

<p>Meeting Date: June 23, 2016</p>	<p>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</p> <p>BOARD MEETING MINUTES</p>	<p>Page 1 of 20</p>
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Board Members Present

Jennifer Ferrera Schmid, President, Public Member
 Dave Connolly, Vice President, Public Member
 John Schneider, Wet Cargo Industry Member
 Captain Joe Long, Pilot Member
 Captain George Livingstone (arrived at 9:40 a.m.)
 Benjamin De Alba, Assistant Secretary for Rail and Ports,
 representing the Secretary of the California State Transportation Agency (CalSTA)

Board Members Absent

Vacant, Dry Cargo Industry Member
 Vacant, Public Member

Staff Present

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

Public Present

Acting Port Agent David McCloy; Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; George Nowell, Esq.; and Maya Lindeman, San Francisco Bar Pilots (SFBP) Intern.

OPEN MEETING:

1. Call to Order and Roll Call –President Schmid

President Schmid 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 Schmid

Board action to approve meeting minutes from the Board meeting held on May 26, 2016.

Board members were presented with the minutes of the meeting held on May 26, 2016. Assistant Director Cristia-Plant stated that she had made non-substantive corrections to the minutes submitted by Board Counsel Eagan and Mr. Jacob, and that the Board members were presented with the corrected minutes. There was no further discussion of the minutes and no public comment.

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MOTION: Commissioner Long moved to approve the minutes of the meeting held on May 26, 2016. President Schmid seconded the motion.

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

ACTION: The motion was approved.

3. Announcements –President Schmid
Announcement of events affecting Board business since the last Board meeting.

President Schmid announced that on June 3, 2016, she had a meeting with Russia Chavis and Ben DeAlba at the CalSTA office to discuss Board administrative services. She stated that she also had the opportunity to meet with Secretary Kelly. She also announced that she attended the June Harbor Safety Committee meeting at which the M/V ULTRA LASCAR incident was discussed.

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 announcements by Board members.

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

A) Correspondence and activities since the Board meeting held on May 26, 2016.

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

- On May 26, 2016, he was copied on an email exchange concerning an air draft issue involving the height of a Pacific Gas and Electric power cable spanning the Sacramento River. He stated this has been an ongoing issue since March 30, 2016, and issue is not yet resolved.
- On June 2, 2016, he was copied on an email exchange between Mr. Jacob and SFBP President McIsaac wherein Mr. Jacob requested more detail on why the minimum rest period (MRP) exception numbers were high in April, and if any of MRP exceptions were due to the implementation of SFBP’s new fatigue prevention work schedules. He stated Capt. McIsaac provided Mr. Jacob with a number of reasons for the MRP exceptions, but the day that was of most concern was April 15, 2016, when there were 7 MRP exceptions, the shortest being 8.0 hours, He further stated that SFBP President McIsaac’s response included an explanation that most of the noted exceptions were due to the container ship longshore labor schedules, and that he was

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- unable to quantify the effects of the SFBP’s work schedule fatigue mitigation program without running two separate dispatch programs.
- On June 11, 2016, he reported the Los Angeles Times ran a story titled, “*How one of L.A.’s highest-paying jobs went to the boss’ son,*” and concerned the hiring and termination of Capt. Rubino, Jr. from employment with the City of Los Angeles, and that the article alleges the specter of nepotism in the City of Los Angeles’ hiring practices.
 - On June 7, 2016, Board staff was provided an article from the San Francisco Chronicle that featured a sleep monitoring device that works similarly to an actigraph, but mounts to the bed to monitor the quality of sleep. The article was provided to the Board staff by fitness committee member General Ward, who thought it was of interest to the Board with regard to the attempts to employ actigraphs in our study of pilot fatigue issues.
 - On June 16, 2016, Board staff received rulemaking comments from Mr. Jacob consistent with the additional 15-day rulemaking comment period with respect to the omnibus rulemaking effort involving changes to the Investigator Minimum Standards, Pilot Trainees, Pilot Training, and Duties of the Port Agent regulations. Executive Director Garfinkle reported that Mr. Jacob’s comments reaffirmed PMSA’s earlier comments supporting the rulemaking effort.
 - On June 20, 2016, Board staff received a copy of a Wall Street Journal article on the Panama Canal expansion. He stated that while the article notes that the expansion doubles the canal’s capacity and enables it to pass ships of up to 14,000 twenty-foot equivalent unit (TEUs), the new canal will not be a panacea for the shipping industry.
 - On June 21, 2016, Board staff received an advance copy of an article authored by Commissioner Livingstone for the web site GCaptain, titled, “*Any Port in a Storm,*” in which he discusses recent ship disasters and the concept of “Port of Refuge” for ships in distress, and the lack of international agreement in this area along with real world consequences.

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

Executive Director Garfinkle reported the following pilot licensing matters:

- Between the April and May Board meetings, Board staff renewed the licenses of Captains Horton, McCloy, Wehr, D’Aloisio, Fawcett, Larwood, Kenyon, Haggerty and Carr.
- Since the May Board meeting, Board staff renewed the licenses of Captains Hurt, Long, Alden, Slack, Cloes, Manes, Miller, and Nyborg.

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C) Report on Board surcharges.

Executive Director Garfinkle reported the Board received a check from the SFBP for \$140,285.52 for the May 2016 surcharge revenues as follows:

- Board Operations Surcharge: \$73,800.52
- Pilot Continuing Education Surcharge: \$3585.00
- Trainee Training Surcharge: \$62,900.00

D) Report on legislative activities and contractual matters.

Assistant Director Cristia-Plant reported the following legislative activities and contractual matters that occurred since the May Board meeting:

- AB 1693 (Gonzalez) would appropriate funds from the General Fund for the payment of specific claims against the State, including \$387,088 to pay the judgment resulting from Pacific Merchant Shipping Association v. The Board of Pilot Commissioners. She reported this bill passed out of the Senate Appropriations Committee on June 20, 2016, with 5 Aye votes and 0 No votes, and that the bill still needs to be heard a second and third time in the Senate.
- AB 1432 (Bonta; Wieckowski) previously was the pilotage rate increase bill from last year. She reported this bill was amended on May 11, 2016, to delete all provisions and creates a new statutory section for a navigation surcharge not to exceed \$1.2 million. She further reported this bill was sent to the Assembly for concurrence of Senate amendments on May 26, 2016, and was re-referred to the Committee on Transportation pursuant to Rule 77.2 the next day. That committee has postponed a hearing on the bill twice—on June 13, 2016 and June 20, 2016.
- Work is proceeding on the revenue audit of the SFBP financial statement and records. An audit entrance meeting was held on June 3, 2016, with Board staff, the State Controller’s Office (SCO) staff, and the SFBP’s Controller. The SCO staff has been conducting audit work off site, and will soon schedule a site visit with the SFBP.
- The contract with San Jose State University Research Foundation (SJSURF) for the pilot fatigue study is fully executed and encumbered thanks to the efforts of many, including staff at CalSTA, Department of Finance, California Highway Patrol (CHP), Department of General Services, and the Department of Motor Vehicles. A contract kick-off call with Dr. Hobbs is scheduled for June 28, 2016.
- The second contract with the California State University Maritime Academy is complete, and provides the Board with continuing services for the entrance examination for the Pilot Trainee Training Program. The 2-year, \$175,000 contract begins July 1, 2016.

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- As reported last month, Artelia Eau & Environment (Artelia) was selected in response to the Board's manned model training services Request for Proposal. CHP contract staff is working with Artelia to obtain signatures on the contract, and to ensure that the contract insurance and Secretary of State registration requirements are completed.
- Although the California Department of Human Resources (CalHR) and the Board have agreed to final interagency agreement terms for the Pilot Trainee Training Program entrance examination psychometrician services, CalHR has not yet provided a final contract budget. CalHR has requested to update its budget numbers to reflect costs in line with its own 2016-17 budget. The previously submitted contract amount from CalHR was nearly \$120,000, and CalHR staff anticipates only a slight increase in costs. The next Trainee Program entrance examination is tentatively scheduled for mid-June 2017.
- On a related note, staff is considering entering into a small contract with Dr. Norman Hertz so that he can facilitate an exchange of his trainee examination institutional knowledge to the CalHR staff.
- On June 16, 2016, the Regents of the University of California, on behalf of the San Francisco Campus (UCSF), and the Board executed a new contract for pilot and trainee fitness determination services. The signed contract was sent to CHP for submittal to the Department of General Services for its review and approval. The amount of this two-year, two-month contract will be \$359,875. Board staff also submitted supporting information to CHP requesting a contract hard start date of May 1, 2016, since the prior UCSF contract expired on April 30, 2016.
- The current contract with the SFBP expires June 30, 2016. Board staff has worked with the Ray Paetzold, the SFBP's Business Director-General Counsel, to finalize a new 5-year contract for surcharge administration, and assistance with administering the Pilot Trainee Training and Pilot Continuing Education Programs. This new contract was further discussed under agenda item 15. Since the new contract could not be finalized before the expiration of the existing 5-year contract, Board staff will prepare an emergency contract so that SFBP can continue providing services until the new 5-year contract can be put in place. DGS has approved the emergency contract justification, which means a contract can be executed and effective in advance of DGS review and approval. CHP is preparing a six-month emergency contract, and the SFBP has agreed to extend the current contract pricing during the emergency contract term.
- A draft renewal interagency agreement for information technology desktop computer support services was sent to the California Department of Transportation (Caltrans) this past week. Similar to the contract with CalHR, we are waiting for Caltrans to finalize its budget before finalizing the agreement. The current Caltrans agreement expires June 30, 2016.

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- Board staff started work on an interagency agreement with CalHR for trainee random and incident drug testing, but ceased working on the agreement until CalHR can confirm it can provide drug testing services to non-state employees through its master agreement with Comprehensive Drug Testing, Inc. (CDT). CalHR is checking on this issue, and will get back to Board staff with its determination.
- No work was done on a potential Pilot Pension Plan contract for CPA services since the last Board meeting. Staff prepared the May monthly pension allocation report for pension monies that were distributed earlier this month. Work on this contract will commence when other higher priority contracts are completed. As stated at prior meetings, CalPERS has confirmed that the Board can utilize one of the firms their pool of actuaries. Staff will work with CalPERS upon direction from the Board to contract with an actuary.

There were no questions or comments from the Board or the public on the Executive Director and Assistant Director reports.

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 Captain Coney has been absent for medical reasons (AFMR) since March 16, 2016, and that he was placed on medical disability leave status effective May 18th. He also reported that Captain Kelso has been AFMR since June 19, 2016.

Acting Port Agent McCloy reported the SFBP continually monitors the dispatch list for possible minimum rest period (MRP) exceptions, and if the potential exception is likely to result in a rest period of less than ten hours, mitigating measures are employed by the SFBP. 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 the SFBP currently has 57 licensed pilots, that there were 27 MRP exceptions in May, and that the shortest rest period was 11 hours. He noted one exception was for a river pilot being called back to work early.

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Mr. Jacob stated that PMSA has been involved in the line height issue, and had discussions with PG&E, USACE, and CalSTA to seek a solution. He thanked the SFBP for bringing attention to the issue.

- 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 George Dowdle

- A) Report on the Pilot Evaluation Committee (PEC) meeting held on June 15, 2016.**

Acting Port Agent McCloy read PEC Committee Chair’s monthly report, and stated the following:

- The PEC met on June 15, 2016.
- In closed session, all trainees were interviewed individually.
- The six current trainees include Captains Lowe, Rubino, Cvitanovic, Epperson, Alfes and Vogel.
- The trainees have been in the program from 3-19 months.
- All trainees are progressing and meeting requirement benchmarks.
- The PEC will next meet on July 20, 2016 at 10:30 a.m.

There were no questions or comments from the Board or the public.

- B) Possible PEC recommendation to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program. Possible Board action to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program.**

There were no recommendations.

- C) 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.**

There were no recommendations.

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D) 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-licensed pilot.

There were no recommendations.

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

Report on the M/V PINE GALAXY accommodation ladder deficiency occurring on May 5, 2016.

Executive Director Garfinkle stated that there were two safety standard violations to report on:

- Captain Tylawsky reported on May 5, 2016, that the M/V PINE GALAXY had an unsafe gangway. Executive Director Garfinkle noted that a Commission Investigator was not dispatched to the ship since it had already departed the bay by the time he was notified of the incident.
- Captain Dowdle reported on June 13, 2016, that the M/V HANJIN MUBAI deployed a ladder not firmly attached to the side of the ship. Executive Director Garfinkle noted that a Commission Investigator was not assigned to investigate because the ship had departed port.

Executive Director Garfinkle stated that both events were promptly reported to the United States Coast Guard (USCG).

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. Possible Board action to grant an extension to present the M/V STAR LUSTER Incident Review Committee incident report at the July Board meeting.

Executive Director Garfinkle stated that the Investigation Review Committee (IRC) is prepared to present its report at today’s meeting on the M/V STAR LUSTER under agenda item 18.

He also reported that the IRC is investigating an event involving the M/V MORNING ORCHID and the M/V K WINNER that occurred at the Port of Stockton on June 8, 2016. He briefly described that the M/V K WINNER has alleged gangway damage due to passing

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interaction caused by the M/V MORNING ORCHID, and the 90-day deadline date for the IRC report is September 6, 2016.

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

Report on loss of propulsion events arising in May 2016, including those events suspected to be due to low sulfur fuel issues.

Executive Director Garfinkle provided the Board with the USCG’s Prevention/Response—San Francisco Harbor Safety Statistics report for May, 2016, and noted the report reflects that there was one loss of propulsion event that was not attributable to fuel switching or the use of low sulfur fuel. He also stated the report reflects that one other vessel that experienced slow engine response on an inbound transit, and this event appears to be attributable to low sulfur fuel. He stated that the number of loss of propulsion events related to low sulfur fuel appears to be winding down.

11. Finance Committee – Commissioner Schneider

A) Report the Finance Committee meeting held on June 7, 2016.

Commissioner Schneider reported that the Finance Committee met on June 7, 2016, and reviewed the Board’s budget, funds condition and surcharge rates. He presented the Committee’s surcharge rate recommendations to the Board as follows:

- The Committee recommends no change to the Board’s previous approval to increase the Board Operations Surcharge rate from 2% to 3%, effective July 1, 2016. He stated the Committee also discussed its desire to maintain a one-year Board Operations fund balance reserve to allow the Board to have a cushion that would allow for a smoothing of any future rate fluctuations.
- The Committee is not recommending a change to the Pilot Continuing Education Surcharge rate, currently at \$5/move.
- The Committee recommends no change in the Pilot Trainee Training Program Surcharge rate currently at \$12/trainee/move.
- The Committee recommends reducing the Pilot Vessel Surcharge rate from 3.27 mills to 2.62 mills, effective July 1, 2016, and that this reduction will somewhat offset the increase in the Board Operations Surcharge rate while still projecting to pay off the one outstanding pilot vessel loan early.

B) Review Finance Committee recommendations on the following Board surcharges:

- a) **Board Operations Surcharge (currently 2%, and previously approved by the Board to increase to 3%, effective July 1, 2016): No change recommended by the**

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Finance Committee. Possible Board action to change or not change the Board Operations Surcharge rate.

- b) Pilot Continuing Education surcharge (currently \$5 per move): The Committee recommends no change to the Pilot Continuing Education surcharge. Possible Board action to change or not change the Pilot Continuing Education Surcharge rate.**
- c) Pilot Trainee Training Surcharge (currently \$12/trainee/move): The Committee recommends no change to the Pilot Trainee Training surcharge. Possible Board action to change or not to change the Pilot Trainee Training Surcharge rate.**
- d) Pilot Vessel Surcharge (currently at 3.27 mills or \$0.00327): Committee voted to recommend reducing this surcharge to 2.62 mills commencing July 1, 2016. Possible Board action to reduce the Pilot Vessel Surcharge to 2.62 mills effective July 1, 2016, or to make another change or not to change the Pilot Vessel Surcharge rate.**

There was no further discussion or comments from the Board or the public on the various surcharge rates.

MOTION: President Schmid moved that the Board accept the Finance Committee's recommendation for no change to the Board Operations Surcharge, the Pilot Continuing Education Surcharge and the Pilot Trainee Training Surcharge rates. Commissioner Long seconded the motion.

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

ACTION: The motion was approved.

MOTION: President Schmid moved that the Board accept the Finance Committee's recommendation to change the Pilot Vessel Surcharge rate from 3.27 mills (\$0.00327), to 2.62 mills (\$0.00262) effective July 1, 2016. Commissioner Livingstone seconded the motion.

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

ACTION: The motion was approved.

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12. Pilot Power Committee – Committee Chairman Livingstone

A) Report on the Pilot Power Committee meeting held on June 21, 2016.

Pilot Power Committee Chairman Livingstone reported that the Pilot Power Committee met on June 21, 2016, and discussed the results of the Pilot Retirement Survey conducted in June, 2016. He noted that all 57 pilots completed the survey, 17 pilots are eligible to retire by the end of 2018, and 9 pilots anticipate retiring by the end of 2018.

Chairman Livingstone stated that there are many moving parts to determining when to recommend to the Board to contract with new trainees including: the program progress status of current trainees, the number of trainees in the program at any one time, the number of projected future pilot retirements and training budget issues. He stated that Board staff does not anticipate having an itemized 2016-17 budget until sometime in August, and that the Committee decided that it might be best to review the availability of funding for trainee stipends for the 2016-17 fiscal year before making a recommendation to the Board to contract with additional trainees.

President Schmid reminded the Board that it may take two to three months for a trainee applicant to complete the pre-contract requirements and execute a contract. Chairman Livingstone stated that the Committee agreed to schedule its next meeting on September 1, 2016, which would give enough time to complete the contract process by the beginning of 2017 should the Committee recommend to the Board, and the Board approve, contracting with additional trainees in late 2016 or early 2017.

Commissioner Long confirmed for Mr. De Alba that the current Pilot Trainee Training Program eligibility list expires July 23, 2017, the next program entrance examination is tentatively scheduled for June 2017. He also stated that upon expiration of the list, candidates are no longer eligible to enter the program and, if still interested, should take the next examination.

Acting Port Agent McCloy commented that the new Survey Monkey process for the Pilot Retirement Survey is very easy and quick to complete.

B) Possible recommendation from the Pilot Power Committee to the Board to direct Board staff to commence contracting with one or more additional applicants for entry into the Pilot Trainee Training Program. Possible Board action to direct staff to commence contracting with one or more applicants for entry into the trainee training program.

There was no Pilot Power Committee recommendation to the Board.

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**13. Continuing Education Committee - Commissioner Livingstone
Report on the Continuing Education Committee meeting held on June 21, 2016.**

Committee Chairman Livingstone reported to the Board that the committee had a wide-ranging discussion at a high level on the following subjects:

- California State University Maritime Academy training service capacity, including both the availability of qualified teaching staff and the status of the simulator technology and equipment. He stated that he will work with the pilots to obtain information about the quality of training facilities outside of California, including information on the different simulation equipment and technologies used at other facilities.
- Updating the pilot combination course training content to include: the human element throughout the course; expanded training on radar navigation in low visibility/restricted waters; working under duress; and dynamic simulation training in which a pilot may be randomly introduced to a failure (e.g., power failure) to add a realistic element to an unrealistic simulation.
- Adding “knowledge centers” to the combination course content via a library of instructional videos on specific training topics, with further discussion of the videos in the classroom.
- He is working with Captain Jorge Viso of the American Pilots’ Association and the SFBP’s Navigation Technology committee to acquire up-to-date training material information.

Vice President Connolly commended the pilots for their pro-active goal of updating the combination course training materials, especially restricted visibility training and incorporating best practices.

14. Rules and Regulations Committee – Commissioner Long

A) 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).**

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e. **Section 222 – Conflicts of Interest (add Port Agent Conflict of Interest regulation).**

Rules and Regulation Committee Chairman Long reported to the Board that the committee has not met recently, but is planning to meet in the near future to renew the Board’s regulation efforts.

B) Review and possibly approve the Final Statement of Reasons for Title 7 California Code of Regulations Sections 211.5, 213, 218 and 222. Possible Board action to approve the Final Statement of Reasons for Title 7, California Code of Regulations Sections 211.5, 213, 218 and 222, and to direct staff to complete the formal rulemaking process.

Chairman Long reported to the Board that it conducted a second 15-day comment period from June 2, 2016, through June 16, 2016, to afford interested parties an opportunity to request a hearing or submit additional comments. He noted that one comment was received from Mr. Jacob on behalf of PMSA, and noted that PMSA continues to support the proposed regulatory amendments.

He briefly reviewed the Final Statement of Reasons (FSOR) for the Board’s rulemaking efforts involving California Code of Regulations Sections 211.5, 213, 215, and 218, and encouraged the Board to adopt the FSOR as prepared by staff. Board Counsel Eagan confirmed for Executive Director Garfinkle that although the agenda omitted Section 215, that it was not a fatal flaw in the Board’s ability to consider the FSOR since the FSOR clearly sets forth the code sections proposed to be amended. Chairman Long stated that he accepts Board Counsel’s advice and guidance.

MOTION: Commissioner Long moved that the Board accept the Final Statement of Reasons for proposed amendments to California Code of Regulations Sections 211.5, 213, 215 and 218 as prepared by staff. Commissioner Schneider seconded the motion.

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

ACTION: The motion was approved.

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15. Review and approval of a draft contract between the Board of Pilot Commissioners (Board) and the San Francisco Bar Pilots (SFBP) and potentially the San Francisco Bar Pilots Benevolent and Protective Association, and delegation to the Executive Director to make minor technical edits and execute the contract – Executive Director Garfinkle and Assistant Director Roma Cristia-Plant

Review and possibly approve a draft sole-source contract between the Board and SFBP and potentially the San Francisco Bar Pilots Benevolent and Protective Association for the provision of services provided to the benefit of the Board, with particular emphasis on insurance provisions contained in contract. Possible Board action to approve a draft sole-source contract between SFBP and potentially the San Francisco Bar Pilots Benevolent and Protective Association and the Board for the provision of services to the benefit of the Board, and delegation to the Executive Director to make minor technical edits and execute the contract.

Executive Director Garfinkle gave a brief report on the draft 5-year contract between the Board and the SFBP. He stated that the current contract with the SFBP expires on June 30, 2016, and that Board staff are endeavoring to include clarity and specificity in the new contract. Toward this end, the draft contract includes insurance and indemnity provisions. He stated that he is not yet certain if indemnity provisions should be included in the SFBP contract, but that the SFBP does not currently have the type of insurance being contemplated in the draft agreement. He further stated that upon the initial query with its insurance company, the SFBP determined the new insurance was going to be costly, and that cost would be passed down to the Board in the contract price.

Assistant Director Cristia-Plant stated that Mr. Paetzold has had additional discussions with SFBP’s insurer, and determined that the SFBP may be able to acquire the specific insurance for much less than the original estimate. Assistant Director Cristia-Plant confirmed for Vice President Connolly that insurance provisions are a Board business decision, and omission of certain insurance provisions would not impact Department of General Services’ approval of the contract.

Mr. Jacob expressed a concern about the legal authority of a special condition in the proposed contract that would authorize the President to be the final arbiter of disputes between the SFBP and the staff of any contract provision. Assistant Director Cristia-Plant stated that such provision giving the head of an organization authority over contract disputes are common in state contracts.

Commissioner Long requested that this item be postponed until the staff and the SFBP’s Business Director-General Counsel have more time to resolve contract issues. Executive Director Garfinkle stated that there is no urgency to the agenda item since Board staff and CHP are working on an emergency contract that will allow time to resolve the new contract issues.

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16. Report on the status of San Francisco Bar Pilot Pension Plan litigation – Board Counsel Eagan

Status report on Craig E. Reeder vs. State Board of Pilot Commissioners litigation. 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 no update on this agenda item beyond that the Board recently filed its brief, to which Captain Reeder will have a chance to respond.

17. Board discussion of best practices in maritime safety – Commissioner 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 briefly reported to the Board that he encourages, as a best practice in maritime safety, the adoption of the previously discussed changes to the combination course training course curricula.

There was a discussion among Board members about a recent incident involving a vessel that lost power five miles off the coast and outside the Board’s jurisdiction, and confusion over decision-making authority in such a vessel distress situation. The event involved high winds, a distressed vessel heading into an environmentally sensitive area off the coast wanting to anchor, and whether to command the vessel to anchor or not in such an area. When Vessel Traffic Service did give authority for the vessel to anchor, it was approximately two and a half miles off the coast. Eventually a pilot was boarded on the vessel and it was towed to safety.

There was then a discussion regarding authority for a pilot to board a vessel outside the Board’s pilotage grounds. Mr. Jacob stated that the Harbors and Navigation Code does allow a pilot to assist a vessel in distress, but queried if the pilot was doing so under his state or federal license.

Commissioner Schneider discussed efforts by the Harbor Safety Committee’s tug working group about emergency towing response required by the State’s Office of Spill Protection and Response. Commissioner Livingstone stated that he brought this issue up over four years ago, and noted that work still needs to be done on putting together a command group with protocols to triage, stabilize and tow.

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Commissioner Long stated that in the end, the ship was not in danger and no harm was done to the environment.

President Schmid called for a recess, and indicated that upon return from recess the meeting will be chaired by Vice President Connolly, and she will assume her position as IRC Chairman.

RECESS BEGAN: 11:25 a.m.
OPEN MEETING RESUMED: 11:35 a.m.

Vice President Connolly resumed the open meeting as Chairman.

18. Incident Review Committee incident report concerning the event involving the M/V STAR LUSTER allision with overhead power cables in the Port of Stockton on January 19, 2016. – President Schmid

A presentation of the Incident Review Committee incident report concerning the event involving the M/V STAR LUSTER allision with overhead power cables in the Port of Stockton on January 19, 2016. 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).

Vice President Connolly recognized IRC Chairman Schmid, who turned the floor over to Executive Director Garfinkle. Mr. Garfinkle reviewed the facts of the incident as follows:

- On the morning of January 19, 2016, the M/V STAR LUSTER (STAR LUSTER), a 669-foot long general cargo ship, was scheduled to shift from the Port of Stockton berth 9/10 to Port of Stockton Berth 15. SFBP Captain Bruce Alden was assigned to the job.
- The weather was inclement, with rain and wind occasionally gusting up to 45 knots.
- Captain Alden boarded the ship at daybreak and met with the Captain on the bridge, where they conducted a Master/Pilot conference. A Pilot Card was provided to the pilot where the listed air draft corresponded to the main mast and was lower than the wires.
- During the conference, there was no mention of any special conditions of the ship. Following the conference and prior to the ship movement, the Chief Officer of the STAR LUSTER informed the pilot that the main mast atop the wheelhouse had been lowered, reducing the air draft by 13 feet over the figure listed on the pilot card. At no time was it mentioned to the pilot that the #1 cargo boom was in the raised position.
- Two tugs were used for the shift, the CLEO BRUSCO on the port bow, and the ANGIE BRUSCO on the port quarter. The tugs were used to hold the ship alongside against the considerable southern wind off the dock.
- At 0742 hours, the ship cast off its last line and proceeded down the channel stern first.

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- The pilot and master were positioned on the starboard bridge wing looking aft.
- As the stern approached Navigation Mark #48 the pilot witnessed an intense flash of light, which he thought was lightning. He turned forward and noticed that the forward-most crane boom was not stowed and was raised in an upright position. It had made contact with one of the power transmission cables spanning the channel.
- The pilot ordered the engines half-ahead in an attempt to keep the other three wires from parting, but the sternway did not come off in time and the other three wires parted as well.
- After all the wires parted, the ship continued on to berth 15 without further incident.

After reviewing the facts, Mr. Garfinkle explained the IRC analysis as consisting of three issues. First, does a pilot have a duty to conduct a reasonable inspection of a vessel for open and obvious conditions that may render the vessel unseaworthy? Second, if so, was the condition of the cargo boom open and obvious? Finally, if there exists a duty to inspect and the condition was open and obvious, does the negligence of the ship's master in not advising the pilot of the proper air draft absolve the pilot of responsibility for the accident?

Mr. Garfinkle stated that the IRC concluded that there is a duty to conduct a reasonable inspection, but the inspection is tempered by the principle that the duty to conduct an inquiry and the quality, kind, and scope of a particular inspection varies with the circumstances of each case. He then went on to explain the IRC's position is that even though the weather conditions discouraged an inspection, and the fact that the ship was proceeding stern first down the channel, the condition of the boom was open and obvious. The IRC found that the most compelling evidence of this was that following the first contact with the wire and the bright flash, the pilot was able to clearly see the boom that made contact with the wire.

Finally, on the issue of whether the negligence of the master absolved the pilot of responsibility, Mr. Garfinkle stated that the IRC agreed that the master of the STAR LUSTER was negligent in not recognizing that the raised cargo boom exceeded that stated air draft, but relied on principles stated in *Williams v. United States Department of Transportation* to conclude that even though the master was negligent, it does not relieve the pilot of his own duty of care.

Based on the analysis presented, the IRC recommended that the Board find for pilot error in this case and that a Letter of Warning concerning duty of care be issued to the pilot.

Following the IRC presentation, pilot's counsel, Mr. George Nowell introduced himself and addressed the Board. His comments followed his written brief, which was submitted to the IRC and provided to Board members in advance of the meeting. In Captain Alden's defense, Mr. Nowell presented the following arguments summarized here:

- That Captain Alden was provided with erroneous information during the Master/Pilot information exchange and on the Pilot Card.

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- Captain Alden exercised reasonable care under the prevailing circumstances and reliance on the information provided by the master and crew was a reasonable exercise of judgment.
- Captain Alden never saw the No. 1 crane boom.
- That the Master's actions constitute clear superseding / intervening negligence that bars a finding of negligence against Captain Alden.

Mr. Garfinkle presented a short rebuttal and the Board adjourned into closed session to deliberate on the matter.

CLOSED SESSION BEGAN: 12:44 p.m.
OPEN MEETING RESUMED: 1:09 p.m.

After returning from closed session, Vice President Connolly recognized Board Counsel Eagan who presented the decision of the Board, which was agreement with the IRC recommendation to find for pilot error, but to not follow the IRC recommendation to issue a letter of warning to the pilot. Board Counsel Eagan stated that he will draft a formal order of the Board's decision for approval at next month's Board meeting. Vice President Connolly thanked the IRC for its thorough report, and also thanked the pilot's counsel, Mr. Nowell.

President Schmid resumed her seat as Chair of the Board and directed the remainder of the meeting.

19. Public comment on matters not on the agenda.

Executive Director Garfinkle thanked Office Technician Hjelle for her extraordinary efforts to complete many pilot license renewals these past two months, and thanked Assistant Director Cristia-Plant for completing mission critical work performed by the Staff Services Analyst while that position is vacant.

20. Proposals for additions to next Board meeting agenda.

Executive Director Garfinkle confirmed that next month's agenda will include an item regarding the Board's final decision on the M/V STAR LUSTER.

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21. Adjournment.

President Schmid called for a motion to adjourn.

MOTION: Vice President Connolly moved to adjourn the meeting. Commissioner Long seconded the motion.

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

ACTION: The motion was approved. The meeting was adjourned at 1:13 p.m.

Submitted by:



Allen Garfinkle, Executive Director