

<p><b>Meeting Date:</b>  <b>February 23, 2023</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 1 of 13</b></p>
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**Board Members Present**

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

**Board Members Absent**

Vacant, Wet Cargo Industry Member  
Vacant, Dry Cargo Industry Member

**Board Staff Present (in person and by phone)**

Allen Garfinkle, Executive Director  
Roma Cristia-Plant, Acting Assistant Director (by phone)  
Dennis Eagan, Board Counsel  
Alethea Wong, Licensing and Training Programs Manager  
Charles Louie, Administrative Assistant II

**Identified Public Present (in person and by phone)**

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 (by phone); Knute Michael Miller, Past Board President; Captain Eric Robinson, SFBP; Captain Dennis Plant, Chevron and retired BOPC-licensee; Kevin Baldwin Bullivant Houser Bailey PC (by phone); Captain Charles Davis, 2022 Pilot Trainee Training Examination Applicant (by phone), and Captain James Barton (by phone).

**OPEN MEETING AGENDA**

**OPEN MEETING**

**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 and Executive Director Garfinkle presented meeting instructions. Administrative Assistant II Louie called the roll and confirmed a quorum.

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**2. Board Officer Elections (Executive Director Garfinkle and Board Counsel Eagan)**

**A. Explanation of rules and customs applicable to Board officer elections.**

Board Counsel Eagan explained the rules and customs applicable to Board officer elections. He stated that the assignment is for two years and can be renewed.

**B. Board members to elect a President of the Board. Board action to elect a President of the Board.**

President Hayes-White thanked the Board for the privilege to serve as President. She thanked Board staff for their support. Commissioner Nyborg stated that he appreciated her service and would support her should she decide to continue in the role. President Hayes-White stated that it is healthy to have a change in leadership, and nominated Commissioner Karen Tynan to be the next Board President. Vice President Schmid thanked President Hayes-White for her leadership. Commissioner Tynan stated that it is important to acknowledge President Hayes-White's leadership during the pandemic. She further stated that she felt public service is critical and that she was willing to step up and continue to learn. Commissioners Nyborg and Carr expressed the hope that the industry seats on the Board will be filled as soon as possible.

**MOTION:** Commissioner Carr moved to elect Commissioner Tynan as President, effective immediately. Commissioner Nyborg seconded the motion.

**VOTE:** YES: Hayes-White, Carr, Nyborg, Schmid, and Tynan.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

**C. Board members to elect a Vice President of the Board, if determined necessary. Board action to elect a Vice President of the Board.**

Vice President Schmid thank the Board for the privilege to serve as Vice President expressed her interest to continue as Vice President. Commissioner Nyborg and President Tynan thanked Vice President Schmid for her continued support of the Board.

**MOTION:** Commissioner Hayes-White moved to re-elect Vice President as Vice President. Commissioner Nyborg seconded the motion.

**VOTE:** YES: Tynan, Carr, Hayes-White, Nyborg, and Schmid.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

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

Captain Davis requested that his letter be posted as part of the Board meeting documents, and questioned why it was not posted on the BOPC website. Board Counsel Eagan stated that closed session items are not available to the public, and his letter did not pertain to any open session meeting items on the agenda.

**4. Review and approval of Board meeting minutes (President Tynan) Board action to approve the minutes from the Board meeting held on January 26, 2023.**

The draft minutes from the Board meeting held on January 26, 2023, were presented to the Board. Commissioner Carr suggested a technical edit. There was no further discussion.

**MOTION:** Commissioner Hayes-White moved to approve the draft minutes from meeting held on January 26, 2023, as edited. Commissioner Carr seconded the motion.

**VOTE:** YES: Tynan, Carr, Hayes-White, Nyborg, and Schmid.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

**5. President Announcements and Activities (President)**

President Tynan thanked the Board for electing her as Board President, and that she appreciates her colleague's confidence in her ability to fulfill her duties as the newly elected President. She added that she looks forward to working closely with staff.

**6. Board Member Announcements and Activities (Board Members)**

Commissioner Hayes-White stated that she received a letter that related concerns regarding the 2022 Pilot Trainee Training Program Selection Exam, and that this letter would be discussed in closed session under agenda item #16.

**7. Directors' Report (Executive Director Garfinkle)**

**A) Correspondence and activities since the Board meeting held on January 26, 2023.**

Executive Director Garfinkle reported the following:

- On January 26, 2023, Board staff received a copy of the PMSA West Coast Trade Report for January 2023.
- On January 31, 2023, Board staff received a copy of *Professional Mariner* which had

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an article detailing the grounding of the 1,096-foot containership, M/V EVER FORWARD, in Chesapeake Bay. He stated that the article cited the United State Coast Guard (USCG) investigation report, which noted that the pilot sent two text messages on his cell phone in the minutes prior to the grounding, and had exited from the active navigation setting on his Portable Piloting Unit (PPU) during the four minutes leading up to the grounding. The USCG cited the pilot’s failure to maintain situational awareness as a leading cause of the grounding. He stated the USCG also cited overreliance on a single navigational tool (the pilot’s PPU) limited his ability to accurately and quickly make a full appraisal of the situation.

- On February 1, 2023, Acting Assistant Director Cristia-Plant and Executive Director Garfinkle attended a California State Transportation Agency Leadership Summit at California Highway Patrol headquarters.
- On February 9, 2023, Administrative Assistant II Louie and he attended the January Harbor Safety Committee meeting in San Francisco, CA.
- On February 13, 2023, he attended the Pension Committee meeting.
- Also, on February 13, Board staff received an email from a pensioner who, after doing some calculations, noted that over the time period 2007 to 2023, the actual pension received only varied by approximately 1% from the target pension.
- On February 15, 2023, he attended the start of the January Pilot Evaluation Committee meeting.
- On February 21, 2023, Board staff received a letter from Mike Jacob, Vice President and General Counsel for PMSA, commenting on a Pension Committee action and other issues involving the San Francisco Bar Pilot Pension Plan.

**B) Report on pilot licensing matters since the Board meeting held on January 26, 2023.**

Executive Director Garfinkle stated that since the January Board meeting, the Board issued license renewals to Captains Lingo and Hirschfeld.

**C) Report on Board surcharges.**

Executive Director Garfinkle reported Board surcharges collected for the month of January 2023, were \$295,230.99, and comprised of the following surcharge amounts:

- |  |              |
|--|--------------|
| • Board Operations Surcharge           | \$154,122.47 |
| • Pilot Continuing Education Surcharge | \$ 31,696.74 |
| • Pilot Trainee Surcharge              | \$ 66,099.07 |
| • Pilot Boat Program Surcharge         | \$ 43,312.71 |

**D) Report of Pension Fiduciary.**

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Executive Director Garfinkle reported that as of January 1, 2023, there were 85 beneficiaries in the San Francisco Bar Pilot Pension Plan (Pension Plan). He reported the following for the January 2023 monthly pension allocation that was made on February 8, 2023:

Surcharge Rate for the Quarter	\$0.05819/gross registered ton
Rolling Look Back Period	October 2021 through September 2022
Monthly Tonnage	20,296,600
Surcharge Billing Total	\$1,181,059.25
Administrative Costs for the Month	(\$2,193.10)
Amount Distributed to Pension Beneficiaries	\$1,178,866.15
Total Monthly Target Rates	\$1,166,753.33
Amount Over/(Under) Total Targe (inclusive of plan expenses)	\$14,305.93

He reported the last cost of living adjustment (COLA) increase to Pension Plan benefits was April 1, 2020, and that Harbors and Navigation Code section 1167 mandates that the Board review the pension benefits the earlier of every three years or whenever there is a 12% increase in the Consumer Price Index (CPI). He stated that the Pension Committee met on February 13, 2023, reviewed the change in CPI, and will make a recommendation to the Board regarding the three-year required review of benefits later in the meeting.

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

Nothing to report.

**F) Report on legislative activities and contractual matters.**

Licensing and Training Programs Manager Wong stated that there was nothing to report on legislative activities.

Licensing and Training Programs Manager Wong reported the following on contractual matters:

- Caltrans – The California Highway Patrol is reviewing the contract renewal documents.
- CitiBank - The Department of General Services (DGS) still has not approved the contract to pay for services from the CalTravel Store as of the meeting date.

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- Artelia – On February 21, 2023, Artelia’s Insurance certificates were provided to DGS for review.
- The amended contract with the University of California San Francisco for pilot and trainee medical services has been executed.
- SFBP - Board staff are still waiting for information from the SFBP needed to enter into a new contract for trainee and other services to the Board.
- San Jose State University Research Foundation - Board staff will need to extend the term of the pilot fatigue mitigation study so the researchers can carry out the last study task to assess the effectiveness of the fatigue prevention regulations, and are awaiting information on cost adjustments before a contract amendment can be completed.

Commissioner Nyborg, commented on the M/V EVER FORWARD article and incident, that he had trouble comprehending a pilot being distracted by cell phone usage for such a large part of the transit, and noted that mobile devices can be an important judiciously-used tool for pilots. President Tynan stated that she appreciated the article on the M/V Ever FORWARD, since it focused on bridge resource management. Commissioner Nyborg agreed that the article raises awareness.

**8. 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 December 7, 2022
- Captain Greger since January 9, 2023

Port Agent Carlier reported that the SFBP continually monitors the dispatch list for possible 12-hour Minimum Rest Period (MRP) exceptions. If the potential MRP is likely to result in a rest period of less than 10 hours, mitigating measures are employed. These measures include, but are not limited to, suspending continuing professional development protocols, cancelling scheduled meetings, cancelling previously granted compensating time off requests, suspending internal working rules, or calling in off-watch pilots.

He reported that the SFBP currently has 51 licensed pilots, December had 8 MRPs, and the shortest rest period was 10 hours.

**B) Monthly report on SFBP ship piloting business activity.**

Port Agent Carlier reported the following pilot vessel information:

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- P/V CALIFORNIA:  
Returned to station on February 17, 2023.
- All other pilot boat operations are normal.

Port Agent Carlier reported that vessel moves for January 2023 were as follows:

- Bar Crossings: 367 Moves
- Bay Moves: 158 Moves
- River Moves: 58 Moves
- Total Moves: 583 Moves
- Gross Registered Tons (GRT): 20.3 million

When comparing 2023 vessel move data with the same period in 2022, total moves were up 3% and GRT is up 13.2%.

**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.

A discussion ensued regarding the difference between AFMR and Not Fit for Duty (NFFD) as follows:

- Commission Carr, Commissioner Hayes-White and Executive Director Garfinkle discussed the California Code of Regulations, section 217.37 (that requires a medical re-evaluation by the Board’s physicians no later than 120 days from original date the licensee was found NFFD by a Board physician. Acting Assistant Director Cristia-Plant added that a pilot’s own doctor determines AFMR, and that Board Physicians determine NFFD status.
- Commissioner Nyborg questioned the 60-day gap between the AFMR date and the NFFD date, which Executive Director Garfinkle clarified is the length of time for UCSF to make a determination of NFFD. He stated that this time may vary from case to case, and the process is most often delayed by the licensee submitting insufficient supporting documentation with his initial notice to the Board’s physician. Commissioner Nyborg opined that the actual impact begins when the licensee is first found AFMR and the lag between that date and the NFFD is too long, and perhaps a review of the regulatory language is in order to have the 120-day period start when the licensee is AFMR.

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- Director Garfinkle explained that the BOPC does not keep track of a pilot work dates. Commissioner Nyborg noted that the Section 237(d) report tracks sick days, enabling the Board to track both the total days worked and the total days not worked due to AFMR.
- Acting Assistant Director Cristia-Plant explained that according to Board regulations a licensee has a duty to report to the examining physician if they are absent for 30 consecutive days, or a total of 30 days in any 60-day period. She noted that the regulations do not prescribe a remedy for licensees non-reporting.

## 9. Pilot Evaluation Committee (Captain Robinson)

A) Report on the Pilot Evaluation Committee (PEC) meeting held on February 15, 2023.

Committee Chair Captain Robinson reported the following for the PEC meeting held on February 15, 2023:

- The PEC met on February 15, 2023, and the members present were Captains Aune, Ruff, Slack, Wehr, and Robinson. Executive Director Garfinkle joined the PEC during the open session.
- The five active trainees include Burns, Meyer, Olmsted, Pascucci, and Sappington. The trainee's range of time in the program span from 10 months to 23 months.
- Trainees Olmsted and Sappington have a First-Class Pilotage endorsement for unlimited tonnage for the San Francisco Bay issued by the U.S Coast Guard on their federal license. Trainees Olmsted and Sappington are handling all areas. Trainee Sappington is in the evaluation stage of training.
- Trainees Burns, Meyer, and Pascucci are acquiring route trips and handling or part handling vessels in all areas.
- Trainee Olmsted remains on probation due to a lack of consistency in various aspects of his piloting, and he continues to receive coaching by the licensed pilot to keep the ship safe.
- 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.
- The next PEC meeting is scheduled for March 15, 2023, 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 or off probation or dismiss one or more trainees from the program.**



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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.

**10. 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 reports of safety standard violations since the last Board meeting.

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

Executive Director Garfinkle stated that there were no incidents reported since the last Board meeting.

**12. 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 stated that he is reporting only on loss of propulsion events involving a Board-licensee. He noted that the USCG report for January 2022 reflected one loss of propulsion event. None were attributable to fuel switching.

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**13. Pilot Pension Committee (Committee Chair Miller)**

**A) Report on the Committee meeting held on February 13, 2023.**

Acting Committee Chair Knute Michael Miller stated that the Committee met on February 13, 2023, to review Pension Plan issues. The Committee approved the minutes from its last meeting held on February 25, 2020. He noted that there were no recommendations for the next Committee meeting agenda other than ensuring that there is a designated chair for the Committee.

**B) Review and consideration of a Consumer Price Index calculation, and possible recommendation by the Committee for a potential percentage increase to the target monthly pension amount received by retired pilots and other recipients of pension benefits from the San Francisco Bar Pilot Pension Plan pursuant to Harbors and Navigation Code Section 1167 to be effective April 1, 2023. Possible Board action to approve a recommendation for a percentage increase to the target monthly pension benefits received by retired pilots and other recipients of pension benefits from the San Francisco Bar Pilot Pension Plan pursuant to Harbors and Navigation Code Section 1167, to be effective April 1, 2023. (Executive Director Garfinkle/Acting Assistant Director Cristia-Plant)**

Executive Director Garfinkle and Acting Assistant Director Cristia-Plant presented a staff report outlining past and current pension data relevant to the consideration of a change in the target monthly pension benefits due to an increase in the CPI over the past three years. Commissioner Carr noted that the staff report was very thorough in its analysis of the data.

**MOTION:** Commissioner Carr moved to approve a 5.76% increase to the target monthly pension benefits received by retired pilots and other recipients of pension benefits from the San Francisco Bar Pilot Pension Plan pursuant to Harbors and Navigation Code Section 1167, to be effective April 1, 2023. Commissioner Hayes-White seconded the motion.

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

**ABSTAIN:** Nyborg.

**ACTION:** The motion was approved.

Mr. Jacob commented that he submitted a letter to the Board regarding issues involving the Pension Plan, including that there are no pension regulations, and that he has alerted the Board about these same issues many times before.

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**14. Report on shipping activity regionally and within the Board’s jurisdiction (Captain McIntyre, SFBP/Mike Jacob, Pacific Merchant Shipping Association)**

Captain McIntyre stated that there has not been much change in shipping activity since the last Board meeting, and noted that 2022 shipping activity for the SFBP was worse than in 2021 or 2020. She shared Propeller Club statistics that revealed heavier container traffic on the East Coast than the West Coast. She added that the forecast for 2023 is not optimistic, and cited potential impacts to shipping due to the International Longshore and Warehouse Union contract negotiations, inflation, the war in Ukraine, and a possible looming recession.

Mr. Jacob stated that over the past 18 months East and Gulf Coast ports continue to outperform West Coast ports. He stated that in 2022, West Coast ports were still down 27% from 2021, and that freight volumes in Savannah and New Jersey are growing very fast. He stated the long-term outlook is not good for the West Coast, as other states are investing directly in their port infrastructure to attract more cargo, while California appears to be actively discouraging shipping industry growth. He noted strong inventories also slow imports. He opined that in a few months there may be developments in longshore contract negotiations and potentially lower freight rates, which may impact traffic volume.

**15. Board discussion on setting priorities for 2023. With several pending regulation proposals and issues before the Board, an opportunity to discuss, plan and prioritize these items for completion in 2023. (Executive Director Garfinkle)**

There was a brief discussion of 2023 Board workload priorities that were narrowed to the following list (but not to the priority order):

1. Fatigue regulations.
2. Updating rate reform regulations.
3. Pilot boat construction surcharge implementation and distribution.
4. Focus on work of Diversity Committee.
5. Investigation into allegations concerning Trainee Selection Exam.
6. Filling vacant seats on the Board with Industry Representatives.
7. Pilot power hearing.

There was general agreement to retain this agenda item on next month’s agenda for further discussion.

**RECESS BEGAN:** 11:27 a.m.  
**OPEN SESSION RESUMED:** 11:43 a.m.

**CLOSED SESSION BEGAN:** 11:43 a.m.  
**OPEN SESSION RESUMED:** 1:20 p.m.

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- 16. Closed session to consider issues raised concerning the 2022 Pilot Trainee Training Program examination and, in addition, various anonymous allegations concerning alleged irregularities in the conduct of the Board’s affairs involving pilots and Board personnel. (Board Counsel Eagan)**

**A closed session is authorized under the Open Meeting Act, Government Code section 11126, subdivisions (c)(1) and (e).**

Board Counsel Eagan reported from closed session that last year, some Board members received communications alleging issues with the 2022 Trainee Selection Exam. There was also additional communications received yesterday that will be forwarded to the Office of the Attorney General.

- 17. Pilot Trainee Training Program Selection Examination (Executive Director Garfinkle)**

**Presentation of the 2022 ranked candidate eligibility list of those candidates who were successful in passing the 2022 Pilot Trainee Training Program selection examination. Board action to accept the 2022 ranked candidate eligibility list of those candidates who were successful in passing the 2022 Pilot Trainee Training Program selection examination.**

Executive Garfinkle recommended to defer Agenda Item 17 to the next Board meeting. Commissioner Carr noted that the Pilot Power Committee recommended contracting with two additional trainees that would be selected from the 2022 Pilot Trainee Training Program selection examination eligibility list. There was a consensus to defer action on this item to the March Board meeting.

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

Captain Davis stated a desire to comment on issues taken up in closed session. Before he was able to deliver his comments, President Hayes-White recognized Kevin Baldwin, an attorney representing the San Francisco Bar Pilots, who stated that comments based on an illegal recording and presumably the comments by Captain Davis were based on such a recording, are, according to Penal Code 632, inadmissible in any administrative proceeding.

Captain Barton inquired of Board Counsel if he concurred with Mr. Baldwin’s interpretation of the penal code. Acting President Hayes-White noted that public comments on matters not on the agenda do not include queries of Board members or staff.

Acting Assistant Director Cristia-Plant responded to an earlier query from Commissioner Hayes-White, and stated that as of January 2023, 66 of the pension beneficiaries of the

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Pension Plan were previous Board-licensees, 11 beneficiaries are surviving spouses of Board-licensee beneficiaries, and 9 are ex-spouses of former Board-licensees receiving a share of a Board-licensee pension benefits based on a court order.

President Tynan turned over the chair duties to Commissioner Hayes-White and left the meeting at 1:27 p.m.

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

Proposals for the next Board meeting included consideration of the 2022 Pilot Trainee Training Program selection examination eligibility list and the Executive Director's performance review.

**20. Adjournment.**

Acting chair Hayes-White adjourned the meeting at 1:32 p.m.

Submitted by:



Allen Garfinkle  
Executive Director