

**BEFORE THE BOARD OF PILOT COMMISSIONERS FOR THE
BAYS OF SAN FRANCISCO, SAN PABLO, AND SUISUN**

In re Petitions of the PACIFIC MERCHANT)	
SHIPPING ASSOCIATION and the)	
SAN FRANCISCO BAR PILOTS for an)	
Adjustment of Pilotage Rates under Harbors)	[Proposed]
Navigation Code sections 1200-1203.)	FINDINGS AND
_____)	RECOMMENDATIONS

FINDINGS

1. On February 11, 2011, the Pacific Merchant Shipping Association (PMSA) and the San Francisco Bar Pilots (SFBP) filed separate petitions for adjustment of pilotage rates under the provisions of sections 1200 through 1203 of the Harbors and Navigation Code. On February 18, 2011, in compliance with the notice requirements of Harbors and Navigation Code section 1201 and section 236(b) of its regulations,¹ the Board of Pilot Commissioners set April 6, 2011, as the date for a public hearing to obtain information and data relating to the issues raised in the petitions.

2. PMSA and SFBP submitted written evidence in support of their respective petitions and written evidence responding to each other's petitions within the time limits set forth in section 1201.5.

3. The Board's president convened a pre-hearing conference with the parties, as authorized by section 236(g), which was held on March 29, 2011. At that conference, the Board president requested submission of additional evidence as permitted by section 236(j).

4. Prior to the hearing, the Board, in compliance with section 236(e), was provided with copies of the audited annual financial statements for 2009 and 2010 of the San Francisco Bar Pilots and the San Francisco Bar Pilots Benevolent and Protective Association.

5. The public hearing to obtain information and data relating to the issues raised in the petitions commenced on April 6, 2011, and concluded on April 8, 2011. The hearing was conducted in accordance with the Bagley-Keene Open Meeting Act, and the proceedings were recorded by a certified shorthand reporter.

6. On April 28, 2011, following submission of closing briefs by PMSA and SFBP, the Board met to deliberate concerning what pilotage rate changes, if any, were warranted by the evidence. Members of the Board considered each of the factors in section 1203 and section

¹ All references to sections 1201, 1201.5, 1202, or 1203 are to those sections of the Harbors and Navigation Code, unless otherwise specified. All references to section 236 are to section 236 of the Board's regulations (Cal. Code Regs., tit. 7, § 236), unless otherwise specified.

236(f). The meeting was conducted in accordance with the Bagley-Keene Open Meeting Act and was recorded by a certified shorthand reporter. Multiple votes were taken on various rate proposals, and ultimately a rate adjustment proposal obtained the number of votes necessary for a recommendation to the Legislature.

Rate adjustments requested by SFBP

7. The SFBP petition requested two surcharges, a transportation fee, additions to the Service Code and Charge Listing published by SFBP, and percentage increases in all rates, effective in 2014 and 2015, as follows:

(a) A fuel surcharge effective January 1, 2012, to cover fuel costs in operating pilot boats. The surcharge would cover the entire cost of fuel for the pilot boats, not just the cost of fuel over and above some base level of fuel cost. The surcharge would be calculated as follows: For the first quarter of 2012, a fuel surcharge mill rate would be obtained by dividing the actual fuel cost for the third quarter of 2011 by the total tonnage moved during that quarter. The mill rate thus obtained would be applied to the high gross registered tonnage of a vessel on all invoices for the first quarter of 2012. For the second quarter of 2012, the mill rate would be obtained by dividing the actual fuel cost for the fourth quarter of 2011 by the total tonnage moved during that quarter. Quarterly recalculation of the mill rate for subsequent quarters would continue in this way through the end of 2015.

(b) A rent surcharge effective January 1, 2012, to cover the amount of rent for that year set forth in the lease with the Port of San Francisco for SFBP's leased premises at the end of Pier 9 on the Embarcadero. The surcharge would cover the entire rental amount set forth in the lease, not just the rental cost over and above some base level of rent. The rent surcharge would be calculated as follows: For 2012, the rent surcharge mill rate would be obtained by dividing the 2012 rent provided for in the lease by the projected tonnage for 2012, which is the actual tonnage for 2010, totaling 310,651,138 tons. That mill rate would be applied to all invoices in 2012. Similar calculations would be made for 2013, 2014, and 2015, using the same actual 2010 tonnage figure as the projected tonnage for these years.

(c) A transportation fee would be charged for each vessel move to cover costs of returning pilots to their cars or the pilot office after completing a vessel move. The fee would be \$87.75 per vessel move in 2013, \$89.51 per vessel move in 2014, and \$91.30 per vessel move in 2015.

(d) Four new charges would be added to the Service Code and Charge Listing for ship movements or special operations, under Harbors and Navigation Code section 1191, as follows:

Code 892 IP, Additional Pilot, Pt. Blunt to Dock, 1/2 listed rates
Code 892 OP, Additional Pilot, Dock to Pt. Blunt, 1/2 listed rates
Code 815 TP, Two Pilot Requirement, double charge
Code 841 CS, Cancel Service Less Than 8 Hours (Stockton/Sacramento), \$258

(e) A six-percent increase in the current rates per draft foot and per high gross registered ton imposed by Harbors and Navigation Code section 1190, effective January 1, 2014, and a further six-percent increase to those rates effective January 1, 2015.

(f) A six-percent increase in the Service Code and Charge Listing as published by the SFBP, effective January 1, 2014, and an additional six-percent increase, effective January 1, 2015.

8. The Board declined to approve the rate adjustments proposed by the San Francisco Bar Pilots, as submitted, by a vote of four votes against the proposal, two votes in favor. Finding Nos. 9 through 16 below set forth the reasons for the rejection of SFBP's proposed rate adjustments, as submitted.

9. Neither the proposed fuel surcharge nor the proposed rent surcharge is a surcharge in the usual sense. Normally, surcharges are charges that apply above a certain base level of expense. These proposed charges encompass the entire cost of the expense item, starting with the first dollar of expense. Both surcharges would require shipping companies to bear the entire amount of these expenses, thereby removing any incentive for the SFBP to control these costs.

10. A proliferation of surcharges is bad policy. Surcharges or special fees for the normal expenses of a business that are either well known in advance or determinable within reasonable limits, such as rent or transportation, are just part of the mix of business expenses, and to the extent possible should be controlled by the owners of the business to maximize efficiency and net return. Surcharges for the entirety of those items shift all of the business risk associated with them to the rate-payers, who have no ability to intervene to control costs passed through to them.

11. The two proposed surcharges are unlike the pilot-vessel surcharge authorized by Harbors and Navigation Code section 1190(a)(1)(B), which funds acquisition of new pilot boats and the cost of design and engineering modifications for the purposes of extending the service life of existing pilot boats, excluding the costs of repair or maintenance. Such purchases and upgrades are infrequent events with large price tags. Further, shippers participate directly during the design phase and the open public process whereby the Board authorizes construction. The process is transparent. Industry has a voice.

12. The several surcharges mandated by statute relate to the duties of the Board of Pilot Commissioners and are not part of the business of SFBP, other than the pilot-vessel surcharge, and, for a brief period, the now-expired navigation-technology surcharge—another non-recurring, special-circumstance surcharge approved by the Legislature with the shippers' concurrence.

13. The proposed fuel surcharge is a more difficult case. The cost of fuel is a significant expense in the overall cost of providing pilotage service, is highly variable, and is largely beyond the control of the SFBP. There might be some savings to be had at the margin by reducing the speed at which the boats operate, or other operational modifications, but in the main, the cost of fuel is dictated by market conditions that cannot be controlled by either the pilots or by shippers. Fuel surcharges are common in other industries for similar reasons.

14. A major problem with the SFBP surcharge proposals and the proposed transportation fee is that they all start with the first dollar. With these new charges structured in that manner, the charges would cover not merely the marginal increase in expense experienced in recent years, but instead the entire expense. To the extent that the proposed new charges cover expenses that have been a part of the business mix for decades—rent, transportation, fuel—there is in fact a hidden generic rate increase. A generic rate increase may be justified, but it ought to be open and obvious—not hidden.

15. The proposals for the addition of three new charges and one increased charge in SFBP's Service Code and Charge Listing appear to be reasonable and in the public interest, both with respect to environmental and other public safety risks, and with respect to increasing the efficiency of maritime commerce on the waters within the Board's jurisdiction. With some clarifying modifications concerning when the charges apply, these changes appear appropriate.

16. With respect to the proposed six-percent across-the-board rate increases proposed for 2014 and 2015, some increase is justified, but the full increases requested seem excessive.

Rate adjustments requested by PMSA

17. The PMSA petition requested a percentage reduction in the bar pilotage mill rate established in section 1190 of the Harbors and Navigation Code, as follows:

- Minus 7.4 percent, effective January 1, 2012
- Minus 1.39 percent, effective January 1, 2013
- Minus 1.39 percent, effective January 1, 2014
- Minus 1.39 percent, effective January 1, 2015
- Minus 1.39 percent, effective January 1, 2016

18. The Board declined to approve the rate adjustments proposed by the Pacific Merchant Shipping Association, as submitted, by a vote of six votes against the proposal, none in favor. Finding Nos. 19 through 22 below set forth the reasons for the rejection of PMSA's proposed rate adjustments, as submitted.

19. The Board's responsibility is to assess the economic environment as it exists today, not the economic environment that existed nine years ago when the Board last authorized an adjustment in rates. The Board is not bound by assumptions used by the Board in 2002, either as to future shipping calls or that Board's apparent assumption that future levels of gross registered tonnage would remain "flat." Nor is the Board bound by any "trend line" for appropriate increases in pilot net income that may have been contemplated by the Board in 2002.

20. This Board must make its own present-day assessments and predictions regarding future shipping traffic across the bar and in the bay and its tributaries, and regarding the future costs of providing pilotage service.

21. Similarly, it must make its own present-day judgments concerning the appropriate level of pilot compensation, given the evidence available to it in this proceeding.

22. PMSA's proposal focused predominantly on the Board's 2002 rate decision and the assumptions that may have motivated it. PMSA devoted relatively little attention to the factors listed in section 1203 and section 236(f) that the Board is to consider in preparing a recommendation to the Legislature. Based on the evidence presented to it in this proceeding, this Board does not believe that the rate rollback requested by PMSA is warranted.

Other rate adjustments considered by the Board

23. By a vote of six in favor, none against, the Board approved a recommendation that the Legislature adopt a fuel surcharge, effective January 1, 2012. The surcharge would be based on a benchmark per-gallon cost for California No. 2 Diesel Ultra Low Sulfur fuel (0-15 parts per million). If the average per-gallon cost to SFBP during a defined three-month period exceeded the benchmark per-gallon cost, the excess per-gallon cost over the benchmark figure, multiplied by gallons purchased, would be recoverable in the succeeding quarter on a per-move basis, with each vessel piloted paying the same amount as a fuel surcharge. The recoverable excess cost would be divided by total vessel moves by pilots during the same defined three-month period to get the cost per vessel to be charged in the succeeding quarter. The recommended fuel surcharge is described in more detail in Recommendation No. 1 below. Finding Nos. 24 through 27 below set forth the reasons for adoption of this fuel surcharge recommendation.

24. The cost of providing fuel to SFBP's five pilot boats is a significant element of SFBP's expenses and has recently increased sharply.

25. The cost of fuel is volatile and difficult to predict.

26. The level of fuel use and its consequent cost are largely beyond the ability of SFBP to control. There might be some savings to be had at the margin by reducing the speed at which the boats operate, or other operational modifications, but in the main, the cost of fuel is dictated by market conditions that cannot be controlled by either the pilots or shippers. Fuel surcharges are common in other industries for similar reasons, and they are appropriate here.

27. In response to the foregoing factors, it is appropriate to authorize a fuel surcharge to be recalculated for each quarter and charged and collected only in those circumstances where average per-gallon fuel costs exceeds the benchmark per-gallon price.

28. By a vote of five in favor, one against, the Board approved a recommendation to add, effective January 1, 2012, four charges to those authorized by either Harbors and Navigation Code section 1190, subdivision (a)(1) or Harbors and Navigation Code section 1191. Two of the charges involve a 50-percent increase in the charge for bar pilotage under section 1190 where considerations of safety require that an additional pilot board the vessel within the bay to bring a vessel to or from the dock. A third charge involves a doubling of the charge for bay and river moves not covered by bar pilotage rates, again where considerations of safety require use of an additional pilot. The fourth charge increases the minimum time to eight hours for cancellation of

requested services for vessel departures from the Ports of Sacramento and Stockton. These recommended charges are described in more detail in Recommendation No. 2 below. Finding Nos. 29 through 33 below set forth the reasons for adoption of this recommendation.

29. Considerations of safety may require that an additional pilot be used in the navigation of a vessel in transit or in its docking or departure from a dock. Such safety concerns may arise because the size or configuration of the vessel may limit visibility from the bridge or cause difficulties in handling, particularly in confined or shallow waters. Safety considerations may also be associated with the approaches to the dock or visibility problems caused by conditions of fog, weather, or darkness. Finally, the nature of the cargo may involve the need for an additional pilot to provide an additional margin of safety.

30. An additional pilot may need to board a vessel within the bay to help pilot it to or from a dock if the vessel is one of the new class of “mega-vessels” that may visit the bay in the future. The length and width of these vessels would closely approach the limiting sizes of channels and turning basins in the bay, particularly in the Port of Oakland. These close tolerances, together with visibility and handling difficulties associated with these vessels, require more precise navigational aids and may require an additional pilot. Simulations at the California Maritime Academy have been conducted at the request of the Port of Oakland to assess whether such vessels can be piloted safely within the bay. It was determined that such vessels can be piloted safely within the bay with the use of specialized aids to navigation and the services of an additional pilot on board.

31. River moves at night of certain vessels, particularly vessels carrying hazardous cargoes, such as anhydrous ammonia, may be conducted with safety, but only if a second pilot is used for the transit. In such situations, the second pilot would be on board for the entirety of a given segment of the transit for which a separate rate has been approved under section 1191 of the Harbors and Navigation Code. Accordingly, the rate would be doubled to reflect the presence of a second pilot for the entire segment.

32. The justifications for a second pilot that are set forth in Finding Nos. 30 and 31 are not the only situations in which a second pilot might be used, but they were mentioned as likely examples during testimony at the hearing.

33. Late cancellations of vessel departures from the Ports of Sacramento and Stockton are costly in terms of time lost and unnecessary travel expenses incurred by pilots, who must begin travel to these distant locations hours before the scheduled departure. An increase in the minimum time for cancellation of such moves without incurring a charge will encourage shipping companies to give sufficient notice to avoid this expense and inconvenience to the pilots.

34. By a vote of five in favor and one against, the Board approved a recommendation that the rates under both Harbors and Navigation Code section 1190, subdivision (a)(1) and Harbors and Navigation Code section 1191 be increased in four annual increments of 1.5 percent each on January 1 of 2012, 2013, 2014, and 2015. These recommended rate adjustments are described in

more detail in Recommendation Nos. 4 and 5 below. Finding Nos. 35 through 43 below set forth the reasons for adoption of this recommendation.

35. On average SFBP's costs have increased at a steady rate since the last rate adjustment in 2002 and can be expected to continue on that trend into the future. While there has been a significant rent increase for the office space occupied by SFBP at the end of Pier 9, that space is appropriate to SFBP's needs, as opposed to the shortcomings of alternative space considered by the pilots prior to their recent renewal of the lease with the Port of San Francisco. It makes sense to have the small office staff co-located with the pilot boats.

36. Concerning whether the net return to pilots is sufficient to attract and hold qualified pilots, the goal, given the unique and challenging navigational environment in which the pilots operate, is to attract the best pilots available, not simply those candidates who meet minimum requirements.

37. Since the last rate hearing in 2002, the Consumer Price Index has increased at an annual rate of between 2.2 percent (San Francisco–Oakland–San Jose Area) and 2.5 percent (West Region Area).

38. When compared to pilotage charges for other ports deemed comparable under section 236(f)(4), the current rates for the pilotage grounds served by the SFBP are “in the middle of the pack,” neither the highest nor the lowest.

39. Similarly, the net income of the local pilots, compared to income levels for pilots of the comparable ports for which information was available, is again about in the middle, neither the highest nor the lowest. Concededly, there may be differences among the different pilot groups concerning the composition of their total compensation package and the expenses that are or are not borne by the pilots themselves, but there was no evidence that any such differences so skewed the income figures being compared as to render the comparison meaningless.

40. Concerning possible impacts of any rate adjustments on local shipping, there was no significant evidence that there would be diversion of ship traffic away from the Bay Area as a result of the rate increases under consideration. The preponderance of the evidence was to the contrary.

41. The volume of future ship traffic, both in terms of vessel calls and the gross registered tonnage of individual vessels—both of which have a direct effect on pilot net income—are difficult to predict. SFBP predicted that aggregate gross registered tonnage would remain at or about current levels for the next four or five years, while PMSA predicted a steady increase. The PMSA prediction is more consistent with historical trends. It is likely that, given the gradual recovery from the recession and the recent statistics concerning bar crossings, that aggregate gross registered tonnage will gradually increase over the period covered by the recommended rate adjustments. Paired with the modest increase in rates recommended here, the increased shipping volume should produce an appropriate net income for the pilots.

42. Concerning the number of pilots available, 60 pilots have been authorized by the Board. The current number of pilots is 55, two of whom, the Port Agent and the Operations Pilot, are not themselves piloting vessels. Given the number of pilot trainees currently in the training program, the Board expects that the number of pilots will reach 60 within the next several years.

43. Those choosing to become pilots incur significant economic and career risks in addition to the physical risk that is inherent in the job. Among those risks are the following:

(a) There has been a significant increase in medical oversight as a result of legislation enacted in 2008, and that is likely to be further increased with the contemplated adoption of physical and mental fitness standards for pilots.

(b) Following the *COSCO BUSAN* incident, pilots are now faced with possible criminal prosecution for perceived misconduct.

(c) Economically, trainee applicants incur significant risk by abandoning their prior maritime employment and entering a one-to-three-year training program at substantially less income, not knowing if they will complete the program successfully and become licensed as a pilot.

(d) Newer vessels are larger and more difficult to pilot in the bay's confined channels and difficult currents, thereby increasing a pilot's exposure to liability.

These factors may be impediments to persons considering a career as a pilot in the Bay Area, and pilot income has to be high enough to overcome any reservations about such a career change, so as to attract the best available potential candidates to the training program.

RECOMMENDATIONS

1. The Board of Pilot Commissioners recommends approval of a fuel surcharge for all vessel moves by the San Francisco Bar Pilots. The surcharge would be effective January 1, 2012, and would be calculated and collected as follows:

(a) The benchmark price for California No. 2 Diesel Ultra Low Sulfur fuel (0-15 parts per million) will be set at \$2.75 per U.S. gallon, inclusive of tax, if any, paid by the San Francisco Bar Pilots.

(b) By December 5, March 5, June 5, and September 5 of each year, the SFBP shall provide the Board an accounting of (1) total gallons of fuel purchased for the exclusive use of the pilot boats during the three months that precede, respectively, December, March, June, and September, (2) the average per-gallon price of that fuel, and (3) total vessel moves during the same three-month period. The first such accounting shall be due by December 5, 2011.

(c) For the purpose of this surcharge, the average price per gallon shall be the price paid by the SFBP, inclusive of tax, if any.

(d) If the average price paid per gallon for any three-month period exceeds the benchmark price, a fuel surcharge will be charged and collected for the appropriate quarter beginning January 1, April 1, July 1, and October 1.

(e) The total dollar amount subject to recovery by the surcharge will be obtained by subtracting \$2.75 from the average price per gallon paid over the three-month period, then multiplying the resulting figure by the total gallons of fuel purchased during the three-month period.

(f) The surcharge to be charged each vessel shall be obtained by dividing the total dollar amount subject to recovery by the surcharge by the total vessel moves during the three-month period.

(g) Annually, prior to April 1, the fuel surcharges for the previous calendar year ending December 31 shall be reconciled to ensure that the total surcharges collected for the year were not more or less in amount than those calculated in the manner set forth above. Any differential, positive or negative, shall be subtracted or added, as appropriate, to the total dollar amount subject to recovery by the surcharge for the quarter beginning April 1.

2. The Board of Pilot Commissioners recommends the addition, effective January 1, 2012, of four new charges to the Schedule of Pilotage Rates for Ship Movements or Special Operations that are authorized by subdivision (a) of Harbors and Navigation Code section 1191 and that are restated in the Service Code and Charge Listing published by San Francisco Bar Pilots, as follows:

(a) Code 892 IP. When, because of safety considerations, an additional pilot is required between Pt. Blunt and the dock, the charge for the additional pilot shall be one-half the rate under subdivision (a)(1) of Harbors and Navigation Code section 1190.

(b) Code 892 OP. When, because of safety considerations, an additional pilot is required between the dock and Pt. Blunt, the charge for the additional pilot shall be one-half the rate under subdivision (a)(1) of Harbors and Navigation Code section 1190.

(c) Code 815 TP. When, because of safety considerations, two pilots are required in areas subject to rates prescribed under Harbors and Navigation Code section 1191, the charge shall be double the rate under Harbors and Navigation Code section 1191.

(d) Code 841 CS. If a requested departure from the Port of Sacramento or the Port of Stockton is canceled less than eight hours prior to the scheduled time for the move, the charge shall be \$262.

3. The Board of Pilot Commissioners recommends that the Legislature adopt the restatement of the Schedule of Pilotage Rates for Ship Movements or Special Operations, amended to include the four new charges set forth in Recommendation No. 2, that is attached as Appendix 1.

4. The Board of Pilot Commissioners recommends that the draft-foot and mill rates for bar pilotage in effect under subdivision (a)(1) of Harbors and Navigation Code section 1190, unaffected by adjustments under subdivision (a)(1)(A) of section 1190, be increased as follows: those rates that are in effect on December 31, 2011, shall be increased by 1.5 percent on January 1, 2012; those that are in effect on December 31, 2012, shall be increased by 1.5 percent on January 1, 2013; those that are in effect on December 31, 2013, shall be increased by 1.5 percent on January 1, 2014; and those that are in effect on December 31, 2014, shall be increased by 1.5 percent on January 1, 2015.

5. The Board of Pilot Commissioners recommends that the minimum rates for ship movements and special operations in effect under section 1191 of the Harbors and Navigation Code be increased as follows: those rates that are in effect on December 31, 2011, shall be increased by 1.5 percent on January 1, 2012; those that are in effect on December 31, 2012, shall be increased by 1.5 percent on January 1, 2013; those that are in effect on December 31, 2013, shall be increased by 1.5 percent on January 1, 2014; and those that are in effect on December 31, 2014, shall be increased by 1.5 percent on January 1, 2015.

6. Section 1122 of the Harbors and Navigation Code provides for a charge against the owner, operator, or agents of any vessel that carries a pilot to sea against his will or unnecessarily detains a pilot when a pilot vessel is standing by to receive the pilot. Past legislative approval of increases in this charge have been incorporated into the Schedule of Pilotage Rates for Ship Movements or Special Operations provided for under subdivision (a) of section 1191 of the Harbors and Navigation Code. In Recommendation No. 5 above, the Board recommends annual increases to this and other charges beginning January 1, 2012. The increase in this particular charge more properly belongs in section 1122. Accordingly, the Board recommends that the successive 1.5-percent annual increases in this charge that are provided for in Recommendation No. 5 be accomplished by amendment of Harbors and Navigation Code section 1122.

DATED:

K. MICHAEL MILLER
President of the Board