

<p style="text-align: center;"><b>Minutes</b></p> <p style="text-align: center;"><b>Open Session</b></p>	<p style="text-align: center;"><b>Monthly Board Meeting</b></p>	<p style="text-align: center;"><b>Date:</b></p> <p style="text-align: center;">August 22, 2013</p>
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**Board members present**

RADM. Frank Johnston, President  
Mr. Dave Connolly, Vice President  
Mr. John Schneider, Commissioner  
Capt. Joe Long, Commissioner  
Capt. Steve Roberts, Commissioner  
RADM. Jack Brooks, Commissioner  
Ben DeAlba, Ex Officio Member designee of the Secretary of the California State Transportation Agency

**Staff present**

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

**Others present**

Capt. Pete McIsaac, Port Agent

**Public present**

Past President Knute Michael Miller and San Francisco Bar Pilots (SFBP) Business Director John Cinderey were among the public present.

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

The meeting was chaired by President Johnston, who called the meeting to order at 9:30 a.m. Staff Services Analyst Kelly Dolcini called roll and found a quorum had been established.

**2. Approval of minutes of the July 25, 2013 Board meeting**

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Board members were presented with the minutes of the July 25, 2013 meeting for approval.

**MOTION:** Commissioner Roberts moved to approve the minutes from the July 25, 2013 Board meeting with leave for staff to make non-substantive clerical changes. Commissioner Schneider seconded the motion

**ACTION:** The motion passed unanimously, with Commissioner Brooks abstaining due to his absence at the July 25, 2013 meeting.

**3. Announcements**

President Johnston thanked staff on behalf of the Board for its excellent work on the canvas prints adorning the back wall of the Board Room. Office Technician Sigrid Hjelle had spearheaded the project and thanked Vice President Johnston and the Board for their appreciation.

President Johnston also brought the Board’s attention to RADM Brooks’ return to the Board table following an illness. He thanked Vice President Johnston and said he was glad to be back.

**4. Board member activities**

There were no reports from Board members.

**5. Executive Director’s report**

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

Mr. Garfinkle reported that on July 29, 2013 Board staff received a certificate of training for Capt. Guy Kleess, certifying that he had attended and passed Emergency Shiphandling/Bridge Resource Management for Pilots at the Maritime Institute of Technology and Graduate Studies in Linthicum Heights, Maryland. This was to fulfill part of his obligation under the settlement reached as a result of the M/T OVERSEAS REYMAR incident. Further obligations include specialized training on a personal piloting unit and 30 trips as an observer on piloting jobs under the San Francisco-Oakland Bay Bridge.

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He further reported that Board staff had received word that the First Appellate District of the Court of Appeal had found in favor of the Board and the San Francisco Bar Pilots in the Public Records Act case initiated by the Pacific Merchant shipping Association.

On July 11, 2013, he attended a meeting of the Harbor Safety Committee in Richmond, CA. The USCG provided the community with a Marine Safety and Security Information Bulletin (MSIB) 13-05 detailing the enforcement of the 34<sup>th</sup> America’s Cup Regulated Area on San Francisco Bay. Also at that meeting, Pacific Merchant Shipping Association (PMSA) unveiled its whale spotting poster designed for distribution to member vessels and the wider community.

Mr. Garfinkle described the difficulties staff has had finding appropriate decorations for the Board offices. He expressed his gratitude to Ms. Hjelle for heading up the mural project and thanked her for her hard work.

**Board licensing:**

Between the June and July Board meetings staff renewed the licenses for Captains Alden, Miller, and Wainwright. Since the July meeting, staff has renewed licenses for Captains Laakso, Merritt, Coney, and Burger.

**Board Surcharges:**

The Board received a check for \$149,766.25 for surcharges collected by the SFBP, which were broken down as follows:

Board Operations Surcharge: \$35,696.25

Continuing Education Surcharge: \$76,440.00

Trainee Training Surcharge: \$37,630.00

**Legislative matters:**

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

**Contractual matters:**

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Mr. Garfinkle asked Staff Services Analyst Kelly Dolcini to address the Board and give a report on the state of BOPC contracts.

Ms. Dolcini described the justifications required in the submission of a contract for Capt. Dave Gates consultant services on the trainee test. She hopes for positive news regarding this contract in the near future.

Staff has begun working with the Continuing Education Committee on a request for proposals from manned model training facilities, as the current contract enabling use of the Port Revel facilities expires on June 30, 2014.

**6. Port Agent's report**

Capt. McIsaac reported that there are currently five pilots absent for medical reasons (AFMR).

He described the nine minimum rest period (MRP) exceptions since the July 25, 2013 meeting, ranging between 10.3 and 11.7 hours.

Capt. McIsaac described the working relationship between the San Francisco Bar Pilots (SFBP), Amtrak/Capitol Corridor, and Union Pacific. The groups came together to discuss train delays caused by bridge lifts in Suisun Bay. Amtrak printed wallet-sized cards for all pilots and bridge tenders listing scheduled key times when trains would cross the bridge. Since beginning this cooperation there has been a 37% decline in delays due to bridge lifts.

He next presented a report on billed vessel moves during the month of July. When compared to a three year average, bar crossings are down 1.6% at 193; bay moves are up 1.7% at 105; river moves are up 5.9% at 38; total moves are down 0.8% at 740 and gross registered tonnage up 4.7% at 31,276,596 tons.

The P/V CALIFORNIA has been out of service while undergoing an annual dry-docking, which was completed August 9, 2013. The P/V GOLDEN GATE was out of service from August 6-9, 2013 for repairs to a broken propeller. The P/V SAN FRANCISCO was taken out of service on August 18<sup>th</sup>, 2013 for its scheduled maintenance dry docking.

Capt. McIsaac also reported to the Board that Pacific Coast Maritime Agencies, Inc. is continually late with payment to the Pilots for services rendered. They currently owe over \$20,000 and the SFBP is requiring that they operate on a cash basis only.

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Commissioner Connolly noted the reduction in AFMRS and MRP exceptions. He noted for the record that the Pilot Power Committee had met and discussed the number of pilots and determined it to be adequate in spite of the recent spate of MRP exceptions. He was gratified to know that things were improving and that the Committee had not acted hastily to recommend a change to the statutory number of licensed pilots.

**7. Pilot Evaluation Committee**

Capt. Nyborg presented the Pilot Evaluation Committee (PEC) report. The Committee met on August 21, 2013. In closed session, all trainees were interviewed individually. There are currently two trainees in the pilot trainee training program, both of whom are progressing well.

**8. Reported safety standard violations**

There were no reported safety standard violations since the July 25, 2013 meeting.

**9. Reportable piloting events**

- A. On the matter of the M/V NYK LYNX, Mr Garfinkle noted that the report on the M/V NYK LYNX will be presented today.
- B. On the matter of the M/V CLAXTON BAY, Mr. Garfinkle reported that the incident remains under investigation. He requested an extension on presenting the report to the September Board meeting.

**MOTION:** Vice President Connolly moved to grant an extension to the investigation into the M/V CLAXTON BAY. Vice President Johnston seconded the motion.

**ACTION:** The motion passed unanimously on a voice vote.

**10. Rules and Regulations Committee**

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Commissioner Roberts reported that the Rules and Regulations Committee had met on August 20, 2013. The revised fitness regulations for pilots are currently in a public comment period, which ends September 9, 2013. So far, no comments have been received and the Committee will meet again on September 13, 2013.

Commissioner Roberts further reported that modifications to the qualifications for admission into the trainee training program are currently at agency and will be released for public comment once they are approved.

The Committee also discussed the proposed language adding a fee of \$1,000 for applicants who take the trainee exam. They discussed the application of the charge and whether it should be a lump sum payment or split in two. President Johnston felt that the fee could pose a hardship to some applicants and wondered whether it should be refunded to those who pass the test but are not admitted to the trainee program. Board Counsel Eagan explained that Statute allows for a fee to be charged but not refunded. Capt. Nyborg stated his opinion that refunding anyone's money would negate the purpose of the exercise and that the proposed fee of \$1,000 was determined to be manageable for parties currently working in the maritime industry. Mr. Miller suggested the addition of language to the application package that clarifies the fee and emphasizes the fact that many apply to the take the test but passage is not a guarantee of entry to the training program. Commissioner Connolly noted that the refund policy should be clearly outlined on application materials and advertisements for the exam.

**MOTION:** Vice President Connolly moved that the Board adopt the proposed language concerning how fees for participation in the exam for entrance into the trainee program will be administered. Commissioner Roberts seconded the motion.

**ACTION:** The motion passed unanimously on a voice vote.

**11. Pilot Fitness Committee**

Committee Chairman Miller reported that the Committee met on August 2, 2013, was notified that the proposed pilot fitness regulations were in the 45-day public comment period. If comments are received, the Pilot Fitness Committee will meet jointly with the Rules and Regulations Committee to consider comments and make recommendations thereon to the Board at its next meeting which is scheduled for September 13, 2013.

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Chairman Miller next reported that Members of the Committee discussed materials related to shift work and fatigue that had been provided to them by Board staff, many of which were suggested by staff of the National Transportation Safety Board. Additional materials were provided by staff and by SFBP Capt. Kenneth Carlson, including a 1984 study of the Port Philip (Australia) Sea Pilots by Yossi Berger of La Trobe University. The Committee will have the opportunity to review the additional materials before the next meeting. Of particular interest is a study of pilot fatigue issues prepared for the Columbia River Pilots Association. The Committee is engaged in extensive review of the professional literature in order to prepare a cogent and responsive scope of work as mandated in S.B 1408. Chairman Miller noted that the Legislature did not provide an augmentation to the Board's appropriation and accordingly, the Board will be required to request such an augmentation through a Budget Change Proposal once a scope of work has been determined and a market survey completed.

**12. Continuing Education Committee**

Commissioner Long reported that the Pilot Power Committee had met on August 20, 2013 and that all members were present to discuss the scope of work and evaluation criteria for a new manned model training contract with the goal of having the SFBP receive the best training available.

**13. Low Sulfur Fuel Report**

There was no report.

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

Board Counsel Dennis Eagan reported that the Court of Appeal ruled on August 1, 2013, that the records sought by the Pacific Merchant Shipping Association were not public records and that the Court had ordered the lower court to dismiss PMSA's action seeking the records. He also reported that PMSA has filed a petition for rehearing with the Court of Appeal.

**Due to the Board going into recess to prepare for the presentation of an Incident Review Committee (IRC) report, President Johnston addressed items 17 and 18 out of order so that**

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members of the public not wishing to stay for the IRC report may have input into these agenda items.

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

Capt. McIsaac suggested working with California Maritime Academy to arrange a schedule for the upcoming trainee training program entrance exam. Mr. Garfinkle agreed and will discuss it with them at their next conversation.

**18. Proposals for next month's agenda**

There were no proposals for next month's agenda.

**THE BOARD STOOD IN RECESS AT 10:31 A.M.**

**THE MEETING RESUMED AT 10:42 A.M.**

**15. IRC report on the interaction between the M/V NYK LYNX and either or both the M/V APL TOKYO and the M/V BEAR MOUNTAIN BRIDGE on April 23, 2013.**

President Johnston recused himself participation as a voting member of the Board because of his status as Chairman of the IRC. Vice President Connolly chaired the Board meeting in his place.

After a quorum was re-established, the Board focused its attention on the IRC investigation of the incident involving the M/V NYK LYNX and either or both the APL TOKYO and the M/V BEAR MOUNTAIN BRIDGE. Mr. Garfinkle presented the report on behalf of the IRC. He began by submitting the IRC report as Exhibit One and a Vessel Traffic Service recording showing the Automatic Identification System (AIS) playback of the Oakland Inner Harbor on the morning of April 23, 2013 as Exhibit Two.

The M/V NYK LYNX was tied up in Oakland Inner Harbor as the M/V BEAR MOUNTAIN BRIDGE and the M/V APL TOKYO were en route to Oakland. The pilots aboard each ship underway had agreed that the APL TOKYO would enter the inner harbor first, turn in the basin



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and back out of the basin so that the BEAR MOUNTAIN BRIDGE could then enter the basin, turn, and proceed to her berth without impediment.

While passing the location of the NYK LYNX, one or both of the two ships created a hydrodynamic situation that apparently resulted in damage to the gangway of the M/V NYK LYNX. This damage necessitated turning of the ship to access the other gangway and caused a longshore delay. The mate of the M/V NYK LYNX was on the bow at the time of the damage and reported reading the name of the M/V APL TOKYO at the same time as the Captain of the ship reported damage to the gangway. This evidence exonerated the M/V BEAR MOUNTAIN BRIDGE as the ship causing the damage and for purposes of this interaction, and its role was classified as a non-incident.

While displaying Exhibit Two, the AIS playback of the Oakland Inner Harbor the morning of the incident, Commissioner Roberts asked Mr. Garfinkle to address the reliability of AIS depictions. Mr. Garfinkle replied that while he believes that the speed shown on the AIS playback is generally as accurate as the instruments that produce it (typically GPS driven), using AIS to represent the vessels position is subject to some interpretation due to the inherent errors of positioning and varied placements of AIS transmitting antenna on the vessels.

Mr. Garfinkle offered an overview of the settled law regarding vessel interactions. He noted that the governing law was developed to deal with damage claims and while we can use this law for purposes of analysis, we are not convened to determine fault for damages purposes, but rather the narrow aspect whether the pilot acted reasonably in the situation.

He went on to explain that the law states that a ship passing piers or docks where vessels are tied up have a duty to proceed carefully and prudently so as to avoid creating unusual swells or suction which would damage craft properly moored. Likewise there is a duty on the moored vessel to be seaworthy and properly moored to resist ordinary and normal swells in narrow waters where heavy traffic may be anticipated. The case law goes on to note that some wash from passing vessels is bound to occur and must be anticipated and guarded against, and that only unusual swells or suction which cannot be reasonably anticipated furnish the basis for a claim. Further complicating the issue is when a vessel can prove that it is properly moored to resist ordinary swells or suction normally to be anticipated, and that the swell or suction came from the vessel charged, that vessel can exonerate itself from blame by a showing that they were proceeding in a reasonable can cautious manner.

Mr. Garfinkle detailed the many factors affecting the hydraulic action upon a moored vessel. This particular incident happened at low tide with the pilot proceeding at the pilot's target speed (5-6 knots) through the estuary. He used tugs to slow his speed to below the minimum

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capability of the ship on its slowest available bell and navigated on the far side of the channel. The moored vessel has an obligation to ensure that their vessel is properly moored to prevent damage due to passing ships. The investigation found that the M/V NYK LYNX did not have the lines on constant tension winches, but instead on the brakes. The master of the ship charged that his ship had moved 1.5 meters (5') on the passing of the M/V APL TOKYO and that the gangway made contact with a fixed bollard on the dock.

Mr. Garfinkle noted that the Committee was charged with weighing competing principles against one another. Capt. Ridens took reasonable measures to lessen the wake, yet there was damage. On the other hand the M/V NYK LYNX may have been tied up properly, but did move 1.5 meters and this was enough to have the gangway make contact with the fixed bollard. It is not known if the gangway was that close to the bollard on first mooring, or if the outgoing tide had caused the ship to go downward in relation to the dock surface, thereby causing the gangway to get dangerously close to the bollard. In either case, the Committee found that this proximity to the bollard tends toward the conclusion that the M/V NYK LYNX was not anticipating and guarding against normal swells or suction

The Committee recommended that the Board find for no pilot error and close this case with no further action.

**MOTION:** Commissioner Roberts moved that the Board accept the IRC recommendations and find for no pilot error and close the case with no further action. Commissioner Brooks seconded the motion

**ACTION:** The motion passed unanimously.

**16. IRC report on the possible grounding of the M/V CLAXTON BAY while departing Berth 7/8 in Stockton on May 10, 2013.**

Reporting on this incident extended to the September Board meeting. Please refer to agenda item 9 of these minutes for more information on the investigation into the M/V CLAXTON BAY incident.

**19. Adjournment**

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**MOTION:** Commissioner Long moved to adjourn the meeting, Commissioner Roberts seconded the motion.

**ACTION:** The motion passed unanimously and the meeting adjourned at 11:27 a.m.

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Allen Garfinkle, Executive Director

Prepared by: Kelly Dolcini