

<p><b>Meeting Date:</b>  <b>May 24, 2018</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 1 of 17</b></p>
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**Board Members Present**

Jennifer Ferrera Schmid, President, Public Member  
 Dave Connolly, Vice President, Public Member  
 David Hoppes, Dry Cargo Industry Member  
 Captain George Livingstone, Pilot Member  
 Captain Einar Nyborg, Pilot Member  
 Marlon Flournoy, Deputy Secretary for Transportation Planning, Representing the Secretary of the California State Transportation Agency

**Board Members Absent**

John Schneider, Wet Cargo Industry Member  
 Vacant, Public Member

**Staff Present**

Allen Garfinkle, Executive Director  
 Roma Cristia-Plant, Assistant Director (via telephone)  
 Dennis Eagan, Board Counsel  
 Luis Cruz, Associate Governmental Program Analyst

**Public Present**

Captain Joseph Long, Port Agent and San Francisco Bar Pilot (SFBP) President; Ray Paetzold SFBP Business Director-General Counsel; Mike Jacob, Pacific Merchant Shipping Association (PMSA); Captains George Dowdle, Orrin Favro, and Steven Teague, SFBP; Captain Eusebio Fabia, State Lands Commission; Captain Maximilian Starnitzky, Pilot Trainee.

**OPEN MEETING**

**1. Call to Order and Roll Call – President Schmid**

President Schmid called the meeting to order at 9:32 a.m. Associate Governmental Program Analyst Cruz called the roll and confirmed a quorum.

**2. Review and approval of Board meeting minutes –President Schmid**

**Board action to approve meeting minutes from the Board meeting held on April 26, 2018.**

Board members were presented with the draft minutes from the Board meeting held on April 26, 2018. Mr. Jacob requested an addition to the minutes that referenced a discussion concerning pilot airfare travel provisions within the Board’s contract with the SFBP. Executive Director Garfinkle and Vice President Connolly also requested minor edits to the minutes. There was no further discussion.

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**MOTION:** President Schmid moved to approve the draft minutes of the meeting held April 26, 2018, as amended. Commissioner Nyborg seconded the motion.

**VOTE:** YES: Schmid, Connolly, Hoppes, Livingstone, and Nyborg.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

**3. President Announcements and Activities –President Schmid**

President Schmid announced that on May 8, 2018, she had lunch meeting with Port Agent Long. She also announced that she has had communications with Bob Franzoia, Senior Advisor, High Speed Rail Authority, at the California State Transportation Agency, concerning Board staff retention.

**4. Board Member Announcements and Activities – Board Members**

There were no announcements.

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

**A) Correspondence and activities since the Board meeting held on April 26, 2018.**

Executive Director Garfinkle reported on the correspondence and activities since the Board’s February meeting as follows:

- On May 4, 2018, he shared with the Board a presentation by the National Maritime Center on Standards of Training, Certification, and Watchkeeping (STCW) Medical Certificate issuance.
- On May 7, 2018, he attended a Director’s meeting at the California State Transportation Agency.
- On May 8, 2018, Board staff was provided with a report on an incident from 2016, occurring in New Zealand involving a passenger ship under pilotage. He stated the incident highlighted the need for effective bridge team management.
- On May 15, he attended a meeting with the Board’s physicians and Medical Review Officer at the University of California, San Francisco Campus (UCSF). He reported outstanding contract and medical assessment issues were discussed, and that progress was made towards resolution on the issues.
- Also on May 15, 2018, Board staff received a letter from Captain Will Lemke providing notice his intent to retire effective October 1, 2018.

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- On May 18, 2018, Board staff received a copy of the Pacific Merchant Shipping Association *West Coast Trade Report* for May 2018, that included the March 2018 loaded twenty-foot equivalent unit (TEU) numbers, and several other articles.

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

- Between the February and the April Board meetings, staff renewed the licenses of Captains Rubino, Kasper, Aune, Bridgman, Kirk, Lemke, Pate, Livingstone, Murray, Billingsley, Horton, Weiss, and McCloy.
- Since the April Board meeting staff renewed the license of Captain Tylawsky.

**C) Report on Board surcharges.**

Executive Director Garfinkle reported that the Board received a check from the SFBP in the amount of \$191,144.08 for the surcharge revenues for the month of April 2018, itemized as follows:

- Board Operations Surcharge: \$92,844.08
- Continuing Education Surcharge: \$ 2,980.00
- Trainee Training Surcharge: \$95,320.00

**D) Report on legislative activities and contractual matters.**

Associate Governmental Program Analyst Cruz stated there was nothing to report on legislative activities.

For contractual matters, Associate Governmental Program Analyst Cruz reported the following:

- The new 5-year contract with the San Francisco Bar Pilots approved by the Board last month is currently being reviewed by legal staff at the Department of General Services.
- California Highway Patrol (CHP) contract staff continue to work on the amendment to the San Jose State University Research Foundation contract approved by the Board last month.
- Board staff are working with contract staff at the University of California San Francisco (UCSF) campus on the new agreement for trainee and pilot fitness determinations that the Board approved last month. The new agreement is anticipated to be effective July 1, 2018.
- CHP contract staff are obtaining signatures on a new contract with the State Controller's Office for pilotage and surcharge audits. The contract will cover the 2017, 2018 and 2019 annual audits, and totals just under \$111,000.

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- CHP contracts staff continue to work on the contract documents for two separate contracts with the California State University Maritime Academy for pilot continuing education courses and the Pilot Trainee Training Program Selection examination services. The contract for pilot continuing education services will be for two years, and totals just over \$215,000. The contract for the trainee program selection examination services will also be for two years, and totals \$188,000. Both contracts are set to start on July 1, 2018.
- CHP contract staff sent an interagency agreement to the California Department of Human Resources (CalHR) for signatures. CalHR will provide assistance with the development and administration of the Pilot Trainee Training Program selection examination. The contract amount is approximately \$103,000, will be for 18 months, and will include work on the next selection examination scheduled for June 2019.
- CalHR’s legal staff have determined that the Board can enter into an interagency agreement for trainee random drug testing services under CalHR’s master drug testing contract. Drug testing services will be provided by Comprehensive Drug Testing, Inc.
- CHP contract staff have almost completed a new interagency agreement with the Board for their administrative support services. The new contract will be for three years for \$149,000 per fiscal year, for a total of \$447,000.
- CHP contract staff have not completed any work on the procurement paperwork necessary to select and contract with a CPA firm for pension calculation services or for the pension actuary services. Work is expected on these two procurements when other Board contract work is completed.

Vice President Connolly thanked Executive Director for including the U.S. Coast Guard’s National Maritime Center webinar presentation, and noted that the presentation contains valuable information that should be shared with Board Counsel and the Joint Pilot Fitness and Rules and Regulations Committee while work is being done on editing the pilot and trainee fitness regulations. Executive Director Garfinkle also noted that “insufficient [medical] condition information” was among the top reasons listed in the presentation that delayed the processing of a medical fitness determination certificate. He stated the Board’s physicians indicated they have similar issues obtaining change in medical condition information from BOPC-licensed pilots and pilot trainees

Vice President Connolly expressed interest in the New Zealand Transport Accident Investigation Commission’s report of the AZAMARA QUEST incident, and referred discussion to the Board’s Pilot Safety Committee

**6. Port Agent’s Report – Captain Joseph Long**

**A) Monthly report on San Francisco Bar Pilots (SFBP) pilot availability and absences.**

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Port Agent Long reported the following:

- Captain Pinetti has been not fit for duty (NFFD) since February 27, 2017;
- Captain Dowdle has been NFFD since September 23, 2017;
- Captain Wehr has been NFFD since February 7, 2018; and
- Captain Martin has been NFFD since April 26, 2018.

Port Agent Long reported that the SFBP continually monitors the dispatch list for possible 12-hour minimum rest period (MRP) exceptions, and if the potential exception is likely to result in a rest period of less than 10 hours, mitigating measures are employed by the SFBP. He reported that the mitigating measures include, but are not limited to, suspending continuing professional development protocols, cancelling scheduled meetings, cancelling previously granted compensating-time-off requests, suspending SFBP internal working rules, or calling in off-watch pilots.

He reported that there are currently 57 licensed pilots. He reported that there were 20 MRP exceptions in April 2018, and that the shortest rest period was 9.5 hours.

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

Port Agent Long reported that all equipment is operating normally.

Port Agent Long reported the billed vessel moves for April 2018 as follows:

- Bar Crossings: 575 Moves
- Bay Moves: 121 Moves
- River Moves: 50 Moves
- Total Moves: 746 Moves
- Gross Registered Tons (GRT): 33.5 Million

He reported that when comparing 2018 year-to-date vessel moves with the same period in 2017, total moves were up 4.4% and GRT was up 3.2%.

Port Agent Long responded to an inquiry from President Schmid concerning pilot peer reviews, and stated that he did not have a peer review report prepared.

In response to Board member queries about the number of MRPs in April 2018, Port Agent Long stated that number of MRPs for that month was due to a combination of pilot retirements, pilots not fit for duty, and increased shipping activity.

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

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

**7. Pilot Evaluation Committee – Captain George Dowdle**

- A) Report on the Pilot Evaluation Committee (PEC) meetings held on May 16, 2018.**

Captain Dowdle reported the following from the meeting held May 16, 2018:

- The PEC met on May 16, 2018.
- All trainees were interviewed individually in closed session.
- The 8 trainees currently in the Pilot Trainee Training Program include Captains Greger, Burchard, Freese, Pullin, Corbett, Starnitzky, Mercier, and Crowl. Their time in the program ranges from 4 to 17 months.
- The two newest trainees are testing for their federal pilotage endorsements.
- The other 6 trainees have obtained their federal pilotage endorsements and continue to train on as many ships as possible.
- All trainees are progressing and meeting recommended benchmarks.

- B) Possible Committee recommendation to Board of a new Committee member to replace resigning member Capt. George Dowdle. Possible Board action to appoint new Committee member to the PEC.**

Captain Dowdle reported that he is resigning from his role as PEC Chairman, and that the Committee has unanimously agreed to recommend current PEC member, Captain Steven Teague, as the new PEC Chairman. Captain Dowdle reported that Captain Teague graduated from CMA in 1989, holds a United States Coast Guard (USCG) Master’s licenses for vessels of unlimited tonnage, and sailed as a Third Mate through Chief Mate aboard tanker, bulk, and container vessels. Additionally, he stated that Captain Teague also sailed as Master of Voith-Schneider tugs engaged in ship assists and escort work on the San Francisco Bay. Captain Teague entered the Pilot Trainee Training Program in 2005, and became a Board-licensed pilot in 2007. Since that time, Captain Teague has previously assisted in developing written and simulation examinations for the Pilot Trainee Training Program. He is also an SFBP operations pilot, a member of the SFBP Board of Directors, and has been a member of the PEC since March 2017.

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President Schmid acknowledged the PEC's recommendation to appoint Captain Steven Teague as Chairman. The Board members praised Captain Dowdle for his service and commitment to the PEC.

Further, Captain Dowdle stated that the PEC extensively discussed and decided to unanimously recommend to the Board that Captain John Carlier fill the vacant seat on the PEC. Captain Dowdle reported that Captain Carlier is a native San Franciscan and a graduate from Saint Ignatius College Preparatory and the California Maritime Academy. He stated Captain Carlier went on to work at Crowley Maritime and rose to the position of Ocean Going Tug Master, towing coastwise oil on the U.S West Coast, Japan, and Korea. He reported that Captain Carlier successfully completed the Board's Pilot Trainee Training Program in 1989, he has held a Board-issued pilot license for 30 years, he is an operation pilot for the SFBP, and he has been on the SFBP Board of Directors. Captain Dowdle noted that Captain Carlier could not attend to meeting due to scheduling conflicts.

**MOTION:** Vice President Connolly moved to appoint Captain John Carlier as the new member of the Pilot Evaluation Committee. Commissioner Nyborg seconded the motion.

**VOTE:** YES: Schmid, Connolly, Hoppes, Livingstone, and Nyborg.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

- C) Possible PEC recommendation to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program. Possible Board action to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program.**

There was no recommendation.

- D) Possible PEC 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.**

There was no recommendation.

- E) 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-licensed pilot.**

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There was no recommendation.

**8. Reported Safety Standard Violations – Executive Director Garfinkle  
(Reported safety standard violations occurring up to the start of the meeting will be reported on.)**

Executive Director Garfinkle reported that there were no reported safety standard violations.

**9. Reportable Piloting Events – Executive Director Garfinkle  
(Reportable piloting events occurring up to the start of the meeting will be reported on.)**

- A) Progress report of an event involving the M/V SHEILA ANN making contact with the bottom in the vicinity of Ward Cut on July 21, 2107. Possible Board action to grant an extension to present the M/V SHEILA ANN report at the Board meeting to be held on June 28, 2018.**

Executive Director Garfinkle reported that agenda items 9A and 9B would be presented together under agenda item 17.

- B) Progress report of an event involving possible interaction of the M/V LEONORA VICTORY with a barge moored at the Port of Stockton on October 23, 2017. Possible Board action to grant an extension to present the M/V LEONORA VICTORY report at the Board meeting to be held on June 28, 2018.**

- C) Progress report of the allision of the M//V ALAM SEJAHTERA with the POSCO Steel dock (PBG 4) in Pittsburg, CA on March 25, 2018. Possible Board action to grant an extension to present the M/V ALAM SEJAHTERA report at the Board meeting to be held on June 28, 2018. If an extension is sought it is due to the investigation being incomplete.**

Executive Director Garfinkle reported that on March 25, 2018, while outbound from the Dow Chemical dock (Pittsburg #6), the M/V ALAM SEJAHTERA allided with the dock face at USS-POSCO Industries (Pittsburg #4). Following the contact, the ship proceeded to Anchorage #9. He reported that the Incident Review Committee (IRC) respectfully requests an extension to present the IRC report at the June 28, 2018, Board meeting since this meeting will be 96 days, and more than 90 days since the incident date. He stated the extension is requested due to the investigation being incomplete by the May 2018 Board meeting.

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**MOTION:** Vice President Connolly moved that the Board grant an extension to the Incident Review Committee to present the report on the M/V ALAM SEJAHTERA at the June 28, 2018, Board meeting. Commissioner Hoppes seconded the motion.

**VOTE:** YES: Schmid, Connolly, Hoppes, Livingstone, and Nyborg.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

**10. Loss-of-Propulsion/Low-Sulfur-Fuel Report – Executive Director Garfinkle**

**Report on loss-of-propulsion events arising in April 2018, as reported by the U.S. Coast Guard, including those events suspected to be due to low-sulfur-fuel issues.**

Executive Director Garfinkle reported that according to the U.S. Coast Guard’s Prevention/Response report –San Francisco Harbor Safety Report for April 2018, there were five loss-of-propulsion incidents and one-loss-of-power incident. He stated that none of the incidents were reported to be attributed to fuel switching.

**11. Navigation Technology Equipment and Software Acquisition Update – SFBP Business Director-General Counsel Paetzold**

**Status report on the SFBP’s navigation technology equipment and software implementation.**

Mr. Paetzold stated there was nothing to report. He also noted the SFBP will provide the Board’s Finance Committee a comprehensive report at the Committee’s next meeting.

**12. Fee and Surcharge Recovery Actions Involving Hanjin Shipping Company – SFBP Business Director-General Counsel Paetzold**

**Status report on the SFBP’s fee and surcharge recovery actions involving pilotage services provided to vessels operated by Hanjin Shipping Company.**

Mr. Paetzold stated there was nothing new to report.

**13. Pilot Fatigue Study Progress Report – Executive Director Garfinkle/Assistant Director Cristia-Plant**

**Progress report on the Pilot Fatigue Study being conducted by the San Jose State University Research Foundation.**

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Board members were presented a draft outline of table of contents to the Bar Pilot Fatigue Report being prepared by researchers at the San Jose State University Research Foundation that was submitted by Dr. Alan Hobbs to Board staff. Executive Director Garfinkle responded to an inquiry from Vice President Connolly concerning the draft fatigue study report, and stated that he thought the Board would not receive a draft copy of study.

**14. San Francisco Bar Pilot Pension Plan Litigation – Board Counsel Eagan**

**Status report on Craig E. Reeder vs. State Board of Pilot Commissioners litigation. The Board may go into closed session to discuss with Board Counsel any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.**

Board Counsel Eagan stated there was nothing to report.

**15. Litigation Regarding Pension Payments of Capt. James Nolan – Board Counsel Eagan**

**A dispute exists concerning entitlement to a portion of the pension payments of Captain James Nolan, a retired pilot. It is likely that resolution of the dispute will involve litigation. The Board may go into closed session to discuss with Board Counsel any matters subject to the attorney-client privilege, in accordance with the Bagley-Keene Open Meeting Act, Government Code section 11126(e).**

Board Counsel Eagan stated there was nothing to report.

**16. Board discussion of best practices in Maritime Safety – Vice President Connolly**

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

Vice President Connolly stated there was nothing to report.

President Schmid turned the meeting over to Vice President Connolly to chair. Vice President Connolly called for a short recess to prepare for the presentation of the Incident Review Committee report.

**RECESS BEGAN: 10:14 A.M.**  
**RETURN TO OPEN SESSION: 10:25 A.M.**

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President Schmid recused herself from her seat on the Board, and assumed her position as a member of the Incident Review Committee along with Executive Director Garfinkle.

**17. Incident Review Committee incident report on the M/V SHEILA ANN together with a report on the M/V LEONORA VICTORY - President Schmid**

**A presentation of the Incident Review Committee report concerning the grounding of the M/V SHEILA ANN on the San Joaquin River on July 27, 2017, together with the report on the interaction of the M/V LEONORA VICTORY with BARGE M580A in Stockton, CA on October 24, 2017. Board deliberation and decision with respect to possible pilot misconduct. 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).**

Executive Director Garfinkle presented the IRC report to the Board on the events involving the M/V SHEILA ANN (SHEILA ANN) and the M/V LEONORA VICTORY (LEONORA VICTORY), and stated that both events involved Captain Orrin Favro. Executive Director Garfinkle explained that the IRC combined the two events involving the single pilot into one report, reporting on each event individually, then ending the report with an issue common to both events. Executive Director Garfinkle provided the Board with Exhibit 1—IRC Report on the SHEILA ANN and the LEONORA VICTORY, dated May 11, 2018, and Exhibit 2—USB memory stick provided by the Port of Stockton.

Executive Director provided the Board with a set of facts for the SHEILA ANN event as follows:

1. On the evening of July 27, 2017, the SHEILA ANN was downbound from the Port of Stockton with Captain Orrin Favro piloting.
2. At approximately 1835 local time, while making a port turn into Ward Cut, the ship took a sheer to starboard. In spite of Captain Favro’s best efforts, the ship continued to sheer to starboard and the ship’s bow made contact with the shallow bank just downriver of “Stockton Channel Range D Front Light.”
3. Captain Favro was able to maneuver the vessel off the bottom and continue downbound. While maneuvering back into the center of the channel, San Francisco Vessel Traffic Service (VTS) called Captain Favro on VHF radio Channel 14, inquiring about the drastic speed reduction they detected. Captain Favro informed VTS that he had made contact with the bank, but was making way again.
4. Captain Favro stated that shortly after making way, he contacted VTS using his cell phone providing information that the vessel was in ballast condition, reportedly had no damage, and that the crew was conducting soundings of the tanks.

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5. The United States Coast Guard (USCG) reviewed the event internally and due to the nature of the grounding, the experience of the pilot onboard, the geography and shoreline composition, and the minor nature of the event with little to no environmental impact, they classified the grounding as a “bump and go.” Base on that status, the USCG determined the incident was not a reportable marine casualty and closed the case following the preliminary investigation. The vessel was cleared to proceed to sea.
6. After informing the ship’s master of the USCG information, the Master made the decision to proceed to sea. The remainder of the transit was uneventful, and at New York Point Captain Favro was relieved by another pilot.

Executive Director provided the Board with a set of facts for the LEONORA VICTORY event as follows:

1. On the morning of October 23, 2017, the LEONORA VICTORY was bound from New York Point to the Port of Stockton (Port) Berth #8 with Captain Orrin Favro piloting.
2. The transit from New York Point was routine and the ship entered the Port at approximately 1100 hours. Once the vessel was safely moored at Berth #8, Captain Favro disembarked.
3. At “a later date,” Captain Favro learned from another pilot commissioned by the Port of Stockton that one of the tugboat captains was called back to the Port following the mooring of the LEONORA VICTORY to retrieve a barge that had broken loose from its mooring to the wooden pilings at the west end of the port.
4. The following day, the Port of Stockton received an email concerning a large amount of wooden debris floating in the water, including wooden pilings. Following that email, a survey conducted for damage revealed that there was severe damage to the pilings where the BARGE M580A was docked.
5. Upon inquiry by the Port of Stockton Police department, the operator of one of the tugs assisting the LEONORA VICTORY claimed the ship was traveling approximately seven knots when entering the Port and passing the barges.
6. Additionally, the Port of Stockton Police Department became aware of damage that took place at Dock #14 (Rough and Ready Island near the entrance of the Port). A Walking Boss/Longshoreman stated that when the LEONORA VICTORY passed Dock #14 he was surprised of how fast the ship was traveling. He reported that the SHAKESPEARE BAY, moored at Dock #14, was pulled off approximately six feet, and that a large tarp draped between the ship and dock was torn when the LEONORA VICTORY passed by. He did not know how much the tarp was worth.

Executive Director Garfinkle stated that the Board first learned of these events, together, on November 10, 2017, when their occurrence was brought to the Port Agent’s attention during a conversation with another Board-licensee. He further stated that once the Port Agent

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learned of these two occurrences, and confirmed them with the pilot involved, the Port Agent notified the Board as required by California Code of Regulations (CCR), title 7, section 218(d)(6).

He stated that the IRC concluded the standard of care calls for an evaluation of whether a particular pilot exercised that degree of care and skill possessed by the average pilot, and that the pilot is liable for damage caused by his failure to exercise the diligence which others pilots similarly situated would ordinarily have exercised, although the pilot is not liable for mere errors in judgment. He stated that this is a fairly high standard of care one would expect of an expert maritime pilot licensed by the Board.

Executive Director Garfinkle stated that in the event involving the SHEILA ANN, the IRC noted there was no damage reported, and the pilot's navigation actions appeared to be reasonable. In the event involving the LEONORA VICTORY, the IRC noted that there was weak evidence of perhaps a bit too much speed entering the port, resulting in minor damage. He stated that the IRC concluded that the evidence did not support a clear finding of negligence and that neither event gives cause for much more than an admonishment of caution for a relatively newly-licensed pilot who navigates on the river. He stated that more troubling to the IRC was that neither event was timely reported to the Port Agent or the Board as required by law.

Executive Director Garfinkle stated that this failure to report is a violation of CCR section 219(g)—duty of Pilots to report an incident to the Board. He also explained that HNC, section 1181 provides for revocation or suspension of a license of a pilot for reasons of misconduct, including willful violation of the rules and regulations adopted by the Board. He explained that in the context of regulatory statutes "willfully" means only a willingness to commit the act, unless otherwise apparent from the context of the statute. He stated that Section 7 of the Penal Code provides that "willfully" does not require an intent to violate the law.

Executive Director Garfinkle then discussed each event to determine whether Captain Favro violated the incident-reporting requirements in CCR section 219(g). In the event involving the SHEILA ANN, there was a grounding of a vessel, which is specifically enumerated as an incident in CCR section 219(g). He stated that there appears to be no dispute that Captain Favro knew he was involved in a grounding. He stated that Captain Favro knew the USCG had interest in the event, and when the UCSG determined it was not a serious marine incident, Captain Favro made a determination that his reporting requirements ended there. Captain Favro's determination was incorrect, and the IRC determined that his willful omission to report to the Port Agent was a violation of CCR section 219(g).

In the event involving the LEONORA VICTORY, he stated that while Captain Favro was unaware that there was wake damage at the time of the incident, he was later informed of the

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possibility of damage, and discussed with the person who purported to have communicated with the personnel at the Port of Stockton, whether “the situation with the barge” was reportable.. Again, in this case, Executive Director Garfinkle stated that Captain Favro demonstrated a willingness to not report the possible property damage to the Port Agent and the Board.

Executive Director Garfinkle stated that during Captain Favro’s interview with the IRC, he stated that he unintentionally overlooked or misunderstood his reporting requirements. In the SHEILA ANN event, Captain Favro stated that when the USCG informed him that no further reporting was required, he understood that to mean that there was no need to further report to the Port Agent and the Board as well. In the LEONORA VICTORY event, Captain Favro stated that when he learned third hand that the Port of Stockton considered it non-reportable, he chose to stay silent on that event as well.

Executive Director Garfinkle stated it is not believable that Captain Favro was unaware of his obligation to report to the State under CCR section 219(g), as a review of his contact with the Board throughout his piloting career provided ample evidence that he was aware of the Board’s regulatory oversight of the pilots it licenses. He reported that when these two events are evaluated in context, the IRC found that Captain Favro was in violation of CCR section 219(g) by not reporting the SHEILA ANN grounding and the LEONORA VICTORY wake damage to the Port Agent or the Board at all, let alone by the most rapid means available.

Executive Director described factors listed in CCR section 210(g)—Incident Review Process, that provide guidance to both the IRC and the Board when determining pilot corrective action alternatives, and stated that the IRC noted the following factors in this case:

1. The severity of the conduct is high, as it is a willful act (as opposed to a negligent act) and calls into question the moral character of the person, one of the most basic requirements of licensing under section 1175(b).
2. While Captain Favro’s piloting skills may not be called into question by these events, his pattern of conduct deprives the public of the opportunity to ascertain for certain when he is involved in a reportable incident, and deprives the public of the opportunity to determine, through chemical testing, whether he was under the influence of any substance or was intoxicated.
3. Captain Favro has not been involved in any prior incidents involving pilot error.
4. There were no injuries involved, no harm to the environment, and only minor property damage.
5. Captain Favro has been licensed since December 13, 2012, just over five years, a relatively short time.
6. There have been no prior corrective actions involving Captain Favro.
7. A suspension of Captain Favro’s license would be very likely to prevent recurrence.
8. A suspension would have a large impact on Captain Favro’s livelihood.

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9. There has been no corrective action taken by the pilot.
10. The degree of negligence in the underlying incidents was relatively slight.
11. The aggravating circumstances are that it is likely, but for second-hand reporting, that the Port Agent and the Board would never have been made aware of these underlying incidents, that the Board was deprived of the opportunity to fully investigate the incidents proximate to when they occurred and that, should alcohol and chemical testing been appropriate, the Board was deprived of that opportunity. The mitigating circumstance is that a degree of contrition was displayed when Captain Favro was interviewed.

Executive Director Garfinkle stated that the IRC concluded that Captain Favro was in violation of CCR section 219(g) of the Board’s regulations by not reporting the grounding of the SHEILA ANN to the Port Agent and the Board as soon as possible, duties permitting, by the most rapid means possible, and was further in violation of the same regulation by not reporting the property damage caused by the LEONORA VICTORY as soon as possible, duties permitting.

Executive Director Garfinkle stated that the IRC recommends:

1. That the Board file an accusation for a suspension of Captain Favro’s license for a period of 60 days;
2. That Captain Favro attend the next available Combination Course module on the “Legal Aspects of Piloting,” at his own expense;
3. That this report serve as a warning to Captain Favro to proceed carefully and prudently when entering a shallow channel where moored vessels are likely to be encountered;
4. That this investigation be closed without further action.

Vice President Connolly thanked the IRC for the through report, and noted that Captain Favro was in attendance.

Commissioner Nyborg addressed the event involving the LEONORA VICTORY and stated it cannot be expected for Captain Favro to report the incident if he was unaware of the barge breaking away from its mooring.

Executive Director Garfinkle clarified for Vice President Connolly that all groundings are internally reviewed by the USCG, and that the Captain of the Port decides if the criteria is met for a “bump and go” classification.

A brief discussion ensued concerning the distinction of the meaning of willfulness and negligence. Board Counsel Eagan noted that the term “willful” may refer to committing an act or not committing an act, both referring to an action. Executive Director Garfinkle stated

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that willful can be an act of omission, and that Captain Favro made the willful choice to not file an incident report with the Board.

Executive Director Garfinkle explained to Commissioner Hoppes that the “bank effect” that may have contributed to the SHEILA ANN grounding, takes place in narrow channels, that rivers are subject to accretion and erosion varying the contours of the river banks and bottom, and that coming into contact with the river bottom could be, but may not always be, the result of pilot error. In the case of the LEONORA VICTORY, there was insufficient data to determine if the speed of advance was unreasonable.

Captain Favro addressed the Board and expressed his remorse, noting that while piloting, quick decisions are made and that he wished he evaluated his actions differently. Captain Favro clarified for Commissioner Livingstone that approximately one week had passed from the LEONORA VICTORY event to him learning of possible damage at the Port of Stockton. Additionally, Captain Favro noted that the Port of Stockton did not consider the event a reportable item.

Vice President Connolly called for short recess and to reconvene the meeting in closed session.

<b>RECESS BEGAN:</b>	<b>11:22 A.M.</b>
<b>RECESS ENDED AND CLOSED SESSION BEGAN:</b>	<b>11:29 A.M.</b>
<b>RETURN TO OPEN SESSION:</b>	<b>12:16 P.M.</b>

Board Counsel reported that the Board determined that:

1. Captain Favro must attend the next available Pilot Continuing Education Combination Course training module on the “Legal Aspects of Piloting” at the California State University Maritime Academy at his own expense.
2. The Executive Director shall offer Captain Favro a stipulation whereby Captain Favro agrees to a 30-day suspension of his license for his failures to report an incident in violation of CCR, section 219(g), and that if Captain Favro agrees to the stipulation, the Board deems that the issue of the length of his suspension is resolved. However, if Captain Favro declines to stipulate to a 30-day suspension of his license, the Executive Director shall file an accusation with the Office of Administrative Hearings that seeks a license suspension for a period of 60 days.

Vice President Connolly stated the during its deliberation, the Board found that pilot reporting is elemental, that the Board found that there was sufficient evidence for disciplinary

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actions against Captain Favro, and that there appeared to be mitigating factors in this case. He thanked the IRC for its good faith deliberation, and Captain Favro for attending the meeting.

Vice President Connolly turned the meeting back over to President Schmid, who resumed her position as chair of the meeting.

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

There were no comments from the public.

**19. Proposals for the next Board meeting agenda.**

There were no proposals for the next Board meeting agenda.

**20. Adjournment.**

**MOTION:** President Schmid moved to adjourn the meeting. Vice President Connolly seconded the motion.

**VOTE:** YES: Schmid, Connolly, Hoppes, Livingstone, and Schneider.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved and the meeting adjourned at 12:21 p.m.

Submitted by:




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Allen Garfinkle, Executive Director