

Minutes Open Session	Monthly Board Meeting	Date: December 18, 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
 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

Capt. Steve Roberts, Pilot Member
 Vacant, Public Member
 Vacant, Dry Cargo Industry Member

Staff present

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

Public present

Port Agent Capt. Peter McIsaac; Pacific Merchant Shipping Association (PMSA) Vice President Michael Jacob; San Francisco Bar Pilots (SFBP) Business Director John Cinderey, SFBP General Counsel Raymond Paetzold.

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.

2. Approval of minutes of the November 20, 2014, Board meeting

Board members were presented with the minutes of the November 20, 2014, meeting for

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approval. Vice President Connolly requested minor amendments to clarify the election of the SFBP President and the appointment of a Port Agent

MOTION: Vice President Connolly moved to approve the November 20, 2014, minutes with minor revisions. Commissioner Long 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:

Mr. Garfinkle reported that Board staff were notified that Commissioner Long appeared in a National Geographic channel documentary titled “Sleepless in America.” The television program initially aired on the National Geographic channel on November 30, 2014, and is also available for viewing on the National Geographic’s website. He congratulated Capt. Long on his effective discussion of the job requirements of a bar pilot.

On December 4, 2014, Board staff received a letter from Richard Aschieris, Port Director for the Port of Stockton, informing the Board that at the December 1, 2014, Port of Stockton Commissioners’ meeting, the commission approved the appointments of Capt. Eric Johnson and Capt. Kristopher Laakso as qualified pilots to offer pilotage services in the district’s jurisdiction. Mr. Garfinkle confirmed that there are currently 12 San Francisco Bar Pilots duly commissioned and appointed to provide pilotage services within the Stockton Port District.

On December 8, 2014, staff received a copy of the agenda for the upcoming regular meeting of the California State Lands Commission that was held December 17, 2014, in Newport Beach, California.

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On December 9, 2014, Board staff received a copy of an article published in SF Gate that described a man was charged in federal court with being a stowaway on the COSCO OCEANIA. A copy of the article is was provided to the Commissioners.

On December 15, 2014, Board staff received a copy of an article titled, “The Effectiveness of Airline Pilot Training for Abnormal Events.” The article, shared by Vice President Connolly, related to recent discussions of the Pilot Safety Committee members concerning training for unexpected events.

On December 15, 2014, Commissioner Long provided staff with an article from Cal Maritime, a magazine of the California Maritime Academy (Cal Maritime or CMA), highlighting the completion of a five year \$75,000 gift from the SFBP that funded scholarships and support for Cal Maritime’s Center for Excellence and Learning in its mission to recruit and retain economically and educationally disadvantaged students. The article indicated the SFBP views its commitment to Cal Maritime as a long-term investment to deepen the candidate pool for the Board’s Pilot Trainee Training Program, and that the SFBP also conducts outreach efforts in the Bay Area to help Cal Maritime’s student recruitment process.

On December 16, 2014, Board staff received notice that California’s Fish and Wildlife’s Office of Spill Prevention and response will no longer provide information on fuel related loss of propulsions. Mr. Garfinkle apprised the Board that going forward this data will be provided by the United States Coast Guard (USCG).

Board Licensing:

Between the October and November Board meetings staff renewed the license for Captain Dowdle.

Since the November Board meeting staff renewed the licenses of Captains Favro, Johnson, McIsaac, Ridens, and Teague.

Board Surcharges:

Mr. Garfinkle reported that the Board received a check for \$126,149.42 for surcharges collected by the SFBP, which included the following:

Board Operations Surcharge: \$28,209.42

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Continuing Education Surcharge: \$15,550.00

Trainee Training Surcharge: \$82,390.00

Legislative Matters:

There has been no legislation affecting the Board since last meeting.

Contractual Matters:

Mr. Garfinkle gave a report to the Board on contractual matters as follows:

- An investigator contract with Capt. Jeffrey Hill was resent to the Department of General Services on November 25, 2014, and is expected to be approved by the end of December.
- Staff drafted a Request for Proposal (RFP) document for the fatigue study, and has received comments on the draft from California Highway Patrol’s (CHP) Contracts Unit staff, Board Counsel Eagan and Pilot Fitness Committee Chairman Miller. Staff will finalize the RFP for issuance by no later than January.
- Commissioner Long met with staff to review the minimum qualifications and other requirements to be listed in the RFP document to procure the next manned model training provider.
- Staff continues to update the scope of work for the surcharge auditor, and projects that an invitation for bid will be issued in late January or early February.
- Staff will begin work early next year on renewing the separate interagency agreements with University of California, San Francisco Campus and CHP, and to renew or extend the contract with Capt. Gates to work on simulations for the next pilot trainee examination.

6. Confirmation of the Port Agent Pursuant to Harbors and Navigation Code Section 1130 – President Johnston

President Johnston called for a motion to confirm the Capt. Pete McIsaac, SFBP President as Port Agent.

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MOTION: Vice President Connolly moved to confirm Capt. McIsaac as Port Agent. Commissioner Schneider seconded the motion.

ACTION: The motion passed unanimously on a voice vote.

7. Port Agent’s Report

Port Agent Peter McIsaac gave the Port Agent Report. He reported the following to the Board:

- There were four pilots absent for medical reasons during the month of November.
- There were two minimum rest period (MRP) exceptions during the month of November.
- The P/V DRAKE was out of service on December 7, 2014, for a clogged generator fuel filter.
- On December 17, 2014, eleven pilots participated in an e-pilot training class at CMA taught by Vic Schisler and Capt. Dave McCloy. The training will increase the number of qualified e-pilots to over 1/3 of the pilot membership.

For November 2014, when compared to a three-year average, bar crossings were down 1.9% at 489, bay moves were up 7.8% at 114, river moves were up 23.8% at 40, total moves were up 0.8% at 643, and tonnage was up 6.4% at 27,221,167 tons. When compared to 2013, year-to-date totals through November reflect total moves were up 0.8% and gross registered tonnage was up 3.7%.

Port Agent McIsaac noted that there are variety of factors currently affecting availability of berths and slowing the movement of ships, causing crowding in anchorage areas on the Bay. Vice President Connolly asked about whether anchorage “buckets” could be rearranged due to many of them being too shallow for use by loaded container ships. Port Agent McIsaac explained that the idea had been discussed, but it was not determined to be necessary at this time, and that so far, arrivals and departures have coincided such that no ships have been turned away.

At the end of his presentation, Port Agent McIsaac recognized John Cinderey for his contributions to the SFBP during his career as Business Director, and wished him luck in his retirement at the end of the month. President Johnston conveyed the Board’s gratitude to Mr. Cinderey for his professional services as the SFBP’s Business Director, and indicated Ray Paetzold will have big shoes to fill as the new SFBP Business Director/General Counsel.

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8. Pilot Evaluation Committee

The Pilot Evaluation Committee did not meet in December. There was no report.

9. Reported safety standard violations – Executive Director Garfinkle

There were no safety standard violations.

10. Reportable piloting events – Executive Director Garfinkle

Before Mr. Garfinkle gave his report, President Johnston addressed the Board and the public present and reminded all that the information gathering process for an incident investigation is often difficult for the Incident Review Committee (IRC) due to lack of authority. He further indicated that this lack of authority impedes the IRC’s efforts, and can prolong the completion of an investigation, often beyond the 90-day statutory initial deadline.

A) Regarding the status of the investigation into the alleged hard landing of the M/T MINDORO STAR at the Valero Benicia Marine Terminal (BNC 4) on July 26, 2014, Mr. Garfinkle reported that the IRC investigation into the alleged hard landing would not be presented today. He indicated that potentially significant new information was received on December 16, 2014, which could change the outcome of the investigation. The 90-day deadline was October 23, 2014. Mr. Garfinkle requested an extension to the January 22, 2015, Board meeting.

MOTION: Vice President Connolly moved to grant an extension of the IRC investigation report of the alleged hard landing of the M/T MINDORO STAR to the January 22, 2015, Board meeting. Commissioner Long seconded the motion.

ACTION: The motion passed unanimously on a voice vote.

B) Regarding the status report of the loss of propulsion of the M/V OCEAN LIFE on September 5, 2014, Mr. Garfinkle reported that the investigation is not yet complete. Evidence of damage to the cable has not been forthcoming. Additionally, he reported the USCG investigation of the incident is not yet concluded, which has resulted in a delay in fulfilling his Freedom of Information Act request to the USCG. The 90-day deadline for this incident occurred December 4, 2014. Mr. Garfinkle requested an extension to the January 22, 2014, Board meeting.

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There was a discussion of granting extensions longer than one month at a time, and Mr. Garfinkle expressed a desire for the Board to err on the side of transparency, and for the IRC to continue to request extensions, and reasons for those extensions, on a monthly basis.

MOTION: Vice President Connolly moved to grant an extension of the IRC investigation report into the loss of propulsion of the M/V OCEAN LIFE to the January 22, 2015, Board meeting. Commissioner Schneider seconded the motion.

ACTION: The motion passed unanimously on a voice vote.

11. Low Sulfur Fuel – Executive Director Garfinkle

Mr. Garfinkle gave a report on loss of propulsion due to the suspected impact of low sulfur fuel from data provided by the California Department of Fish and Wildlife’s Office of Spill Prevention and Response. There were 9 loss of propulsion incidents in the month of November – four fuel related and five suspected to be fuel related.

He reiterated that the Department of Fish and Wildlife will no longer be providing the Loss of Propulsion report, and that he anticipates receiving this information in the future from the USCG.

12. Finance Committee – Committee Chairman John Schneider

Commissioner Schneider reported that the Committee met on December 4, 2014, and recommend that the Board maintain the Operations Surcharge at one percent (1.0%) of all pilotage fees, and the Pilot Boat Surcharge at 3.27 mills (\$0.00327) per high gross registered ton for each vessel subject to the basic bar pilotage fee. He further stated the Committee recommend the Board lower the Continuing Education Surcharge from \$25 per move to \$10 per move, and to lower the Pilot Trainee Surcharge from \$35 to \$10 per trainee per move, both effective January 1, 2015.

MOTION: Commissioner Schneider moved the Board lower the Continuing Education Surcharge to \$10.00 per move and the Pilot Trainee Training Surcharge to \$10.00 per trainee per move, effective January 1, 2015, and that the Pilot Boat Surcharge remain at 3.27 (\$0.00327) mills per high gross registered ton for each vessel subject to the basic bar pilotage fee, and the Board Operations Surcharge remain at one percent (1.0%). Vice President Connolly seconded the motion.

ACTION: The motion passed unanimously on a voice vote.

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13. Rules and Regulations Committee – Commissioner Roberts

- A.) In Commissioner Roberts’ absence, Mr. Garfinkle reported that the Rules and Regulations Committee met on December 16, 2014, and that among the topics discussed were proposed modifications in regulations to the duties of the Port Agent to change continuing professional development standards for recently licensed pilots.
- B.) The Committee recommended the Board approve the proposed changes to California Code of Regulations (CCR) Chapter 7, Article 6, Section 218 (d)(1)(A and B) which would increase the vessel length requirement from 925 feet to 975 feet and from 975 feet to 1000 feet.

MOTION: Commissioner Long moved that the Board adopt the vessel length changes proposed by the Rules and Regulations Committee to CCR Chapter 7, Article 6, Section 218 (d)(1)(A and B), and to direct staff to move forward with rulemaking. Commissioner Schneider seconded the motion.

ACTION: The motion passed unanimously on a voice vote.

(Note: The following was discussed out of order.)

- D.) In Commissioner Roberts’ absence, Mr. Garfinkle also reported that at its meeting, the Rules and Regulations Committee also discussed minimum standards for Board incident investigators. Mr Garfinkle discussed the background on the regulations since his tenure with the Board. Due to the stringent minimum requirements, he stated the Board has been able to attract only a limited pool of qualified investigators. He further stated that the Rules and Regulations Committee discussed changing the regulation requirements to attract a larger pool of investigators. Mr. Garfinkle apprised the Board that other west coast pilot commissions were having similar difficulties locating a sufficient number of qualified incident investigators. Mr. Garfinkle reviewed the Committee recommendations that were provided to the Commissioners.

MOTION: Commissioner Schneider moved to adopt the Rules and Regulations Committee proposal to change investigator minimum standards contained in 7 CCR 211.5 and summarized as: (i) changing any gross tons to 1600 gross tons or greater for the possession of a USCG licenses as a Master; (ii) changing from two years to one year the time to possess a USCG licenses as a chief engineer; (iii) deleting the requirement that a

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bachelor’s degree be from a maritime academy; (iv) changing from three years to two years of experience in shipboard duties as a chief mate or first assistance engineer; (v) changing from three years to two years the experience as a senior marine Coast Guard investigating officer, and changing the retirement rank from Commander to Warrant Officer or above; and, (vi) changing from two years to one year the experience employed shoreside as a marine investigator. Vice President Connolly seconded the motion

ACTION: The motion passed unanimously on a voice vote.

C.) Mr. Garfinkle briefly discussed the rulemaking process, and the annual reporting of the Board’s anticipated rulemaking actions for the calendar year to the Office of Administrative Law.

MOTION: Vice President Connolly moved to report the following to the Office of Administrative Law for the Board’s 2014 Rulemaking Calendar: (i) Regulations Cleanup, Removal of Obsolete Provisions (7 CCR, §§201 *et. seq.* and §218); (ii) Pilot Trainee Entrance Examination Fee (7 CCR, §213); (iii) Duties of Port Agent (7 CCR, §218); Commission Investigator Minimum Standards (7 CCR, §211.5); and, (iv) Continuing Education--Adding Fatigue Education (7 CCR, 215). Commissioner Long seconded the motion.

ACTION: The motion passed unanimously on a voice vote.

14. Pilot Safety Committee – Commissioner Roberts

In Commissioner Roberts’ absence, Vice President Connolly reported that the Pilot Safety Committee had met on December 4, 2014, and spoke at length about near-miss reporting, and hazard identification and reporting systems used elsewhere.

Commissioner Schneider reported his support of the establishment of the Pilot Safety Committee, and his sentiment that the Committee is doing excellent, useful work. He also reported that the committee will meet again next year to discuss a mission statement.

15. Continuing Education Committee – Commissioner Long

Commissioner Long reported that the Continuing Education Committee met on December 16, 2014. At the meeting, he reported the committee discussed the results of the manned model

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Request for Information and the upcoming Request for Proposals. The Committee also discussed the curriculum of the combination course training and possible plans for the future as the contract with CMA comes to an end.

PRESIDENT JOHNSTON STATED THAT AGENDA ITEMS 16 AND 18 WOULD BE CONSIDERED IN CLOSED SESSION, AND PROCEEDED WITH AGENDA ITEM 17.

17. Report on the Status of Public Records Act litigation – Board Counsel Eagan

Mr. Eagan reported that the Department of Justice had filed its opening brief but that there was nothing further to report.

19. Report on Stipulation for settlement and mutual release in Peinado vs. Board of Pilot Commissioners, Case No. 964430 – Board Counsel Eagan

There was no report on this matter.

20. Board discussion of best practices in maritime safety – Vice President Connolly

This item was discussed under item 14. Vice President Connolly suggested that the Pilot Safety Committee work with the Continuing Education Committee to suggest possible improvements to safety.

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

No report. An extension to the investigation was granted under item 10.

22. Public Comment on Matters Not on the Agenda

Mr. Jacob expressed PMSA’s objection to the Board acting on item #16 due to the lack of operating regulations concerning the pilot pension program and disability retirements.

Capt. McIsaac reported that there were no significant delays or events due to the recent storm

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that came through the area.

23. Proposals for additions to next month’s meeting agenda

There were none.

THE BOARD THEN WENT INTO CLOSED SESSION TO DISCUSS AGENDA ITEMS 16 AND 18.

BEGIN CLOSED SESSION: 11:10 ..

16. Presentation and discussion of a request for a disability pension by San Francisco Bar Pilot Capt. Michael Sweeney – Executive Director Garfinkle

18. Report on Fair Political Practices Commission decision to include Port Agent in Board’s Conflict of Interest Code.

Board Counsel Eagan absented himself from the closed session prior to this matter being considered.

END CLOSED SESSION AND RETURN TO OPEN SESSION: 12:39 p.m.

President Johnston reported that the Board had considered Capt. Sweeney’s request for a disability pension in closed session, found him eligible under section 1164 (b) of the Harbors and Navigation Code, and made a determination that, based upon competent medical evidence, the disability became permanent on or was of an extended and uncertain duration as of February 14, 2014.

There was no report on agenda item 18.

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24. Adjournment

There being no further business before the Board, President Johnston adjourned the meeting at 12:40 p.m.



Allen Garfinkle, Executive Director

Prepared by: Kelly Dolcini