

<p>Meeting Date: October 22, 2015</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 17</p>
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Board Members Present

RADM. Francis Johnston, President, Public Member
 Dave Connolly, Vice President, Public Member
 Capt. George H. Livingstone, Pilot Member
 Capt. Joe Long, Pilot Member
 Jennifer Ferrera Schmid, Public Member
 John Schneider, Wet Cargo Industry Member
 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

Staff Present

Allen Garfinkle, Executive Director
 Roma Cristia-Plant, Assistant Director
 Dennis Eagan, Board Counsel
 Kelly Dolcini, Staff Services Analyst

Public Present

Acting Port Agent John Carlier; Pacific Merchant Shipping Association (PMSA) Vice President Mike Jacob; San Francisco Bar Pilots (SFBP) Business Manager-General Counsel Ray Paetzold; SFBP Captains Greig, Dowdle, Manes, Roberts, and Laakso; BOPC Pilot Trainee Kasper; Capt. Mike Rubino; Knute Michael Miller; Captain Doug Anderson; Rex Clack, Esq.; and, Rollie Caabe, State Lands Commission.

OPEN MEETING:

1. Call to Order and Roll Call – President Johnston

President Johnston called the meeting to order at 9:30 a.m. Staff Services Analyst Dolcini called the roll and confirmed a quorum.

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

Board action to approve Board meeting minutes from the meeting held on September 24, 2015.

Board members were presented with the minutes of the meeting held on September 24, 2015, for approval. Board Counsel recommended clerical and substantive changes, and the

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substantive changes were discussed. There was no further discussion and no public comment.

MOTION: Vice President Connolly moved to approve the minutes of the meeting held on September 24, 2015, as edited. Commissioner Schneider seconded the motion.

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

ACTION: The motion was approved.

3. Announcements – President Johnston

Announcement of events affecting Board business since the last Board meeting.

President Johnston announced that, on October 13, 2015, he had attended a meeting of the Northern California Area Maritime Security Committee. He stated that he received a certificate of appreciation at the meeting for his 11 years of service to the committee, and submitted a letter of resignation from the committee, effective December, 31, 2015.

Also effective December 31, 2015, he stated that he will resign from the Port of San Francisco Maritime Commerce Advisory Committee after serving on it for the last 20 years.

4. Board Member Activities – Board Members

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

There were no reports

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

A) Correspondence and activities since the September 24, 2015, Board meeting.

Executive Director Garfinkle reported on correspondence received by the Board Since September 24, 2015 as follows:

- September 24, 2015, PMSA Vice President Michael Jacob shared with the Board a letter addressed to Board President Johnston requesting that the Executive Director, as the fiduciary of the San Francisco Bar Pilot Pension Plan, retain the services of an actuary familiar with the administration of defined-benefit pension plans to assess the full value and extent of any and all present and likely future liabilities associated with the plan.

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- September 25, 2015, he, Board Counsel, and Ray Paetzold attended the hearing in Sacramento Superior Court on Board of Pilot Commissioners v. Fair Political Practices Commission.
- September 30, 2015, Board staff received a copy of a letter to Governor Brown from PMSA Vice President Michael Jacob submitting three nominations for the vacant Board of Pilot Commissioners' Dry Cargo Industry seat. The three nominees are Brian Coleman, Alan Hicks, and Dave Hoppes.
- On September 30, 2015, he, Board Counsel, and Board Pilot Fitness Chairman and former Board President K. Michael Miller attended the hearing in San Francisco Superior court on Reeder v. Board of Pilot Commissioners.
- October 6, 2015, Executive Director Garfinkle received an email from Capt. Einar Nyborg, chairman of the Pilot Evaluation Committee, containing a photograph of a trainee in front of a radar console on the bridge of a ship with a sheet placed between the console and the window to simulate fog/reduced visibility conditions. Capt. Nyborg explained this is only done with the consent of the Master of the ship and under the supervision of a licensed pilot.
- October 8, 2015, he attended a meeting of the San Francisco Bay Harbor Safety Committee held in Richmond at the California Maritime Academy (CMA) Safety and Security Center.
- October 8, 2015, he met with Board Physicians--Doctors Kosnik, Harrison, Seward, and Shusterman--at UCSF Occupational and Environmental Medicine Clinic to discuss various aspects of the Board's pilot medical assessment program.
- October 9, 2015, he received a letter from Capt. Michael Rubino requesting to rescind his September 14, 2015, resignation from the Pilot Trainee Training Program and requesting reinstatement to the program.
- October 12, 2015, Board staff received a copy of a letter from Office of Administrative Law (OAL) Legal Analyst Melvin Fong, addressed to Chief Counsels and Regulation Coordinators reminding us that we are required to submit a Rulemaking Calendar to OAL by January 30, 2016.
- October 14, 2015, he traveled to Sacramento to attend a CalSTA directors meeting.
- October 19, 2015, Board staff received an email from the California State Auditors advising that it has accepted our response to Recommendation #2 of the 2009 audit which reads, "[T]o ensure that its expenditures are appropriate, the [B]oard should competitively bid contracts with physicians who perform physical examinations of pilots." He explained the Board previously responded to that recommendation by saying it would not implement this recommendation as written since the Board entered into a non-competitive inter-agency agreement with UCSF. When it became apparent that this response was inadequate to remove the Board from a list that would continue to reflect this finding as an open audit recommendation year after year, Assistant Director Cristia-Plant worked proactively with the auditors and CalSTA to devise a revised response that clarified that we have substantially complied with the recommendation by ensuring that our expenditures are appropriate, while also

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complying with Govt. Code 19130 that requires state entities to contract with other state agencies when possible.

- October 20, 2015, Board staff received an email from Capt. Tylawsky forwarding an article from Lloyd's List, a maritime industry publication, concerning the Master of the COSTA CONCORDIA and his legal battles after the grounding incident. He stated the article raises interesting issues about bridge team management, language barriers, use of ECDIS, electronic charts versus paper charts, voyage planning, monitoring of turning circles, and International Safety Management systems.
- He shared with the Board a presentation prepared by Dr. Laura Gillis in November of 2011, which discussed U.S. Coast Guard medical oversight of mariners, and specifically the fatigue-related issue of sleep apnea.
- October 21, 2015, Board staff received a letter from Capt. Sean Gabe requesting his retirement effective January 1, 2016.

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

Executive Director Garfinkle reported between the August and September Board meetings, staff renewed the licenses of Captains Kleess and LeSieur.

Since the September meeting, staff has renewed Captain Dowdle's license.

C) Report on Board surcharges.

Executive Director Garfinkle reported the Board received a check from the SFBP for \$78,028.76 for September 2015 surcharge revenues as follows:

- Board Operations Surcharge: \$32,273.76
- Pilot Continuing Education Surcharge: \$ 3,455.00
- Trainee Training Surcharge: \$42,300.00

D) Report on legislative activities and contractual matters.

Assistant Director Cristia-Plant reported there was no legislative report, and reported the following on Board contracts:

- Since the last meeting, the State Controller's Office submitted a revised scope for the Revenue Auditor contract, which staff is currently reviewing. The proposed fee for two years of audits is \$52,000.
- Staff made some progress on the manned model contract procurement since the last Board meeting, and is near finalizing the point scoring criteria and contract provisions that will be included in the request for proposal document. The timeframe to complete and issue a request for proposal document is nearing a critical stage, and this assignment may need to be prioritized over other assignments.

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- Board staff have provided staff at the California Department of Human Resources (CalHR) with a prior completed pilot job analysis and final reports from prior Pilot Trainee Training Program entrance examinations. Since the last Board meeting, CalHR has requested additional information, which was provided by staff. From staff's initial discussions with CalHR staff, it appears that CalHR will likely have the staffing capacity and resources to provide a pilot job analysis and assistance with the next Pilot Trainee Training Program entrance examination.
- Dr. Erin Flynn-Evans sent an email stating that she is preparing a fatigue study package for San Jose State University Research Foundation's Internal Review Board (IRB). The IRB's website states the IRB is a committee responsible for reviewing research proposals submitted by SJSU students, faculty, and staff that involve the use of human subjects. IRB members make sure that the proposed research is in compliance with university policy and federal regulations established to ensure the safety of research participants and the ethical and responsible conduct of investigators.

President Johnston expressed his appreciation for Assistant Director Cristia-Plant's hard work to clear the last audit item of the 2009 State Auditor's audit.

Assistant Director Cristia-Plant responded to a questions by Commissioners Livingstone and Long about the timing for the manned model request for proposal and subsequent contract. She indicated that she will work with the California Highway Patrol contract staff to issue the request for proposal as soon as possible.

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 Carlier reported that four pilots—Captains Chapman, MacLachlan, Bridgman, and Lemke—have been absent this month, or a portion thereof, for medical reasons.

B) Monthly report on SFBP ship piloting business activity.

Acting Port Agent Carlier stated that the SFBP continually monitors the dispatch list for possible minimum rest period exceptions, and identified a variety of mitigating measures employed if circumstances are likely to result in a rest period of less than ten hours. He reported that the SFBP currently has 58 licensed pilots, that there were eight minimum rest period exceptions in September.

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He also reported that the:

- P/V CALIFORNIA was down October 5-6, 2015, for scheduled maintenance on the port generator.
- P/V GOLDEN GATE was down for four hours on October 10, 2015, due to a line getting fouled in the starboard propeller, and again on October 17-18 due to a main engine starter failure.

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

- Bar Crossings 526 moves/-10.4%
- Bay Moves 117 moves/+35.6%
- River Moves 46 moves/+29.1%
- Total Moves 689/-1.4%
- Gross Registered Tons (GRT): 29.7 million/-7.1% year to date (YTD)

He further reported that when comparing YTD piloting activity in 2015 to 2014, total moves were down 3.9%, and GRT was down 11.6%.

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

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

7. Pilot Evaluation Committee – Captain Einar Nyborg

Captain Dowdle gave the Pilot Evaluation Committee (PEC) Chairman’s report on behalf of Chairman Captain Einar Nyborg.

A) Report on the October 21, 2015, Pilot Evaluation Committee meeting.

Capt. Dowdle reported the PEC met on October 21, 2015. Current trainees in the Pilot Trainee Training Program (Program) are progressing well. Their time in the program ranges from 2-14 months. One trainee has reached the evaluation stage of the Program, with others not far behind. The PEC will next meet on November 18, 2015.

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B) Committee report and comments on former Pilot Trainee Training Program trainee Capt. Rubino’s progress in training program prior to his resignation.

Capt. Dowdle reported that Capt. Michael Rubino was admitted to the program in September, 2014. He obtained pilotage endorsements for the entire bay and was exceeding his benchmarks in the program. He began handling ships in February, 2015. He demonstrated good shiphandling skills, was not afraid to ask questions, and was honest and forthright with high potential to become a good pilot. The PEC anticipates that if Capt. Rubino is readmitted to the Program, a certificate of completion will be recommended within a year.

8. Reported safety standard violations – Executive Director Garfinkle

A. Presentation of Report by Commission Investigator on the MV DIANTHUIS pilot ladder site visit and inspection. Ladder first report in poor condition on September 13, 2015, by Capt. C. Martin

Executive Director Garfinkle reported that a Board investigator was dispatched to the M/V DIANTHUS to view the reported deficiency in boarding arrangements. He reported that the whippings and lashings on the ladder had been repaired, but that the ladder was not replaced.

B. Reporting on safety standard violations since the last Board meeting. (Reports received between the issuance of this notice and the meeting will be reported on.)

Executive Director Garfinkle recounted that on October 12, 2015, Captain Carl Martin reported that the Union Pacific Railroad Bridge (UPRRB) did not provide a lift at the arranged time of his passage on the M/V ISS BREEZE. Capt. Martin had called an hour ahead for a lift and nearly had to take extreme measures to stop the ship when the bridge had not completely lifted in time for passage under the bridge.

On October 14, 2015, Executive Director Garfinkle reported he received a report from Captain Mark Manes explaining as he was boarding the M/V XIN FEI ZHOU, the handrails located just inside the starboard side hatch were not pinned in place and came off in his hand, causing him to lose balance and nearly fall overboard. A Board investigator was dispatched to the M/V XIN FEI ZHOU and determined that human error on the part of the crew was to blame for the unpinned grab rail.

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

- A) Status report on the interaction between the M/V FUJI GALAXY and the M/V CS SARAFINA, on April 28, 2015, when the M/V FUJI GALAXY was underway into the Port of Stockton and the M/V CS SARAFINA, moored at Berth 10, Port of Stockton, suffered damage to her gangway. Possible Board action to grant an extension to present the M/V FUJI GALAXY Incident Review Committee incident report to the November Board meeting. If an extension is requested, the delay in presenting the report will be due to staff workload.**

Executive Director Garfinkle reported that he had recently received the pilot statement regarding the incident, but has been unable to complete the Incident Review Committee (IRC) investigation due to his time away from the office for Board and other business. He requested an extension to the November 2015, Board meeting.

MOTION: Vice President Connolly moved to grant an extension to the M/V FUJI GALAXY investigation to the November meeting. Commissioner Long seconded the motion.

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

ACTION: The motion was approved.

- B) Status report on the allision of the M/V JIANGMEN TRADER with San Joaquin River lighted marker 47 on June 27, 2015. Possible Board action to grant an extension to present the M/V JIANGMEN TRADER Incident Review Committee incident report at the November Board meeting. If an extension is requested, the delay in presenting the report will be due to staff workload.**

Executive Director Garfinkle reported that the IRC investigation for the M/V JIANGMIN TRADER incident was not ready to be presented due to his time away from the office for Board and other business. He requested an extension to the November 2015, Board meeting.

MOTION: Vice President Connolly moved to grant an extension to the M/V JIANGMEN TRADER investigation report to the November meeting. Commissioner Livingstone seconded the motion.

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

ACTION: The motion was approved.

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

Report on loss of propulsion events arising since last meeting, including those events suspected to be due to low sulfur fuel issues.

Executive Director Garfinkle reported that he had received loss of propulsion statistics from the U.S. Coast Guard and that there were five loss of propulsion incidents in the month of September, none of which were attributable to fuel switching.

11. Pilot Safety Committee mission statement – Commissioner Livingstone

Review and possible Board adoption of Pilot Safety Committee mission statement. Possible Board action to approve and adopt Pilot Safety Committee mission statement.

Commissioner Livingstone reported that a mission statement was developed for the Pilot Safety Committee as follows:

The Pilot Safety Committee is a standing committee of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun. The purpose of the committee is to develop recommendations to the Board regarding pilot safety and navigational safety in pilotage conducted by pilots licensed by the Board, including, but not limited to, identifying risks in pilotage and best practices to mitigate such risks, with an emphasis on the Human Element; to review recommendations of the U.S. Coast Guard and the U.S. National Transportation Safety Board to the Board or to state pilot commissions generally relative to pilotage safety, and develop recommendations to the Board in response thereto; and to advise the Board on such other matters relative to Pilot Safety as may be assigned by the Board or its President.

The Committee shall establish a dialogue with the Harbor Safety Committee of the San Francisco Bay Region and its relevant subcommittees in the exchange of information.

The Committee will meet as necessary, as directed by the Committee Chair, and report to the Board. Meetings of the Committee will be open to the public, and duly noticed as provided for in the Open Meeting Act. Notices and agendas of the Committee meetings will be posted on the Board’s website. www.bopc.ca.gov. Public comments will be solicited and are encouraged.

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MOTION: Vice President Connolly moved to accept the mission statement of the Pilot Safety Committee. Commissioner Livingstone seconded the motion.

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

ACTION: The motion was approved.

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

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

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

Executive Director Garfinkle stated the Board has been provided with the complete draft rulemaking package with this month’s meeting documents for the Port Agent Conflict of Interest regulations, and that the November Board meeting agenda will include an action item on this subject.

B) Section 213 – Pilot Trainees (add exam fee and clean-up of regulations).

C) Section 218 – Duties of Port Agent (amend requirement for assignments of pilots with under 12 and 18 months experience).

D) Section 211.5 – Commission Investigator Minimum Standards (amend minimum qualifications standards).

E) Section 215 – Pilot and Inland Pilot Training (add fatigue management and radar navigation in low/restricted visibility training and clean-up).

Assistant Director Cristia-Plant stated that the previously Board-approved draft rulemaking documents were submitted to the California Highway Patrol’s (CHP) budget staff and to CalSTA for review, and that the Department of Finance will need to review the economic impacts of the proposed rulemaking prior to the package being sent to the Office of Administrative Law. She confirmed for Commissioner Long that CHP’s review was limited to budget purposes.

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13. Report to National Transportation Safety Board (NTSB) – Executive Director Garfinkle

Presentation of a report to the NTSB that responds to recommendation M-11-19, stemming from the EAGLE OTOME investigation, which reads: “Ensure that local pilot oversight organizations effectively monitor and, through their rules and regulations, oversee the practices of their pilots to promote and ensure the highest level of safety.” Possible Board action to approve report.

Executive Director Garfinkle presented his draft report in response to the NTSB’s recommendation M-11-19 to the Board for approval, and stated that, if approved, the report will be sent to the CalSTA Secretary for review and approval before being sent to the Governor. Board members thanked Executive Director Garfinkle for his exhaustive and thorough report, which included an analysis of the Board’s comprehensive body of statutes and regulations that are in place to monitor and oversee the practices of pilots within the Board’s jurisdiction that promote and ensure the highest level of safety. Commissioner Livingstone felt it important to note that there have been no fatigue-related incidents on the Bay.

MOTION: Vice President Connolly moved to approve the Executive Director Garfinkle’s report to the NTSB. Commissioner Long seconded the motion.

VOTE: YES: Johnston, Connolly, Livingstone, Long, Schmid and Schneider.

NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

14. Request for a pension plan actuarial study from the Pacific Merchant Shipping Association (PMSA) – Executive Director Garfinkle

PMSA has requested that the Board direct the Executive Director, as fiduciary agent of the Board Pilot Pension Plan, to retain the services of an actuary familiar with the administration of defined-benefit pension plans to assess the full value and extent of any and all present and likely future liabilities associated with the statutory Pilot Pension Plan. Possible Board action to direct the Executive Director to retain the services of an actuary familiar with the administration of a defined-benefit pension plan to assess the full value and extent of any and all present and likely future liabilities associated with the statutory Pilot Pension Plan.

In its letter dated September 24, 2015, PMSA requested that the Board complete an actuarial review of the Pilot Pension Plan (Plan), since the last time it was done was January 1, 2009. Executive Director Garfinkle indicated that in his role as the Plan’s primary fiduciary, he believes that there is no downside of conducting the requested actuarial study, that such a

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study won't provide him with any information useful in managing the Plan, but could provide the industry with some idea of future Plan liability.

President Johnston suggested that the Board reconvene its Pension Committee to review the matter. President Johnston appointed Vice President Connolly as Chair of the Committee, and past Board President Mike Miller, Commissioners Long and Schneider as Committee members.

15. Review, discussion, and possible action on correspondence from former Pilot Trainee Training Program Capt. M. Rubino requesting reinstatement as a trainee in the Pilot Trainee Training program. Possible Board action in response to Capt. Rubino's request to be reinstated as a trainee in the Pilot Trainee Training program.

Executive Director Garfinkle gave a short history of former Program trainee Captain Rubino's participation in the Program, including:

- Captain Rubino joined the trainee program on September 14, 2014. He resigned from the Program on September 14, 2015, in order to take a position in the Los Angeles Pilots training program.
- On October 9, 2015, Captain Rubino submitted a request to rescind his resignation and requested reinstatement to the Program.
- Captain Rubino's performance in the Program was evaluated by the PEC, who reported that Capt. Rubino exceeded expectations, was a model trainee, and that he would likely finish training within a year.

Executive Director Garfinkle indicated that Captain Rubino had no rights of return under the Board's statutes or regulations. He outlined the options available to the Board, which included to: not grant the request; grant the request and reinstate Captain Rubino to the bottom of the trainee eligibility list; or reinstate Captain Rubino and enter into a new Program contract with two options for the contract term—a new three-year term or a term that would not exceed three years inclusive of the time spent in the Program under his prior Program contract. He added that the Board has invested considerable time and money in Captain Rubino.

Board Counsel Eagan noted that nothing in the regulations covers a request for reinstatement by a trainee who has resigned from the Program, and that Captain Rubino's Program contract, by its terms, was terminated upon his resignation. He indicated that Captain Rubino has no right of return to the Program, and that reinstatement is therefore at the Board's discretion. He mentioned a previous situation where a trainee who had resigned had been reinstated in the Program by decision of the Board President and the chair of the PEC. Other than establishing that the Board had in the past agreed to reinstatements, prior reinstatements of trainees did not establish precedent for whether reinstatement should be granted in a

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particular case; each situation was fact-specific. He further explained that legitimate considerations for the Board in contemplating Captain Rubino’s request for reinstatement could include: his performance as a trainee; his motivations for resigning; his commitment to staying in the Program and becoming a pilot if he is reinstated in the Program; the current need for pilots and the likely date of his completion of the Program; the Board’s “investment” in Captain Rubino in terms of stipend payments and time and effort of the PEC and Board staff, and the additional time, effort, and expense that it would take to get a new trainee to the same level of progress in the program; and the freeing up of training funding in this year’s budget for another use that otherwise would be used to pay his stipend if he returns to the Program. He explained that these and possibly other factors could inform the Board’s decision. He explained that although the Board had broad discretion, its decision could not involve factors such as race, religion, national origin, or political affiliation.

Past President Miller informed the Board that he was aware that the Board previously reinstated a trainee who was a “stellar performer” and had resigned from the Program due to cross-country family issues, and that the Board reinstated the trainee under a contract that maintained the original three-year Program limit.

Captain Rubino addressed the Board and confirmed that he had resigned from the Program for what he thought was an opportunity to work with his father as a Los Angeles Port pilot; that this employment had been successfully objected to by certain other Los Angeles pilots; and that a majority of his experience has been as a tugboat captain in the San Francisco Bay area. He assured the Board that he was available for immediate reinstatement and that if given the opportunity he is committed to becoming a San Francisco Bar Pilot. He confirmed for Board Counsel Eagan that he was offered an opportunity in July to work for Jacobsen Pilot Service in Long Beach, but turned down that opportunity, and would do so again.

President Johnston noted that Captain Rubino was not gone from the Program for much more than three weeks. Commissioners Long and Schmid noted that Captain Rubino’s short period away from the training program would be a factor in their decisions. Commissioner Long explained that longer periods away from the training program might raise concerns about skill-set atrophy. Executive Director Garfinkle stated that Captain Rubino could have taken a leave of absence from the Program, but that he was not counseled on that option.

Board members discussed Capt. Rubino’s letter and expressed appreciation that he helped them understand his reasons for leaving the Los Angeles Pilot Training Program. They also discussed two recent pilot retirements and projected pilot retirements and related manpower issues. Several members of the audience expressed support for Captain Rubino’s character and skill.

Mr. Jacob addressed the Board and agreed that the issue of a resignation from the Program is not addressed in either statutes or regulations. He stated that Captain Rubino had “violated”

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his training contract and thereby removed himself from the list and emphasized the regulations state that if the Board determines that there is an opening in the Program, it must follow the regulations for the manner in which new trainees are admitted to the Program and select a candidate from the eligibility list, and that the Board’s process for admitting trainees to the training program is a ministerial process rather than a “political” process.

Vice President Connolly responded to Mr. Jacob’s comments and stated that he did not agree that the Board’s reinstatement of Captain Rubino was a political one, but rather a manpower decision. He stated that the action of admitting new trainees into the Program is different in kind from the decision whether to reinstate into the Program an already-admitted trainee who has resigned. He also stated that he believes that given projected manpower needs, all candidates on the eligibility list will eventually enter the Program.

Board Counsel Eagan also responded to Mr. Jacob’s comments, reminding the Board that: there is nothing in the regulations addressing a reinstatement situation; there was no violation of the Program contract by Captain Rubino since his contract with the Board specifically provided that it could be terminated by his resignation; there is nothing political about the Board considering a Program reinstatement request; that government should function in a common-sense manner; that Mr. Jacob’s comments about the Board’s decision about reinstatement of Program participants being a ministerial Board action are incorrect; and that reinstatement decisions are infrequent and fact-specific. He also confirmed for Commissioner Schneider that he believed the Board could successfully defend itself if a decision to reinstate were challenged by a candidate on the current eligibility list.

Prior to the motion, two commissioners stated that the Rules and Regulations Committee should review the reinstatement issue and draft regulatory language to guide the Board when encountering such events in the future.

MOTION: Commissioner Long moved to reinstate Captain Rubino to the Pilot Trainee Training Program, with the term of the new Program contract, when added to the length of training completed under the terminated Program contract, not to exceed a total of three years. Commissioner Connolly seconded the motion.

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

ACTION: The motion was approved.

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

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

Board Counsel Eagan reported that a hearing on this matter in the Court of Appeal is scheduled for October 29, 2015.

17. Report on Board of Pilot Commissioners vs. Fair Political Practices Commission litigation initiated by the Board on March 3, 2015 – Executive Director Garfinkle/Assistant Director Cristia-Plant

Progress report on Board of Pilot Commissioners vs. Fair Political Practices Commission. The Board may go into closed session to discuss with the Executive Director/Assistant Director, any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.

Executive Director Garfinkle reported that he attended the hearing in Sacramento Superior Court on September 25, 2015, and that the Board prevailed in the case. He also stated that the Board’s attorney is currently drafting a judgment and the writ to be directed to the Fair Political Practices Commission, and it is unknown whether the Fair Political Practices Commission will appeal.

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

Progress report on Reeder vs. Board of Pilot Commissioners. The Board may go into closed session to discuss with the 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 reported that the San Francisco Superior Court decided in favor of the Board on the matter and Capt. Reeder’s pension was denied. He stated Captain Reeder has sixty days to file an appeal after mailing of notice of entry of judgment.

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

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

Vice President Connolly directed the Board’s attention to an article from Lloyd’s List about the COSTA CONCORDIA cruise ship that ran aground on January 13, 2012, off the Italian island of Giglio, and asked what could be learned from the reliance on ECDIS charts (Electronic Chart Display & Information System). Executive Director Garfinkle stated that: he believed there were many links in the error chain; a route line on an electronic chart would not have been relied solely upon by a pilot; the pilot should have relied on his knowledge of the area; the bridge team communication appears poor (no pilot on board); the article raises more questions than answers, and, that a more thorough report will provide information. Commissioner Long stated that newer mariners are seeming to rely more and more on ECDIS charts, the SFBP attempts to counter such sole reliance by having pilots carry Personal Piloting Units, and the PEC covers the over-reliance on ECDIS in its training.

20. Incident Review Committee incident report on the M/V FUJI GALAXY - President Johnston

A presentation of the Incident Review Committee incident report concerning the interaction between the M/V FUJI GALAXY and the M/V CS SARAFINA in the Port of Stockton on April 28, 2015. Board deliberation and decision with respect to possible pilot error. Board determination with respect to further actions, if appropriate. The Board may go into closed session for the deliberation of the incident report presented under this item pursuant to Harbors and Navigation Code §1180.6(a) and Government Code §11126(c)(3).

An extension was granted to the IRC report under item 9.

21. Public comment on matters not on the agenda.

There were no comments.

22. Proposals for additions to next month’s agenda.

The Board discussed the below follow up items:

- Ensure that the Rules and Regulations Committee considers regulations to address procedures for Pilot Trainee Training Program resignations, and to make a rulemaking recommendation to the Board.

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- Next month's agenda include an action item for Board approval of Section 222 rulemaking package materials.
- Next month's agenda include an action item for Board approval of the 2016 rulemaking calendar to submit to OAL.

23. Adjournment.

MOTION: Commissioner Long moved to end the meeting. Vice President Connolly Seconded the motion.

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

ACTION: The motion was approved and the meeting adjourned at 11:45 a.m.



Allen Garfinkle, Executive Director

Prepared by: Kelly Dolcini and Roma Cristia-Plant