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Committee Members Present:

Knute Michael Miller, Committee Chair and Past Board President
Joanne Hayes-White, Commissioner
Captain Einar Nyborg, Commissioner and San Francisco Bar Pilot
Robert Kosnik, MD
Brigadier General (Ret.) Chester L. Ward, MD

Committee Members Absent:

None.

Staff Present:

Allen Garfinkle, Executive Director
Roma Cristia-Plant, Assistant Director (remotely)
Dennis Eagan, Board Counsel
Alethea Wong, Administrative Assistant II

Public Present:

Captain Robert Carr, Commissioner and San Francisco Bar Pilot (SFBP); Captain Joseph Long, SFBP President and Port Agent; Ray Paetzold, SFBP General Counsel; Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; and Captains Cevan LeSieur, Andrew Murray, and Gregory Tylawsky, SFBP.

OPEN MEETING

1. Call to order and roll call. (Chair Miller)

Committee Chair Miller called the meeting to order at 9:37 a.m. Administrative Assistant II Wong called the roll and confirmed a quorum.

2. Approval of the minutes of Committee meetings held on August 21, 2019, and November 19, 2019. (Chair Miller)

Committee members were presented with the draft minutes from the Committee meeting held August 21, 2019. Commissioner Nyborg requested minor non-substantive edits to the draft minutes. There were no further comments or edits requested.

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MOTION: Commissioner Hayes-White moved to approve the draft minutes of the meeting held on August 21, 2019, as amended. Commissioner Nyborg seconded the motion.

VOTE: Yes: Miller, Hayes-White, Kosnik, Nyborg, and Ward.
No: None.
Abstain: None.

ACTION: The motion was approved.

- 3. Continue the review and discussion of the July 2018 San Francisco Bar Pilot Fatigue Study produced by San Jose State University Research Foundation and the National Aeronautics and Space Administration, the identification of key recommendations appropriate for incorporation into regulations, and the development of a fatigue risk management policy. Possible recommendation to the Board to approve recommendations for a fatigue risk management policy from the Committee from which fatigue mitigation regulations will be drafted, and to direct the Committee and Board staff to commence draft regulation writing. (Committee Members and Board staff)**

The Committee reviewed a draft of the Pilot Fitness Committee Recommendations with Respect to Fatigue Management Markup Worksheet V. 4.3 – December 20, 2019. Chair Miller stated that he sent out an earlier version of the draft recommendations (Markup Worksheet V. 4.1) for comment and input, that the current draft V. 4.3 contains input from the Port Agent, and that he received comments from Mr. Jacob in a letter dated December 19, 2019, which has been provided today to the Committee and the public.

Study Recommendation #1: Interventions intended to prevent or manage fatigue should be introduced as part of an overall Fatigue Risk Management System (FRMS), some elements of which are already in place.

Board Counsel Eagan stated that this Committee recommendation calls for the Board to adopt a regulation requiring the Port Agent to develop an FRMS that would be applicable to all BOPC-licensees, and that the Board would have the opportunity to review and approve the FRMS, as well as any future changes to the document. Dr. Kosnik stated a concern that the FRMS would be a high-level policy document, and queried in what document would the specific fatigue mitigation requirements would be enumerated, such as reporting requirements. Board Counsel Eagan and Chair Miller clarified for Dr. Kosnik that the Committee is drafting policy recommendations to the Board arising from the recommendations contained in the pilot fatigue study, and that future Board regulations and the FRMS itself will contain specificity as to the various fatigue mitigation requirements. Commissioner Nyborg added that the pilots already have some elements of an FRMS in place, and that Board regulations would be in addition to fatigue measures contained in an FRMS.

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Chair Miller and Mr. Jacob both commented that the Committee’s recommendations should consistently include directions to the Port Agent regarding the development and maintenance of an FRMS.

There was a general discussion of the process of how to handle changes to a Board-approved FRMS, including reporting to the Executive Director when the Port Agent makes changes to the FRMS, and for the Executive Director to report to the Board, to potentially viewing changes that the Port Agent makes to the FRMS akin to emergency regulations that allow the changes to be in effect for a short period of time. There was consensus among Committee members that a process for addressing changes the Port Agent makes to a Board-approved FRMS should be considered more closely at the time the regulations are written.

Study Recommendation #2: A limit on the duration of work periods is advisable. The current Bar Pilot Association policy (a limit of 12 hours) appears to be appropriate

Chair Miller stated that this Committee policy recommendation now authorizes the Port Agent to go beyond a hard-stop work-hour limitation of 14 hours, when necessary. Commissioner Nyborg agreed that the Port Agent must be given flexibility to allow longer work periods in unusual circumstances. Chair Miller stated that there is a consensus among the Committee members on this policy recommendation to the Board.

Study Recommendation #3: The maximum duration of a night work period without a rest opportunity should be less than the allowable duration of a daytime work period.

Chair Miller discussed how to characterize the night time hours between 0001-0559, or 0000-0600, and Commissioner Nyborg stated that he agrees to the latter since the current proposed committee policy states that a night work period includes time “between” those two time periods.

Board Counsel Eagan explained that there were at least three different interpretations of a “night work period,” but how it is currently construed is any work that is done during the night work period hours results in the entire shift being characterized as a night work period, and cited an example of a work shift that started at 1800 and ended just after midnight at 0005, would be a 6 hour and 5 minute night work period. Port Agent Long stated that he agreed with that interpretation. Board Counsel Eagan stated that there then would be no need for the bracketed optional language to define a night work period.

There was consensus by the Committee that this recommendation should proceed as written.

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Study Recommendation #4: A limit to the number of consecutive night shifts is advisable. A limit of two consecutive night shifts would be most desirable; however, a limit of three consecutive night shifts may be more practical.

Mr. Jacob stated that the Port Agent is responsible for assigning pilots to vessels, and this recommendation should be written to direct the port agent to limit the number of consecutive night shifts. Board Counsel Eagan stated that this policy recommendation could be written similar to others and state that the BOPC, by regulations, would require the Port Agent ensure that pilot assignments do not exceed a maximum of 18 hours of night-time hours worked in any 72-hour period.

There was agreement on this policy recommendation.

Study Recommendation #5: The BOPC should explore the reasons for the early morning peak in arrivals and consider options to distribute arrivals more evenly thought the 24-hour day.

There were no comments regarding this draft policy recommendation to the Board.

Study Recommendation #6: The BOPC should consider whether a change to the minimum advance notice required when ordering a pilot would help to increase the predictability of pilot schedules.

Chair Miller noted that there was a consensus among the Committee members on this policy recommendation, and added that the Board should review and approve any FRMS changes to this policy. Mr. Jacob noted that the Port Agent should be directed to set the minimum advance notice requirements. Commissioner Nyborg expressed a concern about setting forth a regulation on advance notices, and the time it may take to obtain Board or regulatory approval to change an advance notice requirement in the future if it is necessary to do so for safety purposes. Executive Director Garfinkle stated that there is currently an 8-hour notice to request a pilot for work during early morning hours so that pilots have some predictability in their pre-night work rest periods.

Study Recommendation #7: The BOPC should consider whether technological solutions (such as software applications) could enable the timing of piloting assignments to be predicted with greater accuracy.

Chair Miller stated that the current policy recommendation is that the Board recommend no regulatory action on this study recommendation. He further noted that Mr. Jacob has a valid point in his comments given future changes in technology the Committee could recommend to the Board to task the Pilot Fitness Committee with reviewing and considering new technology for dispatch and personnel management and watchkeeping from time-to-time or on a regular basis consistent with the FRMS review.

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Study Recommendation #8: The BOPC should consider whether pilots who are on-call for 14 days should be provided with a rest break at or around the mid-point of the 14-day period. A midpoint break of at least 24 hours may be appropriate. If such a break does not occur naturally due to the movement of the board, it may be feasible to delay the pilot's BoB [bottom of the board] time to achieve this.

Mr. Jacob commented that there is no definition for "service" nor "on-call" or "on-call service," but was amenable to discussing or creating such regulatory definitions. Commissioner Nyborg commented that these terms have been commonly used for quite some time.

Mr. Jacob also stated that the policy recommendation should be written to require the Port Agent to limit pilot assignments to a maximum number of days worked to 14 or 15 with a mid-point rest period consistent with other policy recommendations.

Study Recommendation #9: The BOPC should consider ways to minimize advancing shift rotation. An advancing shift rotation occurs when each work period in a series has a start time earlier than that of the preceding work period.

There were no comments regarding this draft policy recommendation.

Study Recommendation #10: There should be a Minimum Rest Period (MRP) between work periods. The current Bar Pilot Association policy (12-hour MRP) appears to be appropriate.

There were no comments regarding this draft policy recommendation.

Study Recommendation #11: Minimum Rest Period (MRP) exceptions should be monitored to ensure that no individual pilot is disproportionately burdened with MRP exceptions.

There were no comments regarding this draft policy recommendation.

Study Recommendation #12: The Committee should consider whether an extended rest period is needed following an MRP exception.

There were no comments regarding this draft policy recommendation.

Study Recommendation #13: Recalls of pilots from an off-call period should be managed to minimize disruption of their recovery rest prior to the start of their next on-call.

Consistent with his comments on study recommendation #8, Mr. Jacob prefers that the policy recommendation remove the terms "off-call" or "on-call" and instead address assignments

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affirmatively, and that he prefers this policy recommendation direct the Port Agent by regulations to minimize assignments of pilots who are observing a recovery rest period or otherwise unavailable for regular assignments by the Port Agent. Commissioner Nyborg agreed to the term, “recovery rest period.”

Study Recommendation #14: Pilots should receive an appropriate recovery period after awakening, before boarding a ship. A longer recovery period will be needed when the awakening occurs during the circadian low, or when the pilot has been asleep for more than 30 minutes.

Board Counsel Eagan stated that this policy recommendation should, similar to other policy recommendation, state that the Board, by regulations, would direct the Port Agent to require the FRMS to include information for pilots, dispatchers, and pilot vessel crews with respect to an appropriate recovery period after awakening. He stated the in the airline industry, a variety of personnel are required to be trained about allowing for an appropriate recovery period after awakening, not just pilots.

Port Agent Long expressed a concern that the FRMS be directed to pilots, and that this policy recommendation requires training of additional employees that should not necessarily be included in an FRMS. Dr. Kosnik agreed that employees who work directly with pilots need to be trained on the recovery period that pilots need after awakening. Board Counsel Eagan noted that the FRMS should be applicable to all involved in fatigue mitigation.

Study Recommendation #15: The BOPC should receive information on the number of Bar Pilots available on the Board.

Chair Miller noted that this study recommendation and the next one are related. He stated that this policy recommendation requires the Port Agent to report monthly to the Board the average number of pilots on the Board during the reporting period, but does not define reporting period. He expressed a concern about obtaining data that would not be useful to the Board, and require the Port Agent to report data above and beyond the reporting that is already required in the Title 7, California Code of Regulations §237(d). Port Agent Long stated that he believed the §237(d) data provided to the Board annually already adequately covers this study reporting recommendation.

Assistant Director Cristia-Plant noted that this study recommendation is recommending data on the number of available pilots, not the number of pilot assignments per day. She also noted that the 237(d) report is annual, not monthly. Mr. Jacob stated that the information would provide how many pilots are available for assignments, and that this information would be important to the Board. Commissioner Hayes-White described examples of her fire department statistics, and suggested that maybe the Port Agent could report the average pilot availability per day for the month in the Port Agent report.

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Chair Miller stated that maybe additional research is needed to determine if the Committee should recommend a policy to the Board on this study recommendation.

Study Recommendation #16: Implement solutions to increase the number of Bar Pilots available on the board at any given time. Approaches could include reducing the amount of “other duties” performed by Bar Pilots, or increasing the number of Bar Pilot Licensees.

Mr. Jacob commented that the FRMS should include a provision to maximize the work availability and efficiency of the pilots, but that PMSA objects to the terms “on the board,” and believes that the policy recommendation can be written affirmatively to require the FRMS to include various measures to increase assignments for pilots who are not observing a recovery rest period.

Study Recommendation #17: Implement a system to enable pilots to report fatigue and remove themselves from the roster without consequences when they are significantly fatigued. It will be necessary to address the cultural barriers that could prevent such a system from working.

There were no comments regarding this draft policy recommendation.

Study Recommendation #18: Provide pilots with educational material on the effective use of caffeine, and other aspects of good sleep hygiene.

There were no comments regarding this draft policy recommendation.

Study Recommendation #19: Provide advice to pilots on how to improve their home sleeping environments. This could include educational material for families on how they can contribute to Bar Pilot rest and alertness.

There were no comments regarding this draft policy recommendation.

Additional Recommendation #20. Pilot Trainees should, when handling vessels, be subject to the same duration of service and other limitations as those imposed on serving pilots.

There were no comments regarding this draft policy recommendation.

Additional Recommendation #21. To ensure that pilots traveling to or from mandated training at facilities distant from the waters under the jurisdiction of BOPC arrive able to pursue their studies or their piloting duties upon return in rested and alert condition, pilots traveling in excess of eight hours and at BOPC expense for training mandated by statutes, regulation, or BOPC action, would be required to travel in a transportation mode that allowed for 180-degree horizontal seating.

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Mr. Jacob stated that PMSA is opposed to this policy recommendation, that the recommendation is not based upon a fatigue study recommendation, and that PMSA objects to any rulemaking that mandates reimbursement for business class air travel. Commissioner Nyborg expressed a concern about the competitive bidding requirements for Board contracts, and the competitiveness of a foreign training company if the cost of business class air travel was included in a contract proposal analysis. Chair Miller noted that if flights are booked early enough, air fare can be obtained at reasonable rates. He also noted that the Board pays a lot to train pilots, and that the Board should ensure that the training it pays for is optimized.

Additional Recommendation #22. Incident Review Committee assessment of whether fatigue contributed to an incident.

Chair Miller commented that the National Transportation Safety Board focusses on fatigue in its accident investigation reports. There were no other comments regarding this draft policy recommendation.

4. Public comments on matters not on the agenda.

There were no comments from the public on matters not on the agenda.

5. Schedule the next Committee meeting, and proposals for items on the next meeting agenda.

Commissioner Carr noted that the Pilot Power Committee would be meeting in February to discuss the January Pilot Retirement Survey. Committee Chair Miller obtained input from Committee members, and announced that the next Committee meeting is scheduled for January 27, 2020 at 9:30 a.m.

6. Adjournment.

Committee Chair Miller, without objection, adjourned the meeting at 12:03 p.m.

Submitted by:



Allen Garfinkle, Executive Director