

<p><b>Meeting Date:</b> <b>February 25, 2016</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 1 of 16</b></p>
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**Board Members Present**

RADM. Francis Johnston, President, Public Member  
 Dave Connolly, Vice President, Public Member  
 Captain George H. Livingstone, Pilot Member  
 Captain Joe Long, Pilot Member  
 Jennifer Ferrera Schmid, Public Member  
 Benjamin De Alba, Assistant Secretary for Rail and Ports,  
 representing the Secretary of the California State Transportation Agency (CalSTA)

**Board Members Absent**

John Schneider, Wet Cargo Industry Member  
 Vacant, Dry Cargo Industry Member

**Staff Present**

Allen Garfinkle, Executive Director  
 Roma Cristia-Plant, Assistant Director  
 Dennis Eagan, Board Counsel  
 Sigrid Hjelle, Office Technician

**Public Present**

Past Board President Knute Michael Miller; Acting Port Agent David McCloy; Ray Paetzold, San Francisco Bar Pilots (SFBP) Business Director-General Counsel; Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; SFBP Captains Steven Roberts, Einar Nyborg, George Dowdle, Randall Pinetti and Erik Fawcett; Pilot Trainee Training Program trainees Drue Kasper, Jubal Hirschfeld (and family), Neil Billingsley, and Dylan Epperson; and Rex Clack, David Russo and Matthew Johnston of Sterling, Clack & Russo.

**OPEN MEETING:**

**1. Call to Order and Roll Call – President Johnston**

President Johnston called the meeting to order at 9:30 a.m. Assistant Director Cristia-Plant called the roll and confirmed a quorum.

**2. Review and approval of Board meeting minutes – President Johnston**

**Board action to approve Board meeting minutes from the meeting held on January 28, 2016.**

Board members were presented with the minutes of the meeting held on January 28, 2016, for approval. Board Counsel Eagan stated he provided staff some technical, non-substantive

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changes. Mr. DeAlba requested that the minutes be edited to reflect that he attended the meeting. There was no further discussion and no public comment.

**MOTION:** Commissioner Long moved to approve the minutes of the meeting held on January 28, 2016. Vice President Connolly seconded the motion.

**VOTE:** YES: Johnston, Connolly, Livingstone, Long, and Schmid.  
NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

**3. Announcements – President Johnston**

**A) Announcement of events affecting Board business since the last Board meeting.**

President Johnston announced that this is his last meeting and that Vice President Connolly will be acting President after today’s meeting.

**B) Presentation of Commendation of Exemplary Performance to Captain Daniel Boriolo for exemplary seamanship during a loss of propulsion and subsequent anchoring while guiding the vessel clear of the location of the Trans Bay Cable on November 4, 2015.**

President Johnston read the Commendation of Exemplary Performance given to Captain Boriolo for his exemplary seamanship during a loss of propulsion and subsequent anchoring event last November. President Johnston gave the commendation to Acting Port Agent McCloy to give to Captain Boriolo since he could not attend the meeting.

**4. Board Member Activities – Board Members**

**Reports by Board Members having Board business-related activities since the last monthly Board meeting or planned prospectively.**

There were no reports from Board members.

**5. Directors’ Report – Executive Director Garfinkle/Assistant Director Cristia-Plant**

**A) Correspondence and activities since the Board meeting held on January 28, 2016.**

Executive Director Garfinkle reported on correspondence received by the Board since the January Board meeting as follows:

- February 16, 2016, the Board received copies of letters sent to Commissioners Schmid and Livingstone on their Senate confirmations as members of the Board.

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- February 18, 2016, Dr. Ward sent him an article from the New England Journal of Medicine titled, “National Cluster-Randomized Trial of Duty-Hour Flexibility in Surgical Training.” The article discusses a study of the effect of current surgical resident duty-hour policies on patient outcomes, resident education, and resident well-being.

**B) Report on pilot licensing matters in the past month and current month.**

- Between the December and January Board meetings, staff renewed the licenses of Captains Carlier, Kelso, Kellerman, Ruff, and Pinetti.
- Since the January Board meeting staff renewed the licenses of Captains Roberts, Lingo, Stultz, and Martin.

**C) Report on Board surcharges.**

Executive Director Garfinkle reported the Board received a check from the SFBP for \$79,224.07 for the January 2016 surcharge revenues as follows:

- Board Operations Surcharge: \$33,044.07
- Pilot Continuing Education Surcharge: \$ 2,720.00
- Trainee Training Surcharge: \$43,480.00

**D) Report on legislative activities and contractual matters.**

Assistant Director Cristia-Plant reported the following legislative activities and contractual matters events had occurred since the last Board meeting:

- Senate Bill 1312 (Wieckowski) was introduced on February 22, 2016, and was read for the first time. She stated the bill may be acted upon on or after March 23, 2016, and that the current version of the bill proposes to, among other things, amend the procedures for a pilotage rate hearing to be before an administrative law judge before it is considered by the Board.
- The State Controller’s Office (SCO) has an execution-ready version of the interagency agreement to perform an audit of pilotage rates and surcharges, and is expected to sign the contract soon. The SCO projects conducting the 2014 and 2015 audit this spring.
- Staff has instructed the California Highway Patrol contract staff to complete the manned model request for proposal document and submit it to the attorney at the Department of General Services for review as soon as possible.
- The California Department of Human Resources Department has prepared an initial draft of the interagency agreement for work on the next Pilot Trainee Training entrance examination.

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- The California Maritime Academy staff are working on creating new interagency agreements for both Pilot Continuing Education and Pilot Trainee Training Program for work that will commence this fiscal year.
- Staff is projecting to complete a contract with the San Jose State University Research Foundation for the pilot fatigue study by May 2016.
- Staff at the California Public Employees Retirement System confirmed that the Board may utilize an actuary from the CalPERS approved pool of actuaries to conduct an actuarial study of the Pilot Pension Plan the Board is so chooses.
- Staff will need to renew the contract with the Pilot Pension Plan CPA firm, which expires March 30, 2016, and it is likely possible that a new agreement will not be in place before the current contract expires.

**6. Port Agent’s Report – San Francisco Bar Pilot (SFBP) Port Agent Capt. Peter McIsaac**

**A) Monthly report on pilot availability and absences.**

Acting Port Agent McCloy reported that four pilots—Chapman, Coppo, Roberts, and Kleess—were absent for medical reasons in January, or portions thereof, and are still absent as of the date of the Board meeting.

Acting Port Agent McCloy stated that the SFBP continually monitors the dispatch list for possible minimum rest period (MRP) exceptions, and identified a variety of mitigating measures employed if circumstances are likely to result in a rest period of less than ten hours. He reported that these measures include, but are not limited to, suspending continuing professional development protocols, cancelling scheduled meetings, cancelling previously granted compensating time off requests, suspending SFBP internal working rules, or calling in off-watch pilots.

He reported that the SFBP currently has 54 licensed pilots, that there were 24 MRP exceptions in January, and the shortest rest period was 9.8 hours.

**B) Monthly report on SFBP ship piloting business activity.**

Acting Port Agent McCloy reported the following vessel-move data when compared to a three-year average:

- Bar Crossings 531 moves/+8.7%
- Bay Moves 93 moves/-15.7%
- River Moves 42 moves/+4.7%
- Total Moves 725/-3.3%
- Gross Registered Tons (GRT): 30,043,015/-6.0% year to date (YTD)

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He further reported that when comparing January 2016 to January 2015, total moves were up 19%, and GRTs were up 48%, which increase is reflective of the downturn in activity due to the Pacific Maritime Association and International Longshore and Warehouse Union issues that started in January 2015.

**C) Monthly confidential written report of pilots who have been absent for medical reasons (AFMR) presented to Board. The Board may go into closed session to discuss contents of the Port Agent’s confidential report as authorized by Harbors and Navigation Code § 1157.1.**

There was no discussion of the confidential written report of pilots who have been absent for medical reasons. There was no closed session discussion of this item.

**7. Pilot Evaluation Committee – Captain Einar Nyborg**

**A) Report on the Pilot Evaluation Committee (PEC) meeting held on February 17, 2016.**

The PEC Chairman, Captain Nyborg reported that the PEC met on February 17, 2016, that all trainees were interviewed individually in closed session, and that the current trainees include Captains Kasper, Hirschfeld, Lowe, Billingsley, Murray, Rubino, Cvitanovic and Epperson. He reported that the time period trainees have been in the program ranges from 6-18 months, and that all trainees are progressing.

Chairman Nyborg reported that after two terms and eight years on the PEC, he has termed out, and that during his tenure, he participated in the training of 25 new pilots, or nearly half of the existing San Francisco Bar Pilots group, He also stated there has been tremendous change during the last eight years, and that he sees a similar turnover in pilot power in the future. He thanked the pilots and the Board for assisting him during his time on the PEC. Lastly, he reported that the next PEC meeting will be held on March 16, 2016.

**B) Possible Committee recommendation to Board of a new Committee member to replace termed out member Capt. Einar Nyborg. Possible Board action to appoint new Committee member to the PEC.**

Chairman Nyborg stated that the PEC recommends the Board approve Captain Eric Robinson to replace him on the PEC. There was no discussion of the recommendation.

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**MOTION:** Vice President Connolly moved that the Board appoint Captain Eric Robinson to replace Captain Einar Nyborg on the Pilot Evaluation Committee. Commissioner Long seconded the motion.

**VOTE:** YES: Johnston, Connolly, Livingstone, Long, and Schmid.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

**C) Possible Committee recommendation to the Board President to appoint a new Committee Chairman of the PEC to replace Capt. Nyborg, who is termed out. Possible action by Board President to appoint new Chairman of the PEC.**

Chairman Nyborg stated that the PEC recommends the Board approve Captain George Dowdle to replace him as the Chairman of the PEC. There was no discussion of the recommendation.

**MOTION:** Commissioner Long moved that the Board appoint Captain George Dowdle to replace Captain Einar Nyborg as the Chairman of the Pilot Evaluation Committee. Commissioner Schmid seconded the motion.

**VOTE:** YES: Johnston, Connolly, Livingstone, Long, and Schmid.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

**D) Possible PEC recommendation for a determination that a trainee has or trainees have completed the Pilot Trainee Training Program. Possible Board action to award a Certificate of Completion to a trainee who has completed the Pilot Trainee Training Program.**

Chairman Nyborg stated that the PEC has determined that trainee Captain Jubal Hirschfeld has successfully completed the Pilot Trainee Training Program, and recommends the Board award a Certificate of Completion to him. Executive Director Garfinkle confirmed for the Board that he has determined that Captain Hirschfeld has complied with the statutory requirements of the program, and also recommends that the Board award a Certificate of Completion to Captain Hirschfeld. There was no further discussion.

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- MOTION:** Commissioner Long moved that the Board award a Pilot Trainee Training Program Certificate of Completion to Captain Jubal Hirschfeld. Commissioner Schmid seconded the motion.
- VOTE:** YES: Johnston, Connolly, Livingstone, Long, and Schmid.  
NO: None.  
ABSTAIN: None.
- ACTION:** The motion was approved.

Chairman Nyborg stated that the PEC has determined that trainee Captain Drue Kasper has successfully completed the Pilot Trainee Training Program, and recommends the Board award a Certificate of Completion to him. Executive Director Garfinkle confirmed for the Board that he has determined that Captain Kasper has complied with the statutory requirements of the program, and also recommends that the Board award a Certificate of Completion to Captain Kasper. There was no further discussion.

- MOTION:** Vice President Connolly moved that the Board award a Pilot Trainee Training Program Certificate of Completion to Captain Drue Kasper. Commissioner Livingstone seconded the motion.
- VOTE:** YES: Johnston, Connolly, Livingstone, Long, and Schmid.  
NO: None.  
ABSTAIN: None.
- ACTION:** The motion was approved.

**E) Possible recommendation from the Executive Director for the appointment of a new pilot or pilots. Possible Board action to accept a recommendation from the Executive Director that a trainee holding a Certificate of Completion from the Pilot Trainee Training Program be licensed as a state pilot.**

Executive Director Garfinkle reported that both Captains Hirshfeld and Kasper have each not met all requirements for him to issue a license—in one instance the trainee is awaiting a fit for duty determination from the Medical Review Officer, and in another, there is an issue with being able to meet the requirements of Harbors and Navigation Code §1175(d), satisfying the Board that the person has means available for boarding and leaving vessels which the licensee may be called upon to pilot.

Executive Director Garfinkle stated that there are currently 54 licensed pilots, that several pilots are absent for medical reasons, and that the workload could benefit from licensing both trainees as soon as possible. He requested that the Board consider granting him approval to issue a license to each graduate subject to the graduate demonstrating compliance with all HNC §1175 requirements. Board Counsel Eagan stated he would prefer separate motions for each graduate, that any conditional approval have an end date upon which the approval for the Executive Director to issue a licenses expires, and

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suggested a date no later than the next Board meeting date. Commissioner Long reminded the Board that the licensing of these two pilots was compressed since the trainees were notified only last week that the PEC would recommend that the two trainees graduate from the Pilot Trainee Training Program.

Executive Director Garfinkle confirmed for Mr. De Alba that one of the trainees could not make timely arrangements to become part of the San Francisco Bar Pilots Association, and that, as a practical matter, a license applicant must be able to demonstrate that he has the means to get to and from a ship. Commissioner Long stated that to use the pilot vessels, a licensee must be in good standing with the SFBP. Commissioner Connolly stated that he believed public safety warrants the Board approve providing the Executive Director with authority to issue each trainee a license conditional upon the Executive Director's receipt of a fit for duty determination for one of the graduates, and demonstration that the other graduate has a means to get to and from a ship, and that such a conditional authority should expire no later than the next Board meeting date.

**MOTION:** Vice President Connolly moved that the Board authorize the Executive Director to issue a pilot license to Pilot Trainee Training Program graduates Captain Jubal Hirschfeld and Captain Drue Kasper when the Executive Director determines that he has received all necessary documentation that the graduate has complied with the requirements in Harbors and Navigation Code §1175, and that such authorization expires on March 24, 2016. Commissioner Schmid seconded the motion.

**VOTE:** YES: Johnston, Connolly, Livingstone, Long, and Schmid.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

PEC Chairman Nyborg thanked the Board for its decision, and stated that he believes all outstanding licensing issues will be resolved in the very near future. He wished the graduates long and fruitful piloting careers.

Chairman Johnston gave his thanks to the new Pilot Trainee Training Program graduates, and was also thankful for the support of the families and friends as the trainees went through the rigorous program. Vice President Connolly also thanked Chairman Nyborg for his eight years on the PEC, and noted that during his tenure, he made outstanding progress in developing new training processes and procedures that will allow the program to continue to be successfully administered in the future.

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**8. Reported safety standard violations – Executive Director Garfinkle (Reports received between the issuance of this notice and the meeting will also be reported on.)**

**Status report on the December 11, 2015, event involving containers lost overboard from the M/V MANOA while approaching the pilot station.**

Executive Director Garfinkle gave a report on the marine event involving containers going overboard on the M/V MANOA on December 11, 2015. He provided the Board members with a copy of the U.S. Coast Guard (USCG) form CG-2692 (Report of Marine Accident, Injury or Death) that was submitted by the ship on the incident, and briefly described that there was an entire row of containers that were unlocked when the ship was in port, in spite of the fact that the row was scheduled for a partial discharge, and were not relocked when the ship departed, ultimately causing twelve containers to go overboard. He said that the IRC had determined there was clearly no pilot error involved in this event.

Executive Director Garfinkle stated that while there was lots of finger pointing about who was at fault, that it was clear to him from reading the reports, including the reports provided consistent with the Freedom of Information (FOIA) request to the USCG, that fatigue and communication errors led up to the loss of containers.

President Johnston stated that he is aware that Matson is still investigating the event. Vice President Connolly stated that he would like the issue referred to the Pilot Safety Committee for further consideration, since such an event could have disastrous consequences, including the loss of life, and that potentially a best practice could be developed to mitigate the risk of recurrence.

President Johnston called for a short recess so the Pilot Trainee Training Program Certificates of Completion could be signed and pictures taken.

**RECESS: 10:30 A.M.**  
**RECONVENE: 10:52 A.M.**

President Johnston administered the pilot oath to Captains Jubal Hirshfeld and Drue Kasper. The Board and staff congratulated the two Pilot Trainee Training Program graduates.

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**9. Reportable Piloting Events – Executive Director Garfinkle (Reports received between the issuance of this notice and the meeting will also be reported on.)**

**Status report on the event involving the M/V STAR LUSTER allision with overhead power cables in the Port of Stockton on January 19, 2016.**

Executive Director Garfinkle reported that the investigation into the M/V STAR LUSTER allision with overhead power cables in the Port of Stockton on January 19, 2016, is in progress. He reported that the 90-day deadline for the Incident Review Committee report is April 18, 2016.

**10. Incident Review Committee – President Johnston**

**Possible appointment of new Incident Review Committee (IRC) member and chairman from among the public members of the Board to replace President Johnston, who is termed out at the end of February, 2016. Possible action by Board President to appoint a new Committee member and Chairman of the IRC from among the public members of the Board.**

President Johnston stated that Commissioner Schmid has volunteered to replace him on the Incident Review Committee, and he appointed her to fill the position and to chair the committee.

**11. Loss of Propulsion/low sulfur fuel report – Executive Director Garfinkle**

**Report on loss of propulsion events arising November 2015 through January 2016, including those events suspected to be due to low sulfur fuel issues.**

Executive Director Garfinkle provided the Board with three months of USCG Prevention/Response San Francisco Harbor Safety Statistics reports (November 2015 through January 2016), and stated that, of the ten loss of propulsion events, only one instance was determined to be due to fuel switching.

**12. Pilot Pension Committee – Committee Chairman Connolly**

**Report on the Pilot Pension Committee meeting held on January 29, 2016.**

Vice President Connolly reported that the Pilot Pension Committee met on January 29, 2016, and was provided a presentation by Graham Schmidt, the author of the 2009 Pilot Pension Plan actuarial study. He stated that Mr. Schmidt reviewed the study and explained the assumptions that were used to calculate the unfunded liability at that time.

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Vice President Connolly stated the Committee members discussed the current needs for a study update, that the Committee requested staff to determine a process to contract with an actuarial firm, and that that Committee members agreed to take additional time to learn more about the plan and assumptions for a future study.

**13. Board Rulemaking status report – Executive Director Garfinkle/Assistant Director Cristia-Plant/Board Counsel Eagan**

**Report on the status and progress of various Board rulemaking efforts, including the following sections in Title 7 California Code of Regulations:**

- A) Section 211.5 – Commission Investigator Minimum Standards (amend minimum qualifications standards).**
- B) Section 213 – Pilot Trainees (add exam fee and clean-up of regulations).**
- C) Section 215 – Pilot and Inland Pilot Training (add fatigue management and radar navigation in low/restricted visibility training and clean-up).**
- D) Section 218 – Duties of Port Agent (amend requirement for assignments of pilots with under 12 and 18 months experience).**
- E) Section 222 – Conflicts of Interest (add Port Agent Conflict of Interest regulation).**

Executive Director Garfinkle reported that CalSTA and the Department of Finance have completed their review of the Omnibus Rulemaking package involving amendments to §§211.5, 213, 215 and 218 of the Regulations. He stated that staff will proceed with moving the package forward to the Office of Administrative Law and noticing the rulemaking activity.

Executive Director Garfinkle reported that the rulemaking documents for §222 are on the CalSTA Secretary’s desk for review and approval.

**14. Report on the status of Public Records Act litigation – Board Counsel Eagan**

**Status report on Public Records Act litigation: Pacific Merchant Shipping Association vs. BOPC and Peter McIsaac as Port Agent, Writ of Mandate. The Board may go into closed session to discuss with Board Counsel any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.**

Board Counsel Eagan stated there was nothing to report.

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**15. Report on Craig E. Reeder vs. State Board of Pilot Commissioners litigation initiated by Captain Craig Reeder on December 17, 2014 – Board Counsel Eagan**

**Progress report on Reeder vs. Board of Pilot Commissioners. The Board may go into closed session to discuss with Board Counsel any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.**

Board Counsel Eagan stated there was nothing to report.

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

**A Board discussion of best practices in maritime safety and/or lessons learned from Incident Review Committee incident reports or other sources, and possible directions to staff to develop safety policies and procedures. Possible Board action to direct staff to develop safety policies and procedures.**

Vice President Connolly reported that the SFBP has finalized a “pilot evaluation while underway” process that he believes is compliant with the USCG’s recommendation resulting from the T/V OVERSEAS REYMAR incident. He reported that additional work still needs to be done to comply with the second recommendation involving low visibility pilot training, and that the Joint Pilot Safety and Pilot Education Committee is working on this.

**17. Performance Evaluation of the Executive Director – President Johnston**

**Annual Performance Evaluation of Executive Director. The Board may go into closed session pursuant to 11126(a)(1) of the Bagley-Keene Open Meeting Act to discuss the evaluation.**

President Johnston stated that the Executive Director evaluations were distributed to other Board members recently, and that Vice President Connolly would follow up with the evaluation at the next Board meeting. Executive Director Garfinkle confirmed for Vice President Connolly that there is no deadline for his annual performance review, and that he will keep the item on the agenda until it is considered by the Board.

**18. Presentation and discussion of a request for a disability pension by San Francisco Bar Pilot Capt. David Chapman – Executive Director Garfinkle.**

**Presentation and discussion of disability pension request by SFBP Capt. David Chapman.**

**Possible Board deliberation and finding on:**

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- A) Whether Capt. Chapman is disabled within the meaning of Harbors and Navigation Code section 1164(b).**
- B) If Board determines that Capt. Chapman is disabled as defined in section 1164(b), the Board must determine the date of that permanent disability.**

**Board may go into Closed Session to discuss Capt. Chapman’s confidential medical reports as authorized by Harbors and Navigation Code, §1157.1.**

Executive Director Garfinkle reported that he has yet to receive a report from the Medical Review Officer on Captain Chapman’s disability retirement request, and that he will keep the item on the agenda for the next Board meeting.

**19. Incident Review Committee incident continuing report on the M/V JIANGMEN TRADER - President Johnston**

**A continuing presentation of the Incident Review Committee incident report concerning the allision of the M/V JIANGMEN TRADER with San Joaquin River lighted marker 47 on June 27, 2015. Board deliberation and decision with respect to possible pilot error. Board determination with respect to further actions, if appropriate. The Board may go into closed session for the deliberation of the incident report presented under this item pursuant to Harbors and Navigation Code §1180.6(a) and Government Code §11126(c)(3).**

President Johnston skipped agenda item 19, and stated that it would be presented after a break.

**20. Public comment on matters not on the agenda.**

There was no comment on matters not on the agenda.

**21. Proposals for additions to next month’s agenda.**

Other than the items previously discussed, there were no recommendations for next month’s agenda.

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President Johnston called for a break, but before doing so, he appointed Vice President Connolly as the meeting Chairman, and excused himself as the President and joined as a member of the Incident Review Committee (IRC). Vice President Connolly then called a recess to set up for the IRC presentation of agenda item 19.

**RECESS: 11:10 A.M.**  
**RECONVENE: 11:15 A.M.**

**19. Incident Review Committee incident continuing report on the M/V JIANGMEN TRADER - President Johnston**

**A continuing presentation of the Incident Review Committee incident report concerning the allision of the M/V JIANGMEN TRADER with San Joaquin River lighted marker 47 on June 27, 2015. Board deliberation and decision with respect to possible pilot error. Board determination with respect to further actions, if appropriate. The Board may go into closed session for the deliberation of the incident report presented under this item pursuant to Harbors and Navigation Code §1180.6(a) and Government Code §11126(c)(3).**

Executive Director Garfinkle gave the IRC presentation of the M/V JIANGMEN TRADER incident. He reported that on the evening of June 27, 2015, the M/V JIANGMEN TRADER was down bound from the Port of Stockton on the San Joaquin River. It was at the end of twilight when the ship rounded Potato Point and the pilot steadied up on a course toward Webb Point, placing Navigation Mark #47 nearly dead ahead. The pilot, Captain Fawcett, stated that he saw Mark #47 in the fading twilight, that navigation marks in the area were starting to illuminate (the navigation marks have photovoltaic switching system for the battery powered, solar charged, LED lights) and that when he later could not see a lit Mark #47, concluded that that it was not lit. He further reported that pilots typically use Navigation Mark #47 as a reference mark for gauging the turn at Webb Point, and stated the pilot consulted the radar and the Portable Piloting Unit (PPU) as he proceeded to make the turn to port. As the ship swung through the turn, the pilot and crew heard and felt an impact on the ship’s hull, which appeared to be from making contact with Navigation Mark #47. The ship proceeded through the remainder of the turn safely and completed the remainder of the passage without incident. In a later statement to the USCG, the master of the JIANGMEN TRADER stated that Navigation Mark #47 was sighted on the starboard side and was lit when the ship was approaching it.

In its conclusion, the IRC noted that due to conflicting testimony on the question of whether Navigation Mark #47 was lit or not, and the lack of physical evidence (the navigation mark was not recovered), it was not possible to determine with certainty whether the mark was lit. The IRC also concluded that if it was lit, and for whatever reason, not visible to the pilot, then

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it would appear he simply misjudged the timing of the turn and initiated the turn too late, allowing the starboard quarter of the ship to make contact with the mark. The IRC also concluded that even if Navigation Mark #47 was not lit, there were adequate alternative tools available to the pilot (radar, PPU) to adequately judge the location of Navigation Mark #47. For these this reason, the IRC recommended a finding of pilot error.

The IRC additionally acknowledged that the pilot is an experienced river pilot, having made many transits on this route, all without incident, also acknowledged the difficulties of river transits and its great appreciation for the pilots who choose to undertake this challenging work. For those reasons, while the IRC recommended a finding of pilot error, it did not recommend any further action by the Board.

The pilot’s counsel (Rex Clack and David Russo) followed the IRC presentation with one of their own wherein the pilot was interviewed before the Board. The questions by counsel focused on how many times the pilot had transited the route (over 50), what was the primary means of navigating the route (visual navigation), did the pilot see Navigation Mark #47 lit (no), and why would the Master’s statement differ as to whether the mark was lit (the pilot believes the ship’s master was referring to Navigation Mark #49 as opposed to #47). The pilot’s counsel also presented a statement from a retired San Francisco pilot familiar with the San Joaquin River that stated visual navigation is the primary means of navigation.

Vice President Connolly confirmed that the Board agreed to go into closed session to discuss the IRC report.

**CLOSED SESSION BEGAN: 12:00 P.M.**  
**RECONVENED TO OPEN SESSION: 12:45 A.M.**

Board Counsel Eagan reported out of closed session that the Board found for pilot error, and that the Board has directed Board Counsel to draft a formal opinion of its decision for presentation and approval at the March Board meeting.

**20. Adjournment.**

Executive Director Garfinkle acknowledged the efforts of former Board and Committee members and awarded Board certificates to President Johnston, Past President Knute Michael Miller, former Commissioner Captain David Wainwright, and PEC Chairman Captain Nyborg. He also acknowledged former Commissioner Captain Roberts, and stated that the Board previously awarded him a certificate. He announced a luncheon gathering for the awardees, staff and the public to be held after the meeting.

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Vice President Connolly called for a motion to adjourn.

**MOTION:** Commissioner Long moved to adjourn the meeting. Commissioner Schmid seconded the motion.

**VOTE:** YES: Johnston, Connolly, Livingstone, Long and Schmid.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved. The meeting was adjourned at 12:47 p.m.



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Allen Garfinkle, Executive Director