

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		March 26, 2015
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**Board members present**

RADM. Francis Johnston, President, Public Member  
 Dave Connolly, Vice President, Public Member  
 Jennifer Ferrera Schmid, Public Member  
 Capt. Joe Long, Pilot 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

**Board members absent**

Capt. George Livingstone, Pilot Member  
 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  
 Sigrid Hjelle, Office Technician

**Public present**

Port Agent Capt. Peter McIsaac; Pacific Merchant Shipping Association (PMSA) Vice President Michael Jacob; San Francisco Bar Pilots (SFBP) Business Director/General Counsel Raymond Paetzold; Knute Michael Miller; and representatives of the U.S. Coast Guard (USCG) Sector San Francisco Investigation Division.

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

President Johnston called the meeting to order at 9:30 a.m. Staff Services Analyst Kelly Dolcini called roll and found that a quorum was established.

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**2. Review and approval of Board meeting minutes**

**A) Approval of minutes of the February 26, 2015, Board meeting.**

Board members were presented with the minutes of the February 26, 2015, meeting for approval. Board Counsel Eagan pointed out several non-substantive changes to item 15.

**MOTION:** Vice President Dave Connolly moved to approve the February 26, 2015, Board meeting minutes as amended to include non-substantive changes. Commissioner John Schneider seconded the motion.

**VOTE:** Yes votes: Johnston, Connolly, Schneider, Long, and Schmid. No votes: None. Abstentions: None.

**ACTION:** The motion was approved.

**B) Approval of corrected minutes of the September 25, 2014, Board meeting.**

Board members were requested to approve corrected minutes of the September 25, 2014, meeting.

**MOTION:** Commissioner Long moved to approve the September 25, 2015, Board meeting minutes as amended to include the action taken to raise the trainee stipend from \$5,000 per month to \$6,000 per month. Commissioner John Schneider seconded the motion.

**VOTE:** Yes votes: Johnston, Connolly, Schneider, Long, and Schmid. No votes: None. Abstentions: None.

**ACTION:** The motion was approved.

**3. Announcements – President Johnston**

President Johnston announced that materials have been received for the upcoming pilotage rate hearing, and that Commissioners should familiarize themselves with the materials and come prepared to participate at the April 1, 2015, hearing.

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**4. Board Member Activities**

There were no reports.

**5. Executive Director's report**

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

Executive Director Garfinkle gave a report to the Board as follows:

- On February 27, 2015, Mr. Garfinkle met with staff of the Judicial Council concerning the use of the Milton Marks Auditorium at 455 Golden Gate Ave. to hold the rate hearing. While other venues with the Port of San Francisco were pursued, none were able to meet timing needs. Mr. Garfinkle thanked President Johnston for his efforts in contacting the Port of San Francisco.
- On March 2, 2015, Board staff received evidence from the SFBP in support of its petition for a pilotage rate hearing. A response and evidence was received from PMSA on March 20, 2015, and a pre-hearing conference attended by representatives from SFBP, PMSA, and Board staff was held on March 24, 2015. A pilotage rate hearing is scheduled for April 1, 2014, and a Board meeting is scheduled for April 10, 2015, at which the Board will review its pilotage rate increase decision made on April 1, 2015 (if a rate increase is approved by the Board), and adopt formal findings and a recommendation to submit to the Legislature.
- On March 2, 2015, Board staff received a letter from the Department of General Services (DGS), Real Estate Services Division, notifying staff the lease on the present office space will expire in two years. They suggest beginning the lease renewal, extension, or new space request as the process can take approximately 18-24 months. As part of our application for renewal, DGS estimates that it will take up to 225 hours to negotiate a lease renewal, and that staff should expect a significant increase in cost per square foot over the current lease.
- On March 3, 2015, the Board filed a petition for a Writ of Mandate and Declaratory Relief in Sacramento Superior Court against the Fair Political Practices Commission. The hearing is set for July 24, 2015.
- On March 6, 2015, Commissioner Livingstone provided staff with articles he wrote for *Work Boat World*, which he felt may be relevant to the work of the Pilot Safety

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Committee.

- On March 11, 2015, Board staff received an article excerpted from *Maritime Executive* and submitted by Vice President Connolly titled, “Scramble to Ensure Public Safety After Houston Oil Spill.” the article detailed the aftermath of a ship collision in Houston resulting from a chemical spill. The article stated that ships blocked the harbor while being salvaged, impacting traffic in and out of the port.
- On March 12, 2015, Mr. Garfinkle attended a Harbor Safety Committee meeting in Oakland. At the meeting, he received a copy of the Navigation Safety Advisory Council (NAVSAC) Resolution 15-01 concerning Automatic Identification System Aids to Navigation (ATON). He explained that NAVSAC was established by Congress as a deliberative body to advise the U.S. Secretary of Transportation, via the Commandant of the USCG, on matters relating to prevention of vessel collisions, rammings, groundings, rules of the road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.
- On March 13, 2015, Board staff received copies of letters to Commissioners Livingstone and Schmid from Annette Porini, Appointments Director for the Senate Rules Committee, congratulating them both on their appointments, and requesting certain information related to completing the confirmation process.
- On March 16, 2015, Board staff received copies of the SFBP Section 237(d) data from January 1, 2014 through December 31, 2014.
- On March 24, 2015 Board staff received an article from Commissioner Schmid excerpted from *Ship and Bunker* titled, “Alliances Launch Asia-U.S. East Coast Services to Bypass West Coast Congestion.” The article chronicles attempts of liner services to shift routes to avoid the west coast and has various viewpoints as to the permanency of the situation.

**Board Licensing.**

Between the January and February meeting, Board staff renewed licenses for Captains Pinetti, Greig, Roberts, Lingo, Martin, and Stultz.

Since the February meeting, Board staff renewed the licenses of Captains Lemke, Bridgman, Melvin, and Kelso.

**Board Surcharges.**

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Mr. Garfinkle reported that the Board received a check for \$61,022.68 for surcharges collected by the SFBP, which included the following:

Board Operations Surcharge: \$24,002.68

Continuing Education Surcharge: \$6,460.00

Trainee Training Surcharge: \$30,560.00

**Legislative Matters.**

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

**Contractual Matters.**

Ms. Cristia-Plant gave a report to the Board on contractual matters as follows:

- A one-year interagency agreement amendment was sent to the University of California San Francisco Campus for signature. The amendment extends the contract for the period of May 1, 2015 through April 30, 2016, with a contract amount for this period of \$159,295. The Department of General Services will need to review the contract before it is approved.
- No activity has taken place on the manned model request for proposals since the last meeting. Staff anticipates resuming work on this project in April.
- A scope of work and draft contract have been prepared to retain a revenue auditor to perform an attestation audit of the various surcharges and pilotage rate calculations. Staff is now confirming whether the work can be procured from within civil service. Both the Department of Finance and the State Controller’s Office are reviewing the scope of work. If neither entity can perform the services, staff will work the Highway Patrol staff on a request for bid process to retain a private contractor.
- Other contracts needing extension or renewal this year include the interagency agreement with the California Highway Patrol for administrative services. Additionally, upcoming contract work is anticipated on an interagency agreement between the Board and California Maritime Academy to provide bridge resource management training and trainee exam simulation development.

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**6. Port Agent’s Report—San Francisco Bar Pilot (SFBP) Port Agent Capt. Peter McIssac**

**A) Monthly report on SFBP ship piloting business activity.**

Port Agent Capt. Peter McIsaac reported the following for February, 2015:

- When compared to a three-year average, bar crossings were down 26.6% at 350, bay moves were up 16.5% at 102, river moves were up 3.5% at 38, total moves were down 18.2% at 490, and gross registered tonnage was down 27% at 17.4 tons.
- When compared to 2014, year-to-date totals through February reflected total moves down 22.3% and gross registered tonnage was down 31.7%.

Port Agent McIsaac reported that vessel moves have increased in the month of March, but it is estimated that revenue for the first quarter of 2015 will be down 18% compared to last year. He indicated that estimates of how long it will take to clear cargo and get back to normal traffic patterns range between two and four months, and that the International Longshore and Warehouse Union has yet to ratify its new agreement.

**B) Monthly report on pilot availability and absences.**

With regard to pilot availability and absences, Port Agent McIsaac gave following report:

- There were four pilots absent for medical reasons during the month of February.
- There was one minimum rest period exceptions during the month of February.

Port Agent McIsaac also reported that, after 25 years as a pilot, Unit 1, Capt. Nancy Wagner would be retiring effective April 1, 2015. She was the first female pilot in the U.S. as well as the first female Commissioner. He wished her fair winds and following seas in her well-earned retirement. President Johnston echoed Port Agent McIsaac’s sentiments about Capt. Wagner and expressed his gratitude for her two terms of service to the Board. He suggested that staff compose a letter thanking her for her service.

**C) Monthly confidential written report of pilots who have been absent for medical reasons (AFMR) presented to the Board.**

The confidential written report was reviewed by the Board and there were no requests to discuss the information in closed session.

**7. Pilot Evaluation Committee—Capt. Einar Nyborg**

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**Report on the March 18, 2015, Pilot Evaluation Committee meeting.**

- A) Pilot Evaluation Committee (PEC) Chairman Capt. Einar Nyborg reported that the PEC met on March 18, 2015; four trainees in the Pilot Trainee Training Program have finished an intensive three months of high job volume and are now focused on federal pilot exam testing; the two newest trainees are focused on the high intensity job volume and federal exam preparation; and, all trainees are performing above PEC benchmarks.

Further, he reported that at its monthly meeting, the Committee continued work on streamlining the outline for the Board’s Pilot Trainee Training Program, online trainee reporting, benchmarks for successful completion of the program and the trainee manual.

The PEC was asked by Mr. Garfinkle to review an unsolicited proposal submitted by Progeny Systems to attest to the validity of the Trainee Training Program. Capt. Nyborg indicated the PEC is open to considering the proposed assessment if the Board decided to proceed. Capt. Nyborg stated that the program has improved over the last 10 years and continues to upgrade the training program structure, reporting, transparency, and program content.

He stated a recent goal of the PEC has been to streamline the training process, and provide benchmarks and attainable goal-setting tools to trainees. Each trainee is counseled each month based on these benchmarks and takes away an understanding of what is required of him or her to be successful in the program. Capt. Nyborg indicated that PEC members keep extensive records including tracking of trainee jobs in fog, jobs to and from each dock, even whether the job is a starboard- or port-side job. He also stated that they track specialized work such as dry docks, flat tows, and river work. The work is carefully documented to show that the trainee program is providing the experience necessary to become an effective pilot.

Although legal challenges to the program are rare, he stated the PEC has developed a system they are confident will withstand such review. Based on written trip reports, trainees are counseled monthly on areas where they need improvement. The strengths and shortcomings of a trainee are noted in writing and retained in the trainee’s file. If the trainee does not improve, the PEC directs training to target areas of weakness. Repeated weakness in a specific area, as addressed by regulation, may result in a trainee dismissal. He indicated that the closed session minutes would serve as strong evidence against claims of unfair dismissal. Additionally, each month, the PEC chair, the Executive Director, and the trainee affirm in writing whether or not the trainee is meeting established benchmarks.

He reported that that PEC has several concerns about the Progeny Trainee Training program validation proposal as follows:

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- The possibility of negative consequences as a result of the assessment outcome.
- That the PEC and the Board would lose flexibility to adjust the trainee program based on the changing environment in which the Pilots operate.
- If this project is determined to be necessary, the job would be put out to bid and the PEC is hesitant to invest the necessary time and energy that would be required to bring a new contractor up to speed on the work. Dr. Hertz, currently with Progeny Systems, Inc., is intimately familiar with the work of the SFBP and there would be efficiency benefits by working with him. As the Board is aware, dedicating pilot hours to special projects provides additional challenges to providing rested pilots for duty on ships.

The PEC is in favor of the idea of the training program validation concept for the following reasons:

- An outside look at the trainee training program and the work of the PEC could offer a new perspective and ideas that the Committee may have overlooked.
- It remains the foremost concern of the Committee to provide the Board with well-trained pilots ready for duty to operate on San Francisco Bay, while also providing a high-quality and decidedly fair training process for each trainee. As a Committee, the PEC seeks any means to continually improve upon the combined objective.
- The Committee noted that the Progeny Systems proposal would serve the dual purpose of completing a formal job analysis, a step necessary to offer the next exam. Exam preparation is a length process, requiring many pilot hours for interviews. If Dr. Hertz were commissioned for this project, the impact on pilot hours would be substantially less, due to his familiarity with the systems in place currently.

Mr. Garfinkle apprised the Board that the next Trainee Training Program entrance examination may need to be given sooner than the typical three year time frame given projected pilot retirements.

Capt Nyborg invited any Board members who are interested in the process to attend PEC meetings. Vice President Connolly expressed his interest in attending a PEC meeting and asked that that Progeny Systems proposal be added to the next Board meeting agenda.

The next PEC meeting is scheduled for April 22, 2015.



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**B) Possible recommendation for a determination that a trainee has or trainees have completed the pilot trainee training program.**

There we no recommendations.

**C) Possible recommendations from the Executive Director for the appointment of a new pilot or pilots.**

There we no recommendations.

**8. Reported safety standard violations – Executive Director Garfinkle**

Mr. Garfinkle stated there has been no reported safety standard violations since the last meeting.

**9. Reportable piloting events – Executive Director Garfinkle**

Status report on the investigation into the loss of propulsion of the M/V OCEAN LIFE on September 5, 2014, wherein the anchors were deployed and allegedly made unintended contact with the Trans Bay Cable in the vicinity of the Union Pacific Railroad Bridge.

Mr. Garfinkle reported that the investigation is not yet complete due to technical problems with the Freedom of Information Act evidence received in the matter as well as staff workload related to the petitioned rate hearing. Vice President Connolly requested that the specific reason for an extension of the time period to report on an incident be included in any report time extension request.

**MOTION:** Vice President Connolly moved to grant an extension of the Investigation Review Committee (IRC) investigation report into the loss of propulsion of the M/V OCEAN LIFE to the April 23, 2015, Board meeting. Commissioner Long seconded the motion.

**VOTE:** Yes votes: Johnston, Connolly, Schneider, Long, and Schmid. No votes: None. Abstentions: None.

**ACTION:** The motion was approved.

In addition to reporting on the M/V OCEAN LIFE, Mr. Garfinkle provided the following

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reportable piloting events to the Board:

- Investigation into the interaction between the M/V HANJIN MUMBAI and the M/V CSCL SUMMER at Oakland Berth 59 on January 23, 2015, resulting in damage to the gangway of the M/V HANJIN MUMBAI. Mr. Garfinkle reported that the incident is still under investigation. He further stated the 90-day deadline will occur on April 23, 2015, and he anticipated presenting the Incident Review Committee report at the Board meeting on that date.
- On March 20, 2015, he received a report that the M/T CHAMPION EXPRESS had dropped anchor after encountering a sheer in the San Joaquin River ship channel. When the anchor was retrieved, the chain was broken near the three shackle mark and the anchor was missing. Mr. Garfinkle stated the 90-day deadline will occur on June 18, 2015.
- On March 23, 2015, the USNS MATTHEW PERRY was being flat-towed when the bow went aground in the vicinity of the BAE Systems dry dock in San Francisco. Mr. Garfinkle stated the 90-day deadline will occur on June 21, 2015.

#### **10. Low Sulfur Fuel – Executive Director Garfinkle**

Mr. Garfinkle gave a report on loss of propulsion incidents in February due to low sulfur fuel from data provided by the USCG. There were two loss of propulsion incidents, of which one was attributed to fuel switching.

#### **11. Pilot Fitness Committee – Chairman Miller**

Pilot Fitness Committee (PFC) Chairman Knute Michael Miller reported that the PFC had met on Monday, March 23, 2015, and discussed the current status of the contract with the University of California, San Francisco (UCSF) for fitness assessment services, as well as the benefits of open communication between UCSF, BOPC, and SFBP pilots as challenges are addressed in the pilot fitness determination process.

The PFC also reviewed pilot fatigue study proposals received from researchers from San Jose State University Foundation, Washington State University and UCSF. Mr. Miller summarized for the Board that proposals were evaluated by the PFC on several factors, including whether the researcher fully responded to the PFC’s request for information, the proposed study methodology and timeline, the proposed budget, and the capacity and qualifications of the research team. Based on these factors, he conveyed to the Board that the PFC reached a consensus and recommended

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to the Board that the Board direct staff to begin negotiating a contract for the fatigue study with the primary researcher from San Jose State Foundation, and that a draft of the contract would be provided to the Board for review. He also reported that Dr. Kosnik recused himself from the Committee's study proposal discussion and vote since he works at UCSF and that UCSF has submitted a proposal.

Vice President Connolly asked Mr. Miller to briefly describe the reasons why the PFC selected San Jose State University Foundation. Prior to Mr. Miller responding, Mr. Garfinkle noted that there was a proposal comparison matrix in the binders provided to Board members. Mr. Miller then went on to state, that while the researchers from the three universities had good credentials, Dr. Hobbs has the strongest credentials and expertise, has published extensively on the subject of fatigue, has proposed a sound study methodology and timeline, and has gathered a talented team of researchers.

Mr. Long stated he believed there is perceived value for the cost of the study, given the San Jose State University researcher qualifications, the proposed study time frame, and the university's proximity to the pilots, which will enable the pilots to more easily build a working relationship with the researchers.

Mr. Jacob commented that he supports the researcher selection, that the San Jose State University Foundation presented a responsive and valid proposal, and that the results will be with us a long time, evidenced by how long we have lived with the Manalytics, Inc. study from the 1980's. He reminded the Board that the recommendations from the study need to be specific and lead to regulations dealing with pilot fatigue issues.

Vice President Connolly reminded the Board of the interest the Legislature has in this study, evidenced by the fact that he was questioned about pilot fatigue issues during his Senate confirmation hearing.

**MOTION:** Vice President Connolly moved that the Board accept the Pilot Fitness Committee's recommendation to select San Jose State University Foundation to perform the statutorily-required pilot fatigue study, and to direct staff to begin the contracting process with the foundation. Commissioner Long seconded the motion.

**VOTE:** Yes votes: Johnston, Connolly, Schneider, Long, and Schmid. No votes: None. Abstentions: None.

**ACTION:** The motion was approved.

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**12. Finance Committee – Commissioner Schneider**

Finance Committee Chairman, Commissioner John Schneider, reported that the Finance Committee met on Monday, March 23, 2015 and reviewed the SFBP financial statements with representatives of Shea, Labagh, Dobberstein, a certified public accounting firm retained by the SFBP, who were available to the Committee telephonically. The Committee also reviewed the Board’s fund condition statement and budget with Ms. Cristia-Plant, and heard a brief presentation from Mr. Miller regarding the pilot fatigue study. Commissioner Schneider thanked the Committee members, and reported to the Board that the Committee recommended all surcharges to remain unchanged.

**MOTION:** Commissioner Long moved to make no changes to: (i) the Board Operations Surcharge at 1% of all pilotage fees, (ii) the Pilot Trainee Training Program Surcharge at \$10 per trainee per move, (iii) the Pilot Continuing Education Surcharge at \$10 per move, and (iv) the Pilot Boat Surcharge at 3.27 mills (\$0.00327) per high gross registered ton for each vessel subject to the basic par pilotage fee. Commissioner Schmid seconded the motion.

**VOTE:** Yes votes: Johnston, Connolly, Schneider, Long, and Schmid. No votes: None. Abstentions: None.

**ACTION:** The motion was approved.

**13. Report on status of Public Records Act Litigation – Board Counsel Eagan**

Board Counsel Eagan reported that a reply brief was submitted and will be heard in June, 2015.

**14. Report on Fair Political Practices Commission decision to include Port Agent in the Board’s Conflict of Interest Code. – Executive Director Garfinkle**

There was no report.

**15. Report on litigation, CRAIG E. REEDER vs. STATE BOARD OF PILOT COMMISSIONERS, initiated by Capt. Craig E. Reeder on December 17, 2014. – Board Counsel Eagan**

Mr. Eagan had nothing to report on this matter.

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

Vice President Connolly reported that the Pilot Safety Committee had not met since the last meeting. He acknowledged the USCG representatives and expressed his appreciation for their attendance at the meeting. He indicated the Committee continues to be concerned with safety issues and catastrophic loss prevention, and how to best predict and prevent such catastrophes. The Safety Committee is also looking at risk mitigation measures and considering how to adapt and/or apply the USCG recommendations stemming from the M/T OVERSEAS REYMAR.

**17. Incident Review Committee report on the M/V OCEAN LIFE – President Johnston**

Per item 9, this report was not presented.

**18. Public Comment on Matters not on the Agenda**

There were no comments.

**19. Proposals for additions to next month’s meeting agenda**

President Johnston requested that a review of the Executive Director’s performance to be added to next month’s Board agenda.

**20. Adjournment**

There being no further business before the Board, the meeting was adjourned at 11:09 a.m.

Allen Garfinkle, Executive Director