

<b>Minutes Open Session</b>	<b>Monthly Board Meeting</b>	<b>Date: March 28, 2013</b>
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111		<b>Page 1 of 8</b>

**Board members present**

RADM. Frank Johnston, Vice President  
RADM. Jack Brooks, Commissioner  
Capt. Steve Roberts, Commissioner  
Mr. Dave Connolly, Commissioner  
Capt. Joe Long, Commissioner  
Mr. John Schneider, Commissioner  
Gabor Morocz, Ex Officio Member  
Designee of the Secretary of the Business Transportation and Housing Agency

**Staff present**

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

**Others present**

Capt. Rick Hurt, Acting Port Agent

**Public present**

Ben DeAlba, Business Transportation and Housing Agency

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

The meeting was chaired by Vice President Johnston, who is acting as President in the absence of an elected president. Vice President Johnston called the meeting of the Board to order at 9:30 a.m.

**2. Approval of minutes of the February 21, 2013 Board meeting**

The minutes were approved with clerical changes.

**3. Announcements**

Mike Miller, ex-Board President, e-mailed staff to report that the Western Regional Pilotage Commissions Meeting scheduled for April 18 and 19, 2013 had been cancelled and tentatively rescheduled for August 2013.

<b>Minutes Open Session</b>	<b>Monthly Board Meeting</b>	<b>Date:</b> March 28, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111		<b>Page 2 of 8</b>

Vice President Johnston read Section 1150 of the Harbors and Navigation Code aloud for the edification of new Board members.

**4. Board member activities**

There were no reports.

**5. Executive Director's report**

Mr. Garfinkle reported on notable correspondence received by staff since the February meeting.

He also reported that the Board had received a check for \$111,581.71 for surcharges collected by the SFBP, which broke down as follows:

Board Operations Surcharge: \$29,409.71

Continuing Education Surcharge: \$64,050.00

Trainee Training Surcharge: \$18,122.00

Between the January and February meetings, the Board renewed licenses for Capts. Kellerman, Lemke, Ruff, Wagner, Pinetti, Greig, and Stultz. Since the February meeting, staff renewed licenses for Capts. Aune, Bridgman, Martin, Melvin, Pate, Pinder, and Kirk.

Ms. Dolcini gave the report on contractual matters. She described the contracts that Board staff has recently completed and are currently working on, including several revolving around the anticipated 2014 trainee program entrance exam.

**6. Port Agent's report**

Capt. Hurt, who was acting as Port Agent in the absence of Capt. McIsaac, reported that there are currently four pilots Absent for Medical Reasons (AFMR) and that there had been two Minimum Rest Period exceptions since the February meeting. He also reported on billed vessel moves during the month in February and gave an update on Pilot Boat maintenance and repairs.

<b>Minutes Open Session</b>	<b>Monthly Board Meeting</b>	<b>Date: March 28, 2013</b>
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111		<b>Page 3 of 8</b>

7. **Pilot Evaluation Committee**

On behalf of Capt. Nyborg, Capt. Hurt reported that there are currently two trainees in the pilot trainee training program, both of whom are progressing well. A new trainee will be admitted to the program on April 1, 2013.

8. **Reported safety standard violations**

Mr. Garfinkle described a safety standard violation involving a pilot ladder on the M/V CABO SOUNION, which had been reported to the Board by SFBP Capt. Nancy Wagner on March 22, 2013. Following the investigation, the Port State Control office of the USCG Sector San Francisco was notified.

9. **Reportable piloting events**

Mr. Garfinkle reported that the matter of the M/T OVERSEAS REYMAR allision with the "Echo" tower of the San Francisco-Oakland Bay Bridge would be addressed at a duly noticed meeting scheduled for April 4, 2013, the 87<sup>th</sup> day of the 90-day reporting period.

On the matter of the M/V SOPHIE OLDENDORFF allision with a mooring dolphin at the port of Redwood City, Mr. Garfinkle requested an extension until the April Board meeting, 132 days after the incident.

On the matter of the M/V TANCREED, which contacted berth #2 at the Benicia Auto Terminal on January 26, 2013, Mr. Garfinkle stated that it will be reported at the April Board meeting.

10. **Rules and Regulations Committee**

Commissioner Roberts explained that the joint Rules and Regulations Committee and Pilot Fitness Committee had its meeting on March 21, 2013. Neither committees had a quorum but the members present continued working on perfecting the text of the proposed regulations. Minor changes have been made to the document with the intent to bring them to the Board for approval. Work on other documents necessary to submit a regulations package to the Office of Administrative law have been continuing. Ex-President Miller volunteered to analyze the market survey data containing pricing for the medical services that was received from the University of San Francisco. He will complete the fiscal and economic analysis that will be part of the justification for approval of the proposed regulations. That work hopefully will be concluded before the next monthly board meeting.

Commissioner Connolly stated that he read the proposed regulations for the first time in their entirety only recently but was impressed by the rigorous medical regime therein proposed. He commented that these draft regulations were remarkable in both their scope and precision and

<b>Minutes Open Session</b>	<b>Monthly Board Meeting</b>	<b>Date:</b> March 28, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111		<b>Page 4 of 8</b>

compared them favorably to the existing U.S. mariner fitness regulatory regime. Connolly commended the considerable work of the Pilot Fitness Committee, as well as the Rules and Regulations Committee and the entire Board in the arduous process of developing the regulations.

Mr. Morocz proposed to have the modifications in the regulatory text reviewed and approved. Mr. Eagan provided a summary explanation of the latest revisions in the text. He explained that a few changes have been made due to the SFBP's suggestion intended to remove references such as illness, incapacity, or disability and replace them with a uniform phrase throughout the regulations: "absence from duty for medical reasons." The qualifications for examining physicians and the Medical Review Officer were broadened to include physicians and surgeons licensed by the Osteopathic Medical Board of California. In addition, the section describing the required qualifications for the Medical Review Officer was amended to add the American Osteopathic Board of Preventive Medicine as one of the sources issuing certificates in occupational medicine. After the explanation of changes, Mr. Morocz proposed that the revised text be approved.

(The version of the text of the proposed regulations and forms are hereby attached and made part of the minutes.)

**MOTION:** The text of the proposed fitness regulations, described as the Express Terms, dated 3/28/13, presented to the Board on 28 pages and the accompanying six forms on seven pages to be approved by the Board. Staff is authorized to use this version of the text and forms to commence the formal rulemaking process.

**ACTION:** Commissioner Long made a motion for approval, and Commissioner Connolly seconded the motion. The vote was unanimous and the motion was carried to approve the text and the accompanying forms of the proposed regulations.

**11. Finance Committee**

In the absence of a Finance Committee chair, Mr. Garfinkle provided a copy of the mill rate adjustment calculation sheet and In the absence of a Finance Committee chair, Mr. Garfinkle provided a copy of the mill rate adjustment calculation sheet and explained the process of calculating the mill rate to the new Commissioners. Mr. Garfinkle explained that until we have sixty licensed pilots the mill rate is reduced by one-half a share of annual audited income for the preceeding year for each pilot below 60, but to a maximum on one full share at 58 licensed pilots. Adjusting the mill rate set by the Legislature of \$0.0924 and adjusting with 2012 annual audited income, the new mill rate is \$0.09181.

**MOTION:** To affirm the change to the mill rate based on an adjustment for being one pilot below the authorized 60, which has been calculated to be \$0.09181.

<b>Minutes Open Session</b>	<b>Monthly Board Meeting</b>	<b>Date:</b> March 28, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111		<b>Page 5 of 8</b>

**ACTION:** Mr. Brooks moved to affirm the new mill rate at 0.09181. Mr. XXXXX seconded the motion. The vote was unanimous and the motion was carried to approve the new mill rate.

**12. Pilot Fitness Committee**

The Committee has not met independently. The business of the Pilot Fitness Committee was discussed under the heading of the Rules and Regulations Committee.

**13. Low Sulfur Fuel Report**

Mr. Garfinkle had no new items to report. However, he explained the reason for having this recurring agenda item for the benefit of the new Commissioners.

**14. Ad Hoc Working Group on Trainee Recruitment**

Mr. Eagan reported that new regulations for admission to the trainee program authored by the Committee with contributions from SFBP and the Pacific Merchant Shipping Association were working their way up to the Office of Administrative Law.

**15. Continuing Education Committee**

There was no report.

**16. Pilot Power Committee**

There was no report.

**17. Ad Hoc Committee on Blue Card Rates**

Vice President Johnston discussed the purpose of the Committee for the benefit of the new commissioners and expressed his interest in adding new members so a meeting could be scheduled as soon as possible.

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

Mr. Eagan reported that the oral argument in the pending appeal regarding the Public Records Act lawsuit brought against the Board and the Port Agent by the Pacific Merchant Shipping

<b>Minutes Open Session</b>	<b>Monthly Board Meeting</b>	<b>Date: March 28, 2013</b>
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111		<b>Page 6 of 8</b>

Association was still set for April 18, although PMSA had filed a motion to reschedule the argument to a later date.

**19. Board Officer Elections**

Mr. Garfinkle explained the regulatory requirements for electing Board officers. He emphasized that long-standing custom has been to elect officers from the ranks of the public members. However, statute and regulations do not restrict electing any members as Board officers including pilot members, industry representatives or the ex officio member.

Mr. Morocz cited the relevant regulations and outlined the specific powers of the President. He emphasized that the President and the Vice President have no policy making authority as individuals. They are part of the multi-member body and the Board is the policy-making entity. He explained that the previous Board members decided not to elect permanent officers and left that option open for the newly appointed Board members. Commissioner Johnston, in his capacity as Vice President, will continue the administrative functions necessary to the operation of the Board. He added that there is no immediate need for the election of officers; it could be deferred to the next monthly meeting, thereby allowing sufficient time for new members to get to know each other.

Commissioner Roberts proposed postponing officer elections until the next monthly meeting. He said that Vice President Johnston could carry on the necessary administrative functions until then. Vice President Johnston reacted by saying that his mandate from the previous board has expired at this meeting. He urged the Board members to make an election now.

**MOTION:** Commissioner Roberts made a motion to table the election of the officers until the next monthly board meeting on April 25, 2013.

**AMENDED MOTION:** Commissioner Connolly proceeded to second the motion but suggested an amendment to it in that the Board should elect Commissioner Johnston as acting Vice President until such time the Board elects permanent officers. He generally supported the idea of waiting, getting to know the other board members, and perhaps wait for a dry cargo representative to be appointed. Commissioner Roberts accepted Commissioner Connolly's suggested amendment.

Commissioner Brooks offered a motion to elect Vice President Johnston as “acting president.” However, after explanations that in the absence of a President the Vice President has all the powers necessary to carry on board functions, he withdrew the motion. However, he wanted to make sure that Commissioner Johnston agrees to accept being Vice President until the next board meeting. Commissioner Johnston stated that he would do so.

Commissioner Long stated that he needs a little more time to think about election of officers and would like to wait another month to proceed with it.

<b>Minutes Open Session</b>	<b>Monthly Board Meeting</b>	<b>Date:</b> March 28, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111		<b>Page 7 of 8</b>

Commissioner Schneider stated that he does not see a great need for waiting with the election of the officers.

**MOTION:** The earlier motion made by Commissioner Robertsas amended, was rephrased stating the following:  
The Board tables the election of the officers until the next monthly Board meeting on April 25, 2013. In the meantime, the Board confirms the result of the February election of the prior board members in that Commissioner Johnston is going to remain Vice President and is authorized to carry on the functions of the President until the permanent election of officers on April 25<sup>th</sup>.

**ACTION:** The motion, as amended and rephrased, received unanimous approval. The motion was carried thereby postponing the election of officers to April 25, 2013, and confirming the status of Mr. Johnston as Vice President until that election.

**20. Board committee structure, membership in committees**

The Committee structures and selection process were described to the Commissioners by Vice President Johnston and Mr. Garfinkle. Following discussion, commissioners were asked to consider participation in committees and were left to select their preferences for the April meeting.

**21. Primer on Incident Review Committee (IRC) Report presentation to the Board**

Mr. Eagan made a short presentation about the purpose and function of the IRC, as well as the procedure to be followed by the Board in considering the report, evidence, and recommendation of the IRC about ship incidents.

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

There were none.

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

There were none

**24. Adjournment**

The meeting adjourned at 11:54 a.m.

<b>Minutes Open Session</b>	<b>Monthly Board Meeting</b>	<b>Date:</b> March 28, 2013
<b>Location:</b> Board Offices at 660 Davis Street, San Francisco, CA 94111		<b>Page 8 of 8</b>

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Allen Garfinkle. Executive Director

Prepared by: Kelly Dolcini