

MEETING MINUTES

STATE OF WASHINGTON ~ BOARD OF PILOTAGE COMMISSIONERS

September 11, 2008 ~ Patriot Day

Present:

Chairman: Harry Dudley

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

Assistant Attorney General: Susan Cruise, Guy Bowman

Administration: Peggy Larson and Judy Bell

Del Mackenzie, Don Soriano, Walt Tabler (Administration): Puget Sound Pilots

Mike Moore, Jordan Royer, Matthew Darbous: Pacific Merchant Shipping Association

Bill Bock: Retired PS Pilot

Ron Kinsey: US Coast Guard Sector Seattle

Vince O'Halleran: Katharine Sweeney

David Surface: Pilot Aspirant

Rob Zarkos: LeGros, Buchanan & Paul

REGULAR MEETING

The regular meeting of the Board of Pilotage Commissioners was convened at 9:40 a.m. by Chairman Harry Dudley in the Agate Conference Room at 2901 Third Avenue, Seattle, Washington. Assistant Attorney General, Mr. Guy Bowman, was introduced as Susan Cruise's replacement to represent the Board. Susan will be staying on to continue assisting with some unfinished matters.

Minutes. With respect to the July 16, 2008 Minutes, Commissioner Hannigan requested that the word "brief" be deleted on page two under New Business where it describes his overview of the written pilot examination and simulator evaluation specifications. It was moved by Commissioner Snyder and seconded by Commissioner Hannigan that the July 16, 2008 Minutes be approved as amended. The motion carried.

OLD BUSINESS

Consideration of Licensure of PSPD Trainee: Captain Bruce Nelson. On July 28, 2008 Captain Nelson's attorney modified their public records request by broadening the scope of their request. The 21-day waiting period for any pilot or trainee to file an injunction to prevent the release of the training records will expire on September 19, 2008, after which all documents that have been assembled will be reviewed for attorney/client privilege and released to Captain Nelson's attorney. Upon receipt of these records Captain Nelson will make a presentation in response to the invitation to address the Board. Action on this matter was deferred to the next regular meeting.

Consideration of Puget Sound Pilot's Request for a Copy of the Assistant Attorney General's Written Legal Opinion on Pilot Retirement Issues. After hearing from the attorneys for the Board and Puget Sound Pilots on their points of view regarding this request, this matter was deferred to executive session in light of potential litigation. Refer to page four of these minutes.

Hiring of Special Attorney Regarding Pilot Retirement Issues, Status of. Upon speaking with attorneys at the Attorney General's Office, Chairman Dudley has been informed that there is a specific process the Board must follow with respect to obtaining a legal opinion on the matter of pilot retirement issues. The Board must first clearly specify what it wants the attorney to address. If personnel is sufficient to consider the request it will move forward, otherwise a Special Assistant Attorney General (SAAG) will be assigned. Continued discussion of this matter was deferred to executive session in light of potential litigation. Refer to page four of these minutes.

It was noted that the public hearing previously intended to be held in October to consider modifications to certain WACs regarding pilot retirement matters has not been scheduled. The Board has not yet finalized proposed amendatory language necessary for rule-making and filing with the Code Reviser.

NEW BUSINESS

Approval of Pilot License Upgrade Programs for Captains Klapperich, Wildes, Scoggins, and Jonathan Ward. It was moved by Commissioner Snyder and seconded by Commissioner N. Davis that the license upgrade programs for Captains Klapperich, Wildes, Scoggins, and Jonathan Ward be approved as drafted by the TEC. The motion carried.

Review and Consideration of Licensure of PSPD Trainee: Captain Katharine Sweeney. This matter was deferred to executive session. Refer to page four of these minutes.

Consideration of Request for Vessel Exemption: Motor Yacht *MISS SYDNEY*. A petition for vessel exemption was received regarding the foreign flagged 130', 298 gross ton Motor Yacht *MISS SYDNEY*. 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 July 18, 2008, subject to final Board approval at today's meeting. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that the Board concur with his action and issue the exemption for the *MISS SYDNEY* for three months so long as it remains in the charge of Captain Graeme Stoner. The motion carried.

Consideration of Request for Vessel Exemption: Motor Yacht *SLOJO*. A petition for vessel exemption was received regarding the foreign flagged 151', 495 gross ton Motor Yacht *SLOJO*. 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 26, 2008, subject to final Board approval at today's meeting. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that the Board concur with his action and issue the exemption for the *SLOJO* for three months so long as it remains in the charge of Captain Bruno Herregods. The motion carried.

Consideration of Request for Vessel Exemption: Motor Yacht *KAORI*. A petition for vessel exemption was received regarding the foreign flagged 110', 228 gross ton Motor Yacht *KAORI*. 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 15, 2008, subject to final Board approval at today's meeting. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that the Board concur with his action and issue the exemption for the *KAORI* for three months so long as it remains in the charge of Captain Johan Raubenheimer. The motion carried.

Consideration of Request for Vessel Exemption: Motor Yacht *IMPETUS*. A petition for vessel exemption was received regarding the foreign flagged 95', 186 gross ton Motor Yacht *IMPETUS*. 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 25, 2008, subject to final Board approval at today's meeting. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that the Board concur with his action and issue the exemption for the *IMPETUS* for three months so long as it remains in the charge of Captain Craig Campbell. The motion carried.

Pilot's Report of Incident: *EVER URSULA*, 8-19-08. While transiting inbound up the Blair Waterway in Tacoma, the vessel made contact with the southeast end of Pier 4. Chairman Dudley has appointed a two-member CIC consisting of Commissioners Addington and Hannigan to investigate the incident involving pilot trainee Captain Katharine Sweeney and Puget Sound Pilots William Snyder and William Bundren. This matter was deferred to the next regular meeting. Board members were reminded that

the three *Pilot's Reports of Incident* they've received concerning this incident are confidential during this ongoing investigation.

Review of Submittal Procedures for Pilot Physical Examinations. Pursuant to a new rule amendment effective August 21, 2008, pilots now have a longer time frame in which to obtain their annual physical examinations. Anyone not completing their physical examination submittal requirements by their license anniversary date will be notified they are not eligible for dispatch.

Activity Reports. Captain Del Mackenzie, President, Puget Sound Pilots, reported there were 55 active pilots including the president in July and 54 in August; Captain William Thorsen retired on August 11th; there were 760 jobs in July compared to 777 the previous July and 698 jobs in August compared to 735 the previous August resulting in a three year July average of 763 and a three year August average of 743; overall traffic for the first eight months of 2008 was 74 fewer jobs than for the same period in 2007; in July 73 comp days were created and 31 days taken for an additional net of 42 and in August 53 comp days were created and 42 days taken for an additional net of 11; Captain Marin Johnson remains on medical leave; and no pilots are currently attending training classes during the summer peak traffic season. Captain Mackenzie spoke about an open letter dated July 25, 2008 which he sent to all maritime stakeholders and partners concerning tanker escort exercises conducted in June with Polar Tankers, Foss Maritime and Crowley Maritime. At PSP's urging, the Board will be issuing a Statement of Policy defining a "passenger vessel" after consideration by the WAC/Legislative Committee.

Captain Mike Moore, Executive Director, Pacific Merchant Shipping Association, reported on the status of California State's Senate Bill 1627 and recommended the Board study it for its value in lessons learned regarding the oversight of state pilotage matters. Captain Moore spoke of PMSA's continued interest in tracking and analyzing vessel arrival data.

Committee Reports.

Trainee Evaluation Committee:

- The TEC met on August 26th.
- Training program scenarios and local knowledge exams for future trainees are being discussed.
- The TEC met on September 10th with Captain Bruce Nelson and his attorney. Chairman Dudley, Susan Cruise and Judy Bell were also in attendance. Ole Mackey was absent.
- The status of trainees Jim Hannuksela, George Thoreson, Larry Seymour and Steve Jones was reviewed. It was moved by Commissioner Snyder and seconded by Commissioner Addington that Captain Hannuksela be moved out of his initial evaluation phase. The motion carried.

2008 Pilot Exam Committee: Captain Hannigan reported that contract work is progressing with focus groups, subject matter experts and item writers. The written exam will take place on October 20, 2008 and the simulator evaluations are scheduled for the following week beginning on August 27th. The deadline for filing an exam application is September 19th. To date 31 applications have been received and reviewed, 28 approved by the exam committee, 2 denied and 1 pending. To date, Captain Dudley has been requested and has granted an extension of the application deadline to one aspirant.

Chairman Dudley recommended to the Board that it consider the value of partial or complete Puget Sound pilotage on an applicant's federal license and explore the concept of granting applicants with such, a higher ranking on the exam than just the combined score from the written and simulator exercises. He suggested the WAC/Legislative Committee look into it and the Board file a CR-101 to announce its intent to consider it. It was moved by Commissioner Addington and seconded by Commissioner Hulsizer that Chairman Dudley's idea be pursued and a CR-101 be filed. Strong objections were voiced by Commissioner Hannigan. The motion failed.

WAC/Legislative Committee: Commissioner C. Davis reported that in addition to some new matters which were assigned today, the committee is working on a Statement of Policy relative to the definition of a passenger vessel.

Work Group Report: Extension of Route and Contract Pilotage. No activity to report at this time.

Administrator's Report. The 2007 Annual Report has been completed and posted on the Board's website. State issued pilot identification cards are being produced this month for all licensed pilots and trainees. Several inquiries have been made recently by legislative staff concerning vessel exemption laws and regulations. Now that the vessel exemption privilege has been extended to the Grays Harbor Pilotage District as a result of recent legislation, consideration needs to be given to modifications to the Petition Form and applicable fees. Analysis of this was assigned to the WAC/Legislative Committee.

Commissioner Comments. Commissioners C. Davis and Mackey reported they had recently spoken with retired Puget Sound Pilot, Captain Mike Gavin, who requested an opportunity to describe his knowledge of the history of pilot retirement matters and his interest in the Board's ongoing activities.

Confirmation of Next Regular Meeting Date. The next regular meeting is scheduled for Thursday, October 9, 2008, following a public hearing at 9:30 a.m. to consider proposed rule amendments on WAC 363-116-200: *Duties of Pilots*. The hearing and meeting will be held in the Agate Conference Room, 2901 Third Avenue, Seattle. Commissioner Hannigan stated that the Board must convene a special meeting immediately following the written exam (perhaps October 21st) to take action on certain exam related matters.

Review of Pilot Physical Examination Reports. After reviewing the physicians' reports it was moved by Commissioner Snyder and seconded by Commissioner C. Davis that the physical examination reports for Captains B.F. Henshaw, P.S. Kelly, E. Marmol, D.W. Mayer, L.R. Petke, J.A. Shaffer, W.H. Snyder, D.H. Stensager and J.K. Ward be accepted for annual license renewal and K.A. Sweeney for trainee license renewal. The motion carried. Follow-up information requested on Captains J.B Harris and M.E. Blake was received and accepted. Captain M.I. Johnson remains unfit for duty.

An EXECUTIVE SESSION was called from 1:10 p.m. to 2:30 p.m. for purposes of discussing potential litigation, trainee evaluations and electronic data retention. In attendance were Chairman Dudley, Commissioners C. Davis, Mackey, Hannigan, Snyder, Addington, N. Davis and Hulsizer; Susan Cruise, Guy Bowman, Peggy Larson and Judy Bell.

Consideration of Puget Sound Pilot's Request for a Copy of the Assistant Attorney General's Written Legal Opinion on Pilot Retirement Issues. It was moved by Commissioner Addington and seconded by Commissioner C. Davis that a response be drafted to Captain Mackenzie indicating this Board does not intend to waive its attorney/client privilege but, as discussed in this meeting, it does intend to provide as much information as is reasonable and practical relative to items it will be using to make its decision in open public session. The motion carried.

Hiring of Special Attorney Regarding Pilot Retirement Issues, Status of. Commissioner Chuck Davis, Chairman of the Legislative Committee, will be working with stakeholders to develop questions to be forwarded to the Attorney General's Office. An August 4, 2008 letter from the Puget Sound Pilots will be considered by the committee as well. The Attorney General's Office will then advise the Board if there are issues beyond what they can address and if a Special Assistant Attorney General is needed.

Review and Consideration of Licensure of PSPD Trainee: Captain Katharine Sweeney. It was moved by Commissioner Snyder and seconded by Commissioner Hulsizer that the Board approve the Training Program Addendum as recommended by the TEC for Captain Katharine Sweeney dated August 28, 2008. The motion carried. It was moved by Commissioner C. Davis and seconded by Commissioner Snyder that Captain Sweeney's training license be renewed. The motion carried.

The Board was advised of the State of Washington's Electronic Data Retention Regulations as described by Susan Cruise.

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

Absent
Commissioner Craig W. Lee

Commissioner Norman W. Davis

Commissioner Elsie J. Hulsizer