

<b>Meeting Date:</b> <b>October 28, 2024</b>	<b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b> <b>Joint Pilot Boat Advisory Committee &amp; Finance Committee Meeting Minutes</b>	<b>Page 1 of 10</b>
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## **ATTENDANCE**

### **Committee Members Present**

Captain Robert Carr, Committee Chair and Commissioner  
Captain Einar Nyborg, Commissioner  
Captain Anne McIntyre, San Francisco Bar Pilots (SFBP) Business Director  
Mike Jacob, Vice President & General Counsel, Pacific Merchant Shipping Association (PMSA)  
Martin Robbins, Engineering Professional, Water Emergency Transportation Authority (WETA)  
Sam Rodriguez, Commissioner

### **Committee Members Absent**

None.

### **Board Staff Present**

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

### **Identified Public Present**

Captain John Carlier, SFBP President and Port Agent  
Kevin Baldwin, SFBP General Counsel  
Roma Cristia-Plant, former BOPC Assistant Director  
Captain David Merritt, SFBP

## **OPEN MEETING AGENDA**

### **1. Call to order and roll call. (Chair Commissioner Carr)**

Chair Carr called the meeting to order at 1:32 p.m. Board Administrative Coordinator, Marjorie (Mari) McNeill called the roll and confirmed a quorum.

Ms. Cristia-Plant, the former Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (BOPC/Board) Assistant Director, noted that she was participating.

### **2. Review and approval of Committee meeting minutes. (Chair Commissioner Carr)**

**Committee action to approve the meeting minutes from September 11, 2023.**

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**MOTION:** Committee Member McIntyre moved to approve the draft minutes of the meeting held on September 11, 2023. Committee Member Robbins seconded the motion.

**VOTE:** YES: Carr, Nyborg, McIntyre, Jacob, Robbins.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

**3. Public comment on matters on the agenda or not on the agenda. (Chair Commissioner Carr)**

Kevin Baldwin, the SFBP General Counsel, announced his attendance.

Assistant Director Millspaugh stated that Committee Member Robbins would have to leave at 2:00 p.m. and suggested action items that would need a vote with a quorum in attendance should be discussed prior to other agenda items, prior to Robbins leaving. Chair Carr stated there would be no vote for agenda item 7, but agenda item 6 would need a vote.

*Chair Carr proposed moving the discussion for agenda item 6 prior to agenda item 4 and 5.*

**6. Review of public comments received by the Board during the written comment period for the Pilot Boat Regulations rulemaking that ended on September 13, 2024.**

**Possible Committee recommendation to the Board to amend the proposed pilot boat regulations in response to the public comments, and possible approval of new proposed regulatory amendments. (Chair Carr and Executive Director Garfinkle)**

Chair Carr stated action may need to be taken for agenda item 6. This agenda item to incorporate language changes to proposed regulations (amending the 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, section 236.1. Pilot Boat Surcharge), would impact when and to what extent reimbursement could be requested [for costs associated with new or retrofitted pilot boats] from the pilot boat fund. The public comment period on the proposed regulations ended September 13, 2024. It was noted two comments were received. The comments were from PMSA and SFBP. Both requested language changes to the final statement of reasons (to reinforce that prospective surcharge adjustment and collection is possible in the proposed regulation.

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Executive Director Garfinkle reported that the public comment (1) from the SFBP highlighted the language is vague, noting the language as proposed reads that any adjustment the Finance Committee makes must already be towards an authorized pilot boat cost. PMSA followed up, stating they felt the language change is not needed so long as the intent is clear in the statement of reasons. Executive Director Garfinkle stated for clarity it is best to update the regulation language to state adjustments to the pilot boat surcharge may be based on anticipated pilot boat cost, rather than only what is authorized by the Board, noting the need to raise funds often comes prior to the Board authorization of costs.

Committee Member Jacob agreed with Executive Director Garfinkle’s assessment and stated that the concern is a potential interpretation that may unduly limit the accessibility of funds. The PMSA wants to ensure there aren’t unintended interpretations in the future due to the language. Committee Member Jacob requested the time spent for the language change be kept to a minimum. He proposed providing a clarification in response to the comments to support the intent in the future.

The Committee discussed the regulation language changes to provide clarity regarding anticipated and authorized costs and noted the additional 15-day public comment period necessary regarding the changes.

**MOTION:** Committee Member McIntyre moved to recommend to the Board to approve the below amended language (bolded additions) to the 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, § 236.1 Pilot Boat Surcharge, subsection h. Committee Member Jacob seconded the motion.

- (h) The Finance Committee of the Board shall periodically, or at such times as the Board may direct, review the costs authorized **or anticipated to be authorized** for recovery and the current and projected income from the Pilot Boat Surcharge and shall prepare recommendations to the Board for periodic adjustments to the surcharge rate to ensure that the surcharge rate is sufficient to recover all costs -- and only those costs -- authorized **or anticipated to be authorized** by the Board for recovery. The rate should be sufficient to maintain a commercially reasonable reserve to allow for ordinary or anticipated fluctuations in surcharge income until all costs authorized **or anticipated to be authorized** have been recovered. Any rate adjustment shall be made by Board action at a duly noticed meeting and shall take effect at such dates as the Board may direct.

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**VOTE:** YES: Carr, Nyborg, McIntyre, Jacob, Robbins, Rodriguez.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.

Chair Carr and Executive Director Garfinkle stated the motion will be presented to the Board during the Board meeting on November 14, 2024. If approved by the Board, there will be another 15-day public comment period. Following the public comment period, if no additional comments are submitted, the package will be submitted to the Office of Administrative Law (OAL). If submitted to OAL prior to December 2024, it will likely be authorized by January 1, 2025.

*Per Chair Carr's recommendation, the conversation regarding agenda item 5 continued after agenda item 6.*

**5. Review and discussion of recent legislation regarding the Pilot Boat Program. (SFBP Business Director, Captain McIntyre)**

**Senate Bill (SB) 295**

- Chair Carr stated SB 295 was recently signed by Governor Newsom.
- Committee Member McIntyre stated SB 295 was sponsored by Senator Dodd to clarify the administration of the pilot vessel (P/V) surcharge discussed in agenda item 6. Since this non-controversial bill recently passed, it will allow the fund distribution to align with the original intent once the revised regulations go into effect January 1, 2025.
- Chair Jacob thanked Assistant Director Millspaugh and Board staff for their help.
- Executive Director Garfinkle voiced his support of SB 295 and stated that SB 295 will clarify and streamline fund allocation and the statute's intent.

**Assembly Bill (AB) 1296**

- Committee Member McIntyre stated AB 1296 was vetoed by the governor, despite widespread support from legislature. The SFBP has continued to work with various members of the legislature to determine what to do next. Everyone involved, including various state entities, are put in a difficult position, and focused on waiting for details to evaluate their next steps. The SFBP is waiting for the Environmental Protection Agency (EPA) waiver and may submit another bill to impact the California Air Resources Board (CARB) regulations if CARB/EPA fail to respond or approve the extensions.

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- Committee Member Jacob stated that he appreciated the Board taking the time to weigh in on AB 1296. It was important for the governor’s office to hear from all sides within the administration. False claims and implications were made by CARB staff, environmental advocates, and newspaper articles included that the PMSA and SFBP were:
  - Asking Board members to perform untoward or unseemly actions,
  - Requesting regulation exemptions,
  - Expecting CARB to take on millions of dollars of new rule making, and
  - Undermining the mission standards under review at United States (U.S.) EPA.

These claims were all patently false so it is very important to have lots of voices at the table, including the Board, stating that the SFBP and PMSA care about safety implications, AB 1296 would not have touched the emissions standards or compliance rules in any way other than the unfeasible CARB timeline. The emissions reduction and air-quality benefits would remain the same regardless of whether AB 1296 passed or not. SFBP and PMSA’s goal is to deliver new boats as quickly as possible.
- Committee Member Rodriguez agreed with Committee Member Jacob’s remarks and stated it is critically important that Board members and staff continue to have collaborative conversations with the Department of Transportation and CARB to clarify misunderstandings of data points. Regardless of who is in the executive branch in the nation’s capital, CARB can maintain standards and CARB’s ruling can have more authority than the U.S. EPA.

*Per Chair Carr’s recommendation, the conversation regarding agenda item 4 continued after agenda item 5.*

**4. Review and discussion regarding the status of current San Francisco Bay Pilot’s (SFBP) pilot station boats and build of new pilot station boats, including: Update on the status of SFBP’s application to the California Air Resources Board (CARB) for extension of service life of SFBP’s current pilot station boats. Update regarding the timeline and projected costs for the planning, construction, and acquisition of new pilot station boats and update on the projected surcharge disbursement schedule. (SFBP Business Director, Captain McIntyre)**

Chair Carr stated the necessity determination for the station boats was approved by the Board in August 2022. For the ensuing two years, the SFBP has been diligently working toward compliance with the harbor craft regulations.

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Committee Member McIntyre stated, regarding the station boat replacement program, that the SFBP is continuing to pursue the extension process with CARB. The SFBP has been providing additional information to CARB through the extension application process. Extensions are difficult because the SFBP doesn't know what outcome will be. Internally, the SFBP continues to work on planning and engineering and has set an internal deadline of finishing the pre-engineering by the beginning of January 2025. The SFBP has been working on the P/V GOLDENGATE for about a year. The SFBP has been learning about the engines, equipment, and new manufacturers. Caterpillar Inc. is one new manufacturer that will soon release compliant engines. It is difficult for the SFBP to determine where to stop investments into extending the service life of current P/Vs and the availability of the shipyards' production schedule. There are no updates on cost estimates, all details are subject to change based on the CARB extension approvals, and the SFBP cannot speed up the timeline regardless of whether the CARB extension approvals are granted or not.

SFBP Counsel Baldwin stated correspondence with CARB is ongoing. SFBP is reiterating the information previously shared with CARB to assist the CARB staff in their thorough evaluation of SFBP's extension application. CARB staff are putting every extension application under heavy scrutiny.

Committee Member McIntyre stated the SFBP hopes CARB will responsive before the end of the year, but CARB has not provided any approval timelines. The following P/Vs will be termed out (no longer compliant with CARB requirements) as of:

- December 2024: P/V CALIFORNIA and SAN FRANCISCO,
- December 2025: P/V DRAKE, and
- December 2028: P/V PITTSBURG.

Committee Member McIntyre also stated if CARB does not approve the extensions that the SFBP would have to have a discussion with CARB and stakeholders regarding how to proceed. Pilots would have to either continue use the boats in violation of CARB regulations (with the risk of a \$10,000 per day fine from CARB) or shut down California's supply chain.

Committee member Jacob stated that the lack of an extension from CARB would put pilots in an impossible situation of having to choose between either providing the service required by the Harbors and Navigation Code or following CARB's direction to not use the boats to provide the service. The SFBP proposed an avenue to avoid that conflict, but the governor chose not to implement it. The SFBP either needs CARB to offer an exception or the SFBP will have to find another administrative solution. The Board

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cannot ask the pilots to do something illegal, such as operating boats if it is deemed illegal. Committee Member McIntyre stated the SFBP is not the only entity faced with these issues. Although the SFBP does not know what is going to happen, they are diligently pursuing a path within timeline available. Committee member Jacob stated he would like to request another meeting to continue this conversation. Chair Carr stated he would like to add a corresponding agenda item to the Board meeting but would address that more under agenda item 9.

*Per Chair Carr's recommendation, the conversation regarding agenda item 7 continued after agenda item 4.*

- 7. Review and discussion regarding a possible service life extension for the Pilot Vessel (P/V) CALIFORNIA. Committee may consider a necessity determination and a preliminary authorization to extend the service life of the P/V CALIFORNIA.**

**Possible Committee recommendation to the Board to approve a request and supporting documentation from the San Francisco Bar Pilots and the San Francisco Bar Pilot's (SFBP) Benevolent and Protective Association to approve a necessity determination and preliminary authorization to extend the service life of the P/V CALIFORNIA)**

Committee Member McIntyre stated that the SFBP continues to evaluate what service life extension investments are appropriate and responsible surcharge expenses. The current cost estimate for extending the service life of the P/V CALIFORNIA is approximately \$814,000. The SFBP is questioning if there is merit in investing such a significant amount in a boat that they will no longer be able to use after a year. A lesson learned from the P/V GOLDEN GATE is that lots of money is put into the pilot boats to maintain them, but they are not worth much when attempting to sell them. As SFBP predicted, the uncertainty of CARB extension approvals contributes to the difficulty of determining the return on investment. If the SFBP is looking at a possible three-year extension, then more investments are appropriate than if the extensions are rejected and the boat only has a one-year service life. Committee Member McIntyre stated she hoped the SFBP would not be put in a position of making irresponsible financial decisions due to lack of clarity.

SFBP Counsel Baldwin stated the SFBP would only invest in work to extend the life of a vessel if CARB approved the use extension. No one wants to invest in a vessel if the extension is not approved. Chair Carr added that the vessel repairs were on hold until receipt of the extension approval from CARB.

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Committee Member McIntyre stated the current wait time to receive parts, if ordered by October 2024, is three months. SFBP ordering is on hold until CARB approval is given. The delivery time may change once the approval is confirmed. This means the timeline for boat repairs cannot be confirmed until the extension approval is received from CARB.

Committee Member Nyborg stated the P/V DRAKE is in the shipyard for maintenance. The maintenance needed to keep the boat operational will cost \$1.2 million; but it will not be a good investment to spend that much money on repairs if the boat will have to be scrapped anyways, due to CARB regulations. CARB is withholding their approval for the extension needed to keep using this boat.

Committee Member Jacob stated the timely response of CARB service life extensions are important to economically continue operating boats. The SFBP and PMSA strive to make the most efficient and cost-effective decisions but can't determine if service life investments are good decisions if they can't determine if a boat will only last a year or get extended use time.

SFBP Counsel Baldwin stated pilot boats cannot be insured if it is illegal to operate them, which includes being out of compliance with CARB regulations.

Committee Member Nyborg stated each boat costs each pilot about \$24,000 per month, deducted from their wages; and that makes the positions less desirable for recruiting.

**8. Public comment on matters not on the agenda. (Chair Commissioner Carr)**

None.

**9. Schedule next Committee meeting, and proposals for items on the next meeting agenda, if necessary. (Chair Commissioner Carr)**

Committee Member McIntyre stated the Committee would have to meet before the Board meeting on December 12, 2024, if SFBP has not received the extension approval from CARB by the middle of December. Committee Member Nyborg agreed and stated that CARB assured the Board and public that SFBP and the Board could use extensions. That was their biggest argument against AB 1296; so, if they still don't approve the extensions then the Board will need to write a letter to the governor highlighting that there is a big problem and that the process is not working out. The SFBP has two boats in danger of being outside the allowable timeframe in January despite the SFBP being reassured there would be plenty of extensions available.



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Chair Carr proposed adding an agenda item to the general Board meeting November 14, 2024, to discuss the CARB extension and the situation the SFBP will face if it does not receive an extension approval and a vote to send a letter to the governor. Committee Member McIntyre stated she would brief the Board at the Board meeting on November 14, 2024 and the committee should further discuss this issue at the December 5, 2024, Joint Pilot advisory Committee & Finance Committee Meeting.

#### **10. Adjournment.**

Chair Carr adjourned the meeting at 2:52 p.m.

Submitted by:



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**Allen Garfinkle**  
**Executive Director**

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**ACRONYM INDEX**

<b>Acronyms / Abbreviations</b>	<b>Definition</b>
AB	Assembly Bill
BOPC/Board	Board of Pilot Commissioners
CARB	California Air Resources Board
EPA	Environmental Protection Agency
OAL	Office of Administrative Law
PMSA	Pacific Merchant Shipping Association
P/V	Passenger Vessel / Pilot Vessel
SB	Senate Bill
SFBP	San Francisco Bar Pilots
U.S.	United States
WETA	Water Emergency Transportation Authority

This and other documents for this meeting can be found on the Board’s website <https://bopc.ca.gov/joint-pilot-boat-advisory-and-finance-committee/>.



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