

<p>Meeting Date: September 29, 2023</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>PILOT FITNESS COMMITTEE MEETING MINUTES</p>	<p>Page 1 of 5</p>
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Committee Members Present:

Knute Michael Miller, Committee Chair and Past Board President
Joanne Hayes-White, Public Member
Captain Einar Nyborg, Pilot Member (SFBP)
Robert Kosnik, MD at the University of California of San Francisco (UCSF)

Committee Members Absent:

None

Staff Present:

Allen Garfinkle, Executive Director
Matthew Millspaugh, Assistant Director
Alethea Wong, Staff Services Manager I (Specialist)
Charles Louie, Administrative Assistant II
Dennis Eagan, Board Counsel
Patrick Tuck, Board Counsel

Public Present:

Commissioner Captain Robert Carr; Roma Cristia-Plant (CalSTA Deputy Secretary of Audits and Administration); Captain John Carlier, San Francisco Bar Pilots (SFBP) President and Port Agent; Kevin Baldwin, San Francisco Bar Pilots General Counsel; Captains Andy Murray and Cevan LeSieur.

OPEN MEETING

1. Call to order and roll call. (Chair Miller)

Chair Miller called the meeting to order at 11:00 a.m. Administrative Assistant II Louie called the roll and confirmed a quorum.

2. Review and approval of Committee meeting minutes. (Chair Miller)

Committee action to approve the minutes from the meeting held on June 21, 2023.

Committee members were presented with the draft Pilot Fitness Committee meeting minutes from June 21, 2023. Commissioner Nyborg made technical edits. Executive Director Garfinkle interjected that the latest version of the June 21, 2023, minutes edited by Board Counsels Eagan and Tuck have not been posted yet. There were no further comments.

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MOTION: Commissioner Hayes-White moved to approve the June 21, 2023, draft minutes as edited. Chair Miller seconded the motion.

VOTE: YES: Miller, Hayes-White, Nyborg.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

3. Public comment on matters on the agenda or not on the agenda. (Chair Miller)

None.

(Committee Member Dr. Robert Kosnik joined the meeting at 11:10 a.m.)

4. Review the Office of Administrative Law suggestions to proposed regulation changes to California Code of Regulations, Title 7, Harbors and Navigation, Division 2, State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun, sections 202, 210, 214, 215, 218.1, and 220, and propose language responding to those suggestions, including, but not limited to, on what basis will the Board accept or reject the FRMS, define what the words "rest opportunity," as it applies to rest on the pilot boat means, what the words "rest break," as used in relation to two-week work periods means, and what the words "rest period," as used in (g) to define time off the board, means.

Commissioner Nyborg praised the San Francisco Bas Pilots (SFBP) Fitness Committee team: Captains Carr, Murray, and LeSieur. Executive Director Garfinkle presented issues that needed clarification, as requested by the Office of Administrative Law (OAL) including, establishing the definition of standards in the regulations regarding the Board's accepting or rejecting of the Fatigue Risk Management System (FMRS) as proposed by SFBP, refining the definition of "**rest opportunity**" in reference to the pilot boat. He added that three terms used as reference to rest: *rest opportunity*, *rest break* (indicating a two-week work window to reset circadian rhythms), and *rest period* (indicating any time off between assigned duties) were not specifically defined.

Board Counsel Egan stated that there is a definition of *rest period* as defined by the *maximum work period*. He discussed various options to be presented to OAL on the regulatory draft language interpretations and changes for establishing pilot fatigue standards pending any Port Agent proposals. Executive Garfinkle announced that he had forwarded to all committee members new language for §218.1(J). Commissioner Nyborg suggested technical changes and requested Board Counsel to clarify the elements in subsection I. Board Counsel Egan responded that the FMRS elements can be expressed

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collectively by the Board for an element-by-element analysis. Dr. Kosnik suggested technical edits to clarify each element for approval. Consensus for acceptance was reached by the Committee. SFBP Counsel Baldwin and CalSTA Deputy Secretary of Audits and Administration Roma-Plant both suggested additional technical edits to make the provisions conditional.

(Committee Member Hayes-White departed the meeting at 11:38 a.m.)

In response to Chair Miller’s procedural inquiry regarding a Board action for OAL consideration, Executive Director Garfinkle confirmed that there must be a Board action and that he will utilize his direct channel to an OAL attorney to whom he can field the language prior to a Board action that shall require a new 15-day comment period. In response to Committee Member Nyborg question regarding FMRS changes made by the Port Agent prior to Board action, Chair Miller replied that the proposed regulation is already structured to allow that change to which Board Counsel Eagan explained interpretations from §218.1(J) exposes missing elements. Committee Member Nyborg proposed that the Board allows the Port Agent to make changes prior to Board approval and suggested provisional edits to §218.1(J). Executive Director Garfinkle warned that now is the time to make any changes because there may not be another chance to timely address this matter despite Board Counsel Eagan not seeing an immediate need for changes now with Committee Member Nyborg agreeing. Ms. Cristia-Plant added that the Port Agent’s FMRS changes would affect the SFBP dispatching software which requires Board approval.

Committee Member Nyborg acknowledged Captain Cevan LeSieur as doing a tremendous amount of work as the chair of SFBP Fatigue Committee. From the Expressed Terms Document, Board Counsel Eagan discussed technical edits to clarify **rest period** and **rest break** interpretations. Mr. Baldwin agreed with Committee Member Nyborg to eliminate the term **rest break** in favor of a pro-active definition for **rest period** as the time between work periods (defined in subsection C) and the 14 to 15-day continuous availability for assignments which does not require a protocol by the Port Agent thereby replacing “**rest break**” with “**extended rest period**”. Ms. Cristia-Plant thought there was a 24-hour rest period exception for a pilot who worked two weeks up to the midpoint to which Board Counsel Eagan said the language allows the Board for consideration though the discretion is still up to the Port Agent to decide. Dr. Kosnik recommended that a Port Agent **statement of consideration** be included to avoid a potential issue. Board Counsel Eagan added that a Port Agent rationale can be included to explain the protocol as unnecessary. Commission Carr stated that these changes may not fall under the OAL suggested agenda for Board review to which Captain Murry agreed as being substantive changes. Committee Member Nyborg reminded the Committee that changes in the FMRS still requires Board approval therefore adding “may” or “shall”

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does not impact the OAL suggested agenda for the Board; however, based on the current definition, Dr. Kosnik does not see the opportunity to address where in the FMRS is incomplete or why the *extended rest break* item was not included. Board Counsel Eagan recommended that Dr. Kosnik’s suggestion be added as a new element otherwise, according to Executive Director Garfinkle, the Board is shut out from insisting that the Port Agent includes that element. Per Board Counsel Eagan, the Board will not be in position to question the Port Agent regarding the *extended rest period* who might decide it to be unnecessary. Executive Director Garfinkle offered a reverse rational solution in that the Port Agent can provide a reason for not including a rest period protocol in the FMRS. Commission Carr reiterated the opinion that this committee discussion is off agenda with Captain LeSieur reiterated that the Board already approved these regulations back in February and June.

Executive Director Garfinkle paraphrased a previous conversation with Committee Member Nyborg which indicated that the SFBP Fitness Committee may want the FMRS to define the *rest opportunity period*. Committee Member Nyborg read aloud his proposals clarifying *rest period* to refresh the committee’s memory that the objective of rest regulations is to capture pilot rotation efficiency while acknowledging that some pilots do not rest well at sea. Captain Murry noticed that the OAL e-mail has mis-referenced §218.1(C) for §218.1(D) and he wanted to know if the OAL objected to the rest opportunity language, to which Executive Director Garfinkle affirmed that OAL wanted the definition of *rest opportunity* to be more clearly defined. Mr. Baldwin narrowed down the definition to be a measurable standard to be achieved for having a rest opportunity that is not subjective that can be imposed by the BOPC. Captain LeSieur referred to the Federal Aviation Administration’s definition of *rest period* for their pilots as a guide, but Chair Miller claimed there is a difference in defining “on duty” between bar pilots vs. airline pilots. Board Counsel Eagan reminded that pilots do have the option to report fatigue and not take on a new assignment to which Captain Murry explained is the purpose for the FMRS.

Executive Director Garfinkle proposed modifying the language stating that *rest opportunity* is a period on an offshore station boat in which the pilot is free from all duties prior to a duty assignment. Captain Murray suggested in place of “without a rest opportunity”, a language Board Counsel Eagan recommended that the pilots should deal with this issue subject to Board approval. In response to Executive Director Garfinkle’s inquiry if the FMRS defined rest opportunity, Captain Murray stated it wasn’t defined but felt the FMRS should define more of these terms which would be imposing a new requirement on the FMRS.

Executive Director Garfinkle explained that the next step is for the committee to approve the recommended changes so that it can be put on the agenda for a Board approval

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pending a two-week public comment period before finalizing the regulation package to be sent to OAL (whose response will determine if the Pilot Fitness Committee shall meet again). He requested that the Committee members vote on approving the four changes.

MOTION: Committee Member Nyborg moved to approve a recommendation to the Board with the amended subsections: (D), (F), (G), and (J) of §218.1 that were agreed during today’s meeting. Committee Member Dr. Kosnik seconded the motion.

VOTE: YES: Miller, Nyborg, Kosnik.

NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

5. Public comments on matters not on the agenda. (Chair Miller)

None.

6. Schedule the next Committee meeting, and proposals for items on the next meeting agenda, if applicable. (Chair Miller)

The next Pilot Fitness Committee meeting has been deferred until further notice.

7. Adjournment.

MOTION: Committee Member Dr. Kosnik moved to adjourn. Committee Member Committee Member Nyborg seconded the motion.

VOTE: YES: Miller, Nyborg, Kosnik.

NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

Chair Miller adjourned the meeting at 1:25 p.m.

Submitted by:



Allen Garfinkle
Executive Director