

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		October 23, 2014
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**Board members present**

RADM. Francis Johnston, President, Public Member  
 Dave Connolly, Vice President, Public Member  
 Capt. Joe Long, Pilot Member  
 Capt. Steve Roberts, Pilot Member  
 John Schneider, Wet Cargo Industry Member  
 Benjamin De Alba, Assistant Secretary for Rail and Ports, representing the Secretary of the California State Transportation Agency

**Board members absent**

Vacant, Public Member  
 Vacant, Dry Cargo Industry Member

**Staff present**

Allen Garfinkle, Executive Director  
 Roma Cristia-Plant, Assistant Director  
 Dennis Eagan, Board Counsel  
 Kelly Dolcini, Staff Services Analyst  
 Sigrid Hjelle, Office Technician

**Public present**

Acting Port Agent Capt. Rick Hurt; Pacific Merchant Shipping Association (PMSA) Vice President Michael Jacob; San Francisco Bar Pilots (SFBP) Business Director John Cinderey, SFBP Capt. Einar Nyborg, Past Board President Knute Michael Miller, Mr. Renee Peinado, Mr. John Cox, Mr. Rex Clack

**1. Call to order and roll call**

President Johnston called the meeting to order at 9:30 a.m. Staff Services Analyst Kelly Dolcini called roll and found that a quorum was established.

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**2. Approval of minutes of the September 25, 2014, Board meeting**

Board members were presented with the minutes of the September 25, 2014, meeting for approval.

**MOTION:** Vice President Connolly moved to approve the September 25, 2014, minutes. Commissioner Schneider seconded the motion.

**ACTION:** The motion passed unanimously on a voice vote.

**3. Announcements – President Johnston**

There were no announcements.

**4. Board Member Activities**

There were no reports.

**5. Executive Director’s report**

**Correspondence and activities since the last meeting:**

On September 11, 2014, Capt. Jeff Cowan of the Department of Fish and Wildlife’s Office of Spill Prevention and Response forwarded a Marine Safety Information Bulletin on preventing loss of propulsion and improving fuel switching safety. Although the bulletin is directed at vessel owner and operators, it provides some interesting statistics on loss of propulsion indicating that 43% are due to general mechanical issues, 23% from start air system issues, 16% on fuel oil systems issues (fuel switching-related), 12% from fuel oil system and fuel pump issues (non-fuel-switching-related), and 6% on lack of maintenance.

On September 29, 2014, Board staff received a letter from the Port of Stockton appointing Capt. David Pate as a Stockton Port District Commissioned Pilot with a term ending June 30, 2015.

With regard to the article distributed last month on Panama Canal expansion safety from an insurance perspective, Capt. George Livingstone provided Board staff with a copy of his monthly column, “Crossing the Bar,” from the October, 2014 issue of *Workboat World*. In the article, he

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discusses safety issues that will be encountered with ultra-large container vessels maneuvering in the locks and transiting the channels.

On October 9, 2014, Board staff was apprised of the progress of the condition and valuation survey/appraisal report on P/V SAN FRANCISCO by Chris Johnson, Marine Superintendent for the SFBP. High priority recommendations were the replacement of expired flares. Recommendations of moderate priority included replacement of wing nuts on the engine room battery terminals, replacement of expired hydrostatic releases on the emergency position indicating radio beacon and starboard life raft, as well as servicing the rescue boat fire extinguisher. The surveyor determined the boat has an estimated fair market value of \$4,850,000, and an estimated replacement value of \$9,100,000.

On October 9 and 10, 2014, he attended the Pacific Admiralty Seminar hosted by the Bar Association of San Francisco. The seminar was well-attended by lawyers and maritime professionals from as far away as Hong Kong and the United Kingdom. Of particular interest to Mr. Garfinkle was a section on On-Board Investigations: Considerations, Conflicts, and Conundrums. Capt. George Livingstone of the SFBP was a speaker and member of a panel discussion on changes in the tug-and-tow industry.

On October 10, 2014, Board staff received news of a \$3.6 million award in a gender discrimination case against the State of Washington Board of Pilotage Commissioners. The article indicated Capt. Katherine Sweeney asserted gender discrimination as the reason she was not licensed by the Washington Board. The article also stated that in the 100+ year history of the Puget Sound Pilots, there has never been a woman pilot and Capt. Sweeney was the first woman accepted into the training program.

On October 14, 2014, Board staff received a United States Coast Guard (USCG) Maritime Safety Information Bulletin concerning Ebola virus precautions.

Also on October 14, 2014, Vice President Connolly provided Board staff with “Researchers building Fatigue Prediction Tool,” an online article from the *Maritime Executive*. The article details a study involving 65 officers and crew on eight ships involved in world-wide trading over a two-year period. As part of the study, the article indicated that participants will keep diaries and wear actigraph watches.

On October 16, 2014, Board staff received a letter from Norman Ronneberg, attorney for Rene Peinado, stating that Capt. Peinado has completed the sailing time requirements listed in the 1996 agreement between Capt. Peinado and the Board, and indicated that Capt. Peinado would like to invoke his contractual right to take the 1993 version of the Pilot Trainee Training Program entrance exam as soon as possible.

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On October 21, 2014, staff received a copy of a letter addressed to Board Counsel Dennis Eagan, notifying him that since the Board has failed to comply with the Fair Political Practices Commission's (FPPC) order to include the Port Agent in the Board's conflict of interest code, the FPPC intends to itself proceed with amending the Board's conflict of interest code to include the Port Agent. The letter also indicated that once the FPPC amends the Board's conflict of interest code, failure to comply with reporting requirements will subject the Port Agent and the Board to enforcement actions by the FPPC.

**Board Licensing:**

Mr. Garfinkle announced that between the August and September meeting, staff renewed Capt. Coney's pilot license, and since the September meeting, Capt. Kleess' license was renewed.

**Board Surcharges:**

Mr. Garfinkle reported that the Board received a check for \$108,339.87 for September surcharges collected by the SFBP, which included the following:

- Board Operations Surcharge: \$37,044.87
- Continuing Education Surcharge: \$36,400.00
- Trainee Training Surcharge: \$34,895.00

**Legislative Matters:**

Mr. Garfinkle reported that there has been no legislation affecting the Board since last meeting.

**Contractual Matters:**

Assistant Director Roma Cristia-Plant reported on contractual matters affecting the Board since the last meeting, including:

- Trainee contracts have been amended to reflect the stipend increase approved by the Board at the September Board meeting.
- Staff is currently developing a contract template, which should streamline the contract preparation process. The template will be used in the documentation for the upcoming surcharge auditor and manned model training procurements.
- Regarding the manned model training contract, staff will be scheduling a meeting with Capt. Long to determine the minimum qualifications and point scoring categories to be included in the request for proposal document to be completed in early 2015.

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- Staff is currently reviewing a draft contract for a surcharge auditor prepared by CHP. The form of the contract will be included in an invitation for bids document, which is anticipated to be submitted to certified small businesses next month.
- One of the investigator contracts was approved by the Department of General Services (DGS), and the second contract, although the same, was not approved by DGS. Ms. Cristia-Plant met with the DGS attorney in early October to discuss the requested amendments, and agreed to three simple amendments. The amendments have been completed by California Highway Patrol staff, and the contract should be executed in the near future.
- Board staff recently met with California State Transportation Agency and California Department of Transportation (Caltrans) information technology (IT) to discuss the Board's IT needs. Caltrans has agreed to provide Board staff with on-site IT assistance at no cost through an interagency agreement.

## **6. Port Agent's Report**

Acting Port Agent Capt. Rick Hurt gave the Port Agent Report. He reported the following to the Board:

- There were three pilots absent for medical reasons during the month of September.
- There were two minimum rest period (MRP) exceptions during the month of September. The reduction in the number of MRP exceptions is likely due to the fact that all trainee training is finished for the year, and the pilot roster is fully complemented at 60 licensees.
- The collaboration between the representatives of the SFBP, Capitol Corridor Joint Powers Authority, Union Pacific Railroad and Amtrak in reducing the number of train delays due to bridge lifts, received an Amtrak Presidential Achievement Award. Capt. McIsaac will travel to Washington, DC for a special award ceremony on November 5, 2014. He indicated that credit is due to all pilots who work with the bridge-tender to mitigate delays during peak train traffic hours.
- The P/V PITTSBURG was taken out of service on September 2, 2014, for the planned service life extension project and was put back in service on October 11, 2014.
- The P/V DRAKE was out of service from October 15-17, 2014, for ABS load line renewal.
- The P/V GOLDEN GATE was hauled on September 26, 2014, to clean the hull and install new zincs. It was taken out of service on October 3, 2014 to install new sanitation.
- When compared to a three-year average, bar crossings were down 0.8% during the month of September at 550. There were 108 bay moves, up 7.4%, and 34 river moves, up 25.9%. Total moves were up 1.7% at 692, and gross registered tonnage was up 7.2% at

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31,555,493 tons. When compared to 2013 year-to-date, total moves were up 2% and gross registered tonnage was up 5%.

## **7. Pilot Evaluation Committee**

Capt. Einar Nyborg gave a report on Pilot Evaluation Committee (PEC) activities since the September Board meeting. The Committee last met on October 22, 2014. All Pilot Trainee Training Program trainees are currently experiencing three months of intensive work accumulation to qualify for USCG pilotage endorsement. The USCG requires submission of eight round trips through a route before a mariner can sit for a pilotage endorsement exam. Once a trainee tests for a route, he is authorized by the PEC to handle vessels under careful supervision. Some trainees enter the program with multiple route endorsements already completed. These individuals are fortunate to have benefitted from local experience and should be commended for their motivation and self-imposed study prior to entering the trainee program. Capt. Nyborg reminded the Board that no additional experience points are given to training program exam applicants that have local pilotage in order to avoid the perception of favoritism to local mariners. Federal First Class pilot endorsement exams are demanding and time-consuming for trainees, but a very important part of the training process.

There are 13 routes and sub-routes within the San Francisco bay and delta. When a trainee accumulates 15 round-trips and multiple dockings and un-dockings within a route, he is upgraded to unlimited federal pilotage license endorsement for that route. Prior to his recommendation for licensure, a trainee will have accumulated hundreds of trips and dockings within the main routes. Capt. Nyborg recognized the working relationship the PEC has maintained with the USCG testing center for many years.

Capt. Nyborg requested that the Board consider the PEC's recommendation of a new member to replace Capt. Tom Burger, whose tenure on the Committee is about to expire, with the timing of the replacement to facilitate staggering PEC member terms. He indicated the PEC is recommending Capt. George Dowdle be appointed to replace Capt. Burger, and provided a brief overview of Capt. Dowdle's education and experience, as evidence that Capt. Dowdle meets all the requirements set forth in regulation for the position. (The Board then considered agenda item #13: "Board appointment of Pilot Evaluation Committee member" out of order.)

**MOTION:** Commissioner Connolly moved to accept the Pilot Evaluation Committee's recommendation and appoint Capt. George Dowdle to the Pilot Evaluation Committee. Commissioner Long seconded the motion.

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**ACTION:** The motion passed unanimously on a voice vote.

On behalf of the PEC, Capt. Nyborg thanked Capt. Burger for his years of service to the PEC, and stated that he has been a fine mentor to many trainees.

Capt. Einar answered a query from Commissioner Roberts and confirmed that trainees receive information in the Pilot Trainee Training Program manuals covering sexual harassment in the workplace.

#### **8. Reported safety standard violations**

- A) Mr. Garfinkle reported that There were no safety standard violations reported since the last meeting.
- B) Mr. Garfinkle announced that Board staff has been investigating the incident of an undetected stowaway on the bridge of the MV/ COSCO OCEANIA that occurred on September 21, 2014. He indicated that the shipping company and the dock were fined by the USCG. President Johnston added that he recently attended an Area Maritime Security Committee (AMSC) meeting along with SFBP Business Director John Cinderey. He apprised the Board that it was clear that there was a lack of communication about the incident, and that several agencies indicated that they would have responded had they known about the stowaway. Lastly, he reported that a cooperative investigation is underway. A discussion followed regarding current emergency procedures employed by pilots to indicate an emergency situation without alerting anyone else on the bridge.

#### **9. Reportable piloting events**

- A) Mr. Garfinkle reported that the incident involving and alleged hard landing of the M/T MINDORO STAR at the Valero Benicia Marine Terminal (BNC 4) on July 26, 2014 was still under investigation. The 90-day deadline occurred on October 23, 2014. An interview with the pilot on board had opened new lines of investigation. Mr. Garfinkle requested an extension to the November 20, 2014, Board meeting.

**MOTION:** Commissioner Roberts moved to grant an extension of the Incident Review Committee report in the matter of the M/T MINDORO STAR. Commissioner Long seconded the motion.

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**ACTION:** The motion passed unanimously on a voice vote.

B) Mr. Garfinkle gave an initial report on the September 15, 2014 loss of propulsion involving the M/V OCEAN LIFE, wherein the anchor was deployed and allegedly made unintended contact with (and damage to) the Trans Bay Cable in the vicinity of the Union Pacific Railroad Bridge. Mr. Garfinkle indicated the investigation is underway, and that the 90-day deadline for reporting to the Board on this incident is December 4, 2014.

**10. Low Sulfur Fuel**

There was no report concerning the loss of propulsion due to low-sulfur fuel.

**11. Implementation of Pilot Fitness Regulations**

Mr. Garfinkle stated that Board staff is continuing to work with University of California, San Francisco campus staff to improve the new fitness determination and medical assessment regime, and noted that, aside from some minor communication issues, the process is working well.

**12. Report of Pilot Safety Committee**

Commissioner Roberts reported that the Pilot Safety Committee met on October 2, 2014. There was discussion of several articles provided by Vice President Connolly, accompanied by a discussion of risk mitigation and near-miss reporting. All members agreed that further research into the issue is warranted.

**13. Board appointment of Pilot Evaluation Committee member**

(This item was addressed under agenda item #7.)

**14. Pilot Boat Advisory Committee**

President Johnston announced that he has selected the members of the Pilot Vessel Advisory Committee, and that the Committee will consist of President Johnston, Commissioner John Schneider, SFBP Capt. Dave McCloy, and Mr. Mike O’Callahan, a former Matson Port Engineer.

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**15. Report on the status of Public Record Act litigation – Board Counsel Eagan**

Mr. Eagan announced that an appeal is pending, and that he had no further information to report.

**16. Report on the Fair Political Practices Commission decision to include the Port Agent in the Board’s Conflict of Interest Code – Board Counsel Eagan**

Mr. Eagan announced that there was no report.

**17. Board Discussion of Best Practices in Maritime Safety - Vice President Connolly**

Vice President Connolly called attention to the Coast Guard Marine Safety Advisory on Distracted Operation from October 29, 2010, which noted the potential risk associated with improper use of cellular telephones and other devices when navigating in the marine environment. He noted that the Coast Guard strongly recommended that vessel owners and operators develop and implement effective policy outlining when phone and device use is appropriate or prohibited. Connolly asked if such a policy was necessary. Commissioner Roberts and acting Port Agent Hurt explained that there is a firmly established code of professional conduct within SFBP that prohibits distracted operations and that allows device use only at appropriate times. A policy was determined to be unnecessary at this time.

This discussion was followed by a discussion on hazard identification and near-miss reporting. Mr. Connolly mentioned that the history of the Harbor Safety Plan was included in his research on the subject and that voluntary near-miss reporting was part of that plan. He noted that this reporting most likely fell by the wayside as anonymity could not be assured due to the Freedom of Information Act, and the inability of the government to provide for confidentiality of the reporting parties. Other information uncovered by his research included the United Kingdom programs “Mariners Alerting and Reporting Scheme (MARS) and “Confidential Hazardous Incident Reporting Programme (CHIRP). Both the CHIRP program and the MARS program operate on a confidential basis, but not anonymously, and both have the goal of improving transportation safety. There was also a discussion of near-miss reporting under the International Maritime Organization (IMO). Vice President Connolly stressed that for near-miss reporting to work there has to be a non-punitive environment. Capt. Nyborg pointed out that the Board has over 20 years of incidents on record, and there is already informal discussion of incidents among pilots and that it is very helpful to both pilots and trainees. Commissioner Roberts noted that Board staff could do a better job of disseminating Incident Review Committee reports to the pilots. Mr. Garfinkle indicated that he would improve on communication with these reports and

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that the staff was looking at ways to digitize past incident reports to create a searchable database that would provide valuable historical incident information.

**18. Incident Review Committee report on the M/T MINDORO STAR – President Johnston**

An extension was provided to the Incident Review Committee to present this report at the November Board meeting. (See agenda item #9.)

**19. Public Comment on matters not on the agenda**

Pilot Fitness Committee chairman Knute Michael Miller reported that the Pilot Fitness Committee (PFC) had not met for several months, pending assurances that budget authority would be available in the 2015/2016 fiscal year to conduct the legislatively mandated pilot fatigue/safety study, but that he understood the administration is working internally to make funds available this fiscal year. As such, he indicated that the PFC will resume work on finalizing the study components and selection of the study consultant. Toward that end, he indicated the PFC will meet next in November. Mr. Miller also reported that the Committee had identified another sleep and fatigue expert who might be interested in participating in the fatigue/safety study—Kenneth Wright, Ph.D. of the University of Colorado. A subcommittee of the Pilot Fitness Committee, consisting of Chairman Miller, General Chet Ward, and Board staff, will discuss the study with Dr. Wright in a telephone conference on October 24.

**20. Proposals for Next Month’s Agenda**

There were none.

**21. Adjournment**

There being no further business before the Board, the meeting was adjourned at 10:54 a.m.

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Allen Garfinkle, Executive Director

Prepared by: Kelly Dolcini