

<p><b>Meeting Date:</b>  <b>May 23, 2019</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>SELECTION APPEAL COMMITTEE MINUTES</b></p>	<p><b>Page 1 of 6</b></p>
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**Committee Members Present:**

Dave Connolly, Committee Chairman and Board President  
David Hoppes, Commissioner (Remote participation)  
8:30 a.m. (Alaska Daylight Time)  
Park Office  
Glacier Nalu Campground Resort  
(formerly known as Spruce Meadows RV Park)  
10200 Mendenhall Loop Road  
Juneau, Alaska 99801  
Captain Einar Nyborg, Commissioner

**Committee Members Absent:**

None.

**Staff Present:**

Allen Garfinkle, Executive Director  
Roma Cristia-Plant, Assistant Director  
Dennis Eagan, Board Counsel  
Luis Cruz, Associate Governmental Program Analyst  
Alethea Wong, Administrative Assistant II

**Public Present:**

Knute Mike Miller, Past Board President; Ray Paetzold, San Francisco Bar Pilots (SFBP)  
Business Director-General Counsel; Captain John Carlier, SFBP; Captain Elizabeth Bunch, 2019  
Pilot Trainee Training Program Selection Examination Applicant; Caroline Gutman,  
Photojournalist

**OPEN SESSION**

**1. Call to Order and Roll Call.**

Chairman Connolly called the meeting to order at 9:31 a.m. Administrative Assistant II  
Wong called the roll and confirmed a quorum.

**2. Approval of minutes from the Selection Appeal Committee meeting held on May 17,  
2017. (Committee Chairman)**

Committee members were presented with the draft minutes from the May 17, 2017, meeting.  
Commissioner Nyborg requested a non-substantial edit to the minutes. There was no further  
discussion.

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**MOTION:** Commissioner Nyborg moved to approve the draft minutes of the meeting held on May 17, 2017, as amended. Commissioner Hoppes seconded the motion.

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

**ACTION:** The motion was approved.

**3. Consider one or more appeals filed by applicants for the 2019 Pilot Trainee Training Program Selection Examination. (Committee Chairman)**

Board Counsel Eagan advised the Committee that they can hear all of the appeals in open session, then go into closed session to deliberate.

Executive Director Garfinkle reported that Captain Elizabeth Bunch submitted an appeal of his rejection of her application to take the 2019 Pilot Trainee Training Program Selection Examination. He also reported that Board staff have also received appeals from applicants Captains Nicholas Rogers and Michael Haight, who are disputing Board staff's experience points calculations.

In regards to Captain Bunch's appeal, Executive Director Garfinkle provided the following information to the Committee:

- He denied Captain Bunch's application due to her sea experience not meeting the minimum eligibility requirements of Title 7, California Code of Regulations (CCR) § 213 (e)(3)(B), since Captain Bunch's experience was not obtained on a towing vessel of not less than 99 gross tons engaged in ship assist, or on a bay or ocean towing vessel of less than 99 gross tons in which the combined gross tonnage of the towing vessel and the vessel(s) towed is not less than 1600 gross tons. He noted that documentation provided in Captain Bunch's application described the tug boats she worked on were 94 gross registered tons (GRT)/180 International Tonnage Convention (ITC), and 88 GRT/180 ITC, and no tonnage information was provided for any barges that were part of a towing operation.
- He and Board staff believe that the application of ITC tons is not consistent with the Board's regulations.
- He believes that Captain Bunch is a well-qualified candidate.
- He sent Captain Bunch a application denial letter on May 8, 2019, explaining his decision and the explained the difference between GRT and ITC.
- There are other issues involving licensing, and noted that she received her 1,600 GRT master endorsement on her federal license in March 2019, but that she did receive a 3,000 GRT master endorsement in 2016, which he is accepting in lieu of the 1,600

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- GRT endorsement required in the Board’s regulations, and noted that the Board’s regulations call for certain experience while holding the required master endorsement.
- Captain Bunch’s appeal letter refers to the United States Coast Guard CG-543 Policy Letter No. 11-12, which provides guidance on acceptance of sea service from mariners serving on vessels that are measured under both the regulatory measurement system of GRTs and the convention measurement system of ITC when applying for merchant mariner credentials, and that Captain Bunch contends that ITC should be accepted to comply with the Board’s regulations.
  - He noted that nothing in the Board’s regulations allow use of ITC tonnage. He has determined that the Board’s regulations reference to gross tons means GRT, and that he declined Captain Bunch’s application since her experience did not meet the minimum qualifications stated in the Board’s regulations.

Board Counsel Eagan stated that ITC was developed as an effort to standardize tonnage in the maritime industry. He stated that prior to ITC terminology, the term “tons” was used, and that “tons” has remained in in federal law in 46 Code of Federal Regulations, §10.17(b). He stated that “gross tons” is a synonym to GRT. He stated that the Committee is confronted with the Federal usage of ITC versus the Board’s regulations use of gross tons, that the two are entirely independent, and that the Board’s regulations are state law.

The Committee reviewed and discussed the historical and legal basis of the usage of the word “gross tons” in the Board’s regulations, that there is not a definition for gross tons in regulations, the connection of the Board’s regulations to federal regulations, and some of the reasoning of the Board’s current trainee program application minimum requirements in regulation, including the reasons behind significant regulatory changes that were made in 2013. Assistant Director Cristia-Plant stated she reviewed prior the rulemaking documents going back to 2000-2001, and found that the term “gross tons” was used in regulations, but that she could not find rule making documentation to explain why the Board adopted the use of the term “gross tons.”

Executive Director Garfinkle stated that many applicants and potential applicants have relied on the Board’s regulations and the not greater than 1,600 ton federal pilot license master endorsement requirement when deciding to apply or not apply to take the Pilot Trainee Training Program selection examination.

Captain Bunch thanked the Committee for the thorough review and discussion of her appeal. She stated that within the maritime community she believes that “gross tons” is means “tonnage,” and that the Board’s regulations need to be clarified on this point. She stated that she would like the opportunity to take the selection examination to determine if she is qualified, although she believes that she is. She confirmed for Chairman Connolly that she has sailed on tankers out of school, and worked out of the Masters, Mates and Pilots union hall, that she is ready to take on the challenge of the Board’s training program.

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There was a brief discussion between Committee members and members of the public concerning Captain Bunch’s maritime experience, the language of the regulation, and the intent of the regulation. Executive Director reminded the Committee that the Board was sued in 1991 over the subjective nature of the trainee examination selection process, how the Board’s current regulations are a product from that litigation, and that the Board has gone to great lengths to remove subjectively from the trainee examination selection process and that a decision to depart from the regulations for this candidate would be a step backwards.

Chairman Connolly called for a short recess and for the meeting to resume in closed session, under agenda item 4.

**CLOSED SESSION as authorized by Government Code Section 11126(c)(2), (3).**

**RECESS BEGAN: 11:03 a.m.**  
**CLOSED SESSION BEGAN: 11:13 a.m.**  
**OPEN SESSION RESUMED: 11:44 a.m.**

Chairman Connolly reported out of closed session that the Committee considered Captain Bunch’s appeal, the testimony provided at the meeting, and the information provided by Board staff and Captain Bunch, and had decided to grant admission to Captain Bunch to take the selection examination. He stated that a written Committee decision would be forthcoming.

The following two appeals were discussed, and Committee decisions were made in open session.

- 4. Consideration of one or more appeals presented in open session.**
- 5. Announcement of recommendations made in closed session, if any.**

In regards to an appeal from Captain Michael Haight, Executive Director Garfinkle reported that he determined that Captain Haight successfully met the minimum qualifications to take the Pilot Trainee Training Program selection examination, and that Captain Haight is appealing his award of zero experience points.

He stated that Captain Haight did not provide documentation that he served as master of self-propelled vessels of not less than 1600 tons as required in CCR 213 (f)(2)(B). Executive Director Garfinkle stated that Captain Haight has requested the Committee consider his Chief Mate time as equal to command time, and award related experience points. He stated that he rejected this argument on the basis that Chief Mate duties do not rise to the level of

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responsibility or accountability of the person in command of the vessel. He stated that while serving as Chief Mate, Captain Haight did not act autonomously, but was under the authority of the ship's master, and that he did not award any experience points for this point scoring category.

Executive Director Garfinkle stated that Captain Haight has also requested the Committee consider trips made on the vessel he was assigned to as master, specifically a dredge, in pilotage waters, and award related experience points. He stated experience points can be awarded if the candidate has the pilotage endorsement on his Merchant Mariner Credential for the pilotage waters where the trips were made as required in CCR213 (f)(2)(E) . He also stated that Captain Haight did not provide documentation that he held a pilotage endorsement on his federal license while serving as a pilot on own vessels of not less than 1600 gross tons for a minimum of 25 moves in pilotage waters for which the applicant held the applicable pilotage endorsement as required in CCR 213 (f)(2)(E). He stated that Captain Haight holds no pilotage endorsements , and that he did not award any experience points for this point scoring category.

The Committee discussed that Executive Director Garfinkle's determinations appear reasonable.

**MOTION:** Commissioner Nyborg moved to affirm the Executive Director's decision to not award any experience points to Captain Michael Haight pursuant to the requirements in Title 7, California Code of Regulations, § 213 (f)(2)(B), and 213(f)(2)(E), and to reject Captain Haight's appeal of Executive Director Garfinkle's determination. . Chairman Connolly seconded the motion.

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

**ACTION:** The motion was approved.

In regards to an appeal from Captain Nicholas Rogers, Executive Director Garfinkle reported that he determined that Captain Rogers successfully met the minimum qualifications to take the Pilot Trainee Training Program selection examination, and that Captain Rogers is appealing his award of ten experience points.

Executive Director Garfinkle reported that Captain Nicholas Rogers is requesting that the Board grant him an additional 15 experience points for piloting his own vessel under CCR 213 (f)(1)(D). He reported that Captain Rogers does not have the pilot endorsement printed on his license, Captain Rogers is arguing that he passed the USCG tests for these routes (as evidenced by an email from Richard Summers, the USCG person-in-charge of piloting endorsements at the Oakland Regional Exam Center), but that Captain Rogers had requested that the printing of the endorsements on his federal license be held until after all routes have

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been completed. Commissioner Nyborg noted that an applicant is charged a fee for each endorsement to be printed on their USCG Merchant Mariner Credential, and this may be why Captain Rogers requested the delayed endorsements.

**MOTION:** Commissioner Nyborg moved to grant Captain Roger's appeal to be awarded an additional 15 experience points pursuant to Title 7, California Code of Regulations, § 213 (f)(1)(D) . Commissioner Hoppes seconded the motion.

**VOTE:** YES: Connolly, Hoppes, and Nyborg.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

#### **6. Public comments on matters not on the agenda.**

There were no comments from the public.

#### **7. Adjournment**

**MOTION:** Chairman Connolly moved to adjourn the meeting. Commissioner Nyborg seconded the motion.

**VOTE:** YES: Connolly, Hoppes, and Nyborg.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved and the meeting was adjourned at 12:02 p.m.

Submitted by:




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Allen Garfinkle, Executive Director