



March 11, 2009

The Honorable Deborah A. P. Hersman  
Member  
National Transportation Safety Board  
490 L'Enfant Plaza, SW  
Washington, DC 20594

RE: Cosco Busan

Dear Board Member Hersman:

The Pacific Merchant Shipping Association (PMSA) represents ocean carriers that conduct business at ports in the States of California and Washington. The members of PMSA utilize pilots licensed by the California State Board of Pilot Commissioners. We have been following the investigations surrounding the cause of the *M/V Cosco Busan* allision and subsequent oil spill of November 7, 2007. As you are well aware, Capt. Cota was operating in compulsory pilotage under the authority of his State license at the time of the allision.

We are in agreement with comments you made on several occasions at the February 18, 2009 NTSB hearing, specifically, that the cause of the Cosco Busan allision began when the vessel left the dock that morning. But we would also state that if federal and state licensing authorities had fully carried out their responsibilities as licensing agencies back in 1998/1999, Capt. Cota would never have had the opportunity to board the Cosco Busan in November of 2007. The failure of many events of that day can be traced back to the time period when Capt. Cota was arrested and subsequently convicted for Driving Under the Influence (DUI). It was at that point that both the State and Federal regulatory systems displayed a number of serious structural flaws ranging from a lack of reporting requirements, a lack of analysis of reports received, nonexistent communication between related regulatory agencies with common licensees, along with a failure to follow statutory and regulatory procedures. As an example, according to NTSB staff, following the Cosco Busan allision and oil spill the USCG requested that Capt. Cota surrender his federal license in 2008 based on information that was in its possession in 1999 but had never acted on. The USCG's inaction in 1999 was inexcusable, and as history has now shown us, its corrective measure came about a decade late.

With regard to the State Board of Pilot Commissioners, the Board failed to properly investigate Capt. Cota's one year of "not fit for duty" status at the time of his license renewal in 2000 and for years seemed to be completely ignorant of Capt. Cota's lengthy and ongoing medical

ailments. The medical history detailed by the NTSB staff show an individual that suffered from a number of serious medical conditions ranging from kidney stones, depression, alcohol addiction, headaches, abdominal pain, sleep apnea, glaucoma, back pain along with the use of approximately eleven different prescriptions, many of which the NTSB staff described at the February hearing as "...performance degrading medications." But despite Capt. Cota's extensive medical history which seemed to manifest itself in prolonged absences from piloting, several piloting "incidents" and a DUI arrest and conviction, the State Board of Pilot Commissioners continued to license Capt. Cota every year – apparently ignorant of these critical facts.

With the benefit of hindsight, this should come as no surprise. By the Pilot Commissions staff admission, it is an organization that "self audited." Before the Cosco Busan allision brought it into the public eye, it last reported on its activities to a Governor during the Eisenhower Administration. Indeed, it seemed to actively seek such anonymity (see Moloney correspondence with California Legislature June 2007; testimony to NTSB 2007, 2008). And at times it seems as if the Commission, in turn, took the same casual approach with its licensees. For example, several months prior to the Cosco Busan allision, the Pilot Commission concluded that there was no public interest in promulgating a definition of pilot "misconduct."

Based on facts brought up by the NTSB staff at the February 2009 hearing regarding letters reportedly written by pilots in the Fall of 1999 which were submitted to the USCG, there is some question as to what exactly was then known about Capt. Cota's DUI arrest and conviction. Moreover, it appears that the authenticity of one of those letters has also been questioned (to the point where the lawyer for San Francisco Bar Pilots offers one suggestion that the document may be an "outright forgery"). The possibility that a key letter may not be authentic, coupled with the apparent lack of reasonable controls by the USCG designed to confirm authenticity and thereby preserve the integrity of critical public records, are extremely serious issues which beg further investigation and inquiry.

We look forward to the final completion of the NTSB Report. All parties involved have much to learn from the NTSB investigation and the ensuing public debate. With respect to both federal and state regulatory agencies, hopefully they will take timely action to improve their oversight functions, leading to a safer pilotage and marine transportation system.

Sincerely,



John R. McLaurin  
President

cc: Honorable Mark V. Rosenker, Acting Chairman  
Honorable Robert L. Sumwalt, Member  
Honorable Kathryn O'Leary Higgins, Member

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March 16, 2009

Mr. John McLaurin, President  
Pacific Merchant Shipping Association  
250 Montgomery Street, Suite 700  
San Francisco, CA 94104

Dear Mr. McLaurin:

On March 11, 2009 you wrote to National Transportation Safety Board Member Deborah Hersman conveying your views in connection with the allision of the M/V COSCO BUSAN with the San Francisco-Oakland Bay Bridge on November 7, 2007 and the several investigations that ensued. A number of your comments are critical of the U.S. Coast Guard and/or the California Board of Pilot Commissioners. This letter responds on behalf of the California Board.

From the text of your letter, it is not always possible to determine whether you are attributing one or another perceived failure or shortcoming to the Commission or to the Coast Guard, or whether you are seeking to tar both with the same brush. Let me begin by clearing up some of the uncertainty and confusion engendered by your letter to Member Hersman:

- The Commission learned from the Coast Guard of the pilot's DUI conviction after it began its investigation of the COSCO BUSAN incident. State law in 1998 did not and presently does not require reporting of DUI or other convictions to the Board of Pilot Commissioners.
- Under California law, conviction of DUI is not grounds for suspension or revocation of a pilot's license. Intoxication while on duty would be grounds for such a sanction. Conviction of DUI might raise questions concerning a pilot's physical or mental fitness. This is an issue that will be considered by the Commission's Pilot Fitness Committee which will be discussed below.
- Contrary to your assertion, the Board of Pilot Commissioners and the Coast Guard are not related regulatory agencies. As you know, the Commission is a California state agency, and the Coast Guard is a federal agency. While it is true that our licensees hold licenses issued by both agencies, those licenses are granted independently and pursuant to different criteria.

To describe communications between the Commission and the Coast Guard as “nonexistent” is simply false. While there is not a formal structure to those communications, there is regular contact and Coast Guard representatives regularly attend and participate in Commission meetings, as do representatives of your Association. It may be appropriate to formalize the communications related to pilot fitness and other appropriate oversight activities through a memorandum of understanding or another protocol. This is a question that will be considered by the Commission’s Committee to Review Investigation Procedures which will be discussed below.

- Both the Commission and the Coast Guard have procedures that result in decisions concerning physical and mental fitness in determining whether to license or relicense pilots under their respective jurisdictions. Those procedures are quite different. The Commission relies on examining physicians who are licensed to practice medicine in California and who are familiar with the fitness standards mandated by the Commission’s regulations and agree to apply them in assessing the fitness of our licensees. The determination of fitness or lack thereof is made by the examining physician, not by the Commission or its employees. The relevant regulations do not permit any personal medical information, including lists of prescription medications, to pass from the examining physician to the Commission or its employees. Accordingly, the Commission would not have had any means of knowing the intimate details of the pilot’s health as you suggest it ought.

The Commission fitness regime contrasts with that of the Coast Guard which has a full medical record on its licensees and itself makes the determination of fitness.

The Commission recognizes that improvements to its medical fitness standards and processes may be appropriate and to that end has established a Pilot Fitness Committee, the work of which is addressed more fully below.

- The pilot experienced several periods during which he was not fit for duty, including approximately one year during 1998-1999. The Pilot Fitness Committee will examine the Commission’s fitness procedures and will consider whether review by a Commission examining physician is appropriate periodically during an extended period of short-term disability.
- California law holds the Board of Pilot Commissioners, like all other professional licensing agencies in the State of California, to a very high standard in determining whether to suspend or revoke a licensee’s license. The Commission must find “clear and convincing evidence to a reasonable certainty” that a licensee is not fit to retain his or her license. That standard is higher than the civil standard of “more likely than not” and less strict than the criminal standard of “beyond a reasonable doubt.” The Commission has reviewed the pilot’s record carefully and thoroughly. Nothing in that record nor information otherwise available to the Commission met the “clear and convincing to a reasonable certainty” standard to which we are held, until the COSCO BUSAN accident.



- You have incorrectly characterized the Commission's attempt at rulemaking in connection with the definition of pilot "misconduct" as "taking a casual approach with its licensees." Nothing could be further from the truth. The fact of the matter is that there was recognition that pilot "misconduct" should be defined in the Commission's regulations, but there was no consensus as to that definition. Accordingly, the Commission moved on to other matters with the expectation that more discussion would develop a consensus at a later date.

In the closing paragraph of your letter to Member Hersman, you write, "With respect to both federal and state regulatory agencies, hopefully they will take timely action to improve their oversight functions, leading to a safer pilotage and marine transportation system." Indeed, the California Board of Pilot Commissioners, as you well know, is engaged in precisely that activity. In the paragraphs that follow, I will discuss those efforts.

**Background** - Investigations of the COSCO BUSAN incident by the Pilot Commission and other state and federal agencies concluded that piloting error was one of the principal causes for the accident. The Pilot Commission identified a number of improvements in pilot oversight that could be taken by the Commission that would help reduce the risk of similar pilot error in the future. The following is a summary of those efforts.

**Medical Oversight** - To operate as a pilot under his state license, the pilot had to meet both Coast Guard and state standards of physical and mental fitness. (Many jurisdictions that employ or regulate pilots rely solely upon the Coast Guard to assure that the pilot is mentally and physically fit. Pilots subject to the jurisdiction of the California Board of Pilot Commissioners, however, may be required to meet additional standards of physical and mental fitness as authorized by California statute and effectuated by the Board's regulations.) The pilot of the COSCO BUSAN had been found fit for duty under both state and federal standards by a state-licensed physician who was required to be familiar with the physical and mental demands on a pilot. Subsequent investigation resulted in allegations that the pilot did not report all of his conditions and medications to the examining physician. These allegations were the subject of a criminal indictment until the pilot entered a plea agreement on March 6, 2009 (in which the pilot pleaded guilty to negligence in causing the accident, admitted not reporting all his medications but did not admit intent to non-report).

Legislation (SB 1217 – Yee) that went into effect January 1, 2009 now requires pilots licensed by this Pilot Commission to provide a complete list of all medications prior to annual fitness examinations, and timely notification of any changes in that medication. Board examining physicians have been provided with guidelines to implement these requirements pending formal rulemaking. Failure to provide such information would be cause to suspend or revoke the pilot's license.

The Pilot Commission has formed a Pilot Fitness Committee to oversee a study by an occupational medicine specialist from the staff of a regional teaching hospital. The Pilot Commission anticipates contracting with the teaching hospital for these services. The

Committee is an advisory committee that in time likely will make recommendations to the Commission that will result in rulemaking and proposed legislation. Membership in the Pilot Fitness Committee includes a former flight surgeon, a pilot licensed by the Commission, and an expert in medical quality assurance. Other physicians will serve as volunteer consultants to the Committee.

The Committee is charged with conducting a comprehensive review of the standards used to determine the fitness of pilots licensed by the Commission, the procedures used to determine that fitness, the qualifications of physicians used by the Commission to make those determinations, the state of the art of assessing mental fitness of pilots (specifically, degradation of performance due to gradual loss of situational awareness or judgment), appeal procedures to protect both public and individual rights and interests, and the possible use of a second medical examiner to review fitness determinations made by other examiners. The Pilot Fitness Committee will advise the Pilot Commission on pilot fitness issues. The Committee will make its recommendations based on workshops open to the public and on the report of the research physician with whom the Commission will contract.

**Pilot Training in Navigational Technology/use of Portable Pilot Units** - One of the causes of the accident was the apparent miscommunication between the pilot and the ship's captain regarding markings on the electronic chart used on the bridge of the COSCO BUSAN, leading the pilot to believe that he was steering the ship towards the center of the span when he was in fact steering towards one of the bridge support towers.

The Pilot Commission formed a Navigation Technology Committee to evaluate the scope of the types of electronic charts found on ships calling on the Bay Area, and to evaluate the possible use of Portable Pilot Units. This will be a standing committee of the Board of Pilot Commissioners and presently is chaired by a public member of the Commission (retired Rear Admiral, U.S. Maritime Service) and includes other members with maritime expertise from the shipping and pilotage communities.

Portable Pilot Units are laptop sized electronic units which the pilot brings aboard a ship to superimpose GPS and other positioning data onto a chart displayed by the unit. The Committee has recommended that pilot training in advanced electronic navigation systems already provided under contracts with the Pilot Commission be enhanced to provide exposure to a greater number of systems and variety of presentations. Contractors to provide the enhanced training have been identified and the contracting process is underway.

The Committee also recommended the adoption of regulations to require pilots to be equipped with, and trained in the use of, Portable Pilot Units meeting specified standards. Based on these guidelines and their own recognition of the utility of such units, the pilots have purchased the units and have begun the training in their use. The rulemaking process is underway.

The Navigation Technology Committee and the Pilot Commission's Executive Director also worked closely with the Harbor Safety Committee for San Francisco Bay (a state-mandated activity separate from the Pilot Commission), which adopted the Navigation Technology Committee's recommendations and has included them in the proposed amendments to the Harbor Safety Plan, along with stricter guidelines for operating large vessels in restricted visibility and other actions designed to reduce the risk of a similar accident.

**Pilot Incident Investigation Procedures** - The Pilot Commission reviewed the incident record of the pilot on the COSCO BUSAN and concluded that that record and other available information would not have warranted an earlier revocation of his license. Nevertheless, it found that improvements in the evaluation and tracking of incidents might be possible to help the Commission identify possible trends and whether a pilot is suffering from a degradation of performance, situational awareness or judgment.

SB 1627 (Wiggins) passed in 2008 also included changes in the Pilot Commission's investigation procedures. In response, the Pilot Commission created an Ad Hoc Committee to Review Investigation Procedures to evaluate the current procedures and guidelines provided to the statutory "Incident Review Committee," and to recommend standards for Commission investigators. The Committee has issued guidelines for reporting the results of incident investigations under the new law, and proposed standards for Commission investigators that have been adopted to assist in contracting with new investigators. Further, the Committee will examine possible procedures to enhance existing communication with the Coast Guard with respect to pilots licensed by both regulatory bodies. That Committee's work, and related rulemaking, is expected to continue throughout 2009.

As I conclude this response to your letter to Member Hersman, I would be remiss in not pointing out to you that the Commission has had very few resources at its disposal in recent years. We are a volunteer board of seven appointed members plus the recent addition of the Secretary of Business, Transportation and Housing who serves ex officio. We have struggled to carry out our mission with a staff of two: an executive director and an administrative assistant. We recently have received authority to expand our staff by an additional executive and a half-time Associate Government Program Analyst. With the additional capacity, many important activities may be initiated.

And there is an important structural change. Beginning January 1, 2009, the Board of Pilot Commissioners moved from being an independent agency to becoming a department of the Business, Transportation and Housing Agency. This was one of the salutary results of SB 1627 enacted last year. I believe that you are familiar with the legislation.

As part of BTH and in conjunction with its responsibility to provide oversight of the Commission, we have access to state resources and competences not previously available to us. It is my intention, as president of the Board of Pilot Commissioners, aggressively to pursue enhancements to the Commission's processes and oversight of its licensees. Your constructive involvement will

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involvement will be welcomed.

As always, John, don't hesitate to contact me if you wish to discuss these or other matters.

Very truly yours,

A black rectangular redaction box covers the signature of Knute Michael Miller. A small diagonal line is visible on the left side of the box, and a short horizontal line extends from the right side.

Knute Michael Miller  
President

Cc: Honorable Mark V. Rosenker, NTSB  
Honorable Deborah A.P. Hersman, NTSB  
Honorable Robert L. Sumwalt, NTSB  
Honorable Kathryn O'Leary Higgins, NTSB  
Honorable Marjorie Berte, California Business, Transportation and Housing Agency