

<p><b>Meeting Date:</b>  <b>May 23, 2024</b></p>	<p><b>Board of Pilot Commissioners (BOPC) for the Bays of San Francisco, San Pablo, and Suisun</b> <b>660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 1 of 23</b></p>
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## ATTENDANCE

### Board Members Present

Karen Tynan, President, Public Member  
 Captain Robert Carr, Pilot Member  
 Captain Einar Nyborg, Pilot Member  
 Sam Rodriguez, Public Member  
 Stephanie Dougherty, Designee for the Secretary of the California State Transportation Agency (CalSTA)

### Board Members Absent

Joanne Hayes-White, Vice President, Public Member  
 Captain Lynn Korwatch, Dry Cargo Industry Member  
 Vacant, Wet Cargo Industry Member

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

Allen Garfinkle, Executive Director  
 Matthew Millspaugh, Assistant Director  
 Alethea Wong, Licensing and Training Programs Manager  
 Mari McNeill, Administrative Coordinator  
 Greg Shepherd, Records Management and Program Support Coordinator  
 Patrick Tuck, Board Counsel

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

Kevin Baldwin, San Francisco Board Pilots (SFBP) General Counsel  
 Rex Clack, Counsel for Captain Slack  
 Captain Anne McIntyre, SFBP  
 Captain Dustin Slack, SFBP  
 Owen O'Mahony, BergDavis Public Affairs  
 Evette Davis, BergDavis Public Affairs  
 Mike Jacob, Pacific Merchant Shipping Association (PMSA) President and General Counsel (by phone)  
 Captain Paul Ruff, SFBP

## OPEN MEETING AGENDA

### 1. Call to Order and Roll Call (President Tynan)

President Tynan called the meeting to order at 9:32 a.m. Licensing and Training Programs Manager, Alethea (Ally) Wong called the roll and confirmed a quorum.

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

Mr. Jacob (on the phone) concurred with Commissioner Nyborg’s Finance Committee report (agenda item 9).

Mr. Jacob requested agenda items 11 and 12 be moved to the end of the agenda.

For agenda item 15, regarding west coast shipment improvements, Mr. Jacob reported increased tonnage across the bar. Geopolitical factors may be the cause of the increase. Shipping volumes are likely to decrease over the summer, but Mr. Jacob expected, if historic patterns remain unchanged, they will recover later in the year.

**3. Review and approval of Board meeting and meeting minutes (President Tynan)  
Board action to approve the minutes from the Board meeting held on April 23, 2024.**

The Board members were presented with the draft minutes from the April 23, 2024, Board meeting. There was no discussion.

**MOTION:** Commissioner Carr moved to approve the draft April 23, 2024, Board meeting minutes. Commissioner Nyborg seconded the motion.

**VOTE:** YES: Tynan, Carr, Nyborg, and Rodriguez.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

**4. President Announcements and Activities (President Tynan)**

President Tynan announced that Commissioner Nyborg may need to leave the meeting early, at 1:15 p.m., and that she will be moving up agenda items 13, 14, and 15.

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

None.

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**6. Directors' Report (Executive Director Garfinkle/Assistant Director Millspaugh)**

**A) Correspondence and activities since the Board meeting held on April 23, 2024.**

Executive Director Garfinkle reported on the following:

- On April 23, 2024, the Board of Pilot Commissioners (BOPC) received a copy of the PMSA *West Coast Trade Report for April 2024*.
- On May 8, 2024, the BOPC received the United States Coast Guard (USCG) Significant Port Safety and Security Cases for April 2024. This report shows “nothing significant to report”, which is good.
- On May 9, 2024, Executive Director Garfinkle attended the Harbor Safety Committee meeting, in San Francisco. This meeting included topics of interest to the BOPC, including requests to add Stockton and Sacramento tide stations, a request to repair the Oakland Outer Harbor bridge range lights, and a discussion related to the removal of the San Francisco approach Lighted Whistle Buoy Racon.
- On May 16, 2024, BOPC staff participated in the IT Modernization Project kick-off meeting with Gartner, Inc. and representatives from the California Department of Transportation (Caltrans), and the California Transportation Agency (CalSTA).
- On May 16, 2024, Captain McIntyre forwarded a memo from the Golden Gate Bridge Highway and Transportation District that noted the differences between the fendering on the Golden Gate Bridge and the Francis Scott Key Bridge in Baltimore. The Golden Gate Bridge has the most robust fendering of any bridge on the west coast.
- On May 16, 2024, CalRecycle notified the BOPC that it had not complied with the state recycled content purchasing requirements. Cal Recycle referred the BOPC to the Department of General Services Purchasing Authority Unit to develop a remediation plan.
- On May 21, 2024, BOPC staff attended a meeting of the Finance Committee.

**B) Report on pilot licensing matters since the Board meeting held on April 23, 2024.**

Executive Director Garfinkle reported since the April 2024 Board meeting, the Board issued license renewals to the following Board licensees: Captains Billingsley, Weiss, Deisher, and Wehr.

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**C) Report on Board surcharges.**

Executive Director Garfinkle reported Board surcharges collected for the month of April 2024, were \$970,031.93 comprising the following surcharge amounts:

- Board Operations Surcharge \$270,489.23
- Pilot Training Surcharge \$34,093.78
- Trainee Surcharge \$32,849.40
- Pilot Boat Surcharge \$632,599.52

**D) Report of pension fiduciary.**

Executive Director Garfinkle reported as of May 1, 2024, there were 84 pensioners.

- Surcharge Rate for the Quarter \$0.04583/gross registered ton
- Rolling Look Back Period January 2023 through December 2023
- Monthly Tonnage for April 27,913,252
- Surcharge Billing Total \$1,279,264.34
- Administrative Costs for the Month \$2,825.70
- Amount Distributed to Pension Beneficiaries \$1,276,438.68
- Total Monthly Target Rates \$1,211,139.71
- Amount Over/(Under) Target \$68,124.67

The last Cost of Living Adjustment (COLA) increase to the pension was April 1, 2023.

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

None.

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

**Legislative Report:**

**Assembly Bill (AB) 1122**

Assistant Director Millspaugh reported staff continue to monitor AB 1122. The bill was amended in the Senate on May 1, 2024, and was set for hearing in the Senate Committee on Transportation on May 20, 2024, however the hearing was cancelled. As amended, this bill would require any equipment installed, or modification to accommodate that equipment, that could limit engine power or operational ability of specified commercial harbor craft, to be approved by at least one authorized classification society, as defined,

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and not void any existing warranty provided by the manufacturer of the engine or propulsion system. However, the bill continues to include language exempting maritime pilot transportation vessels acting in an official capacity. Board staff will continue to monitor the bill as it proceeds.

President Tynan confirmed the Board’s continued desire for regular updates on AB 1122, even if the updates only consist of a confirmation that the language didn’t change.

Assistant Director Millspaugh confirmed the engine restrictions from AB 1122 would exempt pilot vessels if they are used in official duties. Captain McIntyre reported that the bill is being run by American Waterways Operators (AWO), the legislation will not affect pilots, and the SFBP is neutral on the bill.

**Contracts Report:**

**California State University Maritime Academy – Trainee Selection Exam Services  
Contract Expiration: To Be Determined (TBD)**

Assistant Director Millspaugh reported Board staff continue to put on hold the development of a new contract with the California Maritime Academy (CMA) for Trainee Selection Exam services as CMA has not identified staffing for the next simulator exam test component.

Assistant Director Millspaugh reported extensive lead time will be needed to develop a new agreement, however CMA has not identified key staff, which is a requirement for the agreements. BOPC will continue to work with CMA for a solution. Due to the lengthy process, additional time will be needed if BOPC contracts outside of CMA; so BOPC will have to start the contracting process soon if an alternate solution, outside of CMA, is needed. Executive Director Garfinkle stated the process is at a critical point and urgent action is needed but delays continue to arise with CMA, who still need to identify the appropriate staff they will use to create and execute the exam.

**State Controller’s Office –Audit Services - Surcharges  
Contract Expiration TBD**

Assistant Director Millspaugh reported the agreement is in development between the State Controller’s Office (SCO) and the BOPC. SCO contract staff are currently reviewing the draft.

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**State Controller’s Office – Pilot Boat Program Audit  
Contract Expiration: TBD**

Assistant Director Millspaugh reported BOPC staff continue to develop a new Inter-Agency Agreement (IAA) between the BOPC and the SCO for the Pilot Boat Program Audit and will continue to meet with the SCO to finalize a draft Scope of Work (SOW) and budget.

**Request for Offer – IT Modernization Project Manager (23M900002)  
Contract Expiration Date: 4/30/2026**

Assistant Director Millspaugh reported an agreement between Gartner, Inc., and the BOPC for project management services has been finalized, the term of the new agreement is May 1, 2024 – April 30, 2026.

**Certified Public Accountant Services to The SFBP Pension Plan (23M900006)  
Contract Expiration TBD**

Assistant Director Millspaugh reported the BOPC entered an invitation for bid process for accounting services, with an award made to Mah & Associates. Board staff and CHP are working to finalize the contract.

**Pilot and Pilot Trainee Fitness Assessment (21M900004) - Amendment**

Assistant Director Millspaugh reported BOPC staff continue to work towards finalizing an amendment to the current agreement between the Board and the University of California San Francisco (UCSF), extending the term to June 30, 2025, and adding additional funds to the budget.

**Administrative Services with the California Highway Patrol:**

Assistant Director Millspaugh reported BOPC staff continue to work with CHP staff to develop a new SOW and budget for an interagency agreement for administrative services. A SOW and final budget are under development.

**General Report Notes:**

Executive Director Garfinkle reported that there was verbal report at the Harbor Safety Committee meeting on the United States Coast Guard (USCG) Significant Port Safety and Security Cases for April 2024, which was not consistent with the written USCG report. An updated USCG report was requested from the Marine Exchange staff that receives and publishes the report, and they acknowledged the differences and said they would investigate.

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Captain McIntyre recommended scheduling a committee meeting as soon as possible to discuss the exam, and review and expedite the exam contracting process. Captain McIntyre noted that changes to the exam process may require extensive work. Commissioner Nyborg noted that the CMA simulator is typically available in the month of June, when the CMA breaks for the summer.

**7. Port Agent’s Report (Port Agent Carlier and Board staff)**

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

Commissioner Nyborg presented the Port Agent’s report on Captain Carlier’s behalf.

Commissioner Nyborg reported the following pilots are Absent for Medical Reasons (AFMR) and the initial absence date:

- Captain Teague since February 14, 2024.
- Captain Ruff since May 8, 2024.
- Captain Ridens since May 22, 2024.

Commissioner Nyborg reported the SFBP continuously monitors the dispatch list for possible 12-hour Minimum Rest Period (MRP) exceptions. For any potential exception likely to result in a rest period of less than 10 hours, SFBP will ensure that mitigating measures are enacted. These measures include, but are not limited to, suspending continuing professional development protocols, cancelling scheduled meetings or committee assignments, cancelling previously granted comp time requests, deferring scheduled training sessions, or calling in off-watch pilots.

Commissioner Nyborg reported there are currently 52 licensees on the SFBP roster.

In April, there were nine MRP exceptions, with the shortest rest period being 10 hours.

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

For April 2024, Commissioner Nyborg reported normal operations for all Pilot Vessels which includes the California, Drake, Golden Gate, Pittsburg, and San Francisco.

Commissioner Nyborg reported vessel moves for April 2024 were as follows:

- Bar Crossings: 463
- Bay Moves: 110
- River Moves: 56
- Total Moves: 629

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- Gross Registered Tons (GRT): 27.9 million

He also reported when comparing 2024 year-to-date vessel move data with the same period in 2023, total moves were up 4.5% and GRT was up 20.8%. President Tynan noted the corresponding graph may benefit from relabeling to specify the comparison is between 2023 and 2024 for the same period, instead of comparing move data and GRT.

**C) Monthly confidential written report of licensed pilots who have been Absent for Medical Reasons (AFMR). The Board may go into closed session to discuss the contents of the Port Agent’s confidential report and other relevant confidential medical information, as authorized by Harbors and Navigation Code § 1157.1.**

No updates.

**8. Pilot Evaluation Committee (Committee Chair)**

**A) Report on the Pilot Evaluation Committee (PEC) meeting held on May 15, 2024.**

Captain Ruff presented the Pilot Evaluation Committee (PEC) Chairman’s Report on the following:

- The PEC met on May 15, 2024. The members present were Captains Wehr, Slack, Bridgman, Stultz, and Ruff.
- The PEC meeting immediately went into closed session. After the closed session concluded, Captain Garfinkle joined the committee in open session. There was no new information.
- There are five active trainees including Gallo, Barron, Johnson, Ajax, and Johnston. The trainee’s range of time in the program range from two weeks to eight months.
- All five are acquiring trips to obtain their first-class pilotage endorsement for unlimited tonnage upon San Francisco Bay. They are observing, part handling and handling ship under direct supervision of a licensed pilot.
- Trainees Gallo and Barron are still testing for their federal pilotage with the USCG.
- Trainee Johnson has completed three months of 45 jobs per month and will ease down to 30 jobs per month average in preparation for USCG exams.
- In closed session, Gallo, Barron, and Johnson were individually interviewed and counseled on their progress in the training program.
- Trainees Ajax and Johnston were introduced to the PEC and then were interviewed and counseled. Time was spent answering their questions and concerns they had.
- As of now, all trainees are meeting recommended benchmarks and are progressing at



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their own rate.

- The next PEC meeting is scheduled for Wednesday, June 19, 2024, 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.**

None.

**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.**

None.

**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.**

None.

**9. Finance Committee (Commissioner Captain Nyborg)**

**A) Report on the Finance Committee meeting held on May 21, 2024.**

Commissioner Nyborg presented the finance report, from the Finance Committee meeting, on the following:

- The Finance Committee virtually met on May 21, 2024.
- The Finance Committee reviewed and approved minutes from its February 27, 2024, meeting.
- The Finance Committee also reviewed Board fund conditions, revenue and expenditure projections, and monthly data for pilotage fees and vessel moves.
- Updates related to the Pilot Boat Program were discussed in the Finance Committee meeting, including needing a new fund and statutory fix, to address budget authority. The new fund will need to be created to receive revenues, interest from deposits, and

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service expenditures for costs associated with vessel construction. Harbors and Navigation Code Chapter 2, Section 1159.1, will need to be amended to address the Pilot Boat surcharge corrections needed to efficiently bill for building pilot boats. Commissioner Nyborg suggested the amendment needed be in the form of a trailer or omnibus bill.

- Station boat replacement design and engineering efforts are an ongoing project. To date, SFBP has paid over \$800,000 in this pre-build effort and will soon seek repayment. Estimates for a new station boat build exceed \$21,000,000 per boat with a projected total cost to be over \$80,000,000 for three boats.
- Stakeholders are working with the California Air Resources Board (CARB) to seek compliance extensions for current vessels while a “Save and Build” financing program is developed.
- Efforts in restructuring boat building financing has the potential to save ratepayers more than \$20,000,000 over the build-out of the next generation of station boats.
- Captain McIntyre reported on the SFBP Consolidated Financial Report. This lengthy report was 10 pages longer than the report from the prior year. This report holds great information on the structure of SFBP and is advised reading for Board Members, pilots, and trainees.
- During the reduced shipping traffic during the Coronavirus disease (COVID-19) pandemic, fund rates had to be increased to remain adequately funded. With tonnage and moves improving to some degree, the additional adjustment of surcharge rates was deemed necessary.

Following Commissioner Nyborg’s report, Captain McIntyre reported that the SFBP is pursuing two options in the Legislature due to the Pilot Boat Program expenses being cost prohibitive because boat replacements would be too expensive to buy replacements outright, rendering the CARB schedule financially infeasible. Per the CARB schedule, two pilot boats would need to be replaced by December 2024 and one more would need to be replaced by December 2025. These boats still have useful life beyond the projected cutoffs, and, if retired early, that investment would be lost. If offered for sale, finding a buyer for them would be challenging. Construction costs of the new boat is estimated at \$21.3 million per boat plus the interest for each loan. CARB does have extension options, but these don’t allow for appropriate business timing nor allow for enough ability to plan for this significant expense.

- The Pilot Boat Fund was established through AB 2056 to collect money through the Pilot Boat surcharge that would be used to reimburse the SFBP for the downpayment needed for the Pilot Boat Program project. The intent of collecting this money is to avoid taking a loan, which would be costly and difficult to acquire for the large sum needed.

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- Through the Build-and-Save (BAS) Program, the SFBP, using the accumulated pilot vessel surcharge funds would pay for the vessels outright, spreading out the expenses and reducing the total funds needed. The BAS Program would be an approximately three-year cycle per boat.

The intent of collecting the funds first and building instead of buying each boat outright is to ensure that, when each boat is finished, it is paid off, without having to finance it. Captain McIntyre reported the SFBP is in the process of a proposing legislation to extend the useful service life of the pilot boats, to overcome the projected financial burden. The SFBP and PMSA met with the Department of Finance to discuss the language that restricts spending on the pilot vessel surcharge.

Commissioner Rodriguez voiced support for the proposed legislation from SFBP. Board Council Tuck reported he would check the restrictions related to the Board submitting an official letter supporting the legislation proposed by the SFBP.

Captain McIntyre reported it would be appropriate to have the Board review the proposals before submission. Captain McIntyre reported the current CARB extension process is not adequate for pilot boats due to the lead time on critical equipment and the size and complexity of the build program. There is only one engine manufacturer in the world that produces the compliant engines needed to be purchased for the pilot boats and the engines currently have a one-year lead-time. The SFBP has spent around \$825,000 on staff, legal time, pre-engineering costs, etc. Cost recovery is expected once the new regulations are in place. CARB staff may take a while to review the extension application due to the large number of applications being received.

Executive Director Garfinkle reported the current amendments to the legislation would remove the existing spending authority limits, of five million dollars per year; so, funds can be spent as they come in (if twenty or twenty-five million dollars is received then a boat can be purchased immediately). The existing legislation is not appropriate for large expenditures.

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

- i. To adjust or not adjust the Board Operations Surcharge rate (currently at 6.5% 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 Finance Committee recommended that the Board Operations Surcharge be reduced from 6.5% to 5.5%, effective July 1, 2024. The goal of this surcharge is to hold one year of operating funds in reserve. The reserve is currently over funded.

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Assistant Director Millspaugh reported that surcharge changes remain in effect until it is deemed necessary to change them. The Finance Committee meets quarterly, and the next meeting is in September 2024. Their decisions will be based off any new data available at each meeting. Executive Director Garfinkle added that if the Board surcharge is below 7.5%, the approval of the Department of Finance is required. All other surcharges only require Board action alone. The approval process is typically expected to take a month, but the Department of Finance may not act until the end of June.

**MOTION:** Commissioner Carr moved to reduce the Board Operations Surcharge rate of all Pilot fees from 6.5% to 5.5%, effective July 1, 2024. Commissioner Rodriguez seconded the motion.

**VOTE:** YES: Tynan, Carr, Nyborg, and Rodriguez.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

**ii. To adjust or not adjust the Pilot Continuing Education Surcharge rate (currently at \$50 per move). Possible Board action to adjust the Pilot Continuing Education Surcharge rate.**

Commissioner Nyborg reported that the Finance Committee recommended that the Board reduce the Continuing Education Surcharge from \$50 per move to \$35 per move, effective July 1, 2024. Projected expenses show that this fund is over-funded.

Executive Director Garfinkle reported fund excesses and deficits are always based off projections. The goal is a year of surplus and the Committee recommends reducing surcharge rates when there is a projected excess or increase the surcharge when there is a projected deficit.

**MOTION:** Commissioner Rodriguez moved to reduce the Pilot Continuing Education Surcharge from \$50 per move to \$35 per move, effective July 1, 2024. Commissioner Carr seconded the motion.

**VOTE:** YES: Tynan, Carr, Nyborg, and Rodriguez.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

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**iii. To adjust or not adjust the Pilot Trainee Training Surcharge rate (currently \$15/trainee/move). Possible Board action to adjust the Pilot Trainee Training Surcharge rate.**

Commissioner Nyborg reported that the Finance Committee recommended that the Trainee Training Surcharge rate be reduced from \$15 to \$10 per trainee per move, effective July 1, 2024. The reduction was recommended due to the projected excess for this fund.

Assistant Director Millspaugh reported trainee stipends are affected by the number of trainees in the program, so if a trainee graduates early and comes out of the program then the number will change. There are currently 5 trainees.

**MOTION:** Commissioner Carr moved to reduce the Trainee Training Surcharge rate from \$15 to \$10 per trainee per move, effective July 1, 2024.

Commissioner Rodriguez seconded the motion.

**VOTE:** YES: Tynan, Carr, Nyborg, and Rodriguez.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

**iv. To adjust or not adjust the Pilot Boat Surcharge rate (currently at \$0.0200 per gross registered ton). Possible Board action to adjust the Pilot Boat Surcharge rate.**

Commissioner Nyborg reported that the Finance Committee recommended the Pilot Boat Surcharge rate be slightly increased from \$0.020 to \$0.021 per gross registered ton, effective July 1, 2024.

Commissioner Nyborg reported the surcharge increase coordinates with the other surcharge decreases so the net overall surcharge rate does not increase, allowing the net industry impact to be closer to zero. These surcharges are intended to keep the Board funds alive and healthy, so Board programs are supported even if there is a dip in traffic. The surcharge amounts are reviewed quarterly in the interest of cost efficiency; to operate in a way that is responsible. Commissioner Nyborg noted there is a lot of work behind the scenes that goes into the adjustment calculations and efficient operations.

Executive Director Garfinkle noted that the shippers have choices on where to send their cargo, so the Committee attempts to be sensitive to the impact on industry to have the least impact on the competitiveness of the region.

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**MOTION:** Commissioner Rodriguez moved to slightly increase the Pilot Boat Surcharge rate from \$0.020 to \$0.021 per gross registered ton, effective July 1, 2024. Commissioner Carr seconded the motion.

**VOTE:** YES: Tynan, Carr, Nyborg, and Rodriguez.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

#### **10. Reported Safety Standard Violations (Executive Director Garfinkle)**

**(Reported safety standard violations occurring up to the start of the meeting will be reported on.)**

None reported.

**Agenda items 11-12 were discussed after agenda item 15.**

#### **13. Status report on the Board’s Information Technology Modernization Project. (Executive Director Garfinkle/Assistant Director Millspaugh)**

Executive Director Garfinkle reported that the BOPC had a very productive meeting with the contractor, Gartner, Inc (Gartner). The BOPC gained insight on how Gartner works, and Gartner gained insight on what the BOPC does. Gartner will look at the entire business process to determine if a technical solution is even necessary. Gartner is working with staff to identify what the BOPC work processes are.

Assistant Director Millspaugh reported that the BOPC laid out the plan in the kickoff meeting. Gartner’s timeline is 18 months, which is very tight and ambitious. Gartner plans to hold workshops with staff and stakeholders to confirm existing details and then they will move forward with identifying how to transform the existing processes and Gartner will outline if a technical solution is possible and what it might be. Gartner intends to submit Project Approval Lifecycle (PAL) stage two documents to the California Department of Technology (CDT) in September.

#### **14. Board discussion concerning Board of Pilot Commissioners’ website protocols. Discussion and possible formation of ad-hoc Committee to review website protocols. (Executive Director Garfinkle/Board Counsel)**

Board Counsel Tuck stated that he consulted with other counsel from CalSTA regarding their website posting protocols, and encouraged the Board consult with CalSTA for additional guidance. Board Counsel explained that at least one other agency has a two-person committee that serves as a resource for the Executive Director when they have questions about posting or releasing confidential or inflammatory information. The intent is to maintain

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transparency without releasing or posting confidential or slanderous information.

President Tynan proposed forming a committee and Commissioner Carr agreed. President Tynan reported this agenda item was established to address a 2023 incident that involved the posting of private information.

Captain McIntyre added SFBP would also need guidance regarding the information security of contractors, private business information, and maintaining trade secrets.

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

Captain McIntyre reported there was nothing new to report but proposed to change this agenda item to a more general shipping activity topic so the report can include other topics, such as status reports on the pilot boat projects.

Recess began at 10:55 a.m.  
Meeting resumed at 11:09 a.m.

**11. Incident Review Committee (IRC) —Reportable Piloting Events (Executive Director Garfinkle/Vice President Hayes-White)**

**(Reportable piloting events occurring up to the start of the meeting will be reported on.)**

Executive Director Garfinkle requested an extension to next month for agenda items 11A, 11B, and 11D.

**A) Progress report on the June 30, 2023, event involving the M/V EVER LOGIC that was passing the M/V EVER FASHION, which suffered gangway damage as the result of hydraulic interaction. Possible IRC request and Board action on an extension to present this report at the next monthly Board meeting.**

**MOTION:** Commissioner Nyborg moved to grant the Incident Review Committee an extension to present its report on the Motor Vessel (M/V) EVER LOGIC at the next Board meeting, on Thursday, June 27, 2024. Commissioner Rodriguez seconded the motion.

**VOTE:** YES: Tynan, Carr, Nyborg, and Rodriguez.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

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**B) Progress report on the September 1, 2023, event involving the M/V BOHOL ISLAND, which made unintended contact with the pier at Sacramento, CA. Possible IRC request and Board action on an extension to present this report at the next monthly Board meeting.**

**MOTION:** Commissioner Carr moved to grant the Incident Review Committee an extension to present its report on the M/V BOHOL ISLAND at the next Board meeting, on Thursday, June 27, 2024. Commissioner Nyborg seconded the motion.

**VOTE:** YES: Tynan, Carr, Nyborg, and Rodriguez.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

**Agenda item 11C was discussed after agenda item 11D.**

**D) Incident Review Committee report on the M/V NEW HANDY, which made unintended contact with San Joaquin River Light #39 on July 23, 2023. Board deliberation of the Incident Review Committee’s recommendations to the Board and determination regarding the event involving the M/V NEW HANDY’s unintended contact with San Joaquin River Light #39 on July 23, 2023. If the report is not presented, the IRC may request an extension. If that is the case, possible Board action to extend the M/V NEW HANDY to the next monthly Board meeting.**

**The Board may go into closed session for the deliberation of the incident report presented under this item pursuant to Harbors and Navigation Code §1180,6 and Government Code §11126(c)(3) and (e)(1).**

**MOTION:** Commissioner Rodriguez moved to grant the Incident Review Committee an extension to present its report on the M/V NEW HANDY at the next Board meeting, on Thursday, June 27, 2024. Commissioner Carr seconded the motion.

**VOTE:** YES: Tynan, Carr, Nyborg, and Rodriguez.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.



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**C) Incident Review Committee report on the P/V RUBY PRINCESS allision with Pier 27, San Francisco, CA. Board deliberation of the Incident Review Committee’s recommendations to the Board and determination regarding the event involving the P/V RUBY PRINCESS allision with Pier 27, San Francisco, CA on July 6, 2023.**

**The Board may go into closed session for the deliberation of the incident report presented under this item pursuant to Harbors and Navigation Code §1180.6(a) and Government Code §11126(c)(3) and (e)(1).**

Executive Director Garfinkle presented the report, on behalf of the IRC, on the Passenger Vessel (P/V) RUBY PRINCESS, to the Board as Exhibit One. He also reported six addenda to the report. These addenda were included in the report and can be found on the last page of the report.

Executive Director Garfinkle reported that on July 6, 2023, Captain Slack, the pilot assigned to the RUBY PRINCESS, was escorted to bridge, where he participated in a master-pilot exchange. No deficiencies were noted at the time of the exchange. It was understood that Captain Toni (the ship’s Captain) would take control when the ship stopped off Pier 23. Captain Toni took over the control (conduct of the vessel, colloquially referred to as the conn) at approximately 0600 hours. After the change of the conn, they began moving the RUBY PRINCESS toward the berth. When it became apparent they were not moving out of the ebb current quick enough, and were out of shape for a proper approach, both engines were ordered full ahead and both rudders hard to port, to abort the approach and move away from the dock. Following the decision to abort the approach, Captain Slack ordered the tug working on the port quarter to move forward on the hull to prevent the tug from becoming caught between the pier and the ship, which reduced the tug’s efficacy. The engines were slow to respond, and the ship did not gain sufficient headway to overcome the ebb current. At approximately 0606 hours, the ship’s stern made unintended contact with Pier 27.

Executive Director Garfinkle explained most of these facts are not in dispute. Only the engine response is in dispute. The main issue is the pilot allowing the Master (the ship’s Captain) to conn the ship to the dock.

Supporting the duty of a pilot retain the conn of a ship in a compulsory pilotage jurisdiction, Executive Director Garfinkle referenced the Harbors and Navigation Code (Code):

- Division 4, Chapter 2, Section 802, “On entering or leaving a port, harbor, or river, the master of a vessel, the navigation of which is not in charge of a pilot, licensed for that port, harbor, or river, shall take a pilot if one offers himself. While the pilot is on board the navigation of the vessel devolves on him.”
- Division 5, Section 1125, “(a) Pilots licensed by the board have exclusive authority, to the extent not provided otherwise by federal law, to pilot vessels from the high seas

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to Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun and the ports thereof, and from those bays and ports to the high seas. They shall also have exclusive authority to pilot vessels within and along the waters of those bays, except as otherwise set forth in this division.

- Division 5, Section 1132, “Every pilot in charge of a vessel arriving in Monterey Bay and the Bay of San Francisco, San Pablo, or Suisun, shall safely moor the vessel in place and position as directed by the master of the vessel, consistent with safe navigation and not contrary to law.”

Executive Director Garfinkle summarized that Code Sections 802, 1125, and 1132 work together to define that the Legislature intends that pilots will control the movement of vessels from the sea buoy to the dock.

Executive Director Garfinkle quoted from a writing by noted pilotage scholar George Quick, “On the bridge of a ship the master/pilot relationship might best be understood if we make the distinction between power and authority. Power can be defined as the ability to act without regard to the right to act, while authority can be described as the right to act without regard to the means or ability to complete the act. At sea, the master has both the power and the authority over the ship and its crew, but on entering pilotage waters the authority to direct and control the movement of the ship shifts by operation of our laws to the pilot. What binds their relationship together is that the pilot’s authority can only be exercised in cooperation with the master’s power to command the crew, and master’s power to have the ship moved can only be lawfully exercised in cooperation with the pilot’s authority to direct and control the movement of that ship.”

He went on to quote from *The Law of Tug, Tow, and Pilotage*, by Parks and Cattrell – “There may be an occasion on which the master of a ship is justified in interfering with the pilot in charge, but they are very rare. If we encourage such interfering, we should have a double authority on board, a *divisum iverium*, the parent of all confusion, from which many accidents and much mischief would probably ensue. If the pilot is intoxicated or is steering a course to the certain destruction of the vessel, the master no doubt may interfere and ought to interfere, in it is only in urgent cases.”

Captains Slack and Toni had worked together about six times prior to the incident without any problems. The report states that when Captain Slack ceded his authority to Captain Toni, it demonstrated the level of trust and goodwill that had developed over their multiple transits together. The level of comfort with which Captain Slack felt in allowing Captain Toni to take the conn speaks volumes about the prevailing local customs that have evolved and stubbornly remain.

The IRC recommended that the Board find Captain Slack negligent by giving up his authority to conn the vessel, and that the Board issue a letter of warning to Captain Slack.

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The IRC also recommended that the Board examine how compulsory pilotage laws are applied on the waters under its jurisdiction and, if necessary, promulgate rules to give both pilots and shipmasters appropriate guidance in how the Board expects that the compulsory pilotage laws of the State of California are to be applied.

In response to an inquiry, Executive Director Garfinkle stated Princess cruise lines would not release Captain Toni's statement. Commissioner Nyborg voiced concerns regarding the availability of the engines. He felt that under normal operation conditions the timing of the abort might have avoided the allision. Commissioner Carr agreed the engine performance may have made a significant difference.

Commissioner Nyborg also stated that the pilot may choose to give the conn to the ship's captain on a cruise ship because the ship's captain knows their ship best, with the understanding the pilot will take the conn back in an emergency. If it is agreed the ship's captain will take control, the pilot would remain on the bridge and advise as needed. Passing the conn does not necessarily negate the pilot's position or authority.

Executive Director Garfinkle reported Captain Slack's position on the bridge made oversight of the actions of Captain Toni challenging. In response to another question, Executive Director Garfinkle noted that Captain Slack transferred the conn twice, once before the unintended contact, and again after Captain Slack had maneuvered the vessel back to the berth and well out of the ebb current.

President Tynan asked Captain Slack to confirm if he gave the conn back to Captain Toni after making unintended contact with the pier. Captain Slack confirmed that he did. Commissioner Nyborg noted that Captain Slack reaffirming this fact demonstrated that he didn't think he did anything wrong by giving the conn to Captain Toni. Executive Director Garfinkle added that the comfort level with which this transfer occurred is evidence that this is common practice.

Captain Slack's counsel, Rex Clack, noted some parts of the incident report were confusing and inconsistent. There was minimal mention of the failure of the engine to respond in the IRC report. Captain Slack was advised the vessel was ready in all respects and ready to respond as needed. A statement in the report Captain Slack provided mentioned very close oversight of Captain Toni's actions. Captain Slack positioned himself on port wing, where he would be, if he were piloting; and very closely watched what was going on. When the vessel was 300 feet (a football field) away from the pier, he called for the abort. Captain Toni responded immediately by ordering the engines ahead, but the engines took three minutes to respond. Mr. Clack stated that had the engines responded as expected, they would have had no problem aborting and this discussion would not exist. Mr. Clack argued that the actual cause of the incident was the slow response of the engines. The IRC characterized Captain Slack's decision as casual, but it was made after five or more experiences with Captain Toni and based off Captain Slack's

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training. This maneuver was carefully planned and very formal, not casual, as stated in the IRC Report. Mr. Clack also reported that the entire bridge team was complimentary of Captain Slack’s conduct. Counsel Clack also disputed interpreting the legislation as clearly requiring the pilot to control the vessel from the San Francisco bar to the dock, stating this was a narrow interpretation. Handing over the conn to the ship’s captain has been practiced in San Francisco Bay as a time-established custom. Counsel Clack argued there is no basis for a finding of negligence.

In response to a question from the Board, Captain Slack stated he was notified of the unintended impact while making the second approach but was unaware of the damage until seeing the damage to the dock during the second approach. Captain Slack also stated he could see the controls from his position.

The Board recessed to closed session to deliberate.

Closed session began at 12:46 p.m.  
 Closed session ended at 1:24 p.m.  
 Open session resumed at 1:25 p.m.

Board Counsel Tuck reported that the Board had made a decision in closed session that differed from the IRC’s recommendation, and as such, that decision would be presented for Board approval in closed session and likely reported out at the June 27, 2024, Board meeting.

**12. Presentation and discussion of a request for a disability pension by licensee Captain Drew Aune (Executive Director Garfinkle)**

**Presentation and discussion of disability pension request by licensee Captain Drew Aune. Possible Board deliberation and finding on:**

- A) Whether Captain Aune 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, based on competent medical opinion.”**

This agenda item has been deferred for consideration at the next Board meeting on June 27, 2024.

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- B) If the Board determines that Captain Aune is disabled as defined in section 1164(b) and unable to perform the duties of a pilot, the Board must determine the date that the disability became permanent (or of extended and uncertain duration) and Captain Aune was unable to perform the duties of a pilot.**

This agenda item has been deferred for consideration at the next Board meeting on June 27, 2024.

- C) Possible Board action determining whether Captain Aune is disabled within the meaning of Harbors and Navigation Code section 1164(b) and unable to perform the duties of a pilot, and the date that the disability became of a permanent or extended and uncertain duration and Captain Aune was unable to perform the duties of a pilot. The Board may go into Closed Session to discuss Captain Aune’s confidential medical reports as authorized by Harbors and Navigation Code section 1157.1.**

This agenda item has been deferred for consideration at the next Board meeting on June 27, 2024.

**16. Closed session for the Board to confer with legal counsel regarding potential significant exposure to litigation against the Board involving two pilots. (Board Counsel)**

**The Board is authorized to discuss this matter in a closed session pursuant to the Open Meeting Act, Government Code section 11126, subdivision (e)(1) and (e)(2)(B).**

This agenda item has been deferred for further discussion and consideration at the next Board meeting on June 27, 2024.

**17. Performance Evaluation of the Executive Director (President Tynan)**

**Annual Performance Evaluation of Executive Director. The Board may go into closed session pursuant to 11126(a)(1) of the Bagley-Keene Open Meeting Act to discuss the evaluation.**

This agenda item has been deferred for consideration at the next Board meeting on June 27, 2024.

President Tynan reported agenda items 12, 16, and 17 were continued to the next Board meeting on June 27, 2024.

**18. Comment by public and Board members on matters not on the agenda.**

None.

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

Captain McIntyre proposed to change agenda item 15 to a general shipping activity topic so the report can include other topics such as the Pilot Boat Report.

**20. Adjournment.**

**MOTION:** Commissioner Rodriguez moved to adjourn the meeting. Commissioner Carr seconded the motion.

**VOTE:** YES: Tynan, Carr, Nyborg, and Rodriguez.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

President Tynan adjourned the meeting at 1:28 p.m.

Submitted by:



Allen Garfinkle  
Executive Director

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## ACRONYM INDEX

<b>Acronyms / Abbreviations</b>	<b>Definition</b>
AB	Assembly Bill
AFMR	Absent For Medical Reasons
AWO	American Waterways Operators
BAS	Build-and-Save
BOPC	Board of Pilot Commissioners
CA	California
CalSTA	California State Transportation Agency
Caltrans	California Department of Transportation
CARB	California Air Resources Board
CHP	California Highway Patrol
CMA	California State University Maritime Academy / California Maritime Academy / Cal Maritime
COLA	Cost of Living Adjustment
Conn	A term of art meaning the conduct of a vessel.
COVID-19	Coronavirus disease
CDT	California Department of Technology
GRT	Gross Registered Tons
IAA	Inter-Agency Agreement
MRP	Minimum Rest Period
M/V	Motor Vessel
PaCE	Professional and Continuing Education (program under CMA)
PAL	Project Approval Lifecycle
PBF	Petroplus, Blackstone, and First Reserve
PEC	Pilot Evaluation Committee
PMSA	Pacific Merchant Shipping Association
P/V	Passenger Vessel or Pilot Vessel
SCO	State Controller's Office
SFBP	San Francisco Board Pilots
SOW	Scope of Work
TBD	To Be Determined
UCSF	University of California San Francisco
U.S.	United States
USCG	United States Coast Guard