

## MINUTES

### HARBOR SAFETY COMMITTEE OF THE SAN FRANCISCO BAY REGION

10:00 a.m., Thursday, December 14, 1995

Marina Bay Boathouse, Port of Richmond, 2580 Spinnaker Way, Richmond , CA

1. The public meeting was called to order by Chair, Arthur Thomas, San Francisco Bar Pilots, at 10:00. The following committee members or alternates were in attendance: James Faber, Port of Richmond; Alexander Krygsman, Port of Stockton; Margot Brown, National Boating Federation; Geoff Landon (alternate for Maurice Croce), Chevron Shipping; Gail Skarich (alternate for Mary McMillan), Sanders Towboat Service; Marci Glazer, Center for Marine Conservation; Rich Smith (alternate for Dwight Koops), SeaRiver Maritime; John Gosling, Matson Navigation; Scott Merritt, Foss Maritime; Roger Peters, Member at Large; U. S. Coast Guard representatives, Capt. Donald Montoro (MSO) and Cmdr. Dennis Sobeck (VTS); U. S. Navy representative Robert Mattson; OSPR Administrator Pete Bontadelli and OSPR representatives Bud Leland and Marian Ashe. Also in attendance, more than twenty-five representatives of the interested public.
2. T. Hunter, Marine Exchange, confirmed that a quorum was present.
3. **MINUTES OF PREVIOUS MEETING.** G. Landon suggested that, on page 5, item 9, line 2, "this committee" should be changed to "the Harbor Safety Committee". J. Lundstrom noted that on page 4, item 5, the minutes should indicate that the HSC agreed to send a letter in support of NOAA charting; and in item 7, the HSC agreed to assign the issue of underwater rocks to a sub-committee. MOTION by A. Krygsman, seconded by M. Brown, "to approve the minutes as corrected." Motion passed without objection.
4. In his opening remarks, the Chair apologized for calling this meeting which had earlier been canceled. He welcomed OSPR Administrator Pete Bontadelli and Joy Skalbeck, aide to Senator Milton Marks, Chair of the Senate Select Committee on the Maritime Industry. While representatives of The Pacific Maritime Shipping Association have not participated in the recent work of the HSC, they were integrally involved in the drafting of SB 2040. The Chair introduced John McLaurin, newly appointed President of PMSA, and expressed hope that there will be more input from the Association henceforth.
5. **COAST GUARD REPORT.** Captain D. Montoro. (1) D. Montoro's report, which is made a part of these minutes, indicated that there were 28 reported cases of pollution incidents investigated in November, with only 13 confirmed, all of a minor nature. (2) Seismic drilling under the Bay Bridge is part of an upgrading and is scheduled for completion 12-15-95. (3) The M/V ADRIANA on 11-10-95 allided with an Antioch pier. An investigation into the cause of the incident is underway. (4) D. Montoro reported on incidents caused by the heavy weather the morning of 12-12-95. Two vessels were blown off their docks and a third struck the dock while entering. All vessels in anchorage were dragging and had to be re-positioned.
6. Jay Phelps introduced the subject of barge traffic in the South Bay transiting up the Guadalupe Slough to Moffett Field. He indicated that these barges sit in the mud and noted that the HSC has forwarded to OSPR a recommendation for underkeel clearance. Efforts to get the area dredged or locate an off-shore site for oil transfers have been unsuccessful. The transfers at Moffett Field only involve 10,000 gallons at a time and all of the oil is off before the barge sits into the mud. This situation has been reviewed with the Coast Guard. The way the barge sits does not structurally compromise the wharf. Were this fact to

change, the practice would be re-evaluated. J. Lundstrom noted that it would be particularly difficult to deal with a spill in the South Bay because of the shallow water and the fact that there is no land side access. In addition the area is home to a major wildlife refuge. The Chair suggested J. Phelps re-introduce the issue under New Business.

**7. CLEARINGHOUSE REPORT, A. Steinbrugge.** (1) There were no escort irregularities reported to OSPR during November. A written report is made a part of these minutes. (2) Vessel traffic was down from October. A good portion of the reduction in tanker arrivals by 18 can be attributed to the temporary closing of the Chevron Richmond Long Wharf facility. Barge traffic has been stable and is up slightly.

**8. OSPR REPORT, B. Leland** reported that this morning he swore in Scott Merritt, Foss Maritime, as representative for the barge operators; Robin Blanford, BCDC, alternate for Joan Lundstrom; and Barry Baldwin, alternate for Scott Merritt.

(1) P. Bontadelli thanked Roger Peters and the members of the TES for the inordinate amount of time that has been devoted to the development of tug escort regulations. OSPR's commitment was to take a first cut at putting the recommendations they received from the HSC into regulatory language and bring that back to the HSC for comment and input prior to going out to the public. OSPR has already received considerable comment. After the HSC has looked at the language and made a determination as to whether it meets the intent of the HSC is for OSPR to put out a second draft with the comments received. The Chair suggested further discussion of the OSPR draft regulations be held until the TES Report. (2) To address the issue of best achievable protection using best achievable technology, a group (BAPBAT) has been formed to look at existing regulations and review them. The result has been objective significant positive exchange of information. P. Bontadelli thanked the Coastal Commission staff for their work in this effort. Industry representatives have remarked that this is the first time all agencies, state and federal, are sitting down and looking at existing regulations for gaps, redundancies and overlap. He also thanked the voluntary participants from federal agencies, including the Coast Guard, Minerals Management and the EPA. Quite a few reviews and comments have been received. There are a lot of regulations out there already. The Division of Oil and Gas is finalizing regulations for pipelines in oil fields. Four or five of the largest spills in the state over the last few years have come from this source. (3) Pre-emption issues are still not crystal clear. This is demonstrated by the case in the courts in Washington State and the fact that proponents of both sides of the issue cite the same court cases and legal precedent. The process to date has given OSPR a greater knowledge of the international nature of shipping

(4) For the 1996 round of contingency plans, there are only a couple of technical changes. The major exception is that of small craft refueling at facilities with tanks under 500 gallons or facilities that don't see enough small vessels to be governed by current regulations. There will be regulations that apply in instances previously not regulated. Correspondence will go out in the next week to those required to file contingency plans. It will identify the key areas OSPR is looking for in the plan, ensuring that contracts are in place for all areas on the coast that are trafficked. OSPR needs data on normal routes of travel. Plans must be consistent with state regulations and federal interpretation. Salvage contracts will be reviewed re-emphasizing uniform enforcement. Any significant changes in area plans from the 1-96 document will be incorporated into regulations. OSPR wants to ensure that appropriate equipment has been contracted for. There will be two more rounds between now and 1998. Area Plans will include a complete salvage section. OSPR is looking at changes to Monterey and Morrow Bay, in that the available tugs are not adequate. This is a fact that was in existence prior to the PG&E move. Compliance

with other existing regulations for prevention can be accomplished without changes to regulations, but rather with a focus. OSPR sent out a series of notices regarding the risk of loss of certification of contingency plans for non-compliance. This is a three strikes-you're out system. OSPR will review the plans first to see if the vessel or facility adequately meets requirements and then seek to ensure that contracts are in place, based on area plans for response. A remand effort will be made to close the gaps. Since 99.9% of plans reference a co-op for services, it is anticipated that no single plan holder will be responsible for closing a gap. The acquisition of equipment to close gaps will follow a three step process: (1) A contingency plan review and remand process; (2) an effort to get the co-op to work with federal agencies to modify or re-situate existing equipment; and finally (3) OSPR will go to the state legislature to acquire resources to close a gap.

P. Bontadelli reviewed the Administrator's Executive Summary of history, issues, facts, goals and recommendations related to the Coastal Protection Review and SB 2040; dated 9-15-95. This nineteen page document is available, upon request, from OSPR or the Marine Exchange. The Chair asked for questions or comments. Capt. Tom Richards, NOAA, noted that the electronic charting process is moving ahead rapidly as a result of the American Pilots Association lap-top demo project.

**9. PORTS SUB-COMMITTEE**, T. Richards. (1) The Richmond current sensor installation is not yet complete. The Oakland Outer Harbor current sensor is off-line and needs maintenance. He showed a water level graphic that demonstrated the value of real time data. There was 2' more water in Alameda/Oakland on Tuesday than predicted. (2) A risk analysis research project is under contract to USCG and NOAA SeaGrant. Participants from MIT, Woods Hole, the USCG and the Army Corps of Engineers will be in the SF Bay area January 24-26. An initial public meeting has been scheduled for 10:00 at the Pier 9 Pilot Station on 1-24-96 so the team can brief the community on the project. On the following two days, the team will visit different groups, including VTS, BCDC and the SF Estuary Institute to learn about the complexity of the Bay Area. Anyone wanting to schedule a meeting with this team should contact T. Richards. (3) T. Richards, C. Bowler and M. Glazer attended a Human Factors Symposium in Seattle on 12-6-95. Discussion addressed determining where real risks are. In order to do this it is important to look at close calls, however, it is hard to get reporting because of liability issues. It was reported that a solution was reached between the FAA and air carriers using NASA as a neutral third party data gatherer. B. Leland reported attending a similar meeting addressing human factors that was sponsored by the Coast Guard on 12-5-95 in Washington, D. C. D. Montoro noted that there is a system in place in SF Bay for reporting and that there is a form in the VTS manual for reporting near misses or close calls. Patrick Moloney, California State Board of Pilot Commissioners reported that the California Association of Master Mariners publication has reviewed human factors discussions and reports on a third party organization formed on the East Coast to review marine events, similar to NASA. J. Lundstrom noted that the HSC does have a Reportable Events Sub-Committee, chaired by M. Croce, which includes D. Montoro (USCG Marine Safety Office), D. Sobeck (USCG Vessel Traffic Service), P. Moloney (Pilot Commission), C. Bowler (Bar Pilots) and herself (BCDC). She suggested that this committee should schedule a meeting after the first of the year to look at the fledgling SF Bay system and new developments elsewhere.

**10. PLAN REVIEW SUB-COMMITTEE**, J. Lundstrom will contact committee chairs regarding their plans for the next six months. Until now the concentration has been on long term tug escort assignments. She will be working with B. Leland to put all Harbor Safety Plans in one volume.

11. The Chair called for a five minute recess after which the meeting was reconvened.

12. **TUG ESCORT SUB-COMMITTEE**, R. Peters. The TES held a well-attended public meeting on 11-21-95 to review the OSPR draft regulations document. On the whole, the language was consistent with HSC recommendations. Comments and improvements will be incorporated into the draft. There was one notable exception. The guidelines approved by the HSC in 9-95 envisioned escort plans in the form of a checklist to be used by the master, pilot and tug operator in a pre-escort conference. This conference would include a review of navigational issues, communication, environmental and emergency conditions and strategies. In drafting regulations, OSPR set out a requirement that the plans be formalized, filed with OSPR thirty days in advance and approved by OSPR prior to the vessel entering SF Bay. OSPR language is found in section 851.5.1 - Escort Plans. This requirement is specific to SF Bay and not required anywhere else in the state. The sub-committee requested public comment and received two which were distributed at this time. R. Peters stated that the HSC must make a conscious decision whether or not to support a pre-plan versus the HSC recommendation for an on-site conference to address a plan. The issue is philosophical, should we have a process dependent on regulations and formal filing of a plan which might be used to second guess the master, pilot and/or tug operator? The escort process depends upon a variety of situational factors. Requiring the master, pilot and tug operator to follow a plan may not be the best idea. In addition, there is a sense that the SF Bay Area is special and this concept is being used to create a regulatory regime that will force business away. It is for these reasons that R. Peters requested this meeting to look at these issues.

P. Bontadelli responded that four issues had come out of the 11-21-95 workshop. (1) The load line issue will be addressed by alternate language referencing the relevant section of the Code of Federal Regulations. (2) The requirement that four persons be fully awake and available will probably be amended with language to allow an operator to demonstrate an alternate method to provide the required capability. (3) The escort plan. (4) If there is a required escort plan, there must be a method to review with the right input and appropriate knowledge, i.e., a technical committee. The OSPR draft language could be interpreted to say that a vessel has to prepare the escort plan. The intent is that the plan may be prepared by a shipper who makes regular and consistent port calls, a tug company or the pilots. OSPR's justification for the plan requirement as drafted is (a) the need to ensure logical thought and appropriate matching of tugs to vessels; (b) general routes of travel have different requirements, which will vary with the escort vessel; (c) there are differences in how the recommendations will interface with various combinations of vessel and tugs; and (d) the need to articulate the precise minimum for conference communication. The language drafted by OSPR is in conformance with recommendations coming out of an ASTM conference.

R. Peters stated that the basic issue is the pre-filing of a plan with OSPR. He asked P. Bontadelli why OSPR's draft regulatory language varies from USCG requirements in Puget Sound and Prince William Sound which don't require formal filing with an authority but require that the planning is done. P. Bontadelli reiterated the need to ensure, demonstrate and document adequate planning and clarified that every call would not require a separate plan if the vessel specifics, tugs and route are the same. Gregg Waugh, San Francisco Bar Pilots, stated that it is not reasonable for an incoming vessel, especially on short notice, to be aware of the local radio channels in use in the port. There must be flexibility to use available channels at the time of transit. It is impossible to write a script for actions required in an emergency situation when the master, pilot and crew must use the tools available, i.e., the physical capabilities of the tanker and tugs, to deal with unpredictable or unexpected situations, including current,

weather, and traffic. The requirement for filing a plan thirty days in advance of arrival is too restrictive. Vessels sometimes change their itineraries with much less than thirty days to respond to economic or other factors. P. Moloney expressed concern that there is no one within the state that has the professional expertise to review a master's action or decision. In addition, if a pilot or master stays within the parameters of a plan, does the state accept liability for an accident?

Cal Bourke asked what the purpose of the regulations is and how can tug matching be implemented. A. Thomas removed himself from the Chair to speak as a member of the public. He observed that over the years the TES has looked closely at factors. The interim guidelines were effective, but under review didn't meet requirements that tugs could handle the tanker. After significant expense, study and review of methods to develop safe guidelines, the HSC passed, almost unanimously, draft guidelines. His concern is that the conversion process by the state to regulatory language was inappropriate. Prince William Sound and Valdez have dedicated plans because tankers there have dedicated tugs. In SF Bay this is not so for much of the tanker traffic. If the tug or tugs outlined in a filed and approved plan are unavailable that would mean the vessel could not move. The HSC recommended matching matrix allows those without dedicated tugs or a tight contract to transit the bay under specific circumstances, such as reduced speed. M. Ashe responded that the elements of the plan in subsection (a) of OSPR draft language refers to the matrix. The only difference is that the plan be submitted to Sacramento. An operator is no more tied to a submitted and approved plan than in the HSC language. R. Peters read the language from the TES issues document that was forwarded to OSPR stating that the escort plan may be in the form of a checklist. The question is whether safety is better served by sending a plan to Sacramento or should this requirement be actively documented on-site during the pre-escort conference. In response to M. Glazer's concern that objections to submitting a plan to Sacramento applied to both matrix matching and the provision for alternate plans, R. Peters responded that he was addressing matrix matching only. A. Krygsman concurred with R. Peters that he had never considered submission to Sacramento.

M. Ashe read the TES reasoning for recommendation/issue A8 as referred to previously by R. Peters. There was a need for a method to assure needed planning is done appropriately. P. Bontadelli stated that his concerns are (a) seeking a recommendation from the HSC on "documentation"; and (b) maintaining appropriate recognition of seamanship required of the players. By statute, OSPR will be guided by HSC recommendation. The resultant draft language will be submitted to the public for what he expects to be a substantial comment and review process. G. Skarich stated that when Foss made simple plans for tanker customers, they got all the data on the particulars of the subject vessel. This is very expensive to derive and can't be done generically using deadweight and displacement only. The idea of a plan was to communicate such things as what chocks would be used, if the tag line is set to be easily deployed, etc. She read from the MSO newsletter, Fall, 1995. During the foreign vessel inspection process, contingency plans were found not to be uniformly used. Developing the matrix was a major expense made to provide a science based reasoning in response to OSPR's request. Filing a plan will not guarantee any better compliance or planning.

The Chair noted that the HSC contemplated that the Clearing House would verify that vessels are in compliance with the matrix. The HSC language which went to Sacramento provided an alternate way for a tanker company to demonstrate compliance and be rewarded for going to the expense of developing plans. G. Waugh added that there is nothing in the draft regulations to allow for an emergency reaction and the tanker company, master, pilot and tug operator cannot have a legal defense if the provision is not in the law. B. Leland added that under the applicable section of the proposed regulations, found on page

3, item (c) there are exemptions for imminent emergency. G. Waugh responded that his comments were not necessarily referring only to an emergency, but also to a changing situation. A. Thomas added that international requirements provide that the master and pilot have a pre-movement conference prior to any move. The information OSPR is looking for is included in this conference, including communication with the tug operator. Practice under the interim guidelines has made them near-perfect, except for the issues raised by the Glosten Study demonstration. The HSC must assure that the state allows for both types of compliance and transit-by-transit maneuvering decisions using the maritime experience and seamanship of the Marine Exchange, pilot, master and tug operator. R. Peters added that the guidelines call for a very specific pre-escort conference. Capt. Alvin Catallini, USCG retired, stated that the definition of "plan" is that from which one deviates. Ship movements cannot be scripted. The master and pilot are conscious of why the deviation takes place. The state's concern for documentation can be met by an entry in the ship's log or a call to the CH.

A. Krygsman emphasized that the HSC must clarify to OSPR that it did not intend for a written plan be submitted to the state. M. Glazer requested clarification and assurance that this discussion of whether or not there is a submission of an escort plan to the state relates only to the matrix or to alternate plans as well. The Chair, R. Peters and A. Krygsman all indicated that they were only discussing matrix matching. D. Montoro stated that he is concerned with issues of liability and proof of a reason for a deviation from a plan if filed with the state. P. Bontadelli responded that those issues are statutory. The current discussion relates to regulatory matters. He reiterated that some documentation is needed. This is not an issue of procedure or rigidity. OSPR has provided language and rationale for it. If the HSC doesn't like the OSPR proposal, the HSC should make a recommendation. R. Peters likes the idea of documenting the pre-escort conference by a log entry in combination with notification to the CH. The Chair noted that the HSC/TES appreciates M. Ashe's work on the regulatory language, stating that the only unresolved issue is the dropping of one proviso. T. Hunter stated that, in reference to using the ship's log for documentation, it might be convenient to also inform the CH, so the information is available for review six months later.

MOTION by R. Peters that "the HSC clarify to OSPR that documentation, as referred to in Section 851.5.1 - Escort Plans, should be deemed to be in the form of an entry in the deck log and a call to the CH advising that the pre-escort conference has occurred." Seconded by A. Krygsman. Discussion. Maker and second agree to amend the motion to state that "OSPR regulatory language regarding alternate compliance will not be changed." P. Bontadelli asked if the log entry would simply state that a conference was held. He suggested that the entry clearly note that the key elements listed in the regulations were included in the conference. M. Glazer noted her concern, referencing section 851.9.c on page 19 of OSPR draft regulatory language, that alternative compliance is submitted to the state by regular callers. J. Lundstrom suggested that members of the TES work with OSPR to assure that HSC intent on these issues is in draft regulatory language. P. Moloney agreed that this would be an easy solution to the problem at issue. He suggested that representatives of the TES, Tug Escort Working Group, tug operators, tanker operators, and the state could draft a Statement of Purpose. There are only so many routes, terminals and all players could sign off on it. The Chair stated that, with no objection, he would loosely interpret the motion on the floor to allow the Chair to select a sub-committee to work with OSPR to sort out the issues and place HSC's recommended language back into the draft regulatory language. There was no objection. M. Brown suggested the motion on the floor be withdrawn in favor of a motion to reject OSPR's draft language for Section 851.5.1 - Escort Plans. Question called. Motion passed unanimously.

G. Skarich referred to discussion at the 11-21-95 workshop regarding the issue of all escort vessels operating in Zone 1 being required to have a load line certificate, Section 851.8(f)(2)(A). She offered language from sections of 46 CFR 42.09 to address tugs that do not presently have load line certificates. It is important to keep the inspection under the scope of ABS or other like society so that these inspections will not cause an issue of liability to the owner/operator or others involved in the escort. "(A) In lieu of a load line certificate, the escort vessel is required to carry a certificate, issued by the American bureau of shipping (ABS) or by any member in good standing in the International Association of Classification Societies; which verifies that the stability requirements and vessel condition have been met under the terms of 46 CFR sections 42.09-10(a) and (1); 42.09-25(a)(b), except "and meeting applicable requires of this subchapter"; and sections 42.09-15(a)(b)(c), except (1) and (2) of the Load Line Regulations; and 46 CFR part 173 Subpart E, Towing 173-090 and 173.095 and Subpart E, "Special Rules Pertaining to Tug Boats and Tow Boats", 174.145." The language of the sections referred to is included as an addendum to these minutes.

**13. UNFINISHED BUSINESS:** None.

**14. NEW BUSINESS:** (1) Jay Phelps addressed earlier discussion of the Moffett Field Marine Terminal. There is insufficient water alongside to keep the barges afloat. The Chair will agenda the issue for the next HSC meeting in January. The Chair noted that light rail transport of oil to the facility is not feasible and that the bottom is extremely soft mud. He suggested that the facility might ask that a deviation from the rules be granted if foot-by-foot basis soundings were provided. The barge could be required to go in afloat and discharge its oil cargo immediately.. The barge would not be moved until subsequent high water. He added that the agencies responsible for dredging should be urged to do so. A. Krygsman noted that Coast Guard language is coming that would impact this facility. D. Montoro indicated that the Coast Guard is looking into it. His initial read is that this is not a practical problem, probably a regulatory one. (2) D. Montoro reported that the USCG is putting a big emphasis on prevention through people. He is looking to initiate a local program, perhaps with a seminar format, and would like ideas from the maritime community. (3) P. Bontadelli thanked the members of the committee for their work and wished all Happy Holidays. The Chair thanked the committee members and all who participated in today's meeting and wished everyone a Merry Christmas and Happy New Year.

**15. NEXT MEETING.** The next meeting will be held on Thursday, 1-11-96, at 10:00 a.m. in the Port of Oakland Board Room.

**16. MOTION** to adjourn by A. Krygsman and accepted by the Chair. Meeting adjourned at 12:58 without objection.

Respectfully submitted,



Terry Hunter  
Executive Secretary