

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

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PILOT COMMISSION - OVERVIEW

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun - locally known as "the Pilot Commission" - regulates the 60 pilots who make up the "San Francisco Bar Pilots" and the one remaining Inland Pilot. The following provides an overview of the Pilot Commission's history, structure, jurisdiction and functions.

History: The Commission was created by first legislative session of the new state of California in 1850 and has been serving continuously ever since.

Government hierarchy: Presently, the Commission answers directly to the Governor and is not a part of any department, although it does receive support services from the Department of Consumer Affairs. Its expenses are paid for by industry through surcharges on pilotage fees and not by state or local taxes. Effective January 1, 2009, the Commission will become a constituent unit of the California Business, Transportation and Housing Agency. The agency has responsibility for the movement of goods throughout the state of California, and many other functions.

Current structure: The Commission consists of seven members appointed by the Governor with the consent of the Senate.

- three are public members who are neither pilots nor work for companies that use pilots
- two are pilots licensed by the Board
- two are "industry members" - one from the tanker industry and one from the dry cargo industry.

Board members serve four-year terms and may be reappointed for one second term. The public members come from varying backgrounds, frequently with limited or no maritime experience, but usually with considerable business, labor or financial experience. In matters in which the industry and pilots have differing viewpoints, it is often the public members who will have the deciding votes. Effective January 1, 2009, the Secretary of the Business, Transportation and Housing Agency will become an *ex officio* member of the Commission.

Staff: The Commission employs two full time employees: an Executive Director, who is a former shipmaster with substantial seagoing experience, and a secretary/administrative assistant. Recently the Commission hired on a half-time basis a retired annuitant Associate Government Program Analyst who will serve the Commission with respect to contracting, rulemaking, and other matters. The

Commission contracts with three investigators, all of who are retired shipmasters, and an attorney specializing in maritime law. Effective January 1, 2009, a Deputy Director will be added to the Commission's staff.

Committees: The Commission does much of its work through a variety of committees that often include non-Board members as well as commissioners, and that develop their own subject matter expertise. They hold meetings or workshops to gather evidence, develop consensus, and make recommendations to the Board. Most committees are advisory. The Board has the ultimate authority to decide most matters that come before it.

Meetings: The Board itself meets regularly once a month in San Francisco, and holds special meetings as necessary on specific topics. All meetings are noticed and most are open to the public with agendas available on the Board's web site (www.pilotcommission.org).

JURISDICTION

Geographically: The Pilot Commission covers the various bays in the San Francisco Bay Area, the tributaries all the way to Stockton and Sacramento, and Monterey Bay, with 70 separate terminals in ten counties. It is the only state pilot commission in California.

Pilots on other California waters operate under the authority of their federal pilot's license. Port of Los Angeles pilots are municipal employees. Port of Long Beach pilots work for a private contractor, the Jacobsen Pilotage Service, Inc. Pilots in the Ports of Humboldt Bay, San Diego, and Port Hueneme are commissioned or contracted with by their respective port authorities or districts.

Subject matter: The Commission licenses pilots. It also does the following:

- holds hearings to develop recommendations to the Legislature as to pilotage rates;
- determines the number of pilots who can be licensed at any one time;
- selects pilot trainees and, through its Pilot Evaluation Committee, oversees their training;
- determines and contracts for training and continuing education required of serving pilots;
- oversees the statutory pension plan; and
- investigates navigational incidents and reports of pilot ladder violations.

TRAINEES

Except for those few remaining pilots grandfathered under an earlier law, all pilots must be selected for, and successfully complete a training program that can last up to three years before they are eligible for licensing.

Eligibility: Candidates for the pilot trainee training program must have a master's license, two years command experience on tugs or deep draft vessels, and pass a written exam and simulator exercise.

Selection: Based on the highest combined score in three areas:

- Experience - (points awarded for length of service on tugs, deep draft and piloting experience elsewhere);
- Written exam - (has been described by those who have taken it as one of the most professional, comprehensive, and challenging piloting exams in the country); and
- Simulator Exercise - tests the candidate's ship-handling skills in anonymous waters, facing a variety of navigational hazards. It is developed by the Board's own maritime and psychometric experts and administered at the California Maritime Academy.

Evaluation of the candidates' performance on the simulator is by a team of evaluators including out-of-state pilots, shipmasters and members of the Board's Pilot Evaluation Committee. Evaluators are provided with a detailed list of a candidate's likely responses to specific situations, and grading criteria to establish which responses are considered Highly Effective, Adequate or Inadequate to protect the vessel's safe navigation in each situation.

This selection process has generated considerable interest from other jurisdictions, whose experimentation we hope to learn from to continue to improve our own selection process.

TRAINING PROGRAM

The trainees who are selected remain on a waiting list for up to three years until openings in the program are identified. The Board enters into a contract with each trainee, who receives a stipend - currently \$5000 a month - and is required to be available full time for up to three years until he or she has successfully completed the program.

Trainees ride with virtually each of the 60 pilots and one inland pilot, initially as observer, and eventually handling the vessels under the supervision of the pilot. By the time they finish the training program, each trainee will have handled every type of vessel that comes into our jurisdiction and will have been into and out of virtually every facility multiple times.

The training is supervised by a five-member Pilot Evaluation Committee made up of senior San Francisco Bar Pilots. That committee tracks each trainee's progress and, based on written criteria, determines when the trainee has successfully completed the training and recommends to the Board when the trainee is ready to be licensed.

CONTINUING EDUCATION

The Commission also has a Continuing Professional Development Program, which requires the assignment of a supervisory pilot for specified ships or facilities during the first three years that a pilot is licensed.

In addition, there are two separate five-year training cycles which each pilot must complete. With pilot and industry input, the Board determines the subject matter and contracts for the training through Port Revel, MITAGS (the Maritime Institute of Technology and Graduate Studies), the California Maritime Academy and other providers. As with other Board expenses, the training is paid for by industry through a separate pilotage surcharge identified on the pilot invoice at a rate set by the Board.

INCIDENT REVIEW COMMITTEE

Navigational incidents involving the possibility of pilot error and other claims of pilot misconduct are investigated by a two-member Incident Review Committee (IRC). By statute, the members of the committee are the Executive Director and one of the three public Board members who is appointed to the committee by the Board President.

Groundings, collisions and other navigational incidents in which a Board licensed pilot was aboard are typically reported to the Executive Director by the Port Agent, who is selected by the pilots to represent them at the Board. They may also be reported by the vessel involved, other vessels or terminal operators. The Executive Director assigns one of the Board's investigators to go aboard the ship if it is still in port, interview the master and other witnesses, obtain copies of the deck log, bell book, course recorder and similar ship's logs, take photographs and report back to the IRC. The pilot is required to provide the IRC with a written statement (which cannot be used against the pilot in any subsequent hearing, except for impeachment, and, by law is not a public document).

The IRC then meets with the pilot to review the results of the investigation and the IRC's options for resolving the matter. If the IRC determines that there was pilot error, it has authority to issue a letter of reprimand or provide counseling to the pilot, or enter into a stipulation with the pilot that could include focused training, a number of supervised practice trips or other terms designed to reduce the risk of having a similar accident. A common element is a lessons learned presentation to the trainees.

The Commission has adopted by regulation guidelines for the IRC providing a range of sanctions for

specific types of misconduct. They were modeled after the Coast Guard's guidelines for similar types of misconduct or negligence. Those guidelines are also available online.

If the IRC concludes that the pilot misconduct warrants a period of suspension or revocation of the pilot's license, it files an accusation. The pilot then has the right to a formal public hearing presided over by an administrative law judge. The burden of proof is higher than that found in Coast Guard license suspension hearings: The IRC must establish pilot error by "clear and convincing evidence to a reasonable certainty."

While the Board could send such cases to be heard by an administrative law judge alone, it has routinely exercised its authority to hear such cases sitting with the ALJ, with the Board acting as the finder of fact. If it determines that there was pilot error, the Board then decides the level of the appropriate sanction.

Cases going to a full Board hearing have become fairly rare, averaging less than one per year. Most, but not all, have resulted in a finding of misconduct, with sanctions typically including extended periods of probation, outright suspension and retraining.

Reports by the IRC are routinely distributed to all the pilots, pilot trainees, the Coast Guard, other state agencies and interested members of the maritime community and are used as "lessons learned" to help other pilots avoid similar incidents. They are also published in the Board's minutes, which receive wide distribution and are available on the Board's website.

Legislation effective January 1, 2009 will modify certain of the IRC processes, but the focus will remain the same.

PILOT LADDERS

The IRC also investigates reports of pilot ladder violations. The pilots have been provided with standardized forms to make it easy to report such violations, and the pilot boats have been equipped with digital cameras to help document them.

The Commission keeps track of reported violations by each vessel and includes that history in its reports.

The pilot ladder violation reports are sent to the ship's owner or agent and to the Coast Guard, which has the jurisdiction to take enforcement action. The reports are also published in the Board's monthly minutes, which receive considerable distribution among those concerned with pilotage in the Bay Area.

These reports also show up on the vessel's incident and casualty history maintained by the Coast Guard and can affect the likelihood of being boarded in the future.

The Commission's anecdotal experience is that this level of notoriety appears to have been effective in getting ship-owner cooperation, especially among those ships that regularly call on the Bay Area. The success of this program has been in large part due to the efforts of the pilots in promptly reporting and documenting the violations, the proactive approach of the pilot organization in meeting with the ship's agents and owners in appropriate cases, and in the support of the Coast Guard in pursuing penalty action in egregious cases.

COAST GUARD/INDUSTRY RELATIONS

The working relationship between and among the San Francisco Bar Pilots, the Pilot Commission, industry and the Coast Guard has been described as one of the best in the country.

Senior representatives of USCG Sector Command (San Francisco) – previously the Marine Safety Office - and the Vessel Traffic Service (VTS) routinely attend the Board's monthly meetings and periodically address the Board on issues of mutual interest. The IRC and the Coast Guard's Senior Investigating Officer work closely together and seek to conduct joint training of their investigators. Board representatives routinely attend harbor safety and maritime security meetings as well as the periodic change of command ceremonies at Coast Guard commands responsible for marine safety issues.

Industry representatives are active participants in virtually all of the Board's functions and have representative members on the Board and on most of its committees.

UPRR BRIDGE (An example of close cooperation)

There is a railroad bridge at Martinez, California that crosses a major waterway that is used by tanker vessels and bulk dry cargo vessels piloted by Board-licensed pilots. The bridge handles over 60 trains per day, including commuter passenger traffic and most of the containers bound to and from the Port of Oakland. For years, the bridge experienced frequent breakdowns and communication difficulties in responding to ships' requests to open. Downbound ships with an ebb tide were particularly vulnerable due to the lack of a place to turn the ship around in the case of last minute problems.

This led to some vessels making requests to open the bridge well before their final approach, and keeping the bridge open for extended periods, resulting in substantial train delays. A committee consisting of representatives from the railroad, the Coast Guard bridge section, VTS, the pilots and the

Pilot Commission were able to break down the cultural barriers between the two transportation systems to arrive at a solution. The railroad invested two million dollars to upgrade the equipment that raised and lowered the bridge. The committee developed a communications protocol which was voluntarily adopted by the stakeholders rather than becoming the subject of further regulation.

The communication protocol ensures the timely passing of critical information between the bridge tenders and the pilots, using consistent terminology and predictable procedures - a significant departure from the prior practice. The result has been a dramatic decrease in the number of close calls, vessel delays and train delays that had plagued past bridge transits.

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The Pilot Commission recognizes that its past successes have been due to the efforts of no one person or entity. It has been the desire to cooperate and participate in finding mutually acceptable solutions on the part of the pilots - both as an organization and individually - as well as the industry, the Coast Guard and other government entities, and the Pilot Commission, that has resulted in the good working relationship that exists today. With the leadership in charge of each of those entities, the Commission fully anticipates that cooperation to continue.