

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		September 26, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 1 of 13</b>	

**Board members present**

RADM. Frank Johnston, President, Public Member  
 Mr. Dave Connolly, Vice President, Public Member  
 RADM. Jack Brooks, Commissioner, Public Member  
 Mr. John Schneider, Commissioner, Wet Cargo Industry Representative  
 Capt. Joe Long, Commissioner, Pilot Member  
 Capt. Steve Roberts, Commissioner, Pilot Member  
 Ben DeAlba, Ex Officio Member designee of the Secretary of the California State Transportation Agency

**Staff present**

Allen Garfinkle, Executive Director  
 Dennis Eagan, Board Counsel  
 Kelly Dolcini, Staff Services Analyst  
 Sigrid Hjelle, Office Technician

**Others present**

Capt. Pete McIsaac, Port Agent

**Public present**

Past President Knute Michael Miller, Capt. Roy Mathur of the Department of Fish and Game, San Francisco Bar Pilots (SFBP) Business Director John Cinderey, Maureen Moss, California Highway Patrol SB/DVBE Advocate, and David Stevens of the State Lands Commission were among the public present.

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

The meeting was chaired by President Johnston, who called the Board to order at 9:28 a.m. Executive Director Garfinkle called roll and found a quorum had been established.

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		September 26, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 2 of 13</b>	

2. **Approval of minutes of the August 22, 2013 Board meeting**

Board members were presented with the minutes of the August 22, 2013 meeting for approval.

**MOTION:** Commissioner Roberts moved to approve the minutes from the August 22, 2013 Board meeting with leave for staff to make non-substantive clerical changes. Commissioner Schneider seconded the motion

**ACTION:** The motion passed unanimously.

3. **Announcements**

There were no announcements.

4. **Board member activities**

Vice President Connolly reported that he had attended the September 24, 2013 Maritime Roundtable discussion with U.S. Representative John Garamendi. He also reported that he had attended the Governor's signing of a new minimum wage bill in Oakland.

5. **Executive Director's report**

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

Mr. Garfinkle reported that he had received information from U.S. Coast Guard (USCG) Commander Jason Tama regarding a near-miss that occurred in the precautionary area west of the SF buoy on June 20, 2013, wherein an outbound tanker came very close to an outbound tug and tow while overtaking. The captain of the ship claimed that the pilot left him in a poor position on disembarkation but the AIS playback showed that he had ample opportunity following the pilot disembarking to achieve a safe closest point of approach (CPA). The USCG issued him a Letter of Warning.

He further reported that on August 26, 2013, Board staff received an invitation to attend a fundraising event hosted by the Seaman's Church Institute on October 3, 2013. He invited interested Commissioners to see him for further information.

<p><b>Minutes</b></p> <p><b>Open Session</b></p>	<p><b>Monthly Board Meeting</b></p>	<p><b>Date:</b></p> <p>September 26, 2013</p>
<p><b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111</p>	<p><b>Page 3 of 13</b></p>	

On August 29, 2013 staff received a copy of an advisory to shipping from the Panama Canal Authority emphasizing the importance of pilots in training being allowed to handle ships.

Also on August 29, 2013, Board staff received a copy of a letter from Robert McEllrath, President of the International Longshore and Warehouse Union (ILWU), which notified the AFL-CIO president Richard Trumka that the ILWU was withdrawing from the AFL-CIO.

Also on August 29, staff received a copy of a letter from Dr. James Burns of California Maritime Academy (CMA) endorsing the skills of Capt. David Gates in a non-competitive bid contract for exam consultation services.

On Sept. 3, 2013 Board staff received a copy of a letter to Capt. Peter McIsaac as President of the San Francisco Bar Pilots (SFBP) from David B. Kutrosky, Managing Director of the Capitol Corridor. In the letter, he expressed his gratitude for the cooperation of the SFBP in its effort to reduce bridge lift delays, which resulted in a 36% decrease in the number of delays on the Capitol Corridor.

Also on September 3, staff received a copy of two Marine Safety Alerts. The first, titled “High Speed Ferry Routes in San Francisco Bay” reminding both professional mariners and recreational boaters to keep a sharp lookout while operating their vessels. This grew from an incident involving a recreational boat colliding with a ferry, resulting in the death of both passengers in the recreational craft.

The second Safety Alert, “Bridge Resource Management in Pilotage Waters,” grew from the M/T OVERSEAS REYMAR incident. It recommends vessel operators and pilots employ mechanisms to facilitate effective bridge resource management, including a thorough master-pilot exchange, effective communication and collaboration while navigating.

Board staff received permission from CMA on September 3, 2012 for the Pilot Fitness Committee to attend the fatigue module of the combination course of the Board mandated continuing education program. The program will commence October 12<sup>th</sup>, 2013 and will be a duly noticed public meeting.

Also on September 3, Board staff received one comment submitted during the public comment period for the new Pilot Fitness Regulations. The comment came from Pacific Merchant Shipping Association (PMSA), which was concerned with the use of the term “medical disability leave”, and the possibility that it could be misinterpreted.

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		September 26, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 4 of 13</b>	

On September 4, 2013, Board staff sent letters to the three applicants remaining on the trainee program waiting list and notified them that the list had expired. They were invited to take the exam when next offered.

On September 10, 2013, Board staff received a Public Records Act (PRA) request from PMSA requesting copies of documents that the Board prepared in response to Executive Order S-03-6 (Gov. Schwarzenegger) if any, including the listing of staff responsible for receiving and responding to PRA requests.

Mr. Garfinkle announced that he had attended a meeting of the Harbor Safety Committee at the Port of Oakland on September 12, 2013.

On September 13, 2013, the Pilot Fitness Committee received a letter from PMSA requesting that the Committee request the disclosure and thorough consideration of the actual record of pilot assignments for the purposes of establishing hours of service rules in the future.

Also on September 13, Board staff received a PRA request from Thomas Burke of Davis, Wright, and Tremaine LLP, the law firm representing PMSA. Board staff notified Mr. Burke that all documents responsive would be made available by October 4, 2013.

On September 16, 2013, Board staff received a petition from PMSA to amend the Board of Pilot Commissioners Conflict of Interest Code 7 CCR 212.5 to include the Port Agent.

Also on September 16, Board staff received a copy of a letter from Darrell Steinberg, Chair of the State Senate Rules Committee addressed to Capt. Steve Roberts congratulating him on his confirmation to the Board of Pilot Commissioners on September 9, 2013 with a vote of 39-0.

Mr. Garfinkle reported that he had also attended the Maritime Roundtable discussion, at which Congressman Garamendi was so impressed with Commissioner Connolly's eloquent comments that he was moved to state "you have just provided me with the opening statement for a national maritime policy.

**Board licensing:**

Between the July and August meetings, staff has renewed licenses for Captains Laakso, Merritt, Coney, and Burger. Since the August meeting, staff renewed licenses for Captains Kenyon, Larwood, Kleess, and Boriolo.

<p align="center"><b>Minutes</b></p> <p align="center"><b>Open Session</b></p>	<p align="center"><b>Monthly Board Meeting</b></p>	<p align="center"><b>Date:</b></p> <p align="center">September 26, 2013</p>
<p><b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111</p>	<p align="center"><b>Page 5 of 13</b></p>	

**Board Surcharges:**

The Board received a check for \$142,778.29 for surcharges collected by the SFBP, which were broken down as follows:

Board Operations Surcharge: \$35,310.29

Continuing Education Surcharge: \$57,480.00

Trainee Training Surcharge: \$49,988.00

**Legislative matters:**

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

**Contractual matters:**

Mr. Garfinkle asked Staff Services Analyst Kelly Dolcini to address the Board and give a report on the state of BOPC contracts.

Ms. Dolcini reported that the non-competitive bid request for Capt. Dave Gates' consultation on the upcoming trainee exam is currently at agency awaiting signature. After it is signed by the secretary, it will be sent to DGS for approval.

Staff has begun working with the Continuing Education Committee on a request for proposals from manned model training facilities, as well as the Pilot Fitness Committee on a study of how fatigue affects the pilots.

**6. Port Agent's report**

Capt. McIsaac reported that there are currently four pilots absent for medical reasons (AFMR).

He described the ten minimum rest period (MRP) exceptions since the July 25, 2013 meeting, ranging between 8.3 and 11.9 hours.

He next presented a report on billed vessel moves during the month of July. When compared to a three year average, bar crossings are down 1.2% at 593; bay moves are up 4.4% at 126; river

<b>Minutes</b>  <b>Open Session</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>  September 26, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 6 of 13</b>	

moves are up 5.7% at 29; total moves are down 0.1% at 748 and gross registered tonnage up 4.7% at 31,858,699 tons.

The P/V GOLDEN GATE was out of service from September 9-24 for planned dry docking. The P/V SAN FRANCISCO was taken out of service on August 18<sup>th</sup>, 2013 for its scheduled maintenance dry docking and was put back into service on September 6, 2013.

**7. Pilot Evaluation Committee**

The Committee did not meet in September. Capt. Nyborg reported that some Pilot Evaluation Committee (PEC) members and several pilot designees (including Christopher Anderson, a retired pilot volunteering his time) would begin the exam development process.

**8. Reported safety standard violations**

There were two reported safety standard violations since the August 22, 2013 meeting. On August 30, 2013, Capt. Sean Gabe reported that the pilot ladder on the M/T ENERGY SPRINTER was not resting on the side of the ship and the rungs were unusually far apart.

On August 30, 2013 Capt. Gabe reported another pilot ladder deficiency on the M/V CHARLOTTE RICKMERS, where the rungs of the ladder were tilted at angles of 20-30 degrees.

**9. Reportable piloting events**

Mr. Garfinkle reported that there had been no reportable piloting events since the last meeting.

**10. Rules and Regulations Committee**

Commissioner Roberts reported that the Rules and Regulations Committee had met on September 9, 2013 and that all agenda items were addressed. The petition from PMSA for a change to Board Conflict of Interest regulations will require Committee action and a meeting will be scheduled soon.

<p align="center"><b>Minutes</b></p> <p align="center"><b>Open Session</b></p>	<p align="center"><b>Monthly Board Meeting</b></p>	<p align="center"><b>Date:</b></p> <p align="center">September 26, 2013</p>
<p><b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111</p>	<p align="center"><b>Page 7 of 13</b></p>	

**11. Pilot Fitness Committee**

Chairman Miller reported that the Committee had met on September 13, 2013 and continued its consideration of background materials relevant to fatigue and sleep deficit issues that affect shift workers generally and pilots in particular.

Chairman Miller noted that all fatigue and circadian rhythm issues could be resolved if ship movements on waters subject to the Board’s jurisdiction were restricted to daylight hours only, in effect constituting a “perfect” solution. Chairman Miller reported that he had inquired of PMSA Vice President Mike Jacob whether PMSA would support that approach to minimizing the risks associated with pilot fatigue. Mr. Jacob indicated that his association would not support that approach. Whereupon Chairman Miller stated his view that the Board would be most unlikely to mandate daylight only moves, but that other solutions, while not “perfect,” could be found that would reduce and minimize pilot fatigue among the Board’s licensees.

The Committee also reviewed provisions of the State Contracting Manual, focusing especially on the provisions governing Requests for Proposals (RFPs). Chairman Miller volunteered to develop a discussion draft for a Scope of Work for an RFP for the legislatively mandated study that would be considered by the Committee at a future meeting.

The Committee will attend the fatigue module of the BRM/Combination Course to be held at the California Maritime Academy on October 12, 2013. In addition, Chairman Miller and Commissioner Long will meet with state contracting staff, along with Board staff, in mid-October to receive instruction that should be helpful in preparing Requests for Proposals. That meeting had not been scheduled as of the date of the Board meeting.

**12. Low Sulfur Fuel Report**

Mr. Garfinkle reported that Capt. Jeff Cowan of the Office of Spill Prevention and Response had provided a report of loss of propulsion incidents that occurred thus far in 2013. There were four in the last month, of which two were related to fuel switching and one was suspected to be related to fuel switching.

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		September 26, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 8 of 13</b>	

**13. Report of pilot’s progress with regard to the settlement in the M/V OVERSEAS REYMAR stipulated settlement with Capt. Guy Kleess**

Mr. Garfinkle reported that Capt. Kleess had completed all of the necessary actions to satisfy the terms of the stipulated settlement agreement suspension and has returned to active piloting. Board members were provided with supporting documentation.

**14. Report of the Attorney General’s Office**

Board Counsel Dennis Eagan reported that the Court of Appeal had denied PMSA’s petition for re-hearing. Vice President Connolly asked if the decision would affect the petition for change of the Board’s Conflict of Interest regulations. Mr. Eagan informed him that the petition was a separate matter and would be handled as such.

**15. Finance Committee**

- A) Commissioner Schneider reported that the Finance Committee had not met since the last Board meeting but that two items under this agenda item require action.
- B) Review of the number of licensed bar pilots anticipated on October 1, 2013 and recommendation for possible adjustment to pilotage rates for the calendar quarter beginning on that date as specified in Harbors and Navigation Code section 1190(a)(1). **Possible Board action to specify bar crossing mill rate to be charged by licensees during the calendar quarter beginning October 1, 2013 pursuant to Harbors and Navigation Code section 1191(a)(1)(A).**

The first item, review of the number of bar pilot anticipated on October 1, 2013 and recommendation for possible adjustment to pilotage rates for the calendar quarter beginning on that date as specified in Harbors and Navigation Code section 1190 (a)(1), would be considered after item 18.

- C) Review Board Operations Surcharge (currently 1%), Pilot Continuing Education Surcharge (currently \$75 per move), Pilot Trainee Training Surcharge (currently \$35/trainee/move), and Pilot Vessel Surcharge (currently at 3.27 mills or \$0.00327). **Possible Board action to adjust any of the above surcharges.**



<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		September 26, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 9 of 13</b>	

The Pilot Fitness Committee did not meet prior to the Board meeting and no recommendation for change to the surcharges was made.

**16. Fitness regulations**

Mr. Eagan reported that the fitness regulations were nearing approval. The public comment period ended on September 9, 2013 and PMSA’s comment regarding the possibility of misinterpretation of the term “medical disability leave” is reflected in the final statement of reasons. Once the Board approves the final statement of reasons, it will be sent to the Office of Administrative Law for final administrative review and then filed with the Secretary of State to be effective January 1, 2014 or April 1, 2014.

**MOTION:** Commissioner Roberts moved to approve the final statement of reasons. Commissioner Long seconded the motion

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

**MOTION:** Commissioner Long moved to approve the final regulatory package. Vice President Connolly seconded the motion

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

**17. Exam-fee regulation**

Presentation by Board Counsel Eagan of final draft of regulation on pilot trainee entrance exam fees. Recommendation for approval of the proposed regulation. Recommendation for approval of submission of the regulation to the California State Transportation Agency and then to the Office of Administrative Law for issuance of notice of proposed rulemaking. **Possible Board action to approve Initial Statement of Reasons, Notice of Proposed Rulemaking, and Economic Impact Statement.**

Board Counsel Eagan presented the Initial Statement of Reasons, Notice of Proposed Rulemaking, and the Economic Impact Statement. The exam fee package was approved by the Rules and Regulations Committee and recommended to the Board..

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		September 26, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 10 of 13</b>	

A) Approval of Initial Statement of Reasons and Notice of Proposed Rulemaking.

**MOTION:** Vice President Connolly moved to approve the Initial Statement of Reasons and Notice of Proposed Rulemaking. Commissioner Roberts seconded the motion

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

B) Approval of Economic Impact Statement

**MOTION:** Vice President Connolly moved to approve the Economic Impact Statement. Commissioner Roberts seconded the motion.

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

**President Johnston suggested that the Board take a recess to reconfigure for the presentation of the IRC report. With the agreement of the other Commissioners, the meeting recessed.**

**THE BOARD STOOD IN RECESS AT 11:00 A.M.**

**THE MEETING RESUMED AT 11:15 A.M.**

**19. IRC incident report on the possible grounding of the M/V CLAXTON BAY while departing berth 7/8, Stockton on May 10, 2013.**

President Johnston recused himself from participation in the meeting as a voting member of the Board and asked Vice President Connolly to preside over the meeting while he participated as a member of the Incident Review Committee (IRC).

Mr. Garfinkle presented the IRC report for the Board's consideration as Exhibit 1. Counsel for Capt. Sweeney, Mr. David Singlestad, presented a written statement from the Capt. of the M/V CLAXTON BAY, which had not been made available to the IRC during the course of its investigation. The statement was made Exhibit 2, and members of the Board were given a few minutes to read and absorb the statement. During this period, the Executive Director, as a member of the IRC, also read the statement and stated to the Board that nothing in the statement is contrary to the evidence previously collected.

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		September 26, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 11 of 13</b>	

Mr. Garfinkle then gave a description of the incident. On May 10, 2013, Capt. Michael Sweeney was moving the M/T CLAXTON BAY from Stockton Berth 8 to New York Point. Prior to his arrival, the ship's bridge equipment had tested satisfactorily. When he arrived on the bridge, Capt. Sweeney and the master of the M/T CLAXTON BAY completed their master-pilot exchange and checklist.

In his execution of the undocking maneuver, he was assisted by the tug ANGIE BRUSCO and tug JULIUS BRUSCO. During the course of this maneuver, the tug ANGIE BRUSCO's tow line parted from the ship as it was clearing the berth. There was some confusion about whether the bow had cleared the berth, so Capt. Sweeney gave engine orders to prevent contact with the dock. Simultaneously the master of the ship gave contradictory orders, at which time Capt. Sweeney ordered the engine stopped and the master complied.

During the exchange, the ship's rudder stopped responding and showed hard-right rudder on the rudder angle indicator. tug ANGIE BRUSCO was passed a ship's line and the ship was maneuvered clear of the berth. She was anchored in the channel with two shots of chain. With the ship stabilized and both tugs now shifted to the port side, the ship was relocated to Stockton Berth 5-6. The Chief Engineer determined that two of the four bolts connecting the rudder stock to the steering hydraulic actuator had sheared.

The following day, the ship was inspected by divers and no evidence of grounding was detected. With no mud or signs of impact found on the rudder, the M/T CLAXTON BAY it is unclear what caused the bolts to shear. It seems certain some external environmental force was applied to the rudder, but there was no evidence of such force.

The IRC recommended that the Board close the case with a finding of no pilot error. Pilot Counsel, Mr. Singlestad, was invited to address the Board before a motion was made. Mr. Singlestad thanked the IRC. He gave a statement on behalf of Capt. Sweeney and described his engine orders as prudent.

Vice President Connolly asked for a brief overview of the legal relationship between master and pilot. Mr. Garfinkle responded by noting that the Master has ultimate authority on board his ship and can relieve the pilot of his duties, but does so at some peril. He also pointed out that while the master and pilot share the common goal of keeping the ship safe, there exists an inherent tension between the pilot, who represents the interests of the people of California, and the master, who represents the interests of the ship owner. Following the discussion Vice President Connolly asked for a motion.

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		September 26, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 12 of 13</b>	

**MOTION:** Commissioner Brooks moved to close the case with a finding of no pilot error and no further action. Commissioner Roberts seconded the motion.

**ACTION:** The motion passed unanimously on a role call vote.

Following the IRC presentation, President Johnston resumed chairing the meeting and addressed items 20 and 21 out of order so that members of the public not wishing to stay for the closed session consideration of agenda item #18 may have input into these agenda items.

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

There were no comments.

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

There were no proposals.

**18. Presentation of a request for a disability pension by San Francisco Bar Pilot Capt. Robert Pinder**

Commissioner Long requested that the Board go into closed session to consider Capt. Pinder's request for a disability pension.

**THE BOARD WENT INTO CLOSED SESSION AT 11:43 A.M.**

**THE OPEN MEETING RESUMED AT 12:22 P.M.**

When it was established that a quorum existed, the Board announced that, in closed session, it had determined Capt. Pinder to be eligible for a disability pension, and the date that his disability became of extended and uncertain duration began on July 8, 2013.

**Having now determined the outcome of agenda item #18, the Chairman Johnston returned to agenda item #15, where the decision and action depended on the number of licensed bar pilots anticipated on October 1, 2013.**

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		September 26, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 13 of 13</b>	

**15. Finance Committee**

- B) Review of the number of licensed bar pilots anticipated on October 1, 2013 and recommendation for possible adjustment to pilotage rates for the calendar quarter beginning on that date as specified in Harbors and Navigation Code section 1190(a)(1).**

Due to the Board's recent decision to grant Capt. Pinder a disability retirement, the number of pilots was reduced to 58. The rate statute in effect calls for the mill rate to be reduced by one-half share of the last annual audited income for each pilot under 60, to a maximum reduction of two one-half shares.. If approved, the new mill rate would be 09119 mills.

**MOTION:** Commissioner Roberts moved to approve the new mill rate based on 58 pilots licensed. Vice President Connolly seconded the motion.

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

**22. Adjournment**

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

**ACTION:** The motion passed unanimously and the meeting adjourned at 12:25 p.m.

---

Allen Garfinkle, Executive Director

Prepared by: Kelly Dolcini