

## Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun

660 Davis Street, San Francisco, CA 94111  
Phone: (415) 397-2253 Fax: (415) 397-9463  
E-mail: [allen.garfinkle@bopc.ca.gov](mailto:allen.garfinkle@bopc.ca.gov)  
website: [www.bopc.ca.gov](http://www.bopc.ca.gov)



Board of Pilot Commissioners  
Monthly Board Meeting  
January 26, 2012  
9:30 a.m.  
**MINUTES**

### OPEN MEETING

#### **Call to Order and Roll Call** – President Miller

President Knute Michael Miller called the meeting to order at 9:35 a.m. Vice President Johnston, and Commissioners Steve Roberts, John Cronin, David Wainwright, John Brooks, and Eric Osen were present, constituting a quorum. Business, Transportation and Housing Acting Secretary Traci Stevens was represented by Deputy General Counsel Gabor Morocz. Members of staff present were Executive Director Garfinkle, Deputy Attorney General Dennis Eagan, Staff Services Analyst Brian Vu, and Office Technician Kelly Dolcini. Port Agent Bruce Horton was also seated at the Commission table.

President Miller noted the presence of Ms. Sarah Weaver, Senior Consultant to the Joint Legislative Sunset Review Committee and welcomed her to the meeting.

#### **2) Approval of Minutes** – President Miller

President Miller requested approval of the revised minutes of the November 17, 2011 Board meeting. Commissioner Roberts moved approval of the minutes with authority to Board staff to make clerical, non-substantive changes. Commissioner Johnston seconded the motion, which passed unanimously on a voice vote.

President Miller requested approval of the minutes of the December 15, 2011 Board meeting. Commissioner Johnston moved approval of the minutes with authority to Board staff to make clerical, non-substantive changes. Commissioner Roberts seconded the motion, which passed unanimously on a voice vote.

#### **3) Announcements** – President Miller

President Miller announced that all Commissioners and senior staff were required to prepare and file with Board staff annual Fair Political Practices Commission (FPPC) Form 700's which are due to Board staff not later than March 31, 2012. He noted that the forms may be prepared using software available on the FPPC website.

President Miller also announced that Executive Director Garfinkle would, in six more days, complete two years at the helm of the Board. President Miller announced that the February 2012 agenda would include a closed session to conduct an annual performance appraisal and encouraged Commissioners who had not already done so to complete their individual appraisals and forward them for consolidation.

#### **4) Board Member Activities – Board Members**

President Miller announced that on January 11, 2012 he had attended a meeting of the San Francisco Maritime Trades Council. The Council was addressed by Ms. Caitlin O’Neill, Chief of Staff to Congresswoman Nancy Pelosi in her D.C. office. Ms. O’Neill has served in that position for approximately two months, having previously served as Deputy Floor Manager for Mrs. Pelosi.

President Miller reported that on January 13, 2012 he had a telephone call with Ms. Kim Duncan, Chair of the Oregon Board of Maritime Pilots to discuss the NTSB correspondence (stemming from its investigation of an accident involving the MV EAGLE OTOME) with 26 state and territorial governors and recommendations included in that correspondence. Ms. Duncan agreed to provide a copy of the Oregon Board’s response to the NTSB and President Miller forwarded a copy of the BTH response to NTSB dated January 12, 2012.

#### **5) Executive Director’s Report – Executive Director Garfinkle**

##### **A) Correspondence and activities since the December 15, 2011 meeting.**

1. On December 20, 2011 staff received the American Pilots' Association response to the National Transportation Safety Board's Report on the Eagle Otome incident.
2. On December 29, 2011, Board staff received a draft of a Pilot Safety Improvement Bill from Pacific Merchant Shipping Association (PMSA) requesting constructive feedback from interested parties.
3. On January 4, 2012, Board staff received a copy of a Public Records Act request from PMSA directed to San Francisco Bar Pilots Capt. Bruce Horton in his capacity as Port Agent requesting copies of an "Annual Pilot Log" created pursuant to 7 CCR 218(c)(1) for years 2002 to 2011.
4. On January 4, 2012, Board staff received a copy of what is purported to be the San Francisco Bar Pilot Work Rules, dated April 7, 2010, and sent by Mike Jacob, Vice President of PMSA.
5. On January 4, 2012, Board staff received three documents: Two were petitions to the Office of Administrative Law - one challenging alleged underground regulations by the BOPC regarding HNC Section 1163 (c); the other challenging alleged underground regulations by BOPC regarding HNC 1167 The third document is a request to the U.S. Department of Labor for an advisory opinion on whether the statutory pension scheme for state licensed pilots is a governmental plan, and if not, whether it would be considered

a single-employer private plan under ERISA, and in either instance to determine the extent to which the California state statute may be preempted by ERISA (Employee Retirement Income Security Act of 1974.)

6. On January 9, 2012, Board staff sent a letter to United States Department of Labor addressing what we believed were some inaccurate statements in the PMSA request for an advisory opinion from the Department of Labor.
7. On January 12, 2012, we received a Letter from Traci Stevens, acting Secretary of Business, Transportation and Housing (BTH) responding to the NTSB recommendations to the Governors where there are local pilot oversight organizations to implement several safety recommendations relating to safety, fatigue, and bridge resource management. The letter refers the recommendation to the Board of Pilot Commissioners to carefully assess the array of NTSB safety recommendations for purposes of implementing any adjustments, amendments or modifications the Board deems necessary and appropriate in light of its expertise in the area of bar pilot practices. Enclosed was also a letter to Deborah Hersman Chairman of the NTSB. The Board will have a chance to discuss this letter more fully under agenda item #20 today.
8. On January 12, 2012 staff received a report from California State Auditor detailing "Recommendations not fully implemented after one year." In your binder you will find the BOPC excerpt.
9. On January 13, 2012, Board staff received a letter from Mr. Mike Jacob, Vice President of PMSA, thanking staff for the correspondence of January 9, 2012, but taking exception to the characterization of its request to the Department of Labor.
10. On January 17, 2012 we received an agenda for a meeting of the California State Lands Commission being held January 26, 2012, in Emeryville starting at 10 am.

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

There were no licenses renewed between the November Board meeting and the December Board meeting.

Since the December Board meeting the Board staff has renewed thirteen licenses to the following pilots: Carlier, Carlson, Coppo, Greig, Kellerman, Kelso, MacLachlin, McIsaac, Ridens, Robinson, Rocci, Teague, and Roberts.

C) Report on surcharges received by the Board.

Executive Director Garfinkle reported that the Board collected December surcharges totaling \$209,878.51 broken down as follows: Board Operations surcharge \$92,743.51, Pilot Continuing Education surcharges of \$71,925.00, and Trainee Training surcharges of \$45,210.00.

D) Report on legislative activities and contractual matters.

There were no legislative activities to report.

Staff Services Analyst Brian Vu reported on the following contracts:

Fiduciary contract – staff has begun work on a new contract for fiduciary services to administer the pilot pension plan. A scope of work has been sent to California Highway Patrol for processing into a contract proposal. Currently, Ghirardo, Inc. is the Board's service provider. Its contract runs out on March 31, 2012. The contract will be done on a small business request for proposal option.

Staff has also completed a service contract on an "X" number basis with Cal Marine Electronics. The vendor will provide Rosepoint software training (used in the Personal Piloting Units which each Pilot is required to carry) for the Board's six trainees currently in the training program.

#### **6) Port Agent's Report –Captain Bruce Horton**

A) Monthly confidential written report on pilots absent for medical reasons (AFMR) presented to Board.

Captain Horton reported that Captain Morgan Hoburg has been placed on medical disability leave, as per the BOPC.

Captain Chris Anderson has been placed on medical disability leave, as per the BOPC.

All Commissioners were provided with copies of the Port Agent's confidential written report of pilots who have been absent for medical reasons. After the Board had the opportunity to read the report, President Miller inquired whether any member wished to go into closed session to discuss the contents of the confidential report. There were no requests.

B) Recommended Minimum Rest Period (MRP) exceptions:

There were 21 MRP exceptions in November. There were seven on November 2, 2011 with 23 pilots on the board, the shortest of which was 7.3 hours. There were six on November 30, 2011 with 22 pilots on the board, the shortest of which was 8.9 hours. Three of those were caused due to fog with job cancellations and rescheduling.

There were 5 MRP exceptions in the month of December. Of these, three of them were caused by calling pilots in early for river jobs.

C) Monthly report on SFBP ship piloting business activity.

Billed moves in December 2011 compared to the three-year average were as follows: Bar crossings up 3.6% (531), bay moves down 15.5% (113), river moves up 51.2% (36), total moves up 2% (680) and gross registered tons (GRT) up 5.3% (25,536,569.00). When compared to December 2010, bar crossings are up 5.7%, total moves are up 6.6% and GRT is up 7%.

The Pilot Vessel GOLDEN GATE was down for one day while the props and zincs were replaced.

The Pilot Vessel CALIFORNIA's starboard generator failed on station due to a broken alternator water pump belt. It was replaced the same day and available for use.

#### **7) Pilot Evaluation Committee – Captain Horton for Captain Einar Nyborg**

The Pilot Evaluation Committee (PEC) met on January 18, 2012. In closed session, all six trainees were interviewed individually. The current trainees include: Carr, Johnson, Manes, and Stultz, Lingo and Favro. They have between four and 13 months in the program. All trainees are progressing well at this time. Two trainees have advanced to the final phase of training. The final, or evaluation phase, means that the trainee is handling the vessel without input from the pilot during the job unless safety requires.

All trainees are attending Rosepoint Software training by Fred King of Cal Marine Electronics today at Pier 9. This is the same training that all pilots attended when laptop navigation computers were first introduced.

PEC has requested that Board staff purchase and provide AIS pilot plug splitters to PEC members so that both trainee and pilot can use separate navigation computers when piloting a vessel. Currently, PEC requires trainees in their final months of training to carry and use their laptop computers. Ships are only outfitted with one AIS feed for pilot use. A splitter provided by Cal marine, would enable two feeds. The estimated cost is about \$185 per unit for five PEC pilots.

The next PEC meeting is scheduled for February 15, 2011.

Board President Miller emphasized that trainees are trained to look out the window first and foremost. The computer is secondary. During the later stages of their training, computers are brought in as an additional aid. This additional stage comes one to two months before they get licensed. Commissioner Roberts also stated that two additional trainees are almost done and when licensed, would increase the number of licensed pilots from 56 to 58. This will aid in reducing MRP exceptions.

Commissioner Osen raised a concern that employing splitter cables might potentially degrade the signal. He advised the Board to check with the manufacturer and look at the warranties. Commissioner Roberts also raised the question whether the PEC would own the equipment. Deputy Counsel Morocz stated that it will be owned by the state and will be tagged as such and put in the inventory. Port Agent Horton emphasized that the equipment would be for PEC use only.

#### **8) Reported Safety Standard Violations and Investigations – Executive Director Garfinkle**

There were no safety standard violations reported since the last meeting.

## **9) Reportable Piloting Events – Executive Director Garfinkle**

Executive Director Garfinkle briefed the Board on the status of the open investigations, presenting the Board with a status report of each ongoing investigation.

Executive Director Garfinkle reported that a grounding of the ASTON TRADER II on the San Joaquin River in the vicinity of Light 31 occurred on November 5, 2011. The investigation process has been initiated. The 90 day deadline will be reached on February 3, 2012. Executive Director Garfinkle requested an extension for presenting the report on the ASTON TRADER II. Commissioner Wainwright moved that an extension be granted to present the ASTON TRADER II report at the February Board meeting. Commissioner Roberts seconded the motion and the motion was passed on a unanimous voice vote.

Executive Director Garfinkle reported that a grounding of the M/V TATJANA at Stockton, berth 10-11 occurred on November 28, 2011. The investigation process has been initiated. The 90 day deadline will be reached on February 26, 2012.

Executive Director Garfinkle reported that an event involving the M/V OAKLAND and a small boat on the Sacramento River occurred on December 3, 2011. The investigation process has been initiated. The 90 day deadline will be reached March 2, 2012.

Executive Director Garfinkle reported that an event involving the M/V SOLAR WING damage to Richmond Pier 8 during docking occurred on December 30, 2011. The investigation process has been initiated. The 90 day deadline will be reached on March 29, 2012.

Executive Director Garfinkle reported that an event involving the M/V BERLIN TRADER interaction with M/V GLOBAL PIONEER while approaching berth 19-20 in Stockton occurred on January 19, 2012. The investigation process has been initiated. The 90 day deadline will be reached on April 18, 2012.

## **10) Rules and Regulations Committee – Commissioner Wainwright**

A) Report on January 9, 2012 Joint Rules and Regulations Committee and Pilot Fitness Committee meetings.

Commissioner Wainwright reported that the Rules and Regulations Committee had met with the Pilot Fitness Committee on January 9, 2012 and January 19, 2012. The Committee has completed its initial draft of the proposed regulations. The next step is reviewing the document in relation to provisions of the Harbor and Navigation Code and existing regulations. The next meetings are scheduled for February 2, 2012 and February 21, 2012.

B) Report on Committee draft of Rulemaking Calendar and recommendation of Committee for Board approval of calendar.

Commissioner Wainwright directed the Board to view the proposals for the Board's 2012 Rulemaking calendar along with the 2012 proposed rulemaking calendar items approved at the January 19, 2012 Rules and Regulations Committee meeting. The Board reviewed the list and

agreed that it should vote on the items individually. Commissioner Roberts then moved that the Board approve items one through three on the list presented for the rulemaking calendar. Item one concerns Pilot and Trainee Fitness Standards (section 217), which is regulations flowing out of 2008 legislation and the Pilot Fitness Study; Item two concerns Pilot Trainee application fees (section 209), which will be a fee charged for taking the exam; and item three concerns revising the trainee admission standards growing out of a periodic review of admission standards and work by the Ad Hoc Committee on Trainee Recruitment. Commissioner Osen seconded the motion. President Miller called for discussion. There was none. President Miller called for the yeas and nays. The motion carried on a roll call vote with: seven yeas, zero nays. Staff was directed to research the expenses associated with conducting the most recent trainee selection exam and to prepare a report for the Board on the cost of administering the exam. Commissioner Osen emphasized that the Board should not have the intention of recovering all costs; the Board should simply want to discourage applicants who want to use the exam as practice.

The Board discussed whether catastrophic expense relief, #4, was a realistic goal given that the Pilot Fitness regulation-writing will continue to consume a considerable amount of the Committee's time. Commissioner Wainwright stated that this was an important agenda item and the Rules and Regulations Committee wanted to keep it current as an ongoing agenda moving forward. PMSA Vice-President Jacob cautioned that if catastrophic expense relief was approved for placement on the calendar, it would send out the message that the Board cared more about pilot rate issues rather than the concerns of rate payers (as PMSA has been requesting pension and "Blue Card" clarification regulation). Commissioner Roberts moved that the Board approve #4 for the rulemaking calendar. Commissioner Wainwright seconded the motion. President Miller called for discussion. There was none. President Miller called for the yeas and nays. The motion carried on a roll call vote: seven yeas, zero nays.

The Board then discussed item #5, Intoxication. Commissioner Wainwright gave a brief recount of the history "intoxication" and "under the influence." There was discussion at Board and Committee levels, however, no consensus was ever reached. Deputy Counsel Morocz stated that he felt this item was not ready for rulemaking. Commissioner Osen concurred, adding that just because an item was not on the calendar doesn't mean that it cannot be addressed at a later time. It means that the Board is not prepared to write regulations in the absence of a clear policy. Commissioner Roberts disagreed, stating that it would be good to include, as it would be a positive reinforcement to the public. Commissioner Roberts moved that the Board approve #5 for the rulemaking calendar. Commissioner Wainwright seconded the motion. President Miller called for discussion. There was none. President Miller called for the yeas and nays. On the roll call vote there were three yeas, four nays. The motion was not agreed to.

The Board then discussed the remaining 2012 Proposed Rulemaking Calendar items approved at the January 19, 2012 Rules and Regulations Committee meeting. No additional items were added at this time. Commissioner Wainwright moved approval of the draft Rule Making Calendar with the items approved today with direction to Board staff to forward it to Business, Transportation, and Housing Agency for submission to the Office of Administrative Law. Commissioner Johnston seconded the motion. President Miller called for additional discussion by the Board and comments from the public. There were none. President Miller called for a roll call vote. The motion carried on a vote of six yeas and one nay, Commissioner Osen voting "nay".

**The Board recessed at 11:35 a.m.**

**The Board returned to open session at 11:49a.m.**

**President Miller announced that the Board would take up agenda #17 out of order.**

**17) Ad Hoc Committee on Blue Card rates – Vice-President Johnston**

Vice-President Johnston thanked the Committee and President Miller for its work in his absence. The Board reviewed the “plain English” code definitions as well as the updated service code and charge listings. Deputy Counsel Morocz opined that the mandate of the Board, when forming this Committee, was ambiguous. If the Board writes regulations, it can be “torpedoed” in public comment. If the interpretation changes the rates, then it would prompt a rate hearing. Commissioner Roberts asked if the Board could vote on “accepting” the document. Board Counsel Eagan stated that there is a difference between “accepting” and “receiving”. Further, if the Board decides there are two interpretations, it could lead to further complications. The Board members discussed whether these definitions were reasonable interpretations. A question arose whether the Board can produce regulations on this subject or whether it requires legislation.

Port Agent Horton questioned the impact of these definitions. Now that the plain English code definition document has been drafted, what is the next step for SFBP as it has spent considerable manpower and resources on this project? PMSA Vice-President Jacob advised that the Board accept the report then send it back to the Ad Hoc Committee to resolve the issues created by this Board action. Deputy Counsel Morocz stated that the document was drafted to clarify to the public what each charge was concerned with. The way clarification can be achieved is through regulations. If the legislature takes this up, the Board will have a document to present to legislature to adopt. Commissioner Wainwright moved that the Board receive report of the "Blue Card" service code and plain language definitions and for the Ad Hoc Committee to continue its work resolving outstanding issues. Commissioner Roberts seconded the motion. President Miller asked for further discussion by the Board and comments from the public. There were none. Whereupon the motion passed unanimously on a voice vote.

**President Miller announced that the Board would take up agenda #22 and #23 out of order.**

**22) IRC Incident Report on USS POINT DEFIANCE September 8, 2011 allision with the Union Pacific railroad Bridge pier while under dead tow – Vice President Johnston and Executive Director Garfinkle**

President Miller announced that the Board next would conduct an informal hearing into the USS POINT DEFIANCE allision with the Union Pacific Railroad Bridge. He recognized Board Vice President Johnston who serves as Chairman of the Incident Review Committee (IRC). Vice President Johnston directed the Executive Director (also a member of the IRC) to present the report.

Executive Director Garfinkle submitted to President Miller the IRC report including all attachments for inclusion in the record. President Miller stated that the report includes the report from the pilot and the confidential report of the investigator, neither of which is part of the public



record, pursuant to Harbors and Navigation Code section 1180.3(b)(11). President Miller noted that the report had been provided to members of the Board in advance of the meeting to provide them with an opportunity to read it. The report was marked as Exhibit #1.

San Francisco Bar Pilot (Capt.) John Carlier was not present. He was represented by counsel. President Miller recognized Mr. Rex Clack and asked him to identify himself for the record and confirm that he represented Capt. Carlier. Mr. Clack did so. President Miller inquired of Mr. Clack whether he wished to make an opening statement. He declined to do so.

President Miller inquired of Mr. Clack whether he wished to supplement the pilot's report that is contained in the IRC report with an oral or written statement and offer additional documentary evidence. Mr. Clack declined but reserved the right to do so.

President Miller explained that Board members, at any time, may ask questions of the members of the IRC and of the pilot or pilot's counsel. No technical rules of evidence apply in this informal hearing. The Board will accord weight to statements and documents according to their perceived reliability. Both the IRC and the pilot or pilot's counsel may respond to and comment upon statements made or documents submitted by the other party.

President Miller asked the IRC to proceed with its report.

Executive Director Garfinkle delivered the IRC report and its recommendations. After questions from the Board to the Executive Director and responses from him, President Miller inquired of Mr. Clack if he had any questions for the IRC. He stated that he had none.

The Board members inquired of the IRC and after discussion, determined not to seek closed session to deliberate. Vice-President Johnston emphasized that the operator of the MARSHALL FOSS, when interviewed, indicated he made an error in carrying out the pilot's orders, which was the primary reason the USS PONT DEFIANCE made unintended contact with bridge. Commissioner Osen questioned if the two trainees, riding along with Capt. Carlier were interviewed and if statements were taken. Executive Director Garfinkle stated that the trainees were not interviewed in this case as there was no contradictory evidence, and that had he needed the trainee's statements for any reason, he would not have hesitated to interview them. Commissioner Osen also questioned the weather parameters in work rules for a flat tow. According to the report, the weather was variable and at what point would they abandon flat tow move. He also questioned who dictated the number of tugs and if this was a suitable number. He made a point that the objective of lessons learned would be to prevent a single human error from causing a vessel to allide with a bridge.

After further discussion, Commissioner Roberts moved that the Board accept the IRC recommendation that the Board find no pilot error in this case, that this case be closed with no further action, and that Capt. Carlier be commended for his actions. Staff advised Commissioner Roberts that commendation of a pilot was not consistent with previous practice and that it would more properly be an item placed on next month's agenda. Commissioner Roberts retracted his previous motion. After further discussion, Commissioner Roberts moved that the Board accept the IRC recommendation that the Board find no pilot error in this case, that this case be closed with no further action. Commissioner Brooks seconded the motion. President Miller asked for further discussion by the Board. There was none. President Miller directed a roll call vote. President Miller called for the yeas and nays. The motion carried on a voice vote: 5 yeas, 1 nay, with Commissioner Osen voting nay.

Capt. G. R. Wheatley of the UCSG inquired as to whether there was a pre-planning conference to lay out plan of transit, verbiage, how to communicate commands, etc. Executive Director Garfinkle responded that he was unsure whether there was one that included both the tug operators and the pilot.

**23) IRC Incident Report on M/V PARTAWATI where there was loss of life (of a kayaker) while docking the ship at Berth 92, San Francisco on October 23, 2011 - Vice President Johnston and Executive Director Garfinkle**

President Miller announced that the Board next would conduct an informal hearing into the M/V PARTAWATI where there was a loss of life while docking. He recognized Board Vice President Johnston who also serves as Chairman of the Incident Review Committee (IRC). Vice President Johnston directed the Executive Director (also a member of the IRC) to present the IRC report.

Executive Director Garfinkle submitted to President Miller the IRC report including all attachments for inclusion in the record. President Miller stated that the report includes the report from the pilot and the confidential report of the investigator, neither of which is part of the public record, pursuant to Harbors and Navigation Code section 1180.3(b)(11). President Miller noted that the report had been provided to members of the Board in advance of the meeting to provide them with an opportunity to read it. The report was marked as Exhibit #1.

President Miller inquired of Vice President Johnston whether the IRC wished to make an opening statement. He did not.

San Francisco Bar Pilot Capt. Chris Anderson was not present. He was represented by counsel. President Miller recognized Mr. George Nowell and asked him to identify himself for the record and confirm that he represented Capt. Anderson. Mr. Nowell did so. President Miller inquired of Mr. Nowell whether he wished to make an opening statement. He did not.

President Miller inquired of Mr. Nowell whether he wished to supplement the pilot's report that is contained in the IRC report with an oral or written statement and whether he wished to offer additional documentary evidence. Mr. Nowell declined but reserved the right to do so.

President Miller explained that Board members, at any time, may ask questions of the members of the IRC and of the pilot or pilot's counsel. No technical rules of evidence apply in this informal hearing. The Board will accord weight to statements and documents according to their perceived reliability. Both the IRC and the pilot or pilot's counsel may respond to and comment upon statements made or documents submitted by the other party.

President Miller asked the IRC to proceed with its report.

Executive Director Garfinkle delivered the IRC report and its recommendations. After questions from the Board to the Executive Director and responses from him, President Miller inquired of Mr. Nowell if he had any questions for the IRC. He stated that he had none.

The Board members inquired of the IRC and after discussion, determined not to seek closed session to deliberate.

President Miller asked Vice President Johnston whether the IRC wished to make a closing statement. He responded that the IRC did not wish to make a closing statement.

President Miller asked Mr. Nowell whether he wished to make a closing statement. He responded that he did not wish to make a closing statement.

After further discussion, Commissioner Brooks moved that the Board accept the IRC recommendation that the Board find no pilot error in this case, that this case be closed with no further action. Commissioner Roberts seconded the motion. President Miller called for further discussion by the Board. There was none. President Miller directed a roll call vote to be taken with Commissioner Brooks voting yea, Commissioner Roberts voting yea, Commissioner Cronin voting yea, Commissioner Osen voting yea, and President Miller voting yea. The motion passed. (Commissioner Wainwright departed early due to work schedule conflicts and did not vote.)

Commissioner Roberts then voiced concern that any incident report, even one that finds for no pilot error might be used by the press in the future against the pilot's interests. Based on this, Commissioner Roberts moved that the vote be vitiated to clear the way for a vote for classifying this as Non-Incident. Commissioner Brooks seconded the motion and President Miller directed a roll call vote with Commissioner Osen voting nay, Commissioner Cronin voting nay, Commissioner Roberts voting yea, Commissioner Brooks voting yea, and President Miller voting nay. The motion did not pass with three nays and two yeas.

**The Board returned to agenda #11.**

**11) Finance Committee – Commissioner Cronin**

There was no report.

**12) Pilot Fitness Committee – Commissioner Roberts**

Commissioner Roberts stated that Pilot Fitness met on January 5, 2012. All agenda items were discussed. Much of the discussion concerned the curriculum of fatigue mitigation seminar with MITAGS instructor Jim Clemens along with the appeals process in Regulation 217(e)(1-9).

**13) Low Sulfur Fuel – Executive Director Garfinkle**

Executive Director Garfinkle reported that Capt. Jeff Cowan, who was not present at the meeting, provided a Loss of Propulsion Report. There were eight loss of propulsion incidents in December with one linked to fuel switching. For the year of 2011, there were 93 losses of propulsion incidents with 32 linked to fuel switching.

**14) Ad Hoc Working Group on Trainee Recruitment – Executive Director Garfinkle for Commissioner Wainwright**

There was no report.

#### **15) Continuing Education Committee – Commissioner Roberts**

Commissioner Roberts reported that in 2012, two classes are scheduled for the MITAGS combination course. The first class will be from April 15-April 20 with six pilots attending. The second class will be from May 2-May 11 with six pilots attending.

Commissioner Roberts also reported that two classes are scheduled for manned model training. The first class will be from May 21-25 with five pilots and two trainees attending. The second class will be from June 25-29 with six pilots attending.

Commissioner Osen questioned who was booking the two trainees' travel for Port Revel. Commissioner Garfinkle responded that SFBP has and that it will be most likely that those two trainees would be pilots by June. He also stated that the issue of purchasing the most economical, refundable tickets would be an agenda item at the next meeting.

#### **16) Pilot Power Committee – Commissioner Roberts**

Commissioner Roberts reported that Pilot Power has not met. PMSA Vice-President Jacobs inquired if there was current 237(d) data available. Commissioner Roberts stated that it would be ready February 21, 2012.

#### **18) Report of the Attorney General's Office – Board Counsel Eagan**

Board Counsel Eagan reported that Judge Conti's judgment on whether the consent decree will be accepted is scheduled for tomorrow. He will report further next month.

#### **19) Adoption of regulatory change in Section 219 – Commissioner Wainwright, Deputy General Counsel Morocz**

The Board discussed the proposed regulatory change to 7 CCR 219. After discussion, Commissioner Roberts moved that the proposed regulatory change in Section 219 be adopted and that staff be directed to submit the change for final approval by the Office of Administrative Law. Commissioner Johnston seconded the motion. President Miller called for further discussion by the Board and comments from the public. There were none. Whereupon the motion passed unanimously on a voice vote.

#### **20) National Transportation Safety Board (NTSB) report on the allision and collision of the EAGLE OTOME with other vessels in the Sabine-Neches Canal in Port Arthur, Texas, January 23, 2010 - President Miller**

President Miller noted that copies of the BTH response to NTSB were included in Board members' binders, along with its correspondence with local pilot oversight bodies at the Ports of

Humboldt Bay, Hueneme, Los Angeles, Long Beach, and San Diego. In addition, members' binders include a copy of the response to the NTSB from the Oregon Board of Maritime Pilots.

President Miller stated that he had forwarded copies of the BTH response to the Board's counterpart pilotage oversight agencies in the States of Alaska, Washington, and Oregon, as well as the Pacific Pilotage authority in British Columbia (PPA). He noted that the PPA was not circularized by the NTSB, but because of the recent development of information sharing among West Coast pilotage oversight bodies (including the PPA), he thought it appropriate to include that organization in the communication.

President Miller noted that BTH Acting Secretary Traci Stevens had referred the NTSB safety recommendations to the Board for further review and consideration in light of the Board's expertise in the area of bar pilot practices. Because the recommendations pertain to both pilot fatigue and pilot training, President Miller proposed that the Board refer the correspondence from BTH to the Pilot Fitness Committee and to the Continuing Education Committee for review and consideration and that the Committees develop recommendations to the Board with respect to a response to BTH Acting Secretary Stevens. After discussion by the Board, given the evident consensus, President Miller referred the correspondence from BTH to the respective Committees.

The Board reviewed the letter from Acting Secretary Traci Stevens. Deputy Counsel Morocz stated that the NTSB had a misconception that the Governor held direct oversight and control of local pilot organizations. Most importantly, Acting Secretary Stevens assessed that the BOPC satisfied the safety concerns reflected in the NTSB Safety Recommendation. However, that does not mean the Board should not be proactive about improvements.

Commissioner Osen opined that a proactive stance by the Board, including informing BTH might have prevented what he felt were incorrect statements in the BTH communication. Deputy Counsel Morocz stated that various Committees exist to examine the process and will continue to do so. PMSA Vice President Jacob stated PMSA's endorsement of NTSB as long as there isn't a degradation of service; he also stated his intent for more formalized guidelines in the form of a bill.

**21) Report on inquiry into pilotage charges for CMA CGM NORMA and other fees not expressly provided for by statute, together with opinion of counsel concerning validity of such fees – Executive Director Garfinkle and Board Counsel Eagan**

Board Counsel Eagan stated that the report would be ready by February's Board meeting.

**24) Public Comment on Matters not on the Agenda**

There were none.

## **25) Proposals for Additions to Next Month's Agenda**

Executive Director Garfinkle stated that next month's agenda would include the issue of airfare purchases, developing the conceptual framework for formal commendation, and the Executive Director's performance review.

## **26) Adjournment**

There being no further business before the Board, the meeting adjourned at 2:35 p.m.