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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

Board Members Absent

Vacant, Dry Cargo Industry Member

Staff Present

Allen Garfinkle, Executive Director
 Roma Cristia-Plant, Assistant Director
 Christiana Tiedemann, Acting Board Counsel
 Sigrid Hjelle, Office Technician

Public Present

Port Agent Capt. Peter McIsaac; San Francisco Bar Pilots (SFBP) Business Director/General Counsel Raymond Paetzold; Captain Daniel Bridgman, Rex Clack, *Esq.*; Rollie Caabay and Richard Hernandez of the California State Lands Commission; and, Captains Einar Nyborg and Steven Roberts.

OPEN MEETING:

1. Call to order and roll call – President Johnston

President Johnston called the meeting to order at 9:30 a.m. Assistant Director Cristia-Plant called roll and confirmed a quorum.

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

Approval of Board meeting minutes from March 26, 2015.

Board members were presented with the minutes of the meeting held on March 26, 2015, for approval. There was no discussion or public comment.

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MOTION: Commissioner Schneider moved to approve the minutes of the meeting held on March 26, 2105. Vice President Connolly 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

A) Announcement of events affecting Board business since the last monthly Board meeting.

There were no announcements.

B) Board recognition of Commissioners Captains Steven Roberts and Nancy Wagner for their service to the Board.

President Johnston presented former Commissioner Steven Roberts with a certificate of appreciation to recognize his eight-year service to the Board. President Johnston stated that Capt. Roberts has a wealth of knowledge that was valuable to the Board, and that his performance on the Board was outstanding. He specifically recognized Capt. Roberts’ efforts and the expertise he brought to the Pilot Evaluation Committee. Capt. Roberts thanked the Board for the opportunity to be of service, and conveyed that he has worked for about 34 years as a San Francisco Bar Pilot, and that he had wanted to give something back to the organization that provided him a worthwhile career.

President Johnston stated that Nancy Wagner was currently out of the state, and that the Board would make other arrangements to acknowledge her with a certificate of appreciation for her many years of service to the Board.

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 March, 2015 monthly meeting.

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Executive Director Garfinkle gave the following report to the Board:

- On March 31, 2015, Board staff received a letter to the Executive Director (with a copy sent to the Commissioners and California State Transportation Agency Secretary Brian Kelly) from Norman Ronneberg, Jr. of Bullivant, Houser, and Bailey, Attorneys at Law, representing Capt. Rene Peinado. Executive Director Garfinkle stated the letter recommends that the Board accept the records Mr. Peinado had already submitted to Executive Director Garfinkle in support of his sea service in satisfaction of the 1996 settlement agreement condition, and that Mr. Peinado should be allowed to take the 1993 Pilot Trainee Training Program entrance examination. Executive Director Garfinkle apprised the Board that he treated a portion of the letter regarding the racial makeup of the licensees as a Public Record Act request, which was responded to promptly.
- On April 2, 2015, Assistant Director Cristia-Plant provided him with an editor opinion article from the *Sacramento Bee* titled, “California Officials Have Email Issues of their Own,” that advocates for all California public officials to use the government assigned email account for official business.
- On April 4, 2015, the Board was provided with an article written by Carl Nolte of the *San Francisco Chronicle* titled, “Maritime Pioneers Proved a Woman’s Place Is At The Helm.” The article showcased five high-ranking women in the maritime field, among them Capt. Nancy Wagner, a former Commissioner and now a retired San Francisco Bar Pilot.
- On April 4, 2015, Capt. Guy Kleess ended a two-year probationary period imposed as part of the settlement in the OVERSEAS REYMAR incident that occurred in 2012.
- On April 7, 2015, Board staff was notified that the Nautical Institute, an international representative body for maritime professionals dedicated to improving standards of those involved in control of seagoing craft, is hosting a two-day conference in San Francisco on May 11 and 12. Commissioner Livingstone, an officer with the institute, will be giving the welcoming address.
- On April 8, 2015, President Johnston, Assistant Director Cristia-Plant and he attended the ribbon cutting ceremony at the California Maritime Academy’s new Safety and Security Center. He stated the training facility will be an important and vital safety and economic development asset to the region.
- On April 9, 2015, he attended the Harbor Safety Committee meeting held in Richmond. At this meeting, the United States Coast Guard (USCG) introduced Radio Activated Sound Signal Aids to Navigation that allow a mariner to activate a sound signal himself by keying a VHF microphone five times on a designated channel. The signal then sounds for thirty minutes.
- On April 13, 2015, he attended a California State Transportation Agency (CalSTA) Director’s meeting in Sacramento. Key among the issues discussed was California’s ongoing drought.
- On April 14, 2015, Board staff provided the Legislature with its 2014 Annual Report.

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- On April 15, 2015, Board staff received a letter from CalSTA Secretary Brian Kelly renewing the designation of Ben DeAlba as his representative on the Board.
- On April 19, 2015, it was with great sadness staff learned of the passing of former Commissioner John “Jack” Brooks. He was 92 years old. Former Commissioner Brooks served with distinction on the Board.
- On April 21, 2015, Vice President Connolly provided Board staff with four articles dealing with aviation pilot mental health that were provided to each Board member.
- Report on Board surcharges:
 - The Board received a check from the San Francisco Bar Pilots for \$62,661.89 for the following:
 - Board Operations Surcharge: \$24,451.89
 - Continuing Education Surcharge: \$ 5,630.00
 - Trainee Training Surcharge: \$32,580.00

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

Between the February and March Board meetings, Executive Director Garfinkle reported that licenses were renewed for Captains. Martin, Bridgman, Melvin, Lemke and Kelso.

Since the March Board meeting, he reported that licenses were renewed for Captains. Livingstone, Fuller, Gabe, Wehr and Horton.

C) Report on legislative activities and contractual matters.

Assistant Director Cristia-Plant reported that the Board’s rate hearing findings made earlier this month and supporting documentation are ready to be sent to the Legislature once the transcripts from the hearing are finalized.

Assistant Director Cristia-Plant gave the following report on Board contracts:

- The contract extension amendment for the interagency agreement with the University of California San Francisco Campus for pilot medical assessments and fitness determinations was sent to the Department of General Services for review and approval on April 9, 2015, and is expected to be approved before the end of the month.
- Board staff conducted a conference call this week with contract staff from the California Highway Patrol (CHP), the San Jose State University Research Foundation and researcher Dr. Alan Hobbs. She reported that the group has started on contract preparation work.
- Staff has determined that the State Controller’s Office (SCO) has the capability and capacity to perform the audit of the various surcharges charged and collected by the SFBP, and of the SFBP’s pilotage rate calculations. The SCO expects to conduct the audit of the SFBP’s 2014 financial data mid-June 2015, with a final report to the Board

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by the end of August 2015, at a cost of approximately \$28,000. Staff will commence the interagency agreement process to procure SCO's services.

- BOPC staff recently met with Commissioner Livingstone to share manned model contract procurement information, and added to the information he has already received from Commissioner Long, to bring him up to speed on this contract procurement. Staff looks forward to working with Commissioner Livingstone on this assignment.
- Other contracts that staff are working on are the interagency agreement with CHP for administrative support services, an interagency agreement with the Department of Transportation for information technology support services, and interagency agreements with the California Maritime Academy for Pilot Trainee Training Program examination support services, and potentially the pilot continuing education services.

6. Port Agent's Report – San Francisco Bar Pilot (SFBP) Port Agent Capt. Peter McIsaac

A) Monthly report on SFBP ship piloting business activity.

Port Agent McIsaac reported the SFBP continually monitors the dispatch list for possible minimum rest period exceptions, and the variety of mitigating measures employed if a rest period exception is likely to result during a rest period of less than ten hours. He reported that the SFBP currently has 58 licensed pilots, that there were 13 minimum rest period exceptions in March principally caused by pilots being brought in early for river work. He reported on pilot vessel repairs and down time.

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

- Bar Crossings 487 moves/- 7%
- Bay Moves 134 moves/+21%
- River Moves 62 moves/+2%
- Gross Registered Tons (GRT): 24.5 million/-3.2%

He further reported that when comparing piloting activity in the first quarter of 2015 to 2014, total moves were down 14%, and GRT was down 25%. He apprised the Board that the Port of Oakland reports that they expect all of the container lines to be back to normal schedule by mid-May, 2015, and that as a result of the recent contract negotiations between industry and dock workers, the International Longshore and Warehouse Union will hold a contract ratification vote on May 22, 2015.

Port Agent McIsaac confirmed for Commissioner Connolly that the river moves principally caused the minimum rest period exceptions (MRPs) for the past month, some pilots performing two moves per day, and that some of the MRPs were related to the closure of the Pittsburgh station.

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Port Agent McIsaac also confirmed for Commissioner Schneider that while there was the recent activity related to river moves and the Port of Stockton is having a record year, he does not believe there currently is a need to have more pilots trained for river moves.

B) Monthly report on pilot availability and absences.

Port Agent McIsaac conveyed that four pilots—Captains Kirk, Aune, Chapman and Martin—have been absent this past month, or a portion thereof, for medical reasons.

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 on 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 – Capt. Einar Nyborg

A) Report on the April 22, 2015, Pilot Evaluation Committee meeting.

Captain Einar Nyborg, Chairman of the Pilot Evaluation Committee (PEC), presented a report on the PEC meeting held on April 22, 2015. He reported that the current trainees—Captains Lowe, Billingsley, Murray, Rubino, Kasper and Hirschfeld have been in the Pilot Trainee Training Program from three to eight months, all trainees are now focused on completing federal pilot license testing, two have completed such testing, and the two newer trainees are focused on high intensity job volume to accumulate sufficient trips for certain federal license exams. He further reported that all trainees are still in Stage 1 of the program, and are performing at levels exceeding the PEC’s benchmarks.

Chairman Nyborg apprised the Board that since river moves are not that frequent, multiple trainees are frequently onboard to gain experience when these types of ship moves come up. He described a recent event in which there was a delay in a full bridge lift as called for by a trainee, and the resultant unique training experience it provided to all trainees on board. Port Agent McIsaac confirmed that this event was not an incident, but that he would send details of the event to Executive Director Garfinkle in the near future.

Chairman Nyborg thanked Commissioners Livingstone and Connolly for attending the April PEC meeting, and stated that he believes the efficacy of the training program can be assessed as the Board determines is necessary, and the PEC has offered suggestions to the Board that would further strengthen the program, but suggestions must be addressed in regulations before changes to the program are made.

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Commissioner Connolly thanked Captain Nyborg for his work as chairman of the PEC. He conveyed to the Board that he was impressed by the PEC's extremely thorough and comprehensive documentation of each trainee's performance. He indicated that such documentation would timely reveal performance problems, allow for corrective measures to be swiftly instituted, and provide ample documentation should a trainee not complete the program.

- B) Possible recommendation for a determination that a trainee has or trainees have completed the pilot trainee training program. Possible Board action to award a Certificate of Completion to a trainee who has completed the pilot trainee training program.**

No action was taken.

- C) Possible recommendation from the Executive Director for the appointment of a new pilot or pilots. Possible Board action to accept a recommendation from the Executive Director that a trainee holding a Certificate of Completion from the pilot trainee training program be licensed as a state pilot.**

No action was taken.

8. Reported safety standard violations – Executive Director Garfinkle

There were no reported safety violations.

9. Reportable Piloting Events – Executive Director Garfinkle

- A) 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 (and damage to) the Trans Bay Cable in the vicinity of the Union Pacific Railroad Bridge. Possible Board action to grant an extension to present the M/V OCEAN LIFE Incident Review Committee incident report at the May Board meeting. If an extension is requested, the delay in presenting the report will be due to Board staff workload.**

Executive Director Garfinkle stated no extension is necessary since the Incident Review Committee will be presenting its report of this incident as part of Agenda Item 16.

- B) Status report on the investigation into the interaction between the M/V CSCL SUMMER and the HANJIN MUMBAI that occurred in Oakland Inner Harbor on January 23, 2015, resulting in alleged damage to the accommodation ladder of the M/V HANJIN MUMBAI. Possible Board action to grant an extension to present the M/V HANJIN MUMBAI**

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Incident Review Committee incident report at the May Board meeting. If an extension is requested, the delay in presenting the report will be due to Board staff workload.

Executive Director Garfinkle stated no extension is necessary since the Incident Review Committee will be presenting its report of this incident as part of Agenda Item 16.

- C) Status report on the investigation of the anchoring of the M/V CHAMPION EXPRESS in the vicinity of San Joaquin River Light while en route to Stockton on March 20, 2015. During the deployment of the anchor to correct a shear, the anchor was lost.**

Executive Director Garfinkle stated the Incident Review Committee will be presenting its determination of this event as part of Agenda Item 16.

- D) Status report on the grounding of the USNS MATTHEW PERRY (T-AKE 9) on March 20, 2015, during a flat tow from Berth 4E at BAE Systems Ship Repair facility to their Dry dock #2.**

Executive Director Garfinkle apprised the Board that this investigation is open, and that the 90-day deadline is June 21, 2015.

- E) Status report on the passage of the M/V ROOK to Stockton on March 22, 2015, where once docked, the vessel was detained by the USCG Port State Control for lacking navigation charts for the passage from New York Point to Stockton.**

Executive Director Garfinkle apprised the Board that this investigation is open, and that the 90-day deadline is corrected to June 20, 2015.

10. Low Sulfur Fuel – Executive Director Garfinkle

Executive Director Garfinkle stated that he now obtains information about loss or reduction of propulsion events at Harbor Safety Committee meetings. He reported that since the last Board meeting, of the six marine casualties reported to the Harbor Safety Committee by the USCG, there were two reported loss or reduction of ship propulsion events, neither were attributable to fuel switching. Executive Director Garfinkle noted that the Low Sulfur Fuel report is going to be renamed and the new name will be reflected in next month’s Agenda.

11. Report on the status of Public Records Act litigation – Executive Director Garfinkle

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.

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Executive Director Garfinkle introduced Acting Board Counsel Christiana Tiedemann. Acting Board Counsel Tiedemann reported that the case was in the Appeals Court, has been fully briefed and the parties are waiting for a decision. She also stated that she believed there was no need to discuss further in closed session unless the Board wished to do so. President Johnston confirmed that a closed session was not necessary.

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

Report regarding the decision of the Fair Political Practices Commission concerning appeal by Pacific Merchant Shipping Association (PMSA) from Board denial of PMSA’s petition to include Port Agent in the Board’s Conflict of Interest Code. The Board may go into closed session to discuss with the Executive Director, any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.

Executive Director Garfinkle stated that the Board has filed its petition in this litigation. Chairman Johnston confirmed that a closed session was not necessary.

13. Report on litigation, Craig E. Reeder vs. State Board of Pilot Commissioners, initiated by Capt. Craig Reeder on December 17, 2014 – Executive Director Garfinkle

Progress report on Reeder v. 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.

Executive Director Garfinkle apprised the Board that information related to this litigation is included in the Board binders, including a memo from Board Counsel Eagan dated July 23, 2014, summarizing the facts and issues involved. Executive Director Garfinkle stated that Captain Reeder has filed a complaint in the San Francisco Superior Court against the Board’s decision to deny him benefits from the San Francisco Bar Pilot Pension Plan, a court date is scheduled for June 2, 2015, and that Board Counsel has not yet filed a response. Chairman Johnston confirmed that a closed session was not necessary.

14. Report on Stipulation for Settlement and Mutual Release in PEINADO vs. BOARD OF PILOT COMMISSIONERS, Case No. 964430 – Executive Director Garfinkle

Report regarding the Stipulation for Settlement and Mutual Release in PEINADO vs. BOARD OF PILOT COMMISSIONERS, Case No. 964430. 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).

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Executive Director Garfinkle discussed the letter received from Mr. Peinado’s attorney dated March 31, 2015, and briefly confirmed the main issue has been that he has not been able to agree with Captain Peinado that he has submitted verifiable documentation of the requisite 250 days of sea time in compliance with the 1996 stipulation agreement. He also indicated that he has concerns related to giving an exam that is more than twenty years out of date.

Executive Director Garfinkle also addressed the racial bias issue raised by Mr. Peinado’s attorney, and stated that it was his opinion that efforts to diversify the piloting industry need to start in high school. He applauded the San Francisco Bar Pilots’ industry diversification efforts to offer scholarships and mentor young mariners. Commissioner Connolly agreed with Executive Director Garfinkle about the need for early diversification efforts and stated that if such efforts are successful, the criteria to be a successful mariner should not be lessened to achieve diversity. He offered an openness to suggestions on how the Board could encourage diversity among the ranks of licensees.

Executive Director Garfinkle conveyed to the Board that as a result of Mr. Peinado’s lawsuit of over twenty years ago, the Board now has a very open and objective Pilot Trainee Training Program entrance examination.

President Johnston polled the Board and confirmed that the Board would further discuss this agenda item in closed session.

15. 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 development of policies and procedures.

Commissioner Connolly discussed the article he submitted regarding mental fitness of pilots in the airline industry. He indicated that the Board’s regulations require a licensee to be mentally fit, and that the fitness study left that determination up to the Medical Review Officer. He stated that he would like to ensure that a licensee is able to report a problem without fear of losing his job. Port Agent McIsaac confirmed for Commissioner Connolly that licensees have access to an employee assistance program through the San Francisco Bar Pilots Association.

Commissioner Long applauded Commissioner Connolly for his pilot safety efforts, and stated his belief that the Pilot Fitness Study, and the upcoming Pilot Fatigue Study have and will directly and indirectly influence pilot mental health issues. Both Commissioner Long and Port Agent McIsaac discussed some of the efforts that are employed to resolve issues related to pilots with personal or other mental health issues, including the following: the Port Agent reporting his concerns about a pilot to the Executive Director; an instance in the past when the Board sent a pilot to anger management training; the current Medical Review Officer’s efforts to become intimately familiar

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with all of the licensees; the value in that pilots cannot doctor-shop now; and, the Port Agent rescheduling pilots to ease workloads.

Executive Director Garfinkle responded to Commissioner Schneider’s comment that many industries test for mental fitness before hiring, and stated that the CHP tests for mental fitness before allowing trainees into its training program. He also stated that he would like to see the Board look into whether or not the Board could offer trainees in the Pilot Trainee Training Program health insurance and access to employee assistance programs. President Johnston stated that he would like Executive Director Garfinkle to pursue these topics.

BEGAN BREAK: 10:58 a.m.

OPEN SESSION RESUMED: 11:15 a.m.

16. Incident Review Committee reports – President Johnston

- A) A presentation on the event involving interaction between the M/V CSCL SUMMER and the M/V HANJIN MUMBAI on January 23, 2015, resulting in alleged damage to the accommodation ladder of the M/V HANJIN MUMBAI. Board may review IRC decision to limit investigation based on 7 CCR §210 (b)(3). 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).**

Executive Director Garfinkle presented an overview of the Incident Review Committee’s (IRC) written report on the interaction between the M/V CSCL SUMMER and the M/V HANJIN MUMBAI that occurred on January 23, 2015. He stated that after the initial investigation, it was clear to the IRC that the Captain of the HANJIN MUMBAI admitted his equipment was placed in harm’s way in an area where heavy ship traffic was anticipated, and that the IRC concluded that there clearly was no misconduct on the part of Capt. Kellerman, the M/V CSCL SUMMER’s pilot. As such, the IRC discontinued its investigation and was making this report to the Board. He confirmed that no action need to be taken by the Board if it agrees with the IRC conclusion.

Executive Director Garfinkle confirmed for Commissioners Connolly and Schneider that interaction is to be expected and appropriate action taken when ultra-large container vessels such as the M/V CSCL SUMMER are nearby. Capt. Nyborg stated he believed an appropriate standard of care was not taken by the crew of the M/V HANJIN MUMBAI. Port Agent McIsaac confirmed for Commissioner Connolly that there is no direct communication method to notify a

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docked ship of a large vessel coming down the channel. Commissioner Livingstone responded to a query from Commissioner Schneider about shipping schedules, and indicated that the shipping schedule through the channel can change frequently, sometimes hourly.

Executive Director Garfinkle reminded the Board that many of the docks throughout the bay were built when smaller ships were the norm, and extreme care must be taken by licensees when moving ships past these docks.

- B) A presentation on the event involving the M/V CHAMPION EXPRESS on the San Joaquin River while enroute to Stockton on March 20, 2015 where in response to a shear, the anchor was deployed and lost. Board may review IRC decision to limit investigation based on 7 CCR §210 (b)(3). 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).**

Executive Director Garfinkle reported to the Board that the Port Agent notified him via email dated March 20, 2015, that the M/V CHAMPION EXPRESS was enroute to SCK 9 on that day, and the anchor was deployed due to a shear event. The Port Agent conveyed that when the anchor was retrieved, the chain had broken near the third shackle mark. The Port Agent further indicated in the email that the USCG determined the event was not an incident. No IRC report was prepared, and no action was taken by the Board.

- C) A presentation of the Incident Review Committee incident report on the September 5, 2014, M/V OCEAN LIFE loss of propulsion, subsequent anchoring, and anchor damage to the Trans Bay Cable in the vicinity of the Benicia-Martinez Union Pacific Railroad Bridge. 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).**

PRESIDENT JOHNSTON RECUSED HIMSELF AS CHAIR, AND AUTHORIZED VICE PRESIDENT CONNOLLY TO RESUME AS THE CHAIR. PRESIDENT JOHNSTON ASSUMED HIS POSITION AS A MEMBER OF THE IRC FOR THE PRESENTATION OF THE REPORT ON THE M/V OCEAN LIFE.

Executive Director Garfinkle presented the IRC report on the M/V OCEAN LIFE. He first reviewed the facts, description of events, statement of witnesses, and the estimate of damages included in the report. He proceeded to discuss the differing standards of care which could be applied to this particular incident. He stated that a pilot is held to a standard of care that calls for a him to exercise that degree of care and skill possessed by the average pilot, that the pilot is not liable for mere errors in judgment, but would be held liable for damage caused by his failure to exercise the diligence which others similarly situated would ordinarily have exercised. He

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apprised the Board that this standard is fairly high, and what one would expect of an expert, such as a pilot.

Executive Director Garfinkle proceeded to read to the Board the third paragraph on page 11 of the report that describes a situation in which allowances can be made to that standard of care when a person controlling the movement of a vessel is faced with sudden peril through no fault of their own, and that courts are not supposed to second-guess parties in peril and expect from that person the most precise judgment. He quoted, “Where, without prior negligence, a vessel is put in the very center of destructive natural forces and a hard choice between competing courses must immediately be made, the law requires that there be something more than mere mistake of judgment by the master in that decision in extremis.”

Executive Director Garfinkle reviewed the IRC’s factual analysis of the incident and summarized that the IRC determined that: (i) the decision to slow on approach to the Union Pacific Railroad Bridge given the location of the vessel and other vessels in the vicinity appeared appropriate and reasonable; (ii) the decision to proceed with the dead-slow ahead bell at 31 RPM without any warnings appeared reasonable; (iii) while maintaining the dead-slow ahead bell presented engineering challenges and loss of propulsion, it appeared that Capt. Bridgman took appropriate resultant actions to anchor the vessel; (iv) moving the vessel with both anchors down following stabilization of the ship was appropriate to move the ship away from immediate peril and to safe anchorage; (v) Captain Bridgman knew of the Trans Bay Cable, and that his belief that it was buried was also reasonable; (vi) the decision to draw the anchor across the cable was not made in a vacuum, but was part of a larger decision to move what appeared to be a disabled or unreliable vessel to a safe anchorage; in backing away from the bridge, it became apparent that the anchors were fouled, and it was at this point that Captain Bridgman was notified by the Vessel Traffic Service that he may have hooked a submarine cable and should not continue to attempt to retrieve the port anchor; and, (vii) the radius of the vessel, if left to swing, left the M/V OCEAN LIFE vulnerable to allision with the oil wharves should she be allowed to swing on her anchor.

Executive Director Garfinkle concluded that the IRC determined that each of the actions taken by Captain Bridgman on the bridge of the M/V OCEAN LIFE was reasonable when examined either under the more strict “ordinary skill of an expert in the profession” or in the more lenient in extremis standard. Based upon this conclusion, Executive Director Garfinkle stated that the IRC recommends that the Board find for no pilot error and that the investigation be closed without further action.

Executive Director Garfinkle then played the Voice Data Recorder (VDR) recording captured on the bridge of the M/V OCEAN LIFE and provided by the USCG for the Board.

Rex Clack of Sterling, Clack and Russo, counsel for Captain Bridgman, stated that he did not have anything further to add to the Executive Director’s report, other than this incident should

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clearly be examined in extremis, and quickly recited some of the incident facts covered by Executive Director Garfinkle.

Vice President Connolly thanked the IRC for a very detailed report. President Johnston stated that the IRC report only gives a small glimpse of the stress that can happen to a pilot in an instance. Commissioner Long conveyed that he believes in extremis applied the entire time, that he agrees with the first IRC finding and that he believes there is no trace of pilot error during the entire event. He also indicated that he agrees with the second finding that the incident should be closed, but not without further action.

Commissioner Livingstone reminded the Board that this incident was a perfect example of the multitude of decisions that go into piloting, and could not stress enough that it is vital for the Board to provide the best possible pilot training regardless of the location of the training facility.

Commissioner Schneider commented that he could definitely hear the stress in Captain Bridgman's voice when listening to the Voice Data Recorder recording of the event.

MOTION 1: Commissioner Long moved to approve that the Board find for no pilot error in this incident. Commissioner Livingstone seconded the motion.

VOTE: Yes: Connolly, Livingstone, Long, Schmid and Schneider.
No: None.
Abstain: Johnston.

ACTION: The motion was approved.

MOTION 2: Commissioner Long moved to approve that the Board close the investigation and issue a commendation to Captain Bridgman for his exemplary performance. Commissioner Livingstone seconded the motion.

VOTE: Yes: Connolly, Livingstone, Long, Schmid and Schneider.
No: None.
Abstained: Johnston.

ACTION: The motion was approved.

PRESIDENT JOHNSTON RESUMED HIS POSITION AS CHAIR AT THE CONCLUSION OF THE ABOVE IRC REPORT.

17. Performance Evaluation of the Executive Director – President Johnston

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Annual Performance Evaluation of Executive Director. The Board may go into closed session pursuant to 11126(a)(1) of the Bagley-Keene Open Meeting Act to discuss the evaluation.

This item was considered in the closed session (see below).

18. Public Comment on matters not on the Agenda.

There we no public comments.

19. Proposals for additions to next month’s Agenda.

There we no proposals for next month’s Agenda.

THE BOARD THEN WENT INTO CLOSED SESSION TO CONSIDER AGENDA ITEMS 14 AND 17.

BEGAN CLOSED SESSION: 12:47 P.M.

RESUMED OPEN SESSION: 1:37 P.M.

President Johnston stated there was no report from the closed session.

20. Adjournment.

There being no further business before the Board, the meeting was adjourned at 1:38 p.m.

Allen Garfinkle, Executive Director

Prepared by: Roma Cristia-Plant