

<p>Meeting Date: August 27, 2020</p>	<p>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</p> <p>BOARD MEETING MINUTES</p>	<p>Page 1 of 23</p>
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Board Members Present

Dave Connolly, President, Public Member
 Joanne Hayes-White, Vice President, Public Member (via telephone; left at 11:23 a.m.)
 Captain Robert Carr, Pilot Member (via telephone)
 David Hoppes, Dry Cargo Industry Member (via telephone)
 Captain Einar Nyborg, Pilot Member (via telephone)
 Captain Oscar Prada, Tanker Company Industry Member (via telephone)
 Stephanie Dougherty, Designee of the Secretary of the California State Transportation Agency (CalSTA) (via telephone)

Board Members Absent

Vacant, Public Member

Board Staff Present

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

Public Present (in person)

Captain Joe Long, San Francisco Bar Pilots (SFBP) President and Port Agent; Captain John Carlier, SFBP; Forrest Booth, Kennedys Law LLP; Captain David Burchard, former BOPC Trainee; and Rex Clack, Esq.

Public Present (via telephone)

Knute Michael Miller, Past Board President; Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; Captain Anne McIntyre, SFBP Business Director; Captains Steven Teague and Christopher Pyne Mercier, SFBP; Christopher Kieliger and Richard Wootton, Cox Wootton Lerner Griffin & Hansen LLP; and Kevin Baldwin, Bullivant Houser.

OPEN MEETING AGENDA

1. Call to Order and Roll Call (President Connolly)

President Connolly called the meeting to order at 9:30 a.m. Administrative Assistant II Wong called the roll and confirmed a quorum.

2. Review and approval of Board meeting minutes (President Connolly)

Board action to approve the minutes from the Board meeting held on July 23, 2020.

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Board members were presented with the draft minutes from the July 23, 2020, meeting. Board Counsel Eagan requested minor edits to the minutes. There was no further discussion.

MOTION: Commissioner Carr moved to approve the draft minutes of the meeting held on July 23, 2020, as amended. Vice President Hayes-White seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.

NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

3. Public comment on matters on the agenda or not on the agenda.

There were no public comments.

4. President Announcements and Activities (President Connolly)

President Connolly announced that he made the following assignments to the Pilot Boat Advisory Committee: Commissioner Carr, chair, Commissioner Prada, and Martin (Marty) Robbins, technical expert, San Francisco Bay Ferry.

He also announced that he participated in discussions with the SFBP and shipping industry representatives regarding the pilots' fiscal issues this year stemming from the pandemic. He reported that the discussions were conducted in good faith, but no solutions were found.

5. Board Member Announcements and Activities (Board Members)

Commissioner Hoppes reported that since the last Board meeting he had discussions with SFBP President Long, Captain McIntyre, and Mr. Jacob regarding the pilots' fiscal issues.

6. Directors' Report (Executive Director Garfinkle/Assistant Director Cristia-Plant)

A) Correspondence and activities since the Board meeting held on July 23, 2020.

Executive Director Garfinkle reported on the following:

- On July 23, 2020, Board staff received a copy of a *Notice to Vessels and Agents in Response to COVID-19*, dated July 20, 2020 issued by the San Francisco Bar Pilots Association, and that the notice sets forth sanitation and operating instructions for vessels using pilots.
- On July 24, 2020, Board staff received the PMSA *West Coast Trade Report* for July 2020.

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- Board staff completed the *Workforce and Succession Plan 2020 -2025*. He noted that these plans are required by the state and such planning is good business practice.
- On July 27, 2020, he sent a letter to Captain Marie Byrd, Commander of Sector San Francisco, and Captain of the Port, regarding the possibility of an alternate testing facility for BOPC pilot trainees while the Regional Exam Center (REC) is closed due to the pandemic.
- On August 3, 2020, he received a subpoena from John Hillsman requesting a “person most knowledgeable” to participate in a deposition on August 20, 2020, regarding various aspects of the Pilot Fitness Study, prepared by Dr. Kosnik, and to provide statistics about pilot retirements. He also reported that Board staff were able to prepare a written response, and provide non-identifiable pilot retirement statistics, such that the deposition was not necessary.
- On August 6, 2020, Board staff received word that another Sandy Hook pilot died while boarding a vessel after falling from a ladder when boarding a tanker on August 5, 2020.
- On August 13, 2020, he sent a letter to Captain Francois Mayor, Director of Artelia, to inform him that the Board would be cancelling the manned model training class scheduled for September 7 – 11, 2020, due to travel restrictions to the European Union.
- On August 17, 2020, Trainee Captain Nelson submitted a six-month leave of absence request from the pilot trainee program to be discussed later at today’s meeting.
- On August 18, 2020, Board staff received a letter from SFBP President Long, that was sent to their customers regarding requirements for payment of pilot invoices.
- On August 20, 2020, he sent a letter to Conte Cicala of Clyde and Co. requesting to discuss his objections to the production of the voyage data recorder (VDR) information from the P/V STAR PRINCESS incident.
- On August 21, 2020, he and President Connolly received a letter from Richard Wootton of Cox Wootton Lerner Griffin Hansen & Poulos, LLP, encouraging the Board to pursue the BOPC’s subpoena of the VDR data in the P/V STAR PRINCESS incident.
- On August 24, 2020, Board staff received a copy of MSIB 08-20, change 3 titled, *COVID-19 – Mariner Credentials*, and noted that the MSIB extended the effective dates of certain mariner credentials and medical certificates, but does not lessen the standards.
- On August 25, 2020, Board staff received a notice from the National Maritime Center titled, *Merchant Mariner Credential Examinations Coronavirus 2019 Update*, and noted that efforts were being made to open all regional exam centers and to make other arrangements for exams.
- Also on August 25, 2020, Board staff received the PMSA *West Coast Trade Report* for August 2020.

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- Also on August 25, 2020, Board staff received a *gCaptain* article by Captain George Livingstone titled, *Crossing the Bar*, which discusses the transportation of goods, and the dangers mariners encounter, especially pilots.
- Since the last Board meeting, Board staff received three letters from BOPC-licensees expressing an intent to retire from piloting on September 30, 2020, including Captain Martin, and that the Board would not need to revisit his request to obtain manned model training from a facility in the United States instead of at the Board's current contractor in France.

B) Report on pilot licensing matters since the Board meeting held on July 23, 2020.

Executive Director Garfinkle reported that since the July Board meeting, the Board renewed the licenses of Captains Starnitzky, Merritt, and Laakso.

C) Report on Board surcharges.

Executive Director Garfinkle reported that the Board received a wire from SFBP for the surcharges collected in July 2020 in the amount of \$138,805.84, itemized as follows:

- Board Operations Surcharge: \$77,680.84
- Pilot Trainee Surcharge: \$42,360.00
- Continuing Education Surcharge: \$18,765.00

D) Report on legislative activities and contractual matters.

Assistant Director Cristia-Plant reported the AB 1372 Bonta bill was last amended on June 22, 2020, and is now a bill to change the approval process for setting pilotage fee rates from the Legislature to the Board. She noted that the bill also makes other technical changes to the Board's statutes. She stated that on July 1, 2020, the bill was referred to the Senate Committee on Governmental Organization, but there are no committee meetings scheduled before the end of the legislative session.

Assistant Director Cristia-Plant reported the following on contractual matters:

- A new three-year interagency agreement for \$112,123 with the California Department of Transportation for information technology support has been executed.
- The contract amendment with the San Jose State University Research Foundation to add \$75,000, and three years to the contract term was approved by the Department of General Services, and is not fully executed.
- The contract amendment with Artelia for a name change, and the two renewal contracts with the California State University Maritime Academy for pilot continuing education and trainee training program selection exam services are fully executed,

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- and all three were sent to the Department of General Services for final review and approval.
- A new contract with the Maritime Pilots Institute for \$4,300 to provide SEAIq navigation software training to 4-5 pilots is executed and in final review at CHP.
 - Work is continuing on the manned model training provider procurement. The Pilot Continuing Education Committee Chair will update the Board on the Request for Information from manned model training providers later at today's meeting.

Board President Connolly, and Commissioners Nyborg and Prada thanked Board staff for their efforts with contracts and the succession and workforce plan as they are very time consuming projects. Commissioner Nyborg also thanked Executive Director Garfinkle for contacting the U.S. Coast Guard about alternate testing locations so the pilot trainees can continue with training.

7. Port Agent's Report (Port Agent Long)

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

Port Agent Long reported that the following pilots have been absent for medical reasons (AFMR) and their initial absence date:

- Captain Carlier – September 11, 2019
- Captain Kirk – November 27, 2019
- Captain Martin – April 14, 2020
- Captain Pate – May 25, 2020
- Captain Kasper – June 11, 2020
- Captain Tylawsky – June 15, 2020

He 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 less than 10 hours, mitigating measures are employed by the SFBP. He reported that mitigating measures include, but are not limited to, suspending continuing professional development protocols, canceling schedule meetings, canceling previously granted compensated time off requests, suspending SFBP internal working rules, and calling in off-watch pilots.

He reported that there are currently 54 licensed pilots, there were 4 MRP exceptions in July, and that the shortest rest period was 10.5 hours.

Port Agent Long expressed a concern with the pilot medical assessment services received from the University of California of San Francisco (UCSF). He reported that there have been challenges with completing the assessment process for pilots returning to work after

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medical leaves of absences and for license renewals. He stated that while there have been moments of excellence with UCSF's service, the current medical assessment process is taking too much of everyone's time. He noted that there is a lack of availability of appointments, lack of response from UCSF staff, pilots trying to get back to work and cannot because not all medical clearances have been obtained, and some license renewals were issued near the renewal dates although the medical exam and testing process was completed up to and more than a month earlier. He requested that the Board potentially consider getting out of the UCSF contract and contracting with UC Davis or another private medical entity. Commissioner Nyborg agreed with Port Agent Long's comments.

Past Board President and Pilot Fitness Committee Chair Miller reminded the Board that state contracting rules require that documentation that there isn't a capable governmental provider available prior to contracting with a private vendor, and that contracts with private vendors are typically renewed every couple of years, which would be time consuming and not necessarily conducive to obtaining consistency in medical assessments. He added that the Pilot Fitness Committee will meet before the September Board meeting, and the issues with the UCSF contract will be discussed by the Committee.

B) Monthly report on SFBP ship piloting business activity.

For the month of July 2020, Port Agent Long reported the following:

- P/V SAN FRANCISCO was in dry dock between July 15, 2020 through August 17, 2020, and is still out of service due to a failure of the main engine battery charger. He reported the vessel is being repaired and expected to resume services on August 27, 2020.
- P/V CALIFORNIA was out of service from August 18, 2020 through August 24, 2020, due to a refrigerator failure.
- P/V DRAKE returned to Pier 9 from the pilot station on August 20, 2020, due to a port generator failure, and that the vessel was repaired and resumed services within a few hours.

Port Agent Long reported that the billed vessel moves for July 2020 were as follows:

- Bar Crossings: 445 moves
- Bay Moves: 118 moves
- River Moves: 46 moves
- Total Moves: 609 moves
- Gross Registered Tons (GRT): 26.4 million

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He also reported that when comparing 2020 year-to-date vessel move data with the same period in 2019, total moves were down 15.4% and GRT was down 14.2%.

Port Agent Long then discussed the pilots' fiscal situation and stated that he had several meetings with stakeholders and others this past month, including representatives from PMSA, Chevron Corporation, the Board, CalSTA and the Governor's Office, to discuss how to fill an approximate \$10 million gap (an over 20% reduction) in pilotage revenues this year related to the pandemic, and that while a variety of ideas were discussed and evaluated, including borrowing from the BOPC's Board Operations Surcharge revenues and a temporary mill rate adjustment, no solutions were found. He also stated that requiring consensus on pilotage rates has been a fool's errand, that PMSA was not being an honest broker, the clock has run out on finding a legislative solution for this year, the situation remains more urgent than ever, and the system is broken.

Port Agent Long proceeded to discuss issues related to the pilots' current fiscal situation, including:

- The current fiscal situation is fourteen years in the making with no pilotage rate adjustments since 2006, and the pandemic has pushed the situation to a crisis.
- The state and port stakeholders, with the exception of Stockton Port, have been standing on the sidelines, unwilling to act except to suggest that the pilots reach a consensus with rate payers in spite of warnings that the critical infrastructure is collapsing.
- Due to financial pressures, the pilots are now evaluating service reductions to keep the pilotage business afloat.
- In the last fourteen years, the Board has sent the Legislature two separate pilotage rate increase recommendations, and both times the related legislation was politically stopped by PMSA.
- The pilots have been advised by legislators to develop a new rate-setting process that removes the legislature from the process, and the pilots have done that twice only to have that effort thwarted by PMSA. He stated that PMSA is very effective in their advocacy on behalf of their members and achieving their desired outcomes, which is a big part of why pilots are in this fiscal situation now.
- The Bay Area consumer price index increase has increase 41% over the last 14 years.
- The lack of rate increases and increases in Bay Area cost of living has impacted the ability to attract and retain pilots, and hampered the pilots' ability to make adequate investments in equipment maintenance, facilities, employees and other infrastructure.
- Surcharges to fund limited capital projects do not replace the lack of adjustment in the underlying pilotage rates.
- Pilots are now retiring sooner than they would have otherwise, qualified younger pilots are applying to other pilot groups, and trainees are considering leaving the program.

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- Pilot business expenses have been cut to the bone, investments have been deferred, and pilot distributions have been cut 45% this year. The pilot association cannot sustainably function at this level.
- PMSA has been very clear in its position that they do not consider pilot distributions as an “operating expense” necessary to support the pilotage system.
- Pilot net income distribution reductions are creating significant challenges in the pilot workforce. Morale is very low. He also questions his desire to remain a pilot after making huge sacrifices to develop a narrow frontline worker skill set.
- He is concerned about being sued by the shippers if services are reduced, and that the SFBP could not afford to retain in-house counsel because the association could not afford to pay him a sufficient compensation.
- BOPC is understaffed and lacking the resources to perform timely mission critical functions including investigations and staying on top of pilot medical assessments and fitness and fatigue regulations that would improve safety in BOPC’s jurisdiction.
- Commissioner positions routinely remain unfilled for no apparent reason, and with the lack of a public member the Board lacks a non-industry perspective when it is desperately needed.

Port Agent Long further discussed next steps he intends to take to achieve a resolution to the pilots’ fiscal issues:

- He will be meeting with cabinet-level staff in the Governor’s Office, and request a forum to resolve the issue since the pilots have exhausted all other short and long-term options and need solutions.
- He would like a commitment from the Board and from CalSTA to help resolve not only the short-term fiscal crisis, but to develop a rate-setting process that is workable, along with the commitment to advance any solutions through the legislative process.
- To manage the pilot association’s cashflow, the SFBP will begin next month to actively manage payments on outstanding invoices, with payments due 30 days from the invoice date.

Port Agent Long thanked the Board and its staff, Secretary Kim and staff from CALSTA and the Governor’s Office for their time and attention, and for their continued engagement to finding an acceptable solution to the pilots’ fiscal issues.

Executive Director Garfinkle noted that Board staff is available to provide support to maintain a viable pilotage system, and noted that that BOPC-licensees are critical to a much larger regional and state commerce system.

Commissioner Carr stated he is frustrated as a pilot and a commissioner, and would like the Board to be more proactive. He stated that two rate hearing attempts have failed already. He noted that while PMSA has publicly expressed concerns about the economic

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cost of recent environmental requirements in California and is vigorously representing its membership, the shippers are making record profits according to recent industry publications. He stated that the Governor needs to take care of the San Francisco Bay and its infrastructure, and that the pilots are part of that infrastructure.

Port Agent Long responded to Commissioner Prada that there is currently no matrix available regarding the reduction in services. However, he has identified service reductions ranging from low to high impacts, including managing timely invoice payment by shippers, eliminating the use of the #3 station boat, reducing the pilot boats on the river, reducing the availability of 24-hour pilot dispatch services, reducing the off shore station boat hours (thus affecting on-demand arrivals), and moving to scheduled appointments for pilot services.

Executive Director Garfinkle confirmed for Commissioner Hoppes that only the Navigation Technology Surcharge reimburses the pilots for costs expended for navigation technology, and when it is charged, the Pilot Boat Surcharge does the same thing. He stated that all other Board surcharges are used to pay for Board operating costs and Board programs. He also commented that a new surcharge will require legislation that could take a year or two to be enacted.

Ms. Dougherty thanked everyone for the information shared. She stated that she has no additional information to add at this time, and that she encourages the continued dialog between the stakeholders.

Mr. Jacob disagreed with the Port Agent Long's comments that PMSA is not being genuine and truthful, requested that the Port Agent withdraw his comments about PMSA not being an honest broker, and stated that PMSA is advocating for its members interests honestly and in a straightforward manner. He stated that the system works best when it works for all stakeholders, that SFBP should not give up on trying to find a consensus and working towards compromise, that even in a formal ratemaking setting there is an important role for compromise, and that PMSA is open and available to continue discussions at any time if the SFBP would like to continue the dialog. He expressed a concern about the potential reductions in service to vessels if the pilots' demands to increase pilot revenues were not met as discussed by the Port Agent, and stated that the shipping industry would formally complain to the State and other appropriate authorities if the SFBP is actively withholding pilotage service or threatening to withhold service in exchange for approval of higher pilotage rates or revenues.

President Connolly stated he agrees with Mr. Jacob about the need to work towards a consensus and is open to considering solutions.

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Port Agent Long thanked everyone for their comments, and stated he will have more to report at the September Board meeting. Commissioner Hoppes expressed a desire for the Board to discuss the pilot's fiscal issues and potential solutions at the next Board meeting.

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.

8. Pilot Evaluation Committee (Captain Teague)

A) Report on the Pilot Evaluation Committee (PEC) meeting held on August 19, 2020.

PEC Chair Captain Teague reported on the following:

- The PEC met on August 19, 2020, and in attendance were Committee members Captains Haggerty, Robinson, Slack, Wehr, and Teague.
- The PEC provided Executive Director Garfinkle a report of trainee activity for July 2020.
- Trainees were interviewed and counseled individually in closed session by the PEC members on their progress in the Pilot Trainee Training Program.
- The eight current trainees include Captains Adams, Benedict, Deisher, Murney, Nelson, Rogers, Stevens, and Weber. The range of time in the program for these trainees is 1 month to 19 months.
- Captains Nelson and Stevens have their full unlimited federal pilotage endorsements on their federal mariner credentials. Captain Stevens is in the evaluation stage of the Pilot Trainee Training Program, and is handling vessels as much as possible, with an occasional observation trip to watch a licensed pilot perform their duties. Executive Director Garfinkle has granted Captain Nelson a 30 day leave of absence from the training program.
- Captains Adams, Benedict, Deisher, Murney, and Rogers are in the final stages of acquiring route trips, and are handling vessels in areas where they have their endorsements.
- The newest trainee, Captain Weber, started the program on August 5, 2020, with an orientation followed by a shipboard assignment. He is presently only observing as he becomes familiar with the training program.

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- These six trainees are in a holding pattern with testing for federal pilotage endorsements as the United States Coast Guard (USCG) has suspended testing during the present pandemic.
- The USCG still does not have a date when license endorsement testing will resume, but the state and federal governments are discussing possible solutions to resume testing.
- All trainees are presently meeting the recommended benchmarks in the program and are progressing at their own rate.
- The next PEC meeting is scheduled for September 16, 2020, at 7:30 a.m. at the Board office.

B) 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.

C) 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.

PEC Chair Captain Teague reported that trainee Captain David Burchard's trainee contract expired on July 16, 2020, and the PEC concluded its review of trainee Burchard at its meeting on August 19, 2020. He stated that a motion was made to recommend issuance of a program Certificate of Completion to trainee David Burchard, and the motion failed with one vote in favor and four votes against. He reported that the Committee will develop a written explanation setting forth the basis for the Committee's decision to not recommend issuance of a certificate of completion and will present this to the Board at a later date.

Forrest Booth, legal counsel for trainee Captain Burchard addressed the Board, and stated the following:

- Captain Burchard and the legal team at Kennedys Law await the PEC's written determination regarding its vote to not recommend to the Board to grant his client a certificate of completion from the pilot training program.
- He asked the Board and the PEC to treat Captain Burchard fairly, and noted that Captain Burchard was in the training program for 3 years and was always told that he was doing well, but for him not to receive a certificate of completion seems unfair. He referenced due process requirements in fifth and first amendments of the U.S.

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Constitution that ensure fairness, and that the evaluation of a trainee should not be based upon likes or dislikes.

- He referenced that labor laws being pro-employee, and noted that based on comments made at today’s Board meeting, not everyone is a friend of the SFBP, and is concerned that some who are not, may use denial of a certificate of completion to his client against SFBP.
- He noted that the Board has spent \$350,000 on Captain Burchard’s training, and even sent him to France for special training. He stated that if the Board denies graduation to Captain Burchard, it will surely be written about in maritime publications, and could be a black eye to the Board.

Port Agent Long commented that he appreciated Mr. Booth’s comments, and expressed a concern regarding a potential conflict of interest since Mr. Booth has worked with the pilots in the past on the Cosco Busan case and on pilotage rate cases. Executive Director Garfinkle clarified that Captain Burchard is not a state employee, is not entitled to state employee benefits, and stated that trainees receive an educational stipend when they are in the pilot training program. Board Counsel Eagan reminded the Board that the issue of Captain Burchard and a certificate of completion from the pilot training program is a matter of due process, and that the Board should await the PEC’s written reasons for their decision before pursuing further discussion.

D) 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.

There was no recommendation.

President Connolly called for a short recess. Vice President Hayes-White left the meeting at 11:23 a.m.

RECESS STARTED: 11:23 a.m.
RETURNED TO OPEN SESSION: 11:34 a.m.

**9. 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 on July 28, 2020, he received a report of a pilot ladder deficiency report that took place on July 25, 2020, prepared by Captain Dan Larwood, and noted that the report stated that while embarking the M/V FUJI GALAXY, the pilot noticed that the brow from dock to ship was too steep, the treads were insufficient for stable

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footing, and the vessel needed a longer brow to facilitate safe boarding. He reported that no action was taken because the ship was outbound, and he did not receive the deficiency report until three days after the incident.

**10. Incident Review Committee—Reportable Piloting Events (Executive Director Garfinkle)
(Reportable piloting events occurring up to the start of the meeting will be reported on.)**

Executive Director Garfinkle stated that he is aware of the Board’s concern regarding the length of time it is taking to complete the Incident Review Committee (IRC) reports, that Board staff are challenged with all of the tasks at hand, that the IRC will not serve the pilot, the shipping companies or the public well if the IRC rushes through the incident reports, and that he is moving forward on all the reports in the order that the incidents occurred as quickly as possible.

A) Status report on the event involving the allision between the T/V POLAR DISCOVERY with the T/V TORM RESILIENCE that was previously moored at the Richmond Long Wharf in Richmond on November 24, 2019. Possible Board action to grant the Incident Review Committee an extension to present the T/V POLAR DISCOVERY report at the Board meeting to be held on September 24, 2020.

Executive Director Garfinkle reported that on November 24, 2019, the T/V POLAR DISCOVERY allided with the T/V TORM RESILIENCE that was previously moored at the Richmond Long Wharf in Richmond. He reported that there was damage to both ships, to the pier, and to the landing arms that were connected to the T/V TORM RESILIENCE. He stated that oil was released, but was contained on the deck of the T/V TORM RESILIENCE, and that no oil went into the water.

Executive Director Garfinkle stated the investigation is complete and that the IRC is in the process of preparing its report. He added that there is no danger to the public due to the delay in presenting this report.

MOTION: Commissioner Prada moved that the Board grant an extension to the Incident Review Committee to present its report on the T/V POLAR DISCOVERY at the Board meeting to be held on September 24, 2020. Commissioner Nyborg seconded the motion.

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

ACTION: The motion was approved.

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B) Status report on the event involving unintended contact of the M/V VINCENT GENESIS with Levin’s Terminal (RCH 20) in Richmond on December 13, 2019. Possible Board action to grant the Incident Review Committee an extension to present the M/V VINCENT GENESIS report at the Board meeting to be held on September 24, 2020.

Executive Director Garfinkle reported that on December 13, 2019, the M/V VINCENT GENESIS made unintended contact with the corner of Levin Terminal in Richmond (RCH20), and caused damage to the wooden structure of the pier. He reported that the report is not yet complete due to staff workload, that the 90-day statutory deadline was on March 11, 2020, and he requested an extension to present the IRC report at the September Board meeting due to staff workload. He added that there is no danger to the public due to the delay in presenting this report.

MOTION: Commissioner Nyborg moved that the Board grant an extension to the Incident Review Committee to present its report on the M/V VINCENT GENESIS at the Board meeting to be held on September 24, 2020. Commissioner Prada seconded the motion.

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

ACTION: The motion was approved.

C) Status report on the event involving the M/V CHAMPION CONCEPT making unintended contact with the corner of the dock while performing a shift from Berth 8 to Berth 9 in Stockton, California on April 28, 2020. Possible Board action to grant the Incident Review Committee an extension to present the M/V CHAMPION CONCEPT report at the Board meeting to be held on September 24, 2020.

Executive Director Garfinkle reported that on April 28, 2020, while making a shift from Berth 8 (SCK 8) to Berth (SCK 9) in Stockton, California, the M/V CHAMPION CONCEPT made unintended contact with the corner of the dock between the two berths. He stated that the vessel’s shell plating was deflected, and there was concrete damage to the corner of the dock. He reported that the investigation is still ongoing, that the 90-day statutory deadline is on July 26, 2020, and he requested an extension to present the IRC report at the September 2020 Board meeting.

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MOTION: Commissioner Nyborg moved that the Board grant an extension to the Incident Review Committee to present its report on the M/V CHAMPION CONCEPT at the Board meeting to be held on September 24, 2020. Commissioner Hoppes seconded the motion.

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

ACTION: The motion was approved.

D) Status report on the event involving the M/V HUNDAI NEPTUNE, the M/V HANOVER EXPRESS and the M/V THALASSA AVRA causing the M/V THALASSA AVRA to have multiple parted lines and making contact with a container crane at Berth 37 in Oakland, California on May 21, 2020. Possible Board action to grant the Incident Review Committee an extension to present the M/V HUNDAI NEPTUNE and the M/V HANOVER report at the Board meeting to be held on September 24, 2020.

Executive Director Garfinkle reported that the M/V THALASSA AVRA, while moored at Oakland 37, suffered some damage due to interaction with passing vessels, the M/V HYUNDAI NEPTUNE and the M/V HANOVER EXPRESS. He reported the damage consisted of parted lines and possibly some contact with a container crane. He reported both Board-licensees aboard the passing vessels underwent post-incident chemical testing. He reported the investigation is still ongoing, the 90-day deadline was August 18, 2020, and he requested an extension to present its report at the September 2020 Board meeting. He added that there is no danger to the public due to the delay in presenting this report.

MOTION: Commissioner Nyborg moved that the Board grant an extension to the Incident Review Committee to present its report on the M/V THALASSA AVRA at the Board meeting to be held on September 24, 2020. Commissioner Prada seconded the motion.

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

ACTION: The motion was approved.

E) Status report on the event involving an interaction between the M/V JIANGMEN TRADER and the moored M/V STRATEGIC ALLIANCE causing the M/V STRATEGIC ALLIANCE to have two parted spring lines at Berth #6 in Pittsburg on July 23, 2020.

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Executive Director Garfinkle reported that on July 23, 2020, the M/V JIANGMEN TRADER interacted with the moored M/V STRATEGIC ALLIANCE at berth #6 in Pittsburg, California, causing the M/V STRATEGIC ALLIANCE to have two parted spring lines. He reported that the investigation is still ongoing, the 90-day deadline is October 20, 2020, and that no Board action is required for this agenda item.

11. Significant Port Safety and Security Cases Report (Executive Director Garfinkle)

Report on marine casualties, navigational safety and significant incident management cases relevant to the Board as reported by the U.S. Coast Guard in its Prevention / Response – San Francisco Harbor Safety Statistics report for July 2020.

Executive Director Garfinkle stated that there wasn't a Harbor Safety Committee meeting in July, and that he will report on the August and September safety reports at the September Board meeting.

12. Pilot Continuing Education Committee (Captain Nyborg)

A) Report on the Pilot Continuing Education Committee meeting held on August 4, 2020.

Committee Chair Nyborg reported that the Committee met on August 4, 2020, and reviewed the Pilot Combination Course training curriculum and schedule, and is recommending changes to the course training. He also reported that the manned model Request for Information (RFI) was sent out to the six manned model training providers on August 10, 2020, that responses were due on August 21, 2020, and that responses were received from all six manned model training providers. He noted that all six facilities indicated an interest in submitting a proposal for manned model training services when the RFP is available. Chair Nyborg stated that the Committee will determine how to proceed with the procurement process after it conducts a review of the RFI responses.

B) Report on the Pilot Continuing Education Program combination course training curricula, including a reduction of the number of training days from 6 to 5 days, and impacts to the status of the contract with the California State University Maritime Academy to provide combination course training. Possible Board action to approve amending the combination course training curricula to shorten the training course from a 6-day course to a 5-day course.

Committee Chair Nyborg stated the Committee discussed updates to the combination course training to make the training more relevant, and to reduce the number of training days from 6 to 5 to help with pilot fatigue and job scheduling. He summarized the

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Committee's changes to the combination course training as reflected on the revised schedule submitted to the Board as follows:

- Reductions were made to the amount of time for emergency medical response training by eliminating CPR training since it is available in other venues.
- Updates were made to the Electronic Chart Display Information Systems (ECDIS) training.
- Reductions were made to the number of case studies presented in class.
- A new module has been added on pilot trainee evaluation.
- A reduction was made to the number of days of simulator training.

He also stated that the contract with the California State University Maritime Academy will need to be amended if the Board approves the Committee's recommendation. Executive Director Garfinkle added that proposed course amendments will not impact the combination course American Pilot Association certification. Captain McIntyre confirmed for Board Counsel Eagan that there is no deletion of statutorily-required training topics.

Vice President Hayes-White returned to the meeting at 12:01 p.m.

- MOTION:** Commissioner Carr moved to approve the Committee's recommendation to change the combination course training curriculum and to shorten the course from a 6-day course to a 5-day course as outlined on the Committee's revised schedule. Commissioner Prada seconded the motion.
- VOTE:** YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.
- ACTION:** The motion was approved.

13. Finance Committee (Commissioner Hoppes)

A) Report on the Finance Committee meeting held on August 20, 2020.

Finance Committee Chair Hoppes reported that the Finance Committee met on August 20, 2020, that the Committee reviewed the Board's financial statements for the last fiscal year, an itemized budget for fiscal year 2020-21, and fiscal information on surcharges set by the Board. He stated that with the exception of the Navigation Technology Surcharge rate, the Committee is not recommending any changes to surcharge rates since it is too soon to determine how shipping activity in 2020 will be impacted by the pandemic and trade issues. He stated the Committee is recommending a Navigation Technology Surcharge rate change principally to ensure that sufficient funds will be collected before

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the end of the year to fund the Board-approved \$1.2 million total navigation technology costs.

B) Finance Committee recommendations to the Board on the following Board surcharges:

Assistant Director Cristia-Plant reported that the Board’s budget was tight for the last fiscal year and will be tight again for this fiscal year. She stated that Board staff submitted a fiscal year 2021-22 budget change proposal to CalSTA and the Department of Finance for an additional \$100,000 to increase the training budget to allow for stipends and costs to train up to 10 trainees at one time, and if successful, the budget increase will take effect on July 1, 2021. She added that the Finance Committee reviewed surcharge projections that reflected a reduction in 2020 shipping activity by 20% as compared to 2019.

1. To adjust or not adjust the Board Operations Surcharge rate (currently 4.5% of all pilotage fees). Possible Board action to adjust the Board Operations Surcharge rate.

MOTION: Commissioner Nyborg moved that the Board Operation Surcharge remain at 4.5% of all pilotage fees. Commissioner Carr seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

2. To adjust or not adjust the Pilot Continuing Education Surcharge rate (currently \$40 per move). Possible Board action to adjust the Pilot Continuing Education Surcharge rate.

MOTION: Commissioner Carr moved that the Pilot Continuing Education Surcharge remain at \$40 per move. Commissioner Prada seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

3. To adjust or not adjust the Pilot Trainee Training Surcharge rate (currently \$10/trainee/move). Possible Board action to adjust the Pilot Trainee Training Surcharge rate.

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MOTION: Commissioner Prada moved that the Pilot Trainee Training Surcharge remain at \$10/trainee/move. Commissioner Carr seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

4. To adjust or not adjust the Navigation Technology Surcharge rate (currently at \$50/move). Possible Board action to adjust the Navigation Technology Surcharge rate.

Committee Chair Hoppes stated that the Board approved a total of \$1.2 million in navigation technology costs at its July meeting, and that the ability to charge the Navigation Technology Surcharge expires on its own terms at the end of the year. He stated that the Committee recommends increasing the surcharge from \$50/move to \$90/move on October 1, 2020, to ensure that the SFBP can collect the required amount before the end of the year, and that the surcharge collections will cease when the \$1.2 million is billed.

MOTION: Commissioner Nyborg moved that the Navigation Technology Surcharge increase from \$50/move to \$90/move effective October 1, 2020. Commissioner Carr seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

C) Report on the Finance Committee’s action on the ratification of the San Francisco Bar Pilots Benevolent and Protective Association’s recovery of Navigation Technology expenditures in 2020 for annual software license fees in the amount of \$20,353, and to recover expenditures for hardware and software license fees in an amount not to exceed \$175,000 as authorized by Board action on June 22, 2017, and consistent with the Board actions on June 27, 2019 and July 23, 2020.

Committee Chair Hoppes reported that SFBP Business Director Captain McIntyre was not aware earlier this year that the Finance Committee was tasked by the Board with approving the use of Navigation Technology Surcharge monies to reimburse the SFBP Benevolent and Protective Association for Board-approved projected expenditures, and had used surcharge monies to reimburse for an expenditure of software costs in April as outlined in her letter to the Committee dated July 16, 2020. He noted that her letter included a copy

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of the invoice to Trelleborg for \$20,363.62. Chair Hoppes reported that the Committee ratified the expenditure of Navigation Technology Surcharge funds to pay the Trelleborg invoice in April.

D) Discussion of Finance Committee’s recommendation to the Board on the possible deferral of payment of operations surcharge by the San Francisco Bar Pilots to the Board under Harbors and Navigation Code § 1159.2(b). Possible Board action to permit the San Francisco Bar Pilots to defer payment of operations surcharge to the Board under Harbors and Navigation Code section 1159.2(b).

Committee Chair Hoppes reported that this agenda item was a request made by PMSA, and that at this time, the Committee has no recommendation to present to the Board on this issue. Chair Hoppes explained that the Board’s statutes allow the Board to direct the pilots when to submit the Board Operations Surcharge collected by the pilots, and that the Committee had a discussion of whether or not delaying several Board Operations Surcharges payments to the Board, essentially an interest-free loan to the pilots, would be help the pilots’ cash flow during the reduction in shipping activity due to the pandemic. He stated that the pilots do not believe that borrowing money from the Board on a short-term basis to pay their ongoing business expenses is a viable long-term solution to their financial issue, and Port Agent Long and Commissioner Carr expressed similar concerns.

Executive Director Garfinkle confirmed that the Board’s statutes do not allow cancellation of the pilots’ obligation to pay these surcharges, and that any deferred surcharges would eventually need to be paid to the Board. Chair Hoppes also added that such a deferral of surcharge payments to the Board could still be an option for future discussion. Both he and Port Agent Long expressed a desire for the Board to discuss the pilots’ fiscal issues and potential solutions at an upcoming Board meeting.

14. Navigation Technology Equipment and Software Acquisition Update (SFBP Business Director Captain McIntyre)

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

Business Director Captain McIntyre reported that the Board-approved additional navigation technology equipment was ordered, but not delivered yet, and that arrangements have been made with Board staff to contract for 4-5 pilots to receive one-day of training on the new navigation technology software, and that these pilots will train the rest of the pilots on the new software.

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15. Trainee request for Leave of Absence (Captain Steve Teague/Executive Director Garfinkle)

Report on Trainee Brett Nelson’s request for a six-month leave of absence from the training program for personal reasons. Possible Board decision to grant Trainee Brett Nelson a six-month leave of absence from the training program. 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.

Executive Director Garfinkle reported that he received a request from Trainee Captain Brett Nelson for a six-month leave of absence from the Pilot Trainee Training Program for personal reasons, and that he has the authority to grant a trainee up to 30 days of leave, which he has already done. Captain Nelson explained to the Board that there were multiple personal issues contributing to his request for a leave of absence, but that the occurrence of COVID-19 was the tipping point.

Board Counsel Eagan stated that Board staff requested additional information from Captain Nelson regarding his reasons for his leave request, and stated that Captain Nelson said he intends to assist with home schooling his daughter and that he anticipates that six months from now the home schooling process will be more refined with less help needed from him, and that he also needed to help both his and his wife’s parents to limit their trips out of the home during the pandemic, but that none of the parents currently have COVID-19. He stated that reason for Captain’s Nelson’s request for a six-month leave of absence is that this time frame is Captain Nelson’s best guess of when things will return to normal or more normal for him.

There were Board member discussions regarding the current need for pilots, that granting a leave of absence would have adverse impacts to pilot manpower, that a Commissioner is taking care of a parent, and understands the extra effort that is required during the pandemic to take care of family members, that a leave of absence would impact the trainee’s training trajectory, that the Board has a 19-month investment in Captain Nelson’s training, that Captain Nelson has up to 48 months to complete the training program per the Governor’s Executive Order, that a trainee does not receive a stipend while out on a Board-approved leave of absence, that other trainees have moved their family to the Bay Area while they are in training, and what would happen to Captain Nelson if the leave was not approved. Captain Nelson confirmed that he would have to quit the program in the event his leave of absence was not approved.

Commissioner Nyborg proposed that since Captain Nelson was already off for a month of leave approved by Executive Director Garfinkle, he recommends the Board consider granting two more months of leave, which will be a total of three-months of leave.

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MOTION: Commissioner Nyborg moved to grant trainee Captain Brett Nelson an additional two months of leave of absence, for a total leave of absence from the Pilot Trainee Training Program of three months. Commissioner Carr seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

President Connolly requested that Board staff follow up with Captain Nelson on his progress and plans, and whether or not he needs to request an additional leave of absence.

16. Incident Review Committee follow-up incident report on the P/V STAR PRINCESS (Committee Chair Connolly)

A follow-up presentation of the Incident Review Committee report on the event involving the P/V STAR PRINCESS wherein a tugboat made fast to the P/V STAR PRINCESS made unintended contact with Pier 23 in San Francisco on October 2, 2019. Continued Board deliberation of the Incident Review Committee’s recommendations to the Board and determination regarding the event involving the P/V STAR PRINCESS. The Board may go into closed session for the deliberation of the incident report presented under this item pursuant to Harbors and Navigation Code §1180.6(a) and Government Code §11126(c)(3).

Executive Director Garfinkle reported that a subpoena was issued to obtain the VDR data from the P/V STAR PRINCESS, and that he received a series of objections to the subpoena from Mr. Cicala, attorney for the company that owns the vessel. He also stated that the Board also received a letter from Richard Wootton, of Cox Wootton Lerner Griffin & Hansen LLP, representing the owner of the tug DELTA CATHRYN encouraging the Board to pursue the VDR data to ensure that the IRC report is based on facts and not recollections.

Commissioner Prada commented the VDR data will provide the Board with useful information for its review of the incident. Both Commissioner Carr and Nyborg expressed a concern that the Board does not have resources and staff time to pursue highly technical evidence such as the VDR data, and encouraged the Board to discuss the IRC report with the information presented. Board Counsel Eagan informed the Board that Executive Director Garfinkle can meet and confer with Mr. Cicala, and if he is unsuccessful in obtaining the VDR data, then the next step would be court action to obtain the information. President Connolly stated that he would like a status report of the Executive Director Garfinkle’s VDR efforts at the next Board meeting, and encouraged the Board to further discuss the need for the VDR information if Executive Director Garfinkle is unsuccessful obtaining the information.

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17. Incident Review Committee report on the T/V POLAR DISCOVERY (Committee Chair Connolly)

A presentation of the Incident Review Committee report on the event involving the allision of the T/V POLAR DISCOVERY with the T/V TORM RESILIENCE that was previously moored at the Richmond Long Wharf in Richmond on November 24, 2019. Board deliberation of the Incident Review Committee’s recommendations to the Board and determination regarding the event involving the T/V POLAR DISCOVERY. The Board may go into closed session for the deliberation of the incident report presented under this item pursuant to Harbors and Navigation Code §1180.6(a) and Government Code §11126(c)(3).

President Connolly noted that this agenda item has been addressed in agenda item 10A.

18. Public comment on matters not on the agenda. (President Connolly)

Mr. Osen commented that the IRC reports have improved tremendously over the years, but believes the investigations are taking too long.

Commissioner Nyborg expressed a concern that the discussions between SFBP and the shipping industry regarding the rate setting process and the pilots’ fiscal issues are not leading to solutions. Board Counsel Eagan commented that it is not in regulations that the Board has to facilitate negotiations between stakeholders, but that President Connolly tried to mediate between the pilots and the shipping association in recent discussions to no avail. Port Agent Long stated that he would like assistance from the Governor’s Office, and would like Board commitment to working with the stakeholders until there is a resolution.

19. Proposals for the next Board meeting agenda. (President Connolly)

Commissioner Hoppes requested that Board staff include a Board discussion of the pilots’ fiscal issues on the next Board agenda.

20. Adjournment.

President Connolly adjourned the meeting without a vote at 1:30 p.m.

Submitted by:



Allen Garfinkle
Executive Director