

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		January 23, 2014
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111	<b>Page 1 of 9</b>	

**Board members present**

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

**Staff present**

Allen Garfinkle, Executive Director  
 Roma Cristia-Plant, Assistant 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, Pacific Merchant Shipping Association Vice President Michael Jacob, San Francisco Bar Pilot (SFBP) Capt. Einar Nyborg, SFBP Business Director John Cinderey and SFBP General Counsel Ray Paetzold 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 9:30 a.m. Staff Services Analyst Kelly Dolcini called roll and found a quorum had been established.

**2. Approval of minutes of the December 13, 2013 Board meeting**

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Board members were presented with the minutes of the December 13, 2013 meeting for approval.

**MOTION:** Commissioner Roberts moved to approve the minutes from the December 13, 2013 Board meeting with leave for staff to make non-substantive clerical changes. Commissioner Schneider seconded the motion,

**ACTION:** The motion passed unanimously with Commissioner Brooks abstaining.

**3. Announcements**

There were no announcements

**4. Board member activities**

There were no announcements.

**5. Executive Director's report**

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

Executive Director Garfinkle gave a report of the correspondence received by the Board since the November meeting:

On December 13, 2013, members of Board Staff and Pilot Fitness Committee Chairman Knute Michael Miller held a teleconference with Dr. Alan Hobbs, currently on loan to NASA from San Jose State University. Dr. Hobbs discussed various methodologies that might be employed to conduct a pilot fatigue study as mandated by Senate Bill 1408. Conversations with Dr. Hobbs will continue as the Pilot Fitness Committee attempts to identify appropriate methodologies and potential independent researchers to conduct the study.

Also on December 13, Board staff was notified of the intent of the Bureau of State Audits (BSA) to conduct a follow-up audit to the BSA's 2009 audit of Board operations. The audit took place on December 19 and 20, 2013 with three representatives from the BSA. It is not yet complete.

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On December 18, members of Board staff and Mr. Miller held a teleconference with Dr. Daniel Mollicone, Ph. D, CEO of Pulsar Informatics, concerning the Pilot Fatigue Study. Among the issues discussed were research methodologies and goals of such a study.

On January 7, 2014, the NTSB released their report on the M/T OVERSEAS REYMAR incident. In the report, they made mention of the BOPC and its pending fitness regulations and noted, in part, “if the rules are changed as [the BOPC] requested, the quality of medical oversight provided by the BOPC would exceed that of the U.S. Coast Guard...” and that “the NTSB supports the actions of the BOPC to implement a medical oversight system that contributes substantially to marine safety. “

On January 9, Mr. Garfinkle attended the Harbor Safety Committee meeting in Richmond. The U.S. Coast Guard distributed a Marine Safety Alert on entanglement accidents and safety practices aboard commercial fishing vessels.

On January 13, Board staff began distribution of press materials announcing the Trainee Training Program entrance exam.

On January 14, the U.S. Coast Guard released a Marine Safety Information Bulletin on recreational and medical marijuana use policies for Maritime Transportation Workers wherein it was reiterated that the Medical Review Officers will not verify a drug test as negative based on possession of a medical marijuana prescription.

On January 17, Board staff received a copy of Pacific Merchants Shipping Association’s (PMSA) response to a request for information from the Fair Political Practices Commission (FPPC) with respect to their appeal of denied petition to the Board to add the Port Agent to the BOPC’s conflict of interest code.

Also on January 17, Board staff received from Board Counsel a copy of a brief submitted to FPPC in opposition to PMSA’s appeal mentioned above.

**Board licensing:**

Between the November and December meetings, staff renewed licenses for Capts. Favro, Fuller, Johnson, McIsaac, Ridens and Teague. Following the December Board meeting and prior to the January Board meeting, staff renewed licenses for Capts. Carlson, Coppo, Robinson MacLachlan, Carlier, Kelso, Kellerman, Ruff, and Pinetti.

**Board Surcharges:**

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The Board received a check for \$142,005.35 for surcharges collected by the SFBP, which included the following:

Board Operations Surcharge: \$34,850.35

Continuing Education Surcharge: \$51,730.00

Trainee Training Surcharge: \$55,425.00

**Legislative matters:**

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

**Contractual matters:**

There were no contractual matters to discuss.

**6. Port Agent's report**

Capt. McIsaac reported that there were four (4) pilots absent for medical reasons (AFMR) for varying periods during the month of December.

He reported that there were seven (7) minimum rest period (MRP) exceptions since the December 19, 2013 meeting, ranging from 8.9 to 11.3 hours.

He next presented a report on billed vessel moves during the month of November. Compared to a three-year average, bar crossings were down 0.3% at 572; bay moves were up 6.6% at 107; river moves were up 13.8% at 42; total moves were up 1.3% at 721; and, gross registered tonnage was up 6.4% at 29,018,169 tons.

The P/V GOLDEN GATE was out of service from January 18-20, 2014. A malfunctioning thermostat was causing a generator engine to overheat.

The P/V SAN FRANCISCO was taken out of service on January 21, 2014 to repair a cooling system leak in the main engine.

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President Johnston requested a closed session at the end of the meeting to discuss the contents of the Port Agent’s confidential Report.

**7. Pilot Evaluation Committee**

Capt. Nyborg reported that both trainees are exceeding their benchmarks and will enter the evaluation stage shortly. During this stage of the program, trainees handle vessel without any input or coaching from the supervising pilot while underway.

Capt. Nyborg also expressed his opinion that the Board should develop a written policy regarding testimony of trainees who are witness to or involved in piloting incidents on the Bay. His concern is that the trainees will experience work related stress during investigations. He requested a clear guideline for trainees to protect both them and the Board.

A discussion of Capt. Nyborg’s concerns followed with Board Counsel advising that all witnesses to an event should be interviewed. If a trainee is witness to an incident, they will need to provide the Board with a statement when requested.

It was suggested that the PEC meet with the Incident Review Committee to develop a policy regarding trainee responsibilities in incident. The Committees will meet jointly at the February 19, 2014 PEC meeting.

**8. Reported safety standard violations**

There have been no safety standard violations since the last meeting.

**9. Reportable piloting events**

- A) On October 15, 2013, the ITB MOKU PAHU allided with the New York Slough Channel Marker #7. The 90-day deadline for presenting the report occurred on January 13, 2014. Mr. Garfinkle reported that the investigation is still open and active, and requested an extension to the February 27, 2014 Board meeting.

**MOTION:** Vice President Connolly moved to grant an extension to the February 27, 2014 Board meeting. Commissioner Long seconded the motion.

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

- B) On November 29, 2013, there was an interaction between the M/V ESSEX STRAIT and the M/T CHAMPION EXPRESS in the Port of Stockton. The M/T CHAMPION EXPRESS alleged gangway damage as a result of the interaction. The incident is under investigation and the 90<sup>-day</sup> deadline will occur on February 27, 2014.
- C) On November 26, 2013, the M/V SAGA WIND made contact with the Union Pacific Railroad Bridge while en-route to Stockton. The IRC received a statement from the pilot, which indicated no damage to the bridge or the antenna. The ship had failed to calculate for the whip antenna on the Pilot Card. The Incident Review Committee determined that there was clearly no pilot error and the investigation was terminated.

Vice President Connolly asked whether pilots relied solely on measurement calculations conducted by the ship. Commissioner Long explained that the Operations Pilot checks the information provided by the ship's agent when the job is taken, and again by the pilot when viewing the Pilot Card aboard the ship. It is not practical, or even possible for the pilot to check the stated height of the mast, and is relegated to work with the information provided.

- D) Mr. Garfinkle reported that the IRC had received a report from the U.S. Coast Guard of an injury aboard the M/V ZENA A. After investigation, it was determined that a pilot was not on board at the time of the injury and that it was beyond the purview of the IRC. The IRC determined that there was clearly no pilot error and the investigation was terminated.

**10. Rules and Regulations Committee**

- A) Chairman Roberts reported that the Rules and Regulations Committee had met on January 23, 2014 to discuss the rulemaking calendar and the status of various regulations in progress. He asked Executive Director Garfinkle to report on the status of the Pilot Fitness Regulations and Trainee Qualification regulations. Mr. Garfinkle reported that the Office of Administrative Law (OAL) had suggested final edits to the Fitness Regulations, which were expected to be approved by OAL soon, and that the Trainee Qualification regulations were also still pending OAL approval. Commissioner Long asked if Board Staff could request an early effective date for the pending Trainee Qualification regulations. Mr. Garfinkle confirmed that such a request had been included in the regulatory package.

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Mr. Garfinkle also reported that the Exam fee regulations had been approved by Agency and should be submitted for public comment soon.

- B) Mr. Garfinkle reviewed the purpose of the Rulemaking Calendar and the items suggested for inclusion calendar to be submitted to OAL. The four items included in the 2014 calendar are as follows: Pilot Trainee Entrance Exam fee (item complete but yet to be submitted to OAL), Trainee Admission Standards (currently under review by OAL), Department of Motor Vehicles pull notice program, and cleanup of existing regulations.

Vice President Connolly asked whether the rulemaking calendar submitted to OAL by BOPC could be more ambitious regarding regulations and rulemaking. Mr. Garfinkle explained that the Board is not bound to the rulemaking calendar submitted, that the calendar is for OAL planning purposes, and that the Board can submit regulations at any time, whether they are listed on the calendar or not.

**MOTION:** Commissioner Roberts moved that the Board accept the 2014 rulemaking calendar and instruct staff to submit to OAL. Commissioner Long seconded the motion.

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

## 11. Pilot Fitness Committee

Mr. Garfinkle gave the report in Mr. Miller's absence. He reported that the Committee had met on January 14, 2014 to discuss options for conducting a study of pilot fatigue. He explained that, rather than have frequent Committee meetings to interview potential study candidates, a sub-committee comprised of Mr. Miller, Board Counsel Eagan, and himself, will vet candidates and report to the full Committee at subsequent meetings.

Vice President Connolly requested that Mr. Garfinkle review, for the benefit of the Board members, the process of contracting with a researcher. Mr. Garfinkle described the different contracting options available to the Board and also noted the fiscal constraints that may keep the Board from contracting for this study during the upcoming fiscal year.

PMSA Vice President Mike Jacob offered to lobby on behalf of the Board to see if funding authority could be secured outside of the State's budget process.

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**12. Low Sulfur Fuel Report**

Executive Director Garfinkle provided the Board with the number of California loss of propulsion incidents reported in the last year, and the number that are confirmed or suspected to be related to low sulfur fuel. He reported that of 77 loss of propulsion incidents this year, 15 were determined to be due to fuel switching and another 29 were suspected to be related to fuel switching.

Mr. Jacob pointed out that the slight uptick in fuel related loss of propulsion incidents could be due to the new fuel standards enacted in January, 2014.

**13. Report of the Attorney General's Office**

Board Counsel Eagan reported that a ruling by the Fair Political Practices Commission on PMSA's appeal of the Board's decision to not include the Port Agent in the Board's Conflict of Interest policy is expected on or before the next meeting date.

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

There was a brief discussion of the upcoming Maritime Leadership Symposium in Sacramento. Ex Officio Member De Alba may attend.

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

Commissioner Roberts requested that the Consumer Price Index adjustment for pensioners be added to the agenda for February.

Vice President Connolly requested that staff review and brief the Board on the U.S. Coast Guard Navigational and Vessel Inspection Circular (NVIC) 01-14 to ensure compliance with the International Convention on Standards of Training, Certification and Watchkeeping (STCW) and how it will impact our licensees.

**The Board then went into closed session to discuss agenda item #7, Port Agent's Report. The Board may go into closed session to discuss contents of the Port Agent's confidential report as authorized by Harbors and Navigation Code, section 1157.1.**

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**BEGIN CLOSED SESSION: 10:58 a.m.**

**END CLOSED SESSION: 11:58 a.m.**

**Following the closed session, it was noted that a quorum was present**

**RESUME OPEN MEETING: 11:59 a.m.**

**16. Adjournment**

There being no further business before the Board, the meeting was adjourned at 12:00 p.m.

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Allen Garfinkle, Executive Director

Prepared by: Kelly Dolcini