

<p>Meeting Date: December 10, 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>VIRTUAL BOARD MEETING MINUTES</p>	<p>Page 1 of 17</p>
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Board Members Present

Dave Connolly, President, Public Member
 Joanne Hayes-White, Vice President, Public Member
 Captain Robert Carr, Pilot Member
 David Hoppes, Dry Cargo Industry Member
 Captain Einar Nyborg, Pilot Member
 Captain Oscar Prada, Tanker Company Industry Member
 Jennifer Schmid, Public Member
 Stephanie Dougherty, Designee of the Secretary of the California State Transportation Agency (CalSTA)

Board Staff Present

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

Identified Public Present

Knute Michael Miller, past Board President; Karen Tynan, future Board Commissioner; Captain John Carlier, San Francisco Bar Pilots (SFBP) President and Port Agent; Captain Anne McIntyre, SFBP Business Director; Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; SFBP Captains George Livingstone and Steve Teague; Chris Hendry and Eric Osen, Chevron; John Schneider, Marathon Petroleum; Captain Scott Adams, BOPC Pilot Trainee; Captain Eusebio Fabia, State Lands Commission; Rex Clack, Esq.; Nick Cohmanschi, Department of Transportation; Luis Cruz; Captain Amanda Wallace; Captain Spencer Snapp; Andrew Drennen, and John Wright.

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. Vice President Hayes-White confirmed later in the meeting that she was present at the beginning of the meeting, but unable to answer the roll call or vote on the minutes due to audio difficulties.

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

Board action to approve the minutes from the Board meeting held on November 12, 2020.

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Board members were presented with the draft minutes from the November 12, 2020, meeting. Commissioners Carr and Nyborg requested minor edits to the minutes. There was no further discussion.

MOTION: Commissioner Hoppes moved to approve the draft minutes of the meeting held on November 10, 2020, as amended. Commissioner Nyborg seconded the motion.

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

ACTION: The motion was approved.

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

None.

4. President Announcements and Activities (President Connolly)

President Connolly welcomed returning Board member Jennifer Schmid and soon-to-be new Board member Karen Tynan. He noted that since the Governor appointed Ms. Tynan to replace him beginning next month, this is his last month on the Board. He also stated that the terms of Commissioner Hoppes and Commissioner Nyborg end at the end of the month, and thanked them and other Board members for their service to the Board.

5. Board Member Announcements and Activities (Board Members)

Commissioner Carr commented that he that he intends to convene the Pilot Safety Committee to discuss the Marine Safety Information Bulletin (MSIB) 21-20, Change 2, *Recommendation for Pilot Transfer Arrangements*, and trap door pilot transfer arrangement safety issues for pilots in the Board’s jurisdiction. .

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

A) Correspondence and activities since the Board meeting held on November 12, 2020.

Executive Director Garfinkle reported on the following:

- On November 9, 2020, Board staff received a letter from Captain Tylawsky notifying that he intends to resign his license on December 2, 2020.
- On November 23, 2020, Board staff received the PMSA *West Coast Trade Report* for November 2020. There is an article by Mr. Jacob titled, *The Supply Chain Patience Demanded by an Economic Tsunami*.

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- On November 30, 2020, Board staff received a letter from Captain Livingstone notifying that he intends to retire on April 1, 2021.
- On December 2, 2020, Board staff received an announcement from Governor Newsom that he has appointed Jennifer Schmid to fill the Board member position vacated by Commissioner Brooks, and Karen Tynan to fill Board President Connolly's position effective on January 1, 2021 or when she executes her oath. He thanked President Connolly and Commissioner Hoppes for their service to the Board. He stated that both Commissioners Schmid and Tynan have maritime backgrounds, and that both have worked for Chevron at some point during their careers.

B) Report on pilot licensing matters since the Board meeting held on November 12, 2020.

Executive Director Garfinkle reported that since the November Board meeting, the Board renewed the license of Captains Carlier, Kirk, Freese, Vogel, Favro, and Ridens.

C) Report on Board surcharges.

Executive Director Garfinkle reported that the SFBP wired to the Board the surcharges collected in November 2020 in the amount of \$218,279.03, itemized as follows:

- Board Operations Surcharge: \$140,484.03
- Continuing Education Surcharge: \$ 26,115.00
- Pilot Trainee Surcharge: \$ 51,680.00

D) Report on outstanding requirements of Board actions in response to Board determination and direction on Incident Review Committee reports.

Executive Director Garfinkle reported that there were no outstanding items to report.

E) Report on legislative activities and contractual matters.

Executive Director Garfinkle stated that there were no legislative activities or contractual matters to report.

Executive Director Garfinkle provided an overview of the pilot license renewal process and paperwork for Commissioner Prada.

7. Port Agent's Report (Port Agent)

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

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

- Captain Kasper – June 11, 2020
- Captain Long – November 11, 2020
- Captain Greger – December 1, 2020
- Captain Kirk – December 2, 2020
- Captain Haggerty – December 9, 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 scheduled 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 51 licensed pilots, that there were 4 MRP exceptions in November, and that the shortest rest period was 10 hours.

Port Agent Carlier responded to Commissioner Nyborg regarding the SFBP's internal policy of a minimum 10-hour rest period, and stated that there have been delays getting pilots to ships this past month, and that it is a challenge to keep the rest period above 10 hours. He clarified for Commissioner Schmid that operating with 51 pilots would be challenging if business was normal, but it is still down because of the pandemic. And, he confirmed for President Connolly that there were no cruise ships in October. Captain McIntyre commented that pilotage fees for November were down by 17% and gross tonnage was down by 20.4%.

B) Monthly report on SFBP ship piloting business activity.

For the month of November 2020, Port Agent Carlier reported the following on the pilot vessels:

- P/V CALIFORNIA. Normal operations, and all vessel survey recommendations have been completed.
- P/V DRAKE. Normal operations, and all vessel survey recommendations that do not require dry dock have been completed.
- P/V GOLDEN GATE. The vessel was out of service due to a broken injector tip in the starboard main engine from November 9, 2020, and resumed services on November 25, 2020.

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- P/V PITTSBURG. Normal operations, and the status on two low priority vessel survey recommendations:
 - The check valve repair in the overboard discharge line is being scheduled.
 - The wireless bilge alarm has been found to be impractical.
- P/V SAN FRANCISCO. Normal operations.

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)

President Connolly noted that PEC Chair Captain Teague was on the call earlier but may be experiencing technical difficulties and requested Executive Director Garfinkle to present the PEC report.

A) Report on the Pilot Evaluation Committee (PEC) meeting held on December 2, 2020.

Executive Director Garfinkle presented the PEC report on behalf of Captain Teague and reported the following:

- The PEC met on December 2, 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 over the past month.
- 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, Olmsted, Rogers, Stevens, and Weber. The range of time in the program for these trainees is from 2 months to 23 months.
- Captains Stevens and Rogers have their full unlimited federal pilotage endorsements on their federal mariner credentials. Captain Benedict completed all testing and is waiting for the U.S. Coast Guard to issue the endorsements on his license. These three trainees are in the evaluation stage of the Pilot Trainee Training Program.
- Captain Deisher has completed all testing and is handling vessels as much as possible with the occasional observation trip to watch a licensed pilot.

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- Captains Adams and Murney are in the final stages of acquiring route trips and are handling vessels in areas where they meet the present requirements.
- Captain Adams' training progress slowed due to administrative issues with the U.S. Coast Guard regarding his limited tonnage license and a request for documentation of additional sea time. Chair Captain Teague is working on a resolution.
- Captain Weber is presently testing, observing, and acquiring route trips and beginning to handle.
- Captain Olmsted is mostly observing while acquiring route trips and is beginning partially handle vessels.
- 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 January 20, 2021, 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 as to whether a trainee has or trainees have successfully completed the Pilot Trainee Training Program. Possible Board action whether to award a Certificate of Completion to a trainee who has completed the Pilot Trainee Training Program.

There was no recommendation.

D) Possible recommendation from the Executive Director for the Board to issue a state pilot license to a trainee who holds a Certificate of Completion from the Pilot Trainee Training Program. 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.

**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 stated that there were no safety violations to report on.

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**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.)**

- 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 January 28, 2021.**

Executive Director Garfinkle stated that an extension of the IRC report for the T/V POLAR DISCOVERY is not necessary since he will present the report under agenda item 17.

Executive Director Garfinkle requested the Board grant extensions to the Incident Review Committee (IRC) to present its investigation reports to the January Board meeting for the following four events at the same time, and provided a short summary of the status of each IRC report.

- B) Status report on the event involving the M/V VINCENT GENESIS making unintended contact 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 January 28, 2021.**

Executive Director Garfinkle reported that there was minor damage from this event, the investigation is being prepared with the assistance of a Commission Investigator, and that the IRC’s report is expected to be presented at the January 2021 Board meeting.

- 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 January 28, 2021.**

Executive Director Garfinkle reported that there was minor damage from this event, and that the IRC report is being prepared with the assistance of a Commission Investigator.

- D) Status report on the event involving an interaction between the M/V HYUNDAI 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.**

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Possible Board action to grant the Incident Review Committee an extension to present the M/V HYUNDAI NEPTUNE and the M/V HANOVER report at the Board meeting to be held on January 28, 2021.

Executive Director Garfinkle reported that there was damage to two vessels and possibly a crane in this event, and that the investigation and report preparation are in progress.

- 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. Possible Board action to grant the Incident Review Committee an extension to present the M/V JIANGMEN TRADER report at the Board meeting to be held on January 28, 2021.**

Executive Director Garfinkle reported that there was minor damage from this event, and that the investigation and report preparation are in progress.

MOTION: Commissioner Hayes-White moved that the Board grant an extension to the Incident Review Committee to present its reports on the M/V VINCENT GENESIS, M/V CHAMPION CONCEPT, M/V HYUNDAI NEPTUNE, and M/V JIANGMEN TRADER at the Board meeting to be held on January 28, 2021. Commissioner Prada seconded the motion.

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

ACTION: The motion was approved.

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.

Executive Director Garfinkle reported that the October 2020 Prevention/Response – San Francisco Harbor Safety Statistics reported that there were two loss of propulsion events and four equipment failure events.

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12. Finance Committee Meeting (Commissioner Hoppes)

A) Report on the Finance Committee meeting held on December 2, 2020.

Finance Committee Chair Hoppes reported that the Finance Committee met on December 2, 2020, that the Committee reviewed the Board's financial statements for the last fiscal year, and itemized budget for fiscal year 2021-21, and fiscal information on surcharges set by the Board. He noted that pilotage revenue is down by approximately 15% in 2020.

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

The below agenda items were discussed together.

- 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.**
- 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.**
- 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.**

Commissioner Hoppes reported that the Committee recommends there be no change to the Board Operations Surcharge rate at this time, that the Pilot Continuing Education Surcharge rate be increased from \$40/move to \$45/move, and that the Pilot Trainee Training Surcharge rate be increased from \$10/trainee/move to \$15/trainee/move. He noted that Mr. Jacob is on the Finance Committee, and supports the proposed surcharge increases.

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MOTION: Commissioner Nyborg moved that the Board approve the Board Operation Surcharge rate to remain at 4.5% of all pilotage fees, that the Pilot Continuing Education Surcharge rate be increased from \$40 to \$45 per move, and that the Pilot Trainee Training Surcharge rate be increased from \$10 per trainee per move to \$15 per trainee per move. Commissioner Schmid seconded the motion.

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

ACTION: The motion was approved.

C) Report on the Finance Committee’s action on the request from the San Francisco Bar Pilots for the ratification of the San Francisco Bar Pilots Benevolent and Protective Association’s recovery of Navigation Technology expenditures in 2020 for hardware and software license fees in an amount not to exceed \$178,172 as authorized by Board action on June 22, 2017, and consistent with the Board actions on June 27, 2019 and July 23, 2020.

Chair Hoppes reported to the Board that the Committee, as authorized by Board action on June 22, 2017, and consistent with the Board actions on June 27, 2019 and July 23, 2020, approved the San Francisco Bar Pilots’ request for the San Francisco Bar Pilots Benevolent and Protective Association to recover \$170,650 from Navigation Technology Surcharge funds, which includes an additional \$291 in bank interest expense not previously approved by the Board, with the final total of Board approved eligible Navigation Technology costs that can be reimbursed from Navigation Technology Surcharge funds of \$1,197,480.

He also reported that the Navigation Technology surcharge was ended on November 20, 2020, for a total amount billed of \$1,197,480, which was \$2,520 short of the \$1.2 million that was authorized by the Board, and that the SFBP will likely be collecting the billed surcharges into next year.

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

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

SFBP Business Director Captain McIntyre reported that training has been completed, that all pilots are using the new navigation technology software, and that feedback from the pilots has been positive. She thanked the Board and the industry for their support of the new technology.

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14. Pilot Vessel Condition and Valuation Surveys (Executive Director Garfinkle)

Review and acceptance of the Condition and Valuation Surveys for the Pilot Vessel PITTSBURG. Possible Board action to accept the Condition and Valuation Surveys for the Pilot Vessel PITTSBURG and making a finding that the vessel is safe and suitable for pilotage service.

Executive Director Garfinkle reported that Board staff received a *Condition and Valuation Survey* for the P/V PITTSBURG. He noted that P/V PITTSBURG is the smallest SFBP pilot boat and is in excellent condition. He reported that P/V PITTSBURG does not have any high priority issues, has one moderate issue with the fire extinguisher needing to be replaced before the expiration date, and has a low-priority issue consisting of water flowing down through the discharge tube and into the bilge in rough weather. The surveyor recommended to install a check valve to prevent inadvertent back flow into the bilge.

MOTION: Commissioner Hoppes moved to accept the Condition and Valuation Survey for the Pilot Vessel PITTSBURG, with the Port Agent to report back to the Board on the completion of the survey findings and recommendations. Commissioner Carr seconded the motion.

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

ACTION: The motion was approved.

President Connolly called for a short recess.

RECESS STARTED: 10:55 a.m.

RETURNED TO OPEN SESSION: 11:02 a.m.

15. Discussion of pilot revenue losses due to reduction in vessel traffic caused by the COVID-19 pandemic. Consideration of the role of the Board, if any, in responding to the situation. Possible Board decision on various alternative courses of action, including (1) creation of a committee of two or fewer Board members to facilitate negotiations between the pilots and stakeholders, possibly leading to presentation of a joint proposal by the pilots and stakeholders to the Legislature for a temporary rate increase; (2) Board initiation of an investigative hearing of pilotage rates limited to consideration of a temporary surcharge or other temporary rate increase and seeking presentation of evidence on that issue by persons directly affected by pilotage rates, possibly leading to a Board recommendation to the Legislature; (3) leaving to persons directly affected by pilotage rates the decision whether to seek, by petition, a pilotage rate hearing before the Board on issues of their choosing; and (4) other Board actions that may be suggested at the meeting.

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President Connolly read the agenda item, and the Board discussed its role in arriving at a solution to the revenue losses incurred by Board-licensees due to the reduction in vessel traffic caused by the COVID-19 pandemic.

SFBP Business Director Captain McIntyre reported that SFBP met with shipping industry representatives on December 7, 2020, and that they discussed proposed statutory language drafted by Board Counsel Eagan for a catastrophic event. She noted that it was a good discussion and that discussions will continue on December 16, 2020. Mr. Jacob also commented that it was a good first discussion about the possibility of amending the statutes related to a catastrophic event, and clarified that the discussion did not involve changing the pilotage rate statutes.

Board members discussed the advantages and disadvantages of involving the Board in potential statutory amendments related to catastrophic events, and the merits of establishing a committee of two or more Board members to facilitate discussions between the stakeholders. Also discussed was whether the Board should be involved in a long-term statutory rate setting solution or involved in a short-term solution to amend the statutes related to a catastrophic event, or both.

The Board agreed that forming a Committee to assist in the stakeholder discussions on statutory amendments related to a catastrophic event is not needed at this time, and agreed to have the agenda item deferred to the January Board meeting for additional discussions.

SFBP Business Director Captain McIntyre noted that there is an urgency to resolve the issue of the Board's ability to respond to a catastrophic event in the short-term, and that the SFBP will continue to meet with industry members to find a short-term solution, possibly by mid-January. She noted that the pilots' concern related to the systemic problems associated with the pilotage rate setting process have not changed, and requested the Board establish a committee to review the process. Mr. Jacob agreed that the stakeholders are working on a statutory solution for catastrophic events.

16. Discussion of pilot training requirements listed in title 7, California Code of Regulations, §215, and Board affirmation to not suspend or revoke a pilot license if the required training opportunity was not made available by the Board to the Board-licensee due to the COVID-19 pandemic. Possible Board affirmation to not suspend or revoke a pilot license due to the Board's inability to provide training opportunities because of the COVID-19 pandemic, and direction to the Executive Director to provide pilots with required training as soon as feasible.

Executive Director Garfinkle reported that due to COVID-19, licensees have not been able to complete continuing education requirements for manned model and bridge resources training

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for almost 9 months. He stated that manned model training requires travel to France, and that overseas travel is prohibited at this time. He also noted that the California State University Maritime Academy where bridge resource management training is conducted is still closed to outside visitors.

He added that Governor Newsom signed Executive Order N-52-20 on April 16, 2020, which allowed the pilot continuing education training requirements specified in California Code of Regulations, title 7, section 215 to be temporarily waived for those pilots required to complete training in 2020. These pilots must satisfy any waived training requirements by June 30, 2021, unless further extended by the Governor. He noted that given that the pandemic is still ongoing, it likely will be impossible for the Board to provide the required pilot training by June 20, 2021, and that he is advised the Governor may not sign an extension of his Executive Order.

Executive Director Garfinkle noted that title 7, California Code of Regulations, §215 gives the Board the option to suspend or revoke a pilot license if the required training was not completed, and that Continuing education training had not been made available by the Board to Board-licensees since Spring 2020 due to the COVID-19 pandemic. Given the likelihood that the Board will not be able to provide the necessary training into 2021 and maybe beyond, he stated that he believes it is important for the Board to provide the pilots assurance that their licenses won't be revoked for lack of the required training due to no fault of their own. He assured the Board that staff will do its best to catch the pilots up on the required training when it becomes available, subject to any contractual and budgetary constraints.

Commissioner Nyborg stated that the pilots have been doing their best to not stay in confined spaces, and suggested postponing continuing education training until it is safe to conduct the training. Port Agent Carlier agreed and expressed a concern about too many pilots being at training at one time when the Board is able to eventually send pilots to the required training. Captain McIntyre noted that bridge resource management training cannot be provided remotely due to the use of the simulator in this training.

MOTION: President Connolly moved that the Board affirm that it will not suspend or revoke a pilot license due to the Board's inability to provide training opportunities because of the COVID-19 pandemic, and directs the Executive Director to provide pilots with the required training as soon as feasible given any contractual or budgetary constraints. Commissioner Schmid seconded the motion.

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

ACTION: The motion was approved.

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At 11:55 a.m., President Connolly turned the meeting over the Vice President Hayes-White to chair, and assumed his position on the Incident Review Committee (IRC).

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).

Executive Director Garfinkle presented the IRC report for the T/V POLAR DISCOVERY. He included a PowerPoint presentation and summarized the facts of the incident as follows:

- On the morning of November 24, 2019, the M/V POLAR DISCOVERY (POLAR DISCOVERY) was scheduled to shift from Anchorage 9 to the Richmond Long Wharf (RLW 4) at 0600 hours. The piloting job was assigned to Captain Roger Kirk.
- Captain Kirk boarded the POLAR DISCOVERY at approximately 0442 hours. At approximately 0515 hours, the master of the POLAR DISCOVERY joined the pilot on the bridge. They conducted a master-pilot information exchange wherein they discussed, among other things, the passage plan, including depth of water along the route and the ship traffic they expected to encounter.
- At approximately 0600 hours the anchor was aweigh, and the ship proceeded to Richmond with Captain Kirk at the conn.
- At 0715 the ship passed Southampton Shoal Channel markers 1 and 2 and two of the tugs assigned to the job put up lines. The tug DELTA CATHRYN was assigned to the starboard bow, tug VIGILANT to the center lead aft, and the tug SARAH was to shadow the port bow (no line).
- The maneuvering plan was to commence turning the ship 160 degrees to starboard once inside the RLW 4 maneuvering basin and back into the berth. The POLAR DISCOVERY was scheduled to dock in a bow-to-bow configuration with the M/V TORM RESILIENCE (hereinafter TORM RESILIENCE) which was moored starboard side to the berth at RLW Berth #3.
- Once in the basin the POLAR DISCOVERY commenced the planned turn to starboard. The rotation to starboard began as planned but the rotation stalled out mid-turn, such that the bow remained pointed at the TORM RESILIENCE.

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- At approximately 0735 hours the bow of the POLAR DISCOVERY made contact with the TORM RESILIENCE headlines, then the bow of the TORM RESILIENCE and eventually with the pier.
- The Incident Review Committee (IRC) consisted of Commission President Dave Connolly (public member), as Chair, and Executive Director Allen Garfinkle.

Executive Director Garfinkle then discussed the public portions of the report, the evidence gathered by the IRC, and the IRC’s analysis of the incident, including whether the pilot was proceeding in a reasonable and cautious manner using the skill and care possessed by the average pilot similarly situated would have exercised, and whether Captain Kirk’s actions were reasonable and prudent and made using his best judgment. He presented the timeline, images and an estimate of damages, which included damage to parts of the loading arms that may eventually need to be replaced.

Executive Director Garfinkle stated that based on the evidence and analysis, the IRC recommended the following actions to the Board:

- That the Board find for misconduct on the part of the pilot.
- That the Board file an accusation for suspension of his license for a period of three months.

Mr. Clack, who represented Captain Kirk, stated that the report is well done and that he wanted to add the following comments:

- There was a contingency plan and all aspects of the move were discussed with the master for 25 minutes **after the pilot boarded the ship at around 4 a.m.**
- Numerous contingencies arise in any ship move.
- Captain Kirk requested the master to notify him if there were any issues.
- This was Captain Kirk’s second move for the night, and that while fatigue rises to a grave and weighty level, it does not rise to the level of misconduct.

Board Counsel Eagan suggested that Board members go into closed session to review and discuss the confidential sections of the IRC report. Commissioner Prada recused himself from voting on this IRC report.

Vice President Hayes-White called for a short recess.

RECESS STARTED: 1:08 p.m.
RETURNED TO OPEN SESSION: 1:20 p.m.
CLOSED SESSION BEGAN: 1:20 p.m.

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Commissioner Schmid volunteered to Chair at the commencement of the closed session meeting due to technical difficulties experienced by Vice President Hayes-White. Vice President Hayes-White eventually joined the closed session and resumed the chair duties.

OPEN SESSION RESUMED:

4:04 p.m.

Board Counsel Eagan reported out of closed session that a vote was taken, and stated that Commissioner Schmid had left the meeting before the vote was taken. He stated that the Board found for pilot misconduct, that an accusation is to be filed to suspend the pilot's license for 12 months, that the pilot will be required to obtain training at his own cost before his license can be restored, and that the training is to include manned model training, bridge resource management training, and training on reducing and avoiding fatigue. He stated the Board will delegate to Board staff the selection of the training providers. He also clarified that the pilot's training can commence immediately since the required training is separate from the pilot's license suspension accusation. He stated that the Board will meet again to finalize its official written decision made in closed session.

Vice President Hayes-White turned the chair duties back to President Connolly.

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

Mr. Osen thanked the Board for their consideration and decision on the POLAR DISCOVERY incident. He commented on various aspects of the incident, including pilot fatigue issues, a pilot's use of a car service to assist with fatigue mitigation, and concerns of no written pilot passage plan. He also had various comments about the IRC report including: no mention of sound or danger signals; no discussion of damage to Berth 4, only Berth 3, even though the vessel proceeded to Berth 4; and opinions and not facts expressed about tugs in the report. He commented that he thought the IRC report was a good report, and that he understood why the IRC report took so long to complete. He suggested that future reports should be briefer so they can be completed sooner. Executive Director Garfinkle thanked Mr. Osen for his comments.

Commissioner Nyborg clarified about the car service that pilots use between jobs, and confirmed that the car service is not available to pilots to use as transport from a home to a dock, only from Pier 9, and noted that home delivery or pick up service would be quite costly since some pilots live outside the Board's jurisdiction.

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

President Connolly requested that agenda item 15 be included in the January Board meeting.

Board Counsel Eagan noted that during closed session, the Board decided to meet on Monday, December 21, 2020, at 9:30 a.m. to finalize in writing its decision made at the November 12, 2020, Board meeting to not issue former BOPC Pilot Trainee, Captain Burchard a certificate of completion from the Pilot Trainee Training Program.

20. Adjournment.

President Connolly adjourned the meeting at 4:35 p.m.

Submitted by:



Allen Garfinkle
Executive Director