

<p>Meeting Date: September 22, 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 14</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
Karen Tynan, Public Member
Stephanie Dougherty, Designee of the Secretary of the California State Transportation Agency (CalSTA)

Board Members Absent

Captain Oscar Prada, Wet Cargo Industry Member
Vacant, Dry Cargo Industry Member

Board Staff Present

Allen Garfinkle, Executive Director
Dennis Eagan, Board Counsel
Roma Cristia-Plant, Acting Assistant Director
Alethea Wong, Staff Services Manager I
Charles Louie, Administrative Assistant II

Identified Public Present

Captain John Carlier, San Francisco Bar Pilots (SFBP) President and Port Agent; Captain Anne McIntyre, SFBP Business Director; and Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel.

OPEN MEETING AGENDA

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

President Hayes-White called the meeting to order at 9:32 a.m.

President Hayes-White provided some introductory remarks concerning the format of the meeting and then turned the floor over to Executive Director Garfinkle for further comments on the meeting format. In these remarks he noted that while the meeting was being conducted in-person at the Board office, Board members and the public could participate by telephone. Staff Service Manager I Wong called the roll and confirmed a quorum.

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2. Review and approval of Board meeting minutes. held on July 28, 2022 and August 25, 2022.

Board action to approve the minutes from the Board meetings held on June 23, 2022, July 28, 2022, and August 25, 2022.

Board members were presented with the draft meeting minutes from June 23, 2022. Commissioners Nyborg and Carr provided minor edits. There was no further discussion.

The Board members were provided with the draft meeting minutes from the July 28, 2022, and the August 25, 2022, Board meetings. There were no edits requested and no further discussion.

MOTION: Commissioner Carr moved to approve the minutes from June as amended, and July and August as written. Commissioner Nyborg seconded the motion.

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

ACTION: The motion was approved.

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

There were no comments.

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

President Hayes-White welcomed Administrative Assistant II Charles Louie to the staff.

5. Board Member Announcements and Activities (Board Members)

Commissioner Nyborg reported that he attended a wedding of a retired pilot and spoke with several retired pilots. They appreciated the pension checks that were sent and thanked the Board for their management of the pension.

6. Directors' Report (Executive Director Garfinkle)

A) Correspondence and activities since the Board meeting held on August 25, 2022.

Executive Director Garfinkle reported on the following:

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- On August 25, 2022, we received notice that Captain Korwatch, Executive Director of the San Francisco Marine Exchange, will be retiring after 22 years at the helm of that organization. He noted that he has personally known Captain Korwatch since his time at the California State University Maritime Academy (Cal Maritime) in the mid-1970's, and that he later had the opportunity to work more closely with her at Matson Navigation, where, as Vessel Manager, she gave him his first permanent Master's assignment.
- Also on August 25, 2022, staff received the SFBP request for Finance Committee authorization to reimburse themselves \$386,636 for pilot vessel maintenance, bringing the total to the statutorily authorized amount of \$1.4 million.
- On August 26, 2022, Board staff received approval to bring Roma Cristia-Plant back as a Retired Annuitant, effective August 29, 2022. This authorization will expire when the permanent Assistant Director position is filled.
- On August 29, 2022, staff received word that PMSA has moved its offices to 475 14th street, Suite 300, Oakland, CA.
- Also on August 29, 2022, Roma Cristia-Plant returned to the BOPC as a Career Executive Assistant Retired Annuitant, and is able to serve in that position until a permanent appointment is made by the Secretary.
- On August 31, 2022, Board staff was notified that AB 2056 had cleared both the Senate and the Assembly and was headed to the Governor's desk for signature.
- On September 1, 2022, Mr. Charles Louie joined the BOPC team as our new Administrative Assistant II. Charles is a long time San Francisco resident. He attended St. Ignatius and holds a Bachelor of Science in International Business from San Francisco State University.
- On September 2, 2022, we received a Validation Report from the 2022 Pilot Trainee Training Program Selection Exam from the California Department of Human Resources (CalHR).
- On September 6, 2022, staff was notified by SFBP Business Director Anne McIntyre that SFBP had completed collection of the surcharge for the Pilot Dispatch Program.
- On September 13, 2022, Governor Newsom signed executive order N-16-22, directing state agencies and departments to take additional actions to embed equity analysis and considerations in their mission, policies, and practices. This action will help expand opportunity for all by addressing disparities for historically underserved and marginalized communities. Addressing unequal circumstances helps drive equal outcomes so all Californians have the chance to reach their full potential and lead healthy and rewarding lives, and all California communities can thrive and prosper. Under the order, state agencies and departments are directed to embed policies and practices in their strategic plans in order to further advance equity and opportunity and address disparities in access and outcomes. As part of these efforts, agencies and

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departments will incorporate more inclusive public engagement and data analysis to better serve all Californians.

Executive Director Garfinkle responded to a question posed by Commissioner Nyborg concerning the trainee drug testing contract, stating that this contract covers random and post-incident testing. Trainees will be provided with Quest Laboratory forms when they become available.

B) Report on pilot licensing matters since the Board meeting held on August 25, 2022.

Executive Director Garfinkle reported that since the August Board meeting, the Board has issued license renewals to Captains Alfery, LeSieur, and Murney.

C) Report on Board surcharges.

Board surcharges collected for the month of August 2022 were \$306,467.67, comprising the following surcharge amounts:

- Board Operations Surcharge: \$165,606.24
- Pilot Training Surcharge: \$ 38,000.39
- Trainee Surcharge: \$102,861.04

D) Report of Pension Fiduciary.

As of September 1, 2022, we currently have 84 pensioners.

The pension surcharge rate was set for the third quarter of 2022 at \$0.06091, based on a 12-month tonnage lookback period that ran from April 2021 through March 2022.

With the pension surcharge rate set at \$0.06091, and the tonnage for August at 20,580,361, the resulting collection totaled \$1,253,549.84, reduced by a true-up payment of \$61,796.06, resulting in target distributions of \$1,191,753.01. The target payments were \$1,158,023.82, resulting in a variance of \$12,593.10 over target (compared to the July 2022 variance of \$26,938.81 under target). Administrative costs for August were \$2,815.69. The total distribution for August was \$1,243,772.43.

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

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

Nothing to report.

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F) Report on legislative activities and contractual matters.

Staff Services Manager I Wong stated that AB 2056 was enrolled and has gone to the Governor for signature.

Commissioner Captain Nyborg inquired about the status for the manned model contract. Executive Director Garfinkle explained that the manned model contract is currently under review with the Department of General Services and he is hoping for some resolution soon.

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 Rocci since March 28, 2022

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. 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.

There are currently 50 licensed pilots.

In August there were 11 MRP exceptions, with the shortest rest period being 10.5 hours.

B) Monthly report on SFBP ship piloting business activity.

For the month of August, there were normal operations for all pilot vessels, with the exception of the P/V PITTSBURG, which was laid-up starting March 9, 2022.

Billed vessel moves for August 2022 were as follows:

- Bar Crossings: 426 moves
- Bay Moves: 140 moves

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- River Moves: 60 moves
- Total Moves: 626 moves
- Gross Registered Tons (GRT): 20.6 million

When comparing 2022 vessel move data with the same period in 2021, total moves were down 4.3% and GRT is down 6.3%.

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)

Port Agent Captain Carlier presented the PEC Chairman report evaluation on behalf of Captain Eric Robinson.

A) Report on the Pilot Evaluation Committee (PEC) meeting held on September 14, 2022.

Port Agent Carlier reported the following:

- The Pilot Evaluation Committee met on September 14, 2022. The members present were Captains Ruff, Slack and Wehr.
- The eight active trainees include Adams, Barnum, Burns, Meyer, Olmsted, Pascucci, Sappington, and Snapp. The trainees’ range of time in the program span from 5 months to 35 months.
- Adams, Olmstead, Barnum, and Snapp have First Class Pilotage endorsements for unlimited tonnage upon San Francisco Bay issued by the U.S. Coast Guard on their federal licenses.
- Adams, Olmstead, Barnum, and Snapp are handling in all areas. Adams is on probation and continues to work on consistency in his piloting.
- PEC has unanimously agreed to place Trainee Snapp into the evaluation stage of training. This stage of training requires the trainee to handle assignments with no coaching from the pilot. The licensed pilot will only intervene in order to keep the ship safe.
- Burns, Meyer, Pascucci, and Sappington are acquiring route trips and handling or part handling vessels in all areas.
- In closed session, all trainees were individually interviewed and counseled on their progress in the training program. Most of the trainees are meeting the recommended benchmarks and are progressing at their own rates.

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- The next PEC meeting is scheduled for October 19, 2022, at 7:30 a.m. in 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 or off 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 current violations.

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

Executive Director Garfinkle reported that there were no new reportable piloting events.

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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 states that these reports are from the U.S. Coast Guard via the Harbor Safety Committee meeting. Because the Committee did not have a meeting in August, both the July and August reports were presented at the September meeting. He also noted that many incidents concern vessels where no BOPC licensed pilots were on board, and he will report only on loss of propulsion events where a licensee was employed.

He reported the following events in July:

- A U.S.-flagged containership experienced a loss of propulsion while transiting outbound from Oakland. With a pilot onboard, the vessel's RPM's dropped while attempting to go astern. The vessel immediately anchored. A failure of the lube oil pump caused the LOP due to the Chief Engineer switching from manual to auto mode. The standby operation fault was repaired by ship staff and found to be operating satisfactorily. Classification Society and Coast Guard witnessed satisfactory operation of the pump. LOP was not attributed to fuel switching. Case closed.
- A foreign-flagged bulk carrier experienced a loss of propulsion while anchoring in the San Francisco Bay. The main engine failed to produce astern propulsion due to a loss of starting air pressure. A broken gasket from cylinder numbers 2 and 3 caused the air leakage. Additional gaskets were replaced on other cylinders due the signs of damage. Main engine was satisfactorily tested ahead and astern. Classification Society and Coast Guard witnessed satisfactory operation of the main engine. LOP was not attributed to fuel switching. Case closed.

12. Finance Committee meeting (Committee Chair Captain Nyborg)

A) Report on the Finance Committee meeting held on September 6, 2022.

1) Report on Pilot Dispatch Program Surcharge collection finalization and sunseting.

The authorized amount of this surcharge (\$275,000) has been collected in full. SFBP reports that there was a nominal \$5,415 over-collection that will be (or has already been) reimbursed to steamship agencies. The surcharge collection has ended.

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Commissioner Nyborg thanked SFBP and PMSA and others for assisting with the cost of this dispatch program, the operation of which will assist in the management of pilot fatigue issues.

- 2) Report on SFBP request for Finance Committee authorization to recover \$386,636.00 in Pilot Boat Maintenance expenses (with total collection not to exceed \$1,400,000).**

SFBP requested authorization to collect the third and final submitted expense statement totaling \$386,636. The Committee approved the SFBP request to reimburse themselves up to the \$1,400,000 authorized by statute.

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

- 1) To adjust or not adjust the Board Operations Surcharge rate (currently at 6.0% of all pilotage fees), and the revenues, expenditures, and reserve balance. Possible Board action to adjust the Board Operations Surcharge rate.**

Commissioner Nyborg reported that the Committee recommended no change.

- 2) To adjust or not adjust the Pilot Continuing Education Surcharge rate (currently at \$60 per move). Possible Board action to adjust the Pilot Continuing Education Surcharge rate.**

Commissioner Nyborg reported that the Committee recommended no change.

- 3) To adjust or not adjust the Pilot Trainee Training Surcharge rate (currently \$20/trainee/move). Possible Board action to adjust the Pilot Trainee Training Surcharge rate.**

Commissioner Nyborg reported that the Committee recommended no change.

- 4) To adjust or not adjust the Pilot Boat Maintenance Surcharge rate (currently \$200/move). Possible Board action to adjust the Pilot Boat Maintenance Surcharge rate.**

Commissioner Nyborg reported that the Committee reviewed the Pilot Boat Maintenance surcharge collected thus far and, in an effort to be assured that it will be

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fully collected prior to the sunset of the surcharge, is recommending an increase to the surcharge from \$200 per move to \$300 per move, effective on October 1, 2022. Board Council Eagan stated that there is no need for Board action if there is no change to a surcharge.

MOTION: Vice President Schmid moved that the Board approve the Finance Committee’s recommendation to increase the Pilot Boat Maintenance Surcharge rate from \$200/move to \$300/move, effective October 1, 2022. Commissioner Carr seconded the motion.

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

ACTION: The motion was approved.

Mr. Jacob thanked Commissioner Nyborg and approves of the actions of the Committee on the pilot boat maintenance and dispatch program surcharges. He thanked SFBP for the prompt reconciliation with the shipping agencies on the reimbursement of the overages incurred.

Captain McIntyre stated that SFBP did intend to send communication of new statutorily authorized fees in advance of the changes that will be occurring if AB 2056 is signed. Implementation of the Temporary Transit Fees will be made effective on October 1, 2022.

Board Council Eagan noted that, due to the urgency clause included in the bill, SFBP can begin charging as soon as the legislation is signed by the Governor, and inquired if SFBP voluntarily will hold off implementation of the surcharge until October 1, 2022. SFBP Business Director McIntyre affirmed that was the case.

13. Discussion of avoidance of conflicts of interest issues regarding the Assistant Director position (President Hayes-White and Board Counsel Eagan). Possible Board action to approve letter to the California State Transportation Agency Secretary regarding the hiring process for the Assistant Director position.

President Hayes-White distributed two copies of a letter directed to CalSTA to all present in-person, at the meeting. One copy was an original letter created by Commissioner Tynan, and the second was a draft with suggested edits by Commissioner Carr. Acting Assistant Director Cristia-Plant inquired if the document was confidential. Board Counsel Eagan

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responded that it was not, at which time Acting Assistant Director Cristia-Plant requested that the two versions be posted to the Board web site, which was done promptly.

Board Counsel Eagan provided some context for the letters, which consisted of an explanation that when the previous Assistant Director was hired, he provided guidance on possible conflicts of interest that might arise out of a spousal relationship with someone that, by dint of being on the candidate list for the training program, may eventually become a trainee in the Board’s training program. He explained that while this relationship did not act as an absolute bar to employment, there may be situations in which the Assistant Director should recuse themselves from the decision-making process. He noted that these should be considered on a case-by-case basis.

Commissioner Tynan stated that the memos capture the tone and collaborative nature of working with CalSTA which was a helpful closure of this issue.

Commissioner Nyborg was concerned that the delayed nature of the resolution of this issue by the Board put a person into an uncomfortable position, and he would like to avoid this in the future, and also would like to work towards closure.

President Hayes-White agreed with Commissioner Nyborg, and noted that she was concerned about the impact recusal would have on staff workload since this is such a small office, and opined that, had there been better communication on this issue, it would have been helpful.

Deputy Secretary Dougherty appreciated that the focus now is more of a go-forward view. She provided a status update on filling the Assistant Director position, which is a Career Executive Assignment (CEA) position and goes through a standardized state hiring process through the California Highway Patrol (CHP), which includes scoring applications for background and experience and hiring interviews. The current advertisement for this position closes on October 31, 2022.

A thorough discussion of the content and tone of the letter ensued.

MOTION: Commissioner Carr moved that the Board approve the draft as amended to be sent to CalSTA. Vice President Schmid seconded the motion.

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

ACTION: The motion was approved.

Mr. Jacob thanked the Board for being proactive and appreciated Commissioner Tynan for taking the initiative to write the original draft. He noted that originally, in 2008, when this position was created, it was a gubernatorial appointment, with the concept that there would

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be a position on staff independent from the Board that would increase transparency, and that it's ironic that the Board is still involved. He noted that the letter does not include input from stakeholders, pilots, nor industry.

Captain McIntyre stated that this issue was very important to the pilots and wanted to avoid similar issues in the future and appreciates that the Board is being proactive.

Commissioner Nyborg expressed his disappointment on the length of time it took to address this issue. He felt that there were too many bureaucratic procedures that stood in the way of resolution of this issue, at the cost to the individual's well-being. As a Commissioner, he found it frustrating, as he desired to find a quick resolution to the problem.

14. Report on shipping activity regionally and within the Board's jurisdiction (Captain McIntyre)

Captain McIntyre stated traffic has marginally improved but still at pandemic levels.

Mr. Jacob stated that even though this is peak season, we are expecting container volume to be slack. Retailers were frontloading their supplies earlier this year to avoid a bottleneck at this time of year, and despite that, there is still congestion. He noted that thousands of empty containers are currently inaccessible at the Howard Terminal. The port is actively looking for additional acreage for storage and staging areas. LA/Long Beach/Oakland are experiencing congestion. The imposition of fees are being considered to motivate shippers to turn their container more quickly. Recession slowdown is a growing concern, as is a strong dollar, which may affect import volumes. He added that there is no peak season this year.

15. Discussion of Assembly Bill 2056 progress and implementation. (Captain McIntyre)

Captain McIntyre noted that Assembly Bill 2056 was presented to the Governor on September 13, 2022, for signature. The bill was unopposed and new fees would be effective October 1, 2022.

Mr. Jacob thanked SFBP, Cruise Lines International Association (CLIA), and Western States Petroleum Association (WSPA) for collaborating on this legislation. He agreed with Captain McIntyre that he would like to see this on the next agenda, to have a full discussion on what type of rulemaking is needed, and how to expedite the calendar for implementing the necessary charges.

Commissioner Captain Nyborg inquired if the Finance Committee will have specific tasks and surcharges that need recommendations.

Mr. Jacob stated, in a response to the inquiry by Commissioner Nyborg, that the Finance

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Committee meeting scheduled for November should be sufficient to act on the new fees before the effective date January 1, 2023.

Acting Assistant Director Cristia-Plant met with CHP Fiscal Staff to discuss creating a new account to deposit the pilot boat monies.

16. Discussion and consideration of cancelling the monthly Board meeting previously scheduled for Thursday, November 10, 2022. Possible Board action to cancel Board meeting previously scheduled for Thursday, November 10, 2022.

Commissioner Nyborg stated that the Board has, on occasion in the past, cancelled November Board meetings prior to the Thanksgiving Holiday. His concerns about doing this are staffing availability and impacts to rate and surcharge changes. He suggests cancelling the November Board meeting due to its proximity to the Thanksgiving holiday, and that it is following so close to October's Board meeting.

A short discussion on the merits ensued.

MOTION: Commissioner Nyborg moved to cancel the November Board Meeting. Vice President Schmid seconded the motion.

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

ACTION: The motion was approved.

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

Mr. Jacob updated the Board on the Howard Terminal stadium project. He noted that there are two separate litigations. In one, Alameda Superior Court heard petitions regarding the adequacy of the EIR impacts, and ruled in favor of the city. In the other, the same plaintiffs challenge the removal of the port priority use designation. He noted that in the second, there will be a case management meeting soon. He added that the Oakland City Administrator will not discuss navigation issues with maritime stakeholders while there is a litigation in progress. An update will be provided at the next Board meeting.

Commissioner Carr stated that it appears that there are multiple attacks on regional maritime interests. The overall effect has negative impact on maritime commerce.

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

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Commissioner Carr suggest keeping agenda item #15 (AB 2056)

Commissioner Nyborg expressed concern that the Board may need an action item associated with the discussion of AB 2056.

Next Board meeting is scheduled for October 27, 2022.

19. Adjournment.

President Hayes-White adjourned the meeting at 11:26 a.m.

Submitted by:



Allen Garfinkle
Executive Director