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| <p>Meeting Date: February 24, 2022</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 26</p> |
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Board Members Present

Joanne Hayes-White, President, Public Member
Jennifer Ferrera Schmid, Vice President, Public Member
Captain Robert Carr, Pilot Member
Captain Einar Nyborg, Pilot Member
Captain Oscar Prada, Tanker Company Industry Member
Karen Tynan, Public Member
Stephanie Dougherty, Designee of the Secretary of the California State Transportation Agency (CalSTA)

Board Members Absent

Vacant, Dry Cargo Industry Member

Board Staff Present

Allen Garfinkle, Executive Director
Dennis Eagan, Board Counsel
Jennifer Barton, Assistant Director
Alethea Wong, Administrative Assistant II

Identified Public Present

Knute Michael Miller, Past Board President; 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; Captain Eric Robinson, SFBP; Captain Eric Weber SFBP; Captain Matt Lingo, SFBP; Captain Dan Murney, SFBP; Captain Dylan Epperson, SFBP; Captain Max Starnitzky, SFBP; Captain Dan Larwood, SFBP; Roma Cristia-Plant.

OPEN MEETING AGENDA

1. Call to Order and Roll Call (President Hayes-White)

President Hayes-White 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 Hayes-White)

The draft meeting minutes from October 28, 2021 and January 27, 2022 were not available for approval and deferred approval for the next Board meeting on March 24, 2022.

A) Board action to approve the minutes from the Board meeting held on October 28, 2021.

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Board meeting minutes for October 28, 2021 were not available.

B) Board action to approve the minutes from the Board meeting held on January 27, 2022.

Board meeting minutes for January 27, 2022 were not available.

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

There were no comments.

4. President Announcements and Activities (President Hayes-White)

President Hayes-White welcomed Jennifer Barton, Assistant Director, and wished departing SSM 1, Brenda Pugh well in her future endeavors.

5. Board Member Announcements and Activities (Board Members)

There were no announcements.

6. Directors' Report (Executive Director Garfinkle)

A) Correspondence and activities since the Board meeting held on January 27, 2022.

Executive Director Garfinkle reported on the following:

- On January 27, 2021, Board staff was notified that the Governor had appointed a new CalSTA General Counsel, Bret Ladine.
- On January 28, 2022, we received the PMSA West Coast Trade report for January 2022.
- On January 31, 2022, Board staff received and signed an amended lease for our facilities, reducing the rent by \$1500 per month, but extending the “soft term” another two years.
- Also on January 31, 2022, I met with Vivica Rush, a Coro Fellow in Public Affairs, who is doing research and providing recommendations on a racial equity action plan for CalSTA.
- On February 1, 2022, Jennifer Barton began her role as Assistant Director. Jennifer brings 25 years’ experience in both the private and government sectors. She came to the Board directly from her role at the Franchise Tax Board as an administrator. She holds a Bachelor of Science degree from CSU Sacramento, and has held an active CPA license since 2009.

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- On February 3rd, 2022, Brenda Pugh, our SSM1 transferred out of the BOPC to the Department of Corrections. We are currently advertising for her position and applications close on February 28.
- On February 8, 2022, I attended a meeting of the Pilot Fitness Committee.
- On February 10, 2022, I attended a meeting of the Ad Hoc Committee to Review the Pilotage Rate Setting Process.
- On February 11, 2022, the Assistant Director and I met with key partners within the Business Services Division at CHP Headquarters. The purpose of the meeting was to introduce Jennifer Barton to the CHP personnel she will be working with closely. We also met with CHP Human Services division that provides our Human Resource services.
- On February 16, 2022, I attended a Pilot Evaluation Committee meeting.
- On February 17, 2022, I attended another Ad Hoc Committee to review the pilotage rate setting process.
- On February 22, 2022, I attended a meeting of the Pilot Fitness Committee.
- On February 23, 2022, I attended an Ad Hoc Committee to review the pilotage rate setting process.
- Advertisement of the upcoming June 2022 exam was placed in the Professional Mariner and Pacific Maritime. Additionally, email communication to announce the upcoming exam was sent out to the Association of Black Maritime Graduates and women groups.

Captain Carr inquired if communication was sent to Women Offshores.org or SeaSisters.org. Executive Director explained Board staff reached out to many organizations and can't recall if these two organizations were contacted, but he will review the list of contacts made and if they were not contacted, he would be sure to reach out to them. Executive Director added, we did include advertisement in the brochure for the upcoming Women's Leadership Group conference being held at California Maritime Academy (CMA).

B) Report on pilot licensing matters since the Board meeting held on January 27, 2022.

Executive Director Garfinkle reported that since the January Board meeting, the Board renewed the licenses of Captains Lingo, Stultz, and Hirschfeld.

C) Report on Board surcharges.

Due to software issues being experienced by SFBP due to the implementation of the new software, we have not received surcharges for the month of January.

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D) Report of pension fiduciary.

As of February 1, 2022, we currently have 82 pensioners, with two more pending retirements beginning next quarter – Captains Alden and Tylawsky, and one disability pension applied for, Captain Kirk.

The mill rate has been set for the First Quarter of 2022 at .05006, based on a 12-month tonnage lookback period that ran from October 2020 through September 2021.

The mill rate for January was 0.05006, and the tonnage for January was 17,884,719, resulting in collections totaling \$895,308.83, on a target of \$1,116,199.04, resulting in a variance of \$220,890.21. The administrative costs for the month totaled \$2,139.70, making the total distribution for January \$893,169.13.

The last increase to the pension was April 1, 2020.

On February 9, 2022, Assistant Director Barton and I, ran independent calculations of the increase in CPI since the last change to the targets (3 years or when the CPI increases by 12%) and determined there was no change recommended at this time. (By using December to December, the change was 6.3%, and by using Annual averages, the change was 5%.)

E) 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 are no outstanding items to report.

F) Report on legislative activities and contractual matters.

Assistant Director Jennifer Barton reported on the following:

Report on Legislative Matters:

- AB 2056 Introduced by Assembly Member Grayson on February 14, 2022 proposes to amend HNC Section 1190.2. The purpose of this amendment ostensibly is to ensure requirements of any rule governing the emissions of commercial harbor craft imposed by the State Air Resources Board are included in the determination of pilotage rates, but may be a placeholder for broader legislative initiatives involving pilotage rates.
- Section 213 Trainee Training Program – The rulemaking package was submitted to OAL for final review on January 28, 2022 (requested effective date to be upon filing

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with Secretary of State). Status as of 2/23/22: no questions/correspondence from reviewing attorney.

Report on Contractual Matters:

New/Renewing:

- UCSF Pilot/Trainee Medical Assessments: CHP is finalizing the agreement prior to second level review. (Estimated Completion Date is 6/30/2022)
- Manned Model Training Services: Reviewing and revising NCB documents per CHP's recommendations. Goal is to submit agreement for DGS approval on 3/01/22. (Estimated Completion Date is 6/01/2022)
- Investigation Services: CHP drafted bid and is under peer review. (Estimated Complete Date is 5/1/22)
- Trainee Drug Testing: BOPC staff in process of obtaining vendor quotes for a fair and reasonable agreement. CHP has started drafting agreement. (Estimated Completion Date is 06/01/2022)

Amendments:

- SFBP Trainee Training Services: Contract amended to increase the number of trainees from 6 to 10. Amendment is with DGS for final approval. (Estimated Completion Date is 3/7/2022).
- EQ Office BOPC facility (660 Davis Street) lease: Contract amended to extend the term of lease and early termination and reduce monthly rental payments. (Amendment executed on 2/15/2022).

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7. Port Agent’s Report (Port Agent Carlier)

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

Port Agent Carlier reported that the following pilots were absent for medical reasons (AFMR):

- Captain Kasper since June 2020
- Captain Alden since April 30, 2021
- Captain Slack since December 15, 2021

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

He reported there are currently 51 licensed pilots. In January there were 3 MRP exceptions, with the shortest rest period being 10.5 hours.

Commissioner Prada asked Port Agent Carlier to remind the Board members how SFBP handles a Pilot who is out for more than a year. Port Agent Carlier explained if a Pilot is out six months or longer, the SFBP has protocols to insure that pilot is riding for recency on all the routes before the pilot goes back to work on their own.

B) Monthly report on SFBP ship piloting business activity.

For the month of January, Port Agent Carlier reported normal operations for all pilot vessels except for PV Golden Gate, which was offline from January 11, 2022 through January 12, 2022 due to crew illness; and PV Pittsburg, which was offline from January 19, 2022 through January 22, 2022 due to crew filling in on PV Golden Gate.

Port Agent Carlier reported that the billed vessel moves for January 2022 were as follows:

- Bar Crossings: 387
- Bay Moves: 128
- River Moves: 50
- Total Moves: 565

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- Gross Registered Tons (GRT): 17.9 million

He also reported that when comparing 2022 vessel move data with the same period in 2021, total moves were down 7.4% and GRT was down 22.5%.

- 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 discussion of this item.

8. Pilot Evaluation Committee (Captain Robinson)

- A) **Report on the Pilot Evaluation Committee (PEC) meeting held on February 16, 2022.**

PEC Chair Captain Robinson reported on the following:

- The PEC met on February 16, 2022, and in attendance were Committee members Captains Aune, Ruff, Slack, Wehr, and Robinson.
- The PEC provided Executive Director Garfinkle a report of trainee activity over the past month.
- The PEC has spent several days at the California Maritime Academy developing the next simulator exam scheduled for June 2022. Additional days are scheduled for simulator development leading up to the exam date. In addition to the PEC members, two additional pilot volunteers are required to conn the ship through the simulation. Captain Robinson explained, valuable information is obtained with every simulation run.
- Trainees were interviewed and counseled individually in closed session by the PEC members on their progress in the Pilot Trainee Training Program.
- There are currently seven trainees: Captains Adams, Barnum, Burns, Olmsted, Pascucci, Sappington, and Snapp. The trainees’ range of time in the program is 3 months to 28 months.
- Captain Adams and Olmstead have First Class pilotage endorsement for unlimited tonnage upon San Francisco Bay issued by the Coast Guard on their federal licenses.
- Captains Adams and Olmstead are handling in all areas. Captain Adams is currently on probation and continues to work on consistency in his piloting.
- Captains Barnum, Burns, Pascucci, Sappington, and Snapp are acquiring route trips and handling or part handling vessels in all areas.

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- Most trainees are presently meeting the recommended benchmarks in the program and are progressing at their own rate.
- The next PEC meeting is scheduled for March 16, 2022, 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 reported that there were no safety standard violations to report on.

**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 M/V GLOBE PEGASUS allision with several pilings at Levin Terminal in Richmond, CA, on April 8, 2021. Possible Board action to grant the Incident Review Committee an extension to present the M/V GLOBE PEGASUS report at the Board meeting to be held on March 24, 2022.

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Executive Director Garfinkle explained the 90-day statutory deadline occurred in July 2021. He stated the incident report is not completed yet and the delay is due to staff workload. The IRC requests an extension to March 24, 2022. There is no danger to public safety due to the delay in presenting the report.

B) Status report of interaction between the M/V CHARLIE and the moored M/V EVA SHANGHAI in the Port of Stockton on October 17, 2021. Possible Board action to grant the Incident Review Committee an extension to present the M/V CHARLIE report at the Board meeting to be held on March 24, 2022.

Executive Director Garfinkle explained the 90-day statutory deadline occurred last month in January 2022. He stated the incident report is not completed yet and the delay is due to staff workload. The IRC requests an extension to March 24, 2022. There is no danger to public safety due to the delay in presenting the report.

- MOTION:** Commissioner Prada moved that the Board grant an extension to the Incident Review Committee to present its report on the M/V GLOBE PEGASUS and M/V EVA SHANGHAI at the Board meeting to be held on March 24, 2022. Commissioner Carr seconded the motion.
- VOTE:** YES: Hayes-White, Schmid, Nyborg, Carr, Prada, and Tynan.
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 one incident of equipment failure from the January 2022 Significant Port Safety and Security Cases. He stated a foreign flagged bulk carrier reported no pilot house control while preparing to get underway from Oakland, CA. The vessel replaced a spool valve and regained pilot house control, the case was closed.

12. Ad Hoc Committee on Pilot Diversity Meeting (Committee Chair Schmid and Executive Director Garfinkle)

Report on the progress to implement changes to the Trainee Training Selection Exam minimum qualifications and exam format.

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Executive Director Garfinkle shared the regulation changes related to the Trainee Training Selection Exam have been submitted to the Office of Administrative Law (OAL).

13. Ad Hoc Committee to Review the Pilotage Rate Setting Process meeting (Committee Chair Captain Carr)

Report on the Ad Hoc Committee to Review the Rate Setting Process meetings held on February 10, 2022 and February 17, 2022 and review of the Committee’s Final Report and recommendations to the Board to change the statutory rate setting process. Possible Board action to approve the Committee’s recommendations to proceed with statutory changes to the rate setting process.

Committee Chair Captain Carr reported the Ad Hoc Committee to Review the Pilotage Rate Setting Process has developed recommendations for legislative changes for the pilotage rate setting process. The Ad Hoc Committee is requesting the Board to approve the Final Report, all recommendations contained in the Final Report, and direct the Board staff to promulgate to CalSTA, legislature, and the Governor’s Office.

Committee Chair Captain Carr explained, the Ad Hoc Committee’s recommendations are a culmination of one year of collaboration amongst all Committee members, including representatives from the SFBP, Industry (PMSA), Board staff, and Board counsel. Meetings and discussions were open and transparent.

Committee Chair Captain Carr stated the Final Report identifies issues with the current rate-setting process and provides recommended solutions to address the identified issues. The last page of the Final Report includes an outline of the recommended process changes.

Committee Chair Captain Carr reported the Summary of Recommendations as follows:

- The Committee recommends to the Board of Pilot Commissioners (BOPC or Board) that the Board propose and advocate to both the Administration and the Legislature that the statutory pilotage rate-setting process be changed. Specifically, Harbors and Navigation Code sections 1190,1191, and 1200-1203.
 - Recommends language which changes the process by removing the Legislature as the final decision maker in the rate-setting process.
 - Recommends language which includes approval by the Secretary of the California State Transportation Agency (CalSTA) of a decision of the Board on adjustment of pilotage rates.
 - Recommends rate hearings be conducted by an impartial administrative law judge (ALJ) who shall prepare a proposed decision for the Board’s consideration.
 - Recommends the Board’s available actions, after the ALJ’s proposed decision

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is issued, as follows:

- The Board adopts the ALJ’s proposed decision in its entirety.
 - The Board makes technical, clarifying, or other minor changes in the proposed decision that do not affect its findings and conclusions and adopts the proposed decision in its modified form.
 - The Board rejects the proposed decision and refers it back to the ALJ for consideration of specified evidence or issues and requests submission of a new proposed decision.
 - The Board rejects the proposed decision with supporting written explanation.
 - Recommends adopting a rate-setting formula for determining revenue requirements. Revenue Requirement = (Target Net Income Per Pilot (TNI) x # of Pilots) + costs and expenses.
- The Committee recommends the Board endorse and propose the following changes to regulations:
 - Recommends language requiring a prehearing conference and parties to develop stipulations prior to a rate hearing conducted by an administrative law judge.
 - Recommends a process which allows for an expedited schedule in the case of a joint petition. The Committee suggests creating a procedural path which allows a joint petition to forgo a lengthy rate hearing process provided it remains uncontested following public comments.
 - Recommends language determining expected elapsed time between rate hearings.
 - Recommends establishing a timeline for each step of the process to encourage a timely submission of Final Order.
- The Committee finds no reason to stay with the status quo and instead recommends the Board, upon acceptance of any or all the recommendations, to instruct Board staff to engage with CalSTA to support the changes to statute. The Committee concludes these recommendations are the culmination of 24 months of Board and Committee deliberations, conducted with significant stakeholder input and the primary ownership rests with the Board to seek the recommended statutory and regulatory reforms.

Committee Chair Captain Carr stated the Committee requested stakeholders formally present their concerns with the current process and suggest process improvements that could be adopted by the State of California. He stated the following are the Five Key Take-Aways in which recommendations were based upon:

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- The process is too lengthy and must follow the legislative calendar. The process requires the petitioning party to find a legislator to author/sponsor the rate bill.
- The process has flaws in evaluating evidence.
- The process needs to make rate setting more formulaic and consistent.
- The process creates a highly contentious and politicized environment.
- The process is not responsive, and rates cannot be updated without Legislative involvement.

Committee Chair Captain Carr explained Executive Director Garfinkle and Board staff prepared a report documenting the historical rate setting process. He also explained from 1991 through 1995, the Board utilized an ALJ in the rate-setting process.

Committee Chair Captain Carr explained as part of the Committee’s research, they reviewed the rate-setting process utilized by three other comparable west coast maritime states: Washington, Oregon, and Hawaii. He stated the Committee leveraged methodologies applied by these three states when developing their recommendations, specifically, the recommendations to adopt a rate-setting formula for determining revenue requirements and utilizing an impartial ALJ to conduct rate hearings.

Committee Chair Captain Carr cited the Committee’s proposed solutions from the Final Report as follows:

- *“The process is lengthy and follows the legislative calendar. The process requires the petitioning party to find a legislator to author/sponsor the rate bill.”*

Both SFBP and PMSA informed the Committee the process through the Legislature is lengthy and costly, and legislators also question why they are involved with the rate-setting process.

Perhaps the most difficult task for the Committee to evaluate has been to recommend a rate-setting process which ensures a proper evaluation of the evidence, provides for review of the Board’s decision, and establishes a process which has removed politicized outcomes.

The Committee is recommending changing the two-step rate-setting process from one that must go through the Legislature for adoption to one in which the Board’s rate decision, based on an ALJ’s recommendation, is reviewed and approved for adoption by the Secretary of CalSTA.

The inclusion of a legislative review and adoption of rate recommendations from a pilot commission is rare in the maritime states with pilot commissions. As stated earlier in this

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report, 5 of 24 states utilize the legislature in the process and only one state other than California has a recommendation from a pilot commission subject to legislative approval.

The current California process of moving a Board of Pilot Commissioners rate recommendation before the Legislature falls to the petitioning party (or parties in an uncontested hearing) to find a legislative sponsor to carry the bill. At no time is it incumbent on the BOPC or CalSTA to move a rate recommendation. In the Committee’s opinion, this contributes to a politicized outcome at the Legislature as stakeholders are free to intervene directly with legislators outside of the public hearing conducted at the Board. The rate-setting process evaluated in our neighboring western states does not include their legislatures. Although each state has a different rate-setting body, the decision at that body requires no further validation.

Since the Committee’s recommendation is to remove the Legislature from the process, there was concern there would no longer be an avenue for reviewing a Board rate decision. The Committee considered California administrative procedures and deliberated on ways to ensure a review element was included in the recommendation. The Committee determined a suitable process would be to submit the Board decision to the CalSTA Secretary for review and approval. The Committee determined it was sufficient to submit the Final Order of the Board with the ALJ proposed decision. The Committee did not desire allowing for a reopening of evidence or for an alternate decision from the Secretary. The Secretary, in the review, would approve the decision, reject the decision with an explanation or remand it back to the Board for further deliberation. The Secretary’s review is expected to be quick and thus be an improvement over the lengthy legislative process.

- *“The process has flaws in evaluating evidence.”*

PMSA informed the Committee it felt the current process of determining recommendations or the substance of the recommendations from the Board, which are placed in front of the Legislature, result in politicized outcomes and lack confidence from ratepayers, lawmakers, and the Administration.

The assertion that the evidence at recent previous rate hearings wasn’t adequately or fairly evaluated was refuted by Board Staff and a Commissioner who was present for those hearings. The Committee agrees with PMSA that this is an area of concern which should be recognized and can be improved upon.

The three states the Committee closely evaluated all used an ALJ or a hearing officer to conduct the meetings. Our Board utilized an ALJ to conduct rate hearings from 1991 to 1995. The Committee is recommending the Board again utilize an ALJ to conduct the hearings, hear evidence and make recommendations.

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The benefit of using an ALJ to hear evidence addresses two issues. The hearing and weighing of evidence are performed impartially by an experienced adjudicator. Also, the Board contracts with an ALJ to serve a role the board members may not be equipped to handle themselves, with the qualifications of the Commissioners on the Board at any time. This was also illustrated as an area for improvement in the JTC Report from Washington.

However, the Committee recommends the Board remain the authority which makes rate determinations. The actions available to the Board once presented with the ALJ proposed decision have been discussed a great deal. The Committee has used elements within the California Administrative Procedure Act (APA) as inspiration to understand options typically available to a deciding authority.¹ The Committee is recommending the Board be limited to four actions.

1. The Board adopts the ALJ’s proposed decision in its entirety.
2. The Board makes technical, clarifying, or other minor changes in the proposed decision that do not affect its findings and conclusions and adopts the proposed decision in its modified form.
3. The Board rejects the proposed decision and refers it back to the ALJ for consideration of specified evidence or issues and submission of a new proposed decision.
4. The Board rejects the proposed decision with a supporting written explanation.

There are other options that the APA affords that the Committee is not recommending. The Committee is not recommending the Board have the opportunity to reject the ALJ’s proposed decision and instead be able to decide the case themselves upon the record, including the transcript, with or without taking additional evidence. The Committee understands having this option available would not resolve the initial problem identified. Any decision of the Board will require a vote of four members of the Board.

Committee member Tynan addressed the Board’s role in setting rates by stating she reviewed the statute to determine if it supports the removal of the Board from participating in the rate-setting process and was unable to find support for the proposition to remove the Board. She explained she documented her findings in a short memo to the Executive Director and the group. The memo was an invitation to others attending the Committee meetings to respond to her analysis of the law. She stated there was no response or rebuttal to her analysis.

Additionally, Committee member Tynan stated she could not find any support within the

¹ Gov. Code, § 11517.

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statute which supports the proposition of individual Board member’s having veto power with a vote. Such veto power would enable either the SFBPs or industry to completely veto with their vote anything that came before the Board. She stated her concern with this proposal is that it would make the three public members peripheral versus integral to the process.

Executive Director Garfinkle pointed out all of the documents relied upon by the Committee are available on the Board’s website. The documents include the memo referred to by Committee member Karen Tynan.

Committee member Captain Prada clarified his point of contention regarding the Board’s voting process for rate-setting changes. He agreed Board actions should be decided by a majority vote, however, with rate-setting changes, in addition to a majority vote, he recommends consensus between at least one pilot member and one industry member.

Committee member Captain Prada stated the Board members should not be able to tip the scale one way or the other on rate-setting changes, the facts should be brought forward by the SFBP and industry, and then the facts should be considered and decided upon by an ALJ. The ALJ’s decision should then go to the Board.

In reference to the Committee’s recommendation for the Board’s available actions after the ALJ’s proposed decision is issued, Committee member Captain Prada stated his concern with the amount of latitude in the statement “minor changes” included in the following recommendation:

Board action regarding proposed decision (second part) *“Make technical, clarifying, or other minor changes in the proposed decision that do not affect its findings and conclusions and adopt the proposed decision in its modified form.”*

Committee member Captain Prada would like industry impacted by rate-setting changes (PMSA, WSPA, and Clea) to weigh in before he can fully support the recommendation.

Committee Chair Captain Carr explained Committee member Captain Prada’s idea for having a special voting system for the rate-setting process was taken into consideration. Additionally, he stated the Committee’s final recommendations ensure the Board would not be able to make their own determination and alter the ALJ decision.

Commissioner Captain Nyborg asked for clarification and the meaning of the following language in the recommendation for the Board’s available actions after the ALJ’s proposed decision is issued:

Board action regarding proposed decision (second part) *“Make technical,*

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clarifying, or other minor changes in the proposed decision that do not affect its findings and conclusions and adopt the proposed decision in its modified form.”

Board counsel, Dennis Eagan responded to the inquiry and stated when developing the Committee’s draft language, similar language applied in Section 11517 of the Government Code was leveraged. He also explained the purpose behind the recommendation (allowance of the board to make minor changes to the ALJ’s decision without it going back to the ALJ for approval) is to minimize delays and streamline the rate-setting process.

Commissioner Captain Nyborg, stated the verbiage “*do not affect its findings and conclusions*” should provide enough safety to ease Committee member Captain Prada’s concerns. Committee member Captain Prada clarified he is only reserving full support until WSPA and Clea can weigh in and feels what is being proposed should move forward.

Committee member Tynan, added to Eagan’s response by stating the Committee’s recommendation to allow for minor changes by the Board was included to ensure there was an opportunity to make minor corrections, such as a math error, before the changes moved forward.

Committee Chair Captain Carr continued with reviewing the Committee’s proposed solutions from the Final Report as follows:

- *“The process needs to make rate setting more formulaic and consistent.”*

The Committee is recommending changes to the statutes to include the formula similar to the formula used by the OBMP for setting rates. Revenue Requirement = (TNI x # of Pilots) + costs and expenses.

Committee Chair Captain Carr stated there was a great deal of consensus when working through this recommendation.

- *“The rate-setting process creates a highly contentious and politicized environment.”*

The recommendation to move the rate-setting process away from the Legislature and instead include a requirement for administrative approval by the CalSTA Secretary is another effort by the Committee to address both contention and politicization.

Committee Chair Captain Carr explained the Committee members worked to obtain consensus

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throughout the process of developing the recommendation and when consensus could not be obtained, the members sought compromise.

Committee member Tynan explained the Committee performed a deep dive into past processes in California and current processes in other states. Committee member Tynan looked to the statute to assist with determining the Board's role going forward. In her research, she found the Board's role is integrated across many different tasks and oversights and she does not support removing the Board from the rate-setting process. Furthermore, she was unable to find justification within the statute to remove the Board from the process.

Committee member Captain Carr stated the Committee is proposing CalSTA approve, reject with reasoning, or remand back to the Board the ALJ's decision. He stated the Committee is recommending three major changes; ALJ involvement, limited Board involvement, and final approval from CalSTA, removing the legislature from the process.

President Hayes-White thanked the Committee for their time and effort they put into the Final Report and Process Outline.

Commissioner Captain Nyborg asked about funding for the petition process. Mike Jacob stated the assumption is costs would be absorbed by Board overhead and supported by the Board Operations Fund.

Commissioner Captain Nyborg inquired about the process for assignment of an ALJ. Board Counsel Eagan stated the request for an ALJ would go through the Office of Administrative Law (OAL).

Commissioner Captain Nyborg inquired about the involvement of CalSTA and whether or not their approval/rejection would represent the Governor's approval/rejection. Committee member Captain Carr explained obtaining CalSTA's review was not intended to extend the process but to ensure the administration's involvement.

Commissioner Schmid inquired if the recommendation has already been shared with the CalSTA Secretary and what CalSTA's role will be in this effort. Commissioner Dougherty explained CalSTA is aware the Committee has been working towards a rate-setting process recommendation and at this time CalSTA does not have a position on the overall recommendation or the Secretary's role as a reviewer/approver.

Commissioner Schmid inquired if surcharges would be included or if they will continue to be a separate adjustment by the Board. Committee member Captain Carr responded that there is leeway in the language to support adding surcharges to the process. Commissioner Schmid inquired if the formula would account for Cost of Living Adjustments (COLA). Committee member Captain Carr confirmed the Committee members included factors to address COLA

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when setting the formula.

Mike Jacob thanked the Committee for all their hard work. He stated although he opposes the report because it isn't consistent with one of their principals, he feels great progress has been made towards substantive reform of the rate-setting process. Other than the recommendation regarding the role of the Board, there is consensus on all other items. As far as PMSA is concerned this is the beginning of the process, not the end, and PMSA is willing to stay at the table to work through the process.

Captain McIntyre thanked the Committee and stakeholders for their efforts and participation in the process. She stated SFBP doesn't agree with PMSA or the Committee when it comes to the role of the Board in the rate-setting process. She stated SFBP's position is the rate-setting process authority should remain solely with the Board, supported by an ALJ that presides over the hearing and presents a decision for the Board to take action. She stated this position is consistent with the Oregon model and regulatory rate setting bodies in CA, such as the PUC. SFBP is not opposed to the involvement of CalSTA but they find it adds an element of delay and duplicative review. She said SFBP understands consensus on the Board's role may not be obtained but rate-setting reform needs to happen in the 2022 legislative session this year. Therefore, SFBP does support the Committee's Final Report and recommendation and remains available to assist with implementation.

Executive Director Garfinkle thanked the Committee for their participation and explained if the Board approves, it will move forward to Sacramento for further discussion.

Committee member Tynan clarified why CalSTA's role was included in the recommendation. She stated with the removal of the Legislative Branch it made sense to include the Executive Branch, which the Board falls under, in the process.

- MOTION:** Commissioner Captain Nyborg moved that the Board propose and advocate to both the Administration and the Legislature the revisions to the pilotage rate-setting process that are set forth in the Committees report. Commissioner Tynan second the motion.
- VOTE:** YES: Hayes-White, Schmid, Nyborg, Carr, and Tynan.
NO: None.
ABSTAIN: Prada.
- ACTION:** The motion was approved.

President Hayes-White called a brief twelve-minute recess at 11:48am.

President Hayes-White resumed the meeting at 12pm. Administrative Assistant II Wong called the roll and confirmed a quorum.

14. Report on the Fitness Committee meetings held on February 8, 2022 and February 22,

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2022.

Possible presentation of draft fatigue regulations for approval by the Board. Possible Board action to approve draft fatigue regulations and to direct the Rules and Regulations Committee and Board staff to initiate rulemaking with the Office of Administrative Law.

Pilot Fitness Committee Chair Miller stated the Pilot Fitness Committee met on February 8, 2022 and continued the meeting on February 22, 2022 to discuss the fitness determination process at UC San Francisco, current issues, and opportunities for improving turnaround times for Fit For Duty (FFD) determinations for pilots, however, the bulk of the time in these meetings was spent reviewing the proposed draft fatigue regulations.

Committee Chair Miller stated the legislature enacted Harbor Navigation Code (HNC) Section 1196.5 which mandated the Board to retain an independent research organization to study pilot work and sleep habits. The Board engaged San Jose State University Research Foundation and NASA to conduct the study. The study came up with several recommendations which were embraced by the Board. The Pilot Fitness Committee completed the draft regulatory language.

Board counsel Eagan walked through the draft regulations as follows:

The Committee's proposed responses to the recommendations were previously approved by the Board. In considering draft regulations, the Committee has altered somewhat four of the policy recommendations that were previously approved by the Board. The affected recommendations are Recommendations 4, 14, 20, and 21.

Recommendation 4. This policy pertained to situations where a pilot has worked more than 18 night-time hours in any 72-hour period. The initial recommendation was that, if that 18-hour limit were exceeded, a pilot would not be assigned to a work period the following day that started prior to 0600. To give pilots two extra hours of sleep, 0600 was changed to 0800.

Recommendation 14. This policy required the Fatigue Risk Management System prepared by the Port Agent to include education of pilots, dispatchers, and pilot vessel crews with respect to an appropriate recovery period after awakening. The draft regulations retain this requirement for pilots by including the subject in the combination course required of pilots under section 215. The topic was also included in section 214, pertaining to trainee training. The requirement was dropped as to dispatchers and vessel crews because pilots direct others when they want to be awakened.

Recommendation 20. This policy required that trainees be educated concerning fatigue but need not comply with the same work- and rest-period requirements applicable to pilots.

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Proposed section 220(I) has been added to section 220, Duties of Pilot Trainees. It requires that trainees familiarize themselves with the work-hour limitations and rest-period requirements applicable to pilots and use those limitations and requirements in scheduling training trips on vessels.

Recommendation 21. This policy required the Port Agent to consider various alternative means to mitigate pilot fatigue occasioned by long-distance travel to and from mandated training. One item for consideration was whether travel by air should allow for 180-degree horizontal seating. That item has been dropped.

Board Counsel Eagan reviewed the text of the proposed fatigue regulation changes as follows:

§ 202. Other Definitions.

(m) “FRMS” means fatigue risk management system.

§ 210. Incident Review Process.

(c) The written report developed by the Incident Review Committee relating to the incident, misconduct or other matter shall include but need not be limited to:

(12) An assessment of whether fatigue contributed to the incident.

§ 214. Pilot Trainee Training Program.

(b) The training program prescribed herein shall include the following topics:

(24) The causes and hazards of fatigue, the means of avoiding or alleviating fatigue, the responsibility of pilots and trainees to ensure that they are rested prior to an assignment, the need for a sufficient recovery period after awakening, and the duty of pilots and trainees to refuse an assignment if they are too fatigued to complete an assignment safely.

§ 215. Pilot Training.

(b) The training program for each pilot shall consist of two parts:

(2) Attend a combination course at least five days in length completed at least once every five years covering at least the following topics:

(E) The causes and hazards of fatigue, the means of avoiding or alleviating fatigue, the responsibility of pilots to ensure that they are rested prior to an assignment, the need for a sufficient recovery period after awakening, and the duty of pilots to refuse an assignment if they are too fatigued to complete an assignment safely.

§ 218.1. Fatigue Risk Management.

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- (a) This section implements section 1196.5 of the Code, which requires the Board to evaluate factors that contribute to pilot fatigue and to adopt regulations that will prevent pilot fatigue and thereby ensure the safe operation of vessels.
- (b) The Port Agent shall prepare and submit to the Board for review and approval a fatigue risk management system. The FRMS proposed by the Port Agent shall be developed to ensure that the operations of the San Francisco Bar Pilots support effective rest opportunities and fatigue mitigation measures. The FRMS shall include the specific restrictions on work hours and rest periods mandated by this section. The FRMS shall also include the additional elements specified in this section. Subject to Board approval, the content of these elements is committed in the first instance to the Port Agent. Requiring initial development of the FRMS by the Port Agent is based on the premise that the Port Agent is most familiar with the day-to-day operations of the pilots and is well situated to evaluate what fatigue-management measures will or won't work in the context of what the pilots do and how they do it.
- (c) Pilots are limited to a maximum work period of 14 hours. A work period starts at the time a pilot would need to report to San Francisco Bar Pilots headquarters to begin an assignment and ends at the time a pilot, having completed the last of one or more assignments, would arrive back at SFBP headquarters. The Port Agent may include in the FRMS a maximum work period less than 14 hours, stating the rationale for the shorter work period. The Port Agent shall report monthly in writing to the Board instances of work periods in excess of 12 hours.
- (d) Pilots are limited to a maximum night work period of 12 hours without a rest opportunity on the offshore station boat between assignments. A night work period is any work period that includes all or any portion of the hours between 0000 and 0600. The Port Agent may include in the FRMS a maximum night work period less than 12 hours, stating the rationale for the shorter night work period. The Port Agent shall report monthly in writing to the Board instances of night work periods in excess of 10 hours without a rest opportunity on the offshore station boat between assignments.
- (e) Pilots are limited to a maximum of 18 night-time hours worked in any 72-hour period. A night-time hour is any whole or partial hour worked between 0000 and 0600. If a pilot has reached the 18-hour limit, the Port Agent shall not assign that pilot to work in any night work period that would include a night-time hour worked prior to 0800 of the calendar day next following the calendar day on which the 18-hour limit was reached. The Port Agent may include in the FRMS a limit lower than 18 hours of night-time hours worked in any 72-hour period, stating the rationale for the lower limit. The Port Agent shall report monthly in writing to the Board the number of assignments made in which a pilot was assigned to work in a night work period that included a night-time hour worked prior to 0800 of the calendar day next following the calendar day on which the 18-hour limit was reached.

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(f) Pilots are limited to 15 consecutive days on-call. The Port Agent may include in the FRMS a protocol for providing pilots who are on-call for 14 or 15 consecutive days a rest break at or around the midpoint of the 14- or 15-day period, stating the rationale for the protocol.

(g) The minimum rest period for pilots between work periods is 10 hours. The Port Agent shall report monthly in writing to the Board the number and duration of rest periods of less than 12 hours.

(h) Concerning each of the requirements set forth in subsections (c) through (g), circumstances may arise upon or adjacent to waters under the Board's jurisdiction that pose an immediate threat of harm to persons, property, vessels, or the marine environment. When, in the opinion of the Port Agent, there is reasonable cause to believe that the risk of harm to persons, property, vessels, or the marine environment exceeds the risks associated with (1) extending work periods, (2) making assignments exceeding the limits on night-time hours, (3) extending the number of consecutive days on call, or (4) authorizing exceptions to the minimum rest period, the Port Agent may depart from the limitations set forth in subsections (c) through (g). For each such departure, the Port Agent shall report monthly in writing to the Board the fact of the departure and the circumstances and reasons therefor.

(i) The Port Agent shall include the following elements in the FRMS:

(1) A plan regarding assignment of off-call pilots that minimizes disruption of their recovery rest periods.

(2) Minimum advance notice to the San Francisco Bar Pilots by those ordering pilot services, thereby increasing the predictability of pilot schedules.

(3) A plan to use various measures to increase the number of pilots available on the board at any given time.

(4) A plan to educate pilots on the importance of reporting fatigue and removing themselves from the roster when they are significantly fatigued

(5) Measures to mitigate pilot fatigue occasioned by long-distance travel to and from mandated training. The Port Agent shall consider:

(A) Delaying a pilot's return to the board following travel.

(B) A travel mode that would minimize the number of travel segments, minimize total travel time, and enhance rest opportunities.

(6) Any other elements that the Port Agent believes will further the objective of preventing pilot fatigue and thereby ensuring the safe operation of vessels.

(j) The Port Agent shall submit the FRMS to the Board for review and approval not later than 60 days after the effective date of this section. The Port Agent shall submit the FRMS to the Board for review and reapproval one year after the initial approval, every 24 months thereafter, and whenever the Port Agent makes substantive changes to the FRMS.

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§ 220. Duties of Pilot Trainees.

(l) A pilot trainee shall familiarize himself or herself with the work-hour limitations and rest-period requirements applicable to pilots and shall be guided by these limitations and requirements in scheduling training trips on vessels.

Committee Chair Miller explained the process for developing the proposed regulations has been an iterative process. The process will continue to be iterative as the FRMS is a living document that will change over time as the SFBP's become familiar with what works and what doesn't work. The FRMS will be brought forward to the Board as changes are made.

Committee member Captain Nyborg stated the pilots have had to learn how to comply and put themselves in a position where they do not have a fatigue related incident. He shared it has been a struggle for everybody and sometimes the answers seem counterproductive. He stated, for example there are times you are taking a pilot off their rest period to relieve a pilot who is required to end their work period, but the pilot coming off their work period may be well rested after spending a day on the pilot boat. Committee member Captain Nyborg explained, they are trying to accommodate all pilots, including those who may not rest well on the pilot boats due to motion and so forth. It has been a difficult compromise and he is thankful to the pilots in their effort to figure it out. Although it is not perfect, the FRMS is flexible and has oversight at the Board level.

Commissioner Captain Carr stated as the Rules & Regulation Committee Chair he sat in on some of the Pilot Fitness Committee meetings and they were conducted at a high level and the considerations and recommendations by the Committee closely resemble the NASA Study. He stated the Rules & Regulation Committee is looking forward to getting the recommendations from the Pilot Fitness Committee and it appears to be a finished product.

Mike Jacob (PMSA) endorsed the Board to move forward with the Committee's recommendations.

MOTION: Commissioner Captain Carr moved that the Board approve draft fatigue regulations and direct the Rules and Regulations Committee and Board staff to initiate rulemaking with the Office of Administrative Law.
Commissioner Captain Prada second the motion.

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

ACTION: The motion was approved.

15. Report on shipping activity regionally and within the Board's jurisdiction (Captain

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McIntyre)

Captain McIntyre explained the financial situation has gotten worse this month. The SFBP's did not bring in enough revenue to cover bills. The SFBP looks forward to continuing to engage with PMSA and other stakeholders to find short-term solutions, as this problem doesn't appear to be going away anytime soon.

16. Presentation and discussion of a request for a disability pension by San Francisco Bar Pilot Captain Roger Kirk – Executive Director Garfinkle.

Presentation and discussion of disability pension request by SFBP Captain Roger Kirk. Possible Board deliberation and finding on:

A) Whether Captain Kirk is disabled within the meaning of Harbors and Navigation Code section 1164(b). In this context, “disabled” means a disability of permanent or extended and uncertain duration, as determined by the board, on the basis of competent medical opinion.

B) If the Board determines that Captain Kirk is disabled as defined in section 1164(b), the Board must determine the date that the disability became permanent (or of extended and uncertain duration).

Possible Board action determining whether Captain Kirk is disabled within the meaning of Harbors and Navigation Code section 1164(b), and the date that the disability became of a permanent or extended and uncertain duration. The Board may go into Closed Session to discuss Captain Kirk's confidential medical reports as authorized by Harbors and Navigation Code, §1157.1

Agenda item will be continued.

17. Incident Review Committee report on the M/V HYUNDAI NEPTUNE and M/V HANOVER EXPRESS interaction with the M/V THALASSA AVRA, resulting in multiple parted lines and contact with a container crane at Berth 37, Oakland Outer Harbor, on May 21, 2020. (Executive Director Garfinkle/Vice President Schmid)

A presentation of the Incident Review Committee report on the event involving the M/V HYUNDAI NEPTUNE and M/V HANOVER EXPRESS interaction with the M/V THALASSA AVRA, resulting in multiple parted lines and contact with a container crane at Berth 37, Oakland Outer Harbor, on May 21, 2020. Board deliberation of the Incident Review Committee's recommendations to the Board and determination regarding the event involving the M/V HYUNDAI NEPTUNE and M/V HANOVER EXPRESS interaction with the M/V THALASSA AVRA. The Board may go into closed

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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) and (e)(1).

President Hayes-White moved to continue in a closed session and noted Commissioner Schmid will not be in the closed session as she is a member of the Incident Review Committee.

Commissioner Captain Nyborg proposed the discussion take place in open session but referred to Commissioner Captain Prada for his input.

Commissioner Captain Prada asked if Commissioner Tynan had an opportunity to review the report. Commissioner Tynan confirmed she has reviewed the report.

President Hayes-White proposed to proceed in closed session to give Commissioner Tynan an opportunity to be briefed on what was discussed. There were no objections to going to a closed session.

The Board members went into a closed session at 12:39pm.

President Hayes-White resumed the meeting at 1:27pm. Administrative Assistant II Wong called the roll and confirmed a quorum.

For the record, Commissioner Schmid formally recused herself from deliberations as she is a member of the Incident Review Committee.

Board Counsel Eagan stated the Board met in closed session and made a decision. The decision is altered in some respects to the recommendations made by the Incident Review Committee. The Board Counsel stated he will draft the decision derived from the Board, submit the draft decision to the Board members who participated in the decision, and at the next Board meeting, the proposed written decision will be reviewed and submitted for approval. It will be announced and distributed once it is approved.

18. Public comment on matters not on the agenda. (President Hayes-White)

No public comments.

19. Proposals for the next Board meeting agenda. (President Hayes-White)

President Hayes-White proposed to include the Executive Director's Performance Evaluation on the next agenda.

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Commissioner Captain Carr asked to add an agenda item for Pilot Power Committee recommendations.

Commissioner Prada inquired about public meetings being held in person. Executive Director Garfinkle explained the Governor’s Executive Order to waive in person meetings is extended until the end of March.

20. Adjournment.

MOTION: Commissioner Prada moved to adjourn the meeting. Commissioner Nyborg seconded the motion.

VOTE: YES: Nyborg, Tynan, Schmid, Hayes-White.

NO: None.

ABSTAIN: None.

ACTION: The motion was approved, and the meeting was adjourned at 1:33 p.m.

Submitted by:



Allen Garfinkle
Executive Director