

<p><b>Meeting Date:</b></p> <p><b>January 27, 2022</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 22</b></p>
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### **Board Members Present**

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

### **Board Members Absent**

Vacant, Dry Cargo Industry Member

### **Board Staff Present**

Allen Garfinkle, Executive Director  
Dennis Eagan, Board Counsel  
Brenda Pugh, Staff Services Manager I  
Alethea Wong, Administrative Assistant II

### **Identified Public Present**

Knute Michael Miller, Past Board President; 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; Captain Eric Robinson, SFBP; Eric Osen, Chevron; Captain Art Thomas, BOPC-licensee, retired; and Roma Cristia-Plant.

## **OPEN MEETING AGENDA**

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

President Hayes-White called the meeting to order at 9:30 a.m. Executive Director Garfinkle called the roll and confirmed a quorum.

### **2. Review and approval of Board meeting minutes (President Hayes-White)**

**Board action to approve the minutes from the Board meeting held on December 9, 2021.**

Board members were presented with the draft meeting minutes from December 9, 2021.

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Vice-President Schmid noted that she had already submitted her edits and Board staff posted the updates to the website. Commissioner Nyborg requested minor edits. Board Counsel Eagan confirmed for Executive Director that his edits have been made and are already on the version of the draft meeting minutes on the Board's website. SFBP Business Director Captain McIntyre suggested that in future minutes the term manpower be referenced as pilot power for consistency.

**MOTION:** Vice President Schmid moved to approve the draft minutes of the meeting held on December 9, 2021, as amended. Commissioner Prada seconded the motion.

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

ABSTAIN: None.

**ACTION:** The motion was approved.

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

There were no comments.

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

President Hayes-White thanked Vice President Schmid for chairing the Board meeting in December 2021.

President Hayes-White thanked Commissioner Prada for joining the Pilot Fitness Committee.

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

There were no comments.

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

**A) Correspondence and activities since the Board meeting held on December 9, 2021.**

President Hayes-White requested that Executive Director Garfinkle continue the meeting with his Executive Director's report, and she will assist Administrative Assistant Wong with her audio and microphone-related technical difficulties at 9:45 a.m.

Executive Director Garfinkle reported on the following:

- On December 11, 2021, Board staff received draft fatigue regulations from Board Counsel Eagan.

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- On December 15, 2021, Board staff received an update that the California Department of Public Health will require masks to be worn in all indoor public settings regardless of vaccination status.
- On December 20, 2021, Board staff received approval from the Department of Finance on the Board request to increase the Board Operations Surcharge rate from 5% of all pilotage fees to 5.5%.
- On December 21, 2021, he attended a meeting of the Ad Hoc Committee to Review the Pilotage Rate Setting Process.

President Hayes-White rejoined the meeting at 9:46 a.m.

- On December 22, 2021, he attended a meeting of the Pilot Power Committee.
- On December 29, 2021, Board staff received a copy of the PMSA *West Coast Trade Report* for December 2021.
- On January 3, 2022, Board staff learned that CalSTA Secretary Kim would be stepping down, effective January 14, 2022.
- On January 4, 2022, he attended a simulator exam development session at the California State University Maritime Academy along with members of the Pilot Evaluation Committee.
- On January 5, 2022, Board staff received Executive Order N-1-22, extending the sunset of AB 361, and permitting state organizations to hold public meetings via teleconference through March 31, 2022.
- On January 6, 2022, he received an inquiry about the upcoming Pilot Trainee Training Program Selection Examination from Captain Pierre Veldhoen, a Dutch national, living in South Africa, and possessing a British Master's license. He noted that Captain Veldhoen will need a U.S. Coast Guard license to qualify for the Pilot Trainee Training Program Selection Examination.
- On January 7, 2022, he received a comment on the pending trainee regulations indicating an error in the drafting of the express terms. Board staff corrected the error and entered into a new 15-day comment period, which ended on January 26, 2022.
- On January 10, 2022, CalSTA General Counsel Scott Wyckoff transitioned to Deputy Legal Affairs Secretary for Governor Newsom.
- On January 11, 2022, he received a letter from Board licensee, Captain Greger, expressing concerns about the Pilot Power Committee's recommendations.
- On January 13, 2022, he attended a Pilot Boat Advisory Committee meeting.
- Also, on January 13, 2022, he attended a meeting of the Ad Hoc Committee to Review the Pilotage Rate Setting Process.
- On January 18, 2022, he received correspondence from Board licensee Captain Kirk, stating that he had recently provided the University of California of San Francisco (UCSF) staff with documentation related to his disability pension request.
- On January 19, 2022, he attended a meeting of the Pilot Evaluation Committee.

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- Also, on January 19, 2022, he attended a surcharge audit exit conference with the State Controller Office, which was for the audit of 2020.
- On January 24, 2022, he received an invitation to the Port of Oakland, State of the Port address to be given by the Port of Oakland Executive Director, Danny Wan, to be held on February 2, 2022. This event will be virtual and is free of charge.

Executive Director Garfinkle reported that SSM I Pugh will be transferring to another state position in Sacramento and wished her the best at her new position. He also reported that an offer was made to the candidate for the Assistant Director position, and the new employee will start on February 1, 2022.

#### **B) Report on pilot licensing matters since the Board meeting held on December 9, 2021.**

Executive Director Garfinkle reported that since the December Board meeting, the Board renewed the licenses of Captains Benedict, Carlier, Greger, Kellerman, Pullin, Rogers, Ruff, and Stevens.

#### **C) Report on Board surcharges.**

Executive Director Garfinkle reported that the SFBP wired to the Board the surcharges collected in December 2021 in the amount of \$220,390.53, as itemized as follows:

- Board Operations Surcharge: \$123,725.53
- Continuing Education Surcharge: \$ 26,900.00
- Pilot Trainee Surcharge: \$ 69,765.00

#### **D) Report of Pension Fiduciary**

Executive Director Garfinkle reported the following regarding the pension:

As of January 1, 2022, there are 82 pensioners, with two more pending retirements beginning next quarter – Captains Alden and Tylawsky, and another pilot had applied for a disability pension.

The mill rate for the First Quarter of 2022 is 0.05006, and is based on a 12-month tonnage lookback period from October 2020 to September 2021.

The mill rate for December 2021 was 0.04443, and the tonnage for December 2021 was 17,679,102, resulting in collections totaling \$785,482.50, on a target of \$1,073,599.71, resulting in a variance of \$288,117.21. The administrative costs for the month of December totaled \$2,139.70, making the total distribution for December \$783,342.80. The last cost of living increase to the pension became effective on April 1, 2020.

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

Executive Director Garfinkle reported that there are no outstanding items to report.

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

Staff Services Manager I Pugh thanked the Board for the opportunity to work with everyone.

Staff Services Manager I Pugh reported that for Section 213 Trainee Training Program, the regulation text was edited, which required a 15-day public comment period. The comment period ended on January 26, 2022. The rulemaking package was submitted to the Office of Administrative Law (OAL) for final review.

Staff Services Manager I Pugh reported the following contractual matters:

- Manned model contract: California Highway Patrol (CHP) is drafting contract documents to submit to the Department of General Services (DGS) for review and approval.
- The amendment to the current San Francisco Bar Pilots contract was approved, and final contract documents will be submitted to DGS.
- University of California of San Francisco (UCSF) contract request was submitted to CHP for final approval.

President Hayes-White thanked Staff Services Manager I Pugh for her work at the Board and wished her well at her new job.

Commissioner Nyborg thanked Executive Director Garfinkle on the pension report and stated he will do some research to determine if it's an issue that needs to be addressed at the next Board meeting since the amount pensioners receive is significantly less than the target amount.

Executive Director Garfinkle reported that the statute mandates the Board to review the pension every three years, or when the consumer price index (CPI) increases by 12% for the region.

Executive Director Garfinkle noted that as the pension calculation look-back period enters the downturn period brought on by the pandemic, the pension surcharge will increase to meet the target.

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Vice President Schmid wanted to know the status of filling the Dry Cargo Industry Board member vacancy. Executive Director Garfinkle stated he has not received any updates and noted PMSA traditionally has provided a list of three nominees to the Governor's Office.

In response to Captain Thomas's inquiry, Executive Director Garfinkle stated the last pension cost of living increase was on April 1, 2020.

## **7. Port Agent's Report (Port Agent Carlier)**

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

Port Agent Carlier reported that the following pilots were absent for medical reasons (AFMR):

- Captain Kasper – June 11, 2020
- Captain Alden – April 30, 2021
- Captain Slack – December 15, 2021

Port Agent Carlier reported that the SFBP continually monitors the dispatch list for possible 12-hour minimum rest period (MRP) exceptions. For any potential exception that is likely to result in a rest period of less than 10 hours, SFBP will ensure that mitigating measures are enacted. He reported that mitigating measures include, but are not limited to, suspending continuing professional development protocols, canceling scheduled meetings, canceling previously granted compensated time off requests, suspending SFBP internal working rules, and calling in off-watch pilots.

He reported that there are currently 51 licensed pilots. In December, there was 1 MRP exception, with the shortest rest period being 11.5 hours.

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

For the month of December, Port Agent Carlier reported normal operations for P/V CALIFORNIA, P/V DRAKE, P/V GOLDEN GATE, P/V PITTSBURG, AND P/V SAN FRANCISCO.

Port Agent Carlier reported that vessel moves for December 2021 were as follows:

- Bar Crossings: 365 Moves
- Bay Moves: 133 Moves
- River Moves: 39 Moves

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- Total Moves: 537 Moves
- Gross Registered Tons (GRT): 17.7 Million

He also reported that when comparing 2022 year-to-date vessel move data with the same period in 2021, total moves were down 5.5% and GRT was down 21.6%.

**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.

**8. Pilot Evaluation Committee (Captain Robinson)**

**A) Report on the Pilot Evaluation Committee (PEC) meeting held on January 19, 2022.**

PEC Committee Chair Captain Robinson reported on the following:

- The PEC met on January 19, 2022, and in attendance were Committee members Captains Aune, Ruff, Slack, Wehr, and Robinson.
- The PEC provided Executive Director Garfinkle a report of trainee activity over the past month.
- Trainees were interviewed and counseled individually in closed session by the PEC members on their progress in the Pilot Trainee Training Program.
- There are currently seven trainees: Captains Adams, Barnum, Burns, Olmsted, Pascucci, Sappington, and Snapp. The trainees' range of time in the program is 2 months to 27 months.
- Captains Adams received his First-Class pilotage endorsements for unlimited tonnage on San Francisco Bay by the U.S. Coast Guard and is currently on probation. Captain Adams is handling ships in all areas.
- Captains Barnum, Burns, Olmsted, Pascucci, Sappington, and Snapp are acquiring route trips and handling or part handling vessels in all areas.
- The trainees are presently meeting the recommended benchmarks in the program and are progressing at their own rate.
- The next PEC meeting is scheduled for February 16, 2022, 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.**

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**Possible Board action to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program.**

There was no recommendation.

- C) Possible PEC recommendation as to whether a trainee has or trainees have successfully completed the Pilot Trainee Training Program. Possible Board action whether to award a Certificate of Completion to a trainee who has completed the Pilot Trainee Training Program.**

There was no recommendation.

- D) Possible recommendation from the Executive Director for the Board to issue a state pilot license to a trainee who holds a Certificate of Completion from the Pilot Trainee Training Program. Possible Board action to accept a recommendation from the Executive Director that a trainee holding a Certificate of Completion from the Pilot Trainee Training Program be licensed as a state-licensed pilot.**

There was no recommendation.

**9. Reported Safety Standard Violations (Executive Director Garfinkle)  
(Reported safety standard violations occurring up to the start of the meeting will be reported on.)**

**A) Pilot Boarding Arrangements Deficiency Report involving the NAVIES AMARYNTH**

Executive Director Garfinkle reported that he had received a Pilot Board Arrangements Deficiency Report from Captain Deisher involving the M/V NAVIES AMARYNTH which was heading outbound and had a combination ladder. Captain Deisher reported one of the platform pins was not in place and a one-half inch manila rope was used for a manrope. Captain Deisher included a photo but it wasn't elucidating. Since the ship was heading outbound, Board staff was unable to send an investigator. Board staff notified the U.S. Coast Guard in Long Beach, the ship's next port of call, and Jacobsen Pilot Service of the ship's defects, both acknowledged receiving our notification.

**B) Pilot Boarding Arrangements Deficiency Report involving the DANAE R.**

Executive Director Garfinkle reported that he had received a Pilot Board Arrangements Deficiency Report from Captain Murney involving the M/V DANAE R, which was inbound. The report stated that the vessel arrangement does not permit for movement of the pilot ladder location relative to the combination ladder. The ladder platform was 3



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meters for boarding offshore. The stanchions were poorly rigged. Captain Murney included a sketch of the combination ladder and pilot ladder which did not meet up. Board staff notified the local USCG Port State Control in San Francisco and they acknowledged the report and noted that an examination of the vessel was scheduled while at berth. The U.S. Coast Guard Port State Control personnel inquired if Board staff had additional concerns regarding the current state of rigging, and Board staff forwarded the correspondence to the Port Agent. The Executive Director is not sure if the Port Agent was able to communicate with the Port State Control but confirmed the USCG San Francisco Port State Control did inspect the vessel. Board staff did not hear back from the Coast Guard regarding their findings.

Commissioner Captain Carr thanked Captains Deisher and Murney for submitting the pilot boarding arrangements deficiency reports so the issues can be resolved and thanked Executive Director Garfinkle for following up on the issues reported. Commissioner Captain Carr reported that the pilot organizations in Southern California have reported multiple instances of securing pins not being set appropriately which may lead to safety issues. Commissioner Captain Carr stated the notifications are helpful so pilots are aware when boarding ships. He also noted that it's difficult to see if the securing pins are in their proper places. It requires time to inspect and usually occurs when the pilot is getting off the ship. Commissioner Captain Carr requested that the pilots continue to report on these issues as it will improve safety.

Commissioner Captain Nyborg added that in Long Beach an incident occurred because a side-port platform was not properly pinned down. As the pilot was about to disembark the ship, the entire structure, including the ladder that was attached, fell into the water, along with the pilot. The platform structure probably weighed close to 400 pounds and fortunately missed the pilot's head. He noted the pilot was not injured and was quickly recovered, but this is an example of a near miss that could have been avoided. Commissioner Captain Nyborg thanked Board staff for communicating the deficiencies as it is helpful in addressing and preventing incidents.

Commissioner Tynan noted that it is important to have relevant information, and for the Board to maintain records of the incidents and reports.

Vice President Schmid inquired about proper procedures in these types of situations, such as would Jacobsen notify the pilots in Southern California upon arrival that there is a deficiency. Commissioner Captain Carr stated he is unsure of their procedures, but he would recommend the ship's crew check all the securing pins prior to the pilot boarding.

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

- A) Status report on the event involving an interaction between the M/V HYUNDAI NEPTUNE, the M/V HANOVER EXPRESS and the M/V THALASSA AVRA causing the M/V THALASSA AVRA to have multiple parted lines and making contact with a container crane at Berth 37 in Oakland, California on May 21, 2020. Possible Board action to grant the Incident Review Committee an extension to present the M/V HYUNDAI NEPTUNE and the M/V HANOVER EXPRESS report at the Board meeting to be held on February 24, 2022.**

Executive Director Garfinkle reported that he is prepared to present the report today under agenda item eighteen.

- B) Status report on the M/V GLOBE PEGASUS allision with several pilings at Levin Terminal in Richmond, CA, on April 8, 2021. Possible Board action to grant the Incident Review Committee an extension to present the M/V GLOBE PEGASUS report at the Board meeting to be held on February 24, 2022.**

Executive Director Garfinkle stated the incident report is not completed yet and the IRC requests an extension to February 24, 2022. There is no danger to public safety due to the delay in presenting the report.

- C) Status report of interaction between the M/V CHARLIE and the moored M/V EVA SHANGHAI in the Port of Stockton on October 17, 2021. Possible Board action to grant the Incident Review Committee an extension to present the M/V CHARLIE report at the Board meeting to be held on February 24, 2022.**

Executive Director Garfinkle explained the 90-day statutory deadline occurred January 14, 2022. He stated the incident report is not completed yet and the IRC requests an extension to February 24, 2022. There is no danger to public safety due to the delay in presenting the report.

**MOTION:** Commissioner Prada moved that the Board grant an extension to the Incident Review Committee to present its report on the M/V GLOBE PEGASUS and M/V EVA SHANGHAI at the Board meeting to be held on February 24, 2022. Commissioner Nyborg seconded the motion.

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

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

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#### **11. Significant Port Safety and Security Cases Report (Executive Director Garfinkle)**

**Report on marine casualties, navigational safety, and significant incident management cases relevant to the Board as reported by the U.S. Coast Guard in its Prevention / Response – San Francisco Harbor Safety Statistics report.**

Executive Director Garfinkle reported of the two reports received, there were no reportable loss of propulsion incidents, with the exception of a ship which experienced a reduction in propulsion ship off of Crescent City.

#### **12. Ad Hoc Committee to Review the Pilotage Rate Setting Process meeting (Committee Chair Captain Carr)**

**Report on the Ad Hoc Committee to Review the Rate Setting Process meetings held on December 21, 2021, and January 13, 2022. Possible recommendation to Board to change the statutory rate setting process. Possible Board action to approve Committee recommendation to proceed with statutory changes the rate setting process.**

Committee Chair Captain Carr reported that the Ad Hoc Committee to Review the Rate Setting Process met on December 21, 2021, and January 13, 2022. He stated there were no actionable recommendations to present to the Board today.

Committee Chair Captain Carr stated the Committee is working on three main agenda items, including the rate process framework, particularly actions taken by the Board in receipt of an Administrative Law Judge's proposed decision. In December, the Committee asked Board Counsel Eagan to draft statute language based on their discussions. Board Counsel Eagan presented the draft at the Committee's January meeting. The draft language can be found as a Board reference document under agenda item 12.

Committee Chair Captain Carr explained the Committee references California Government Code 11517, which gives an excellent example of how this process is used. The Code referenced is not specific to the Board's situation but does clearly lay out various options the Board could take with an ALJ's proposed decision.

Committee Chair Captain Carr reported the Committee began discussing the factors involved in setting rates at the November Committee meeting and asked stakeholders to clarify factors and how they are applied. For the December meeting PMSA and SFBP jointly produced a reference document which illustrated the formulas which are used in Washington and Oregon and provided the regulatory and statutory language from both those states. The Committee also reviewed the present California factors in statute and regulations.

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Both states reviewed had similar formulas and the Committee asked stakeholders to work on defining the factors to be considered in this formulaic approach, using the Oregon model of target net income per pilot\* number of pilots + operating costs = revenue requirement. This joint document was reviewed at the Committee's January meeting. The Committee was receptive to the succinct language.

The Committee will be looking to combine Board Counsel Eagan's statute language on actions in statute with the factors developed based on the joint submission from stakeholders.

The Committee is nearing completion of its review and as such has decided to develop a committee report detailing the Committee's considerations and final recommendations.

The Committee will be meeting on February 10, 2022, at 1 p.m. to continue the discussion, and review and approve the report.

### **13. Pilot Boat Advisory Committee meeting (Committee Chair Captain Carr)**

#### **Report on the Pilot Boat Advisory Committee meeting held on January 13, 2022.**

Committee Chair Captain Carr reported that the Pilot Boat Advisory Committee met on January 13, 2022, with two items for discussion. There were no actionable recommendations presented to the Board.

Committee Chair Captain Carr shared Captain McCloy's updates, which were shared with the Committee on the progress of P/V GOLDEN GATE replacement project underway at Snow Shipyard. Captain McCloy's presentation is available as a reference document on the website. Committee Chair Captain Carr encouraged everyone to check out the PDF, if only to view the photos. He stated good progress has been made in the fabrication of the hull structure and shell plating. Supply chain disruption has caused approximately one-month delay in the delivery of aluminum. He stated the yard has considered delivery delays and has proactively ordered long lead time on difficult-to-ship items. Captain McCloy reported the yard has a talented workforce and has managed COVID well. An updated delivery date of Thanksgiving 2022 is estimated.

Committee Chair Captain Carr stated the Committee spent time discussing the pending replacement of all three station boats. Captain McCloy developed a slide show to guide this discussion as well and is a reference document for this item. SFBP is not yet prepared to submit a Necessity Determination or request a preliminary authorization but expect to do so in late spring.

Committee Chair Captain Carr shared a few salient points for the Board to understand:

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- The California Air Resource Board's (CARB) new Commercial Harbor Craft regulations include pilot vessels and will take effect January 2023. No waiver from these regulations is expected.
- Compliance dates for P/V CALIFORNIA and P/V SAN FRANCISCO are at the end of 2024, and for P/V DRAKE at the end of 2025.
- The Committee discussed submitting an Alternate Compliance Plan (ACP) to request a longer time from CARB to meet the compliance dates. This ACP cannot be submitted until after the regulation takes effect in January 2023. Committee member Robbins has extensive experience at the Water Emergency Transportation Authority (WETA) and their mixed fleet of ferries. Mr. Robbins is confident a well-reasoned ACP would be accepted by CARB.
- The Committee discussed the design of the vessel's propulsion and electrical load that may be applicable to future CARB regulations. The discussion included the expected life of the new generation of vessels and whether obsolescence sooner than 20 years should be planned for.
- Financing for three station boats soon on the heels of a run boat is acknowledged to be significant. Though the committee did not discuss in any details, the ability to start an escrow account and start collecting surcharge fees before delivery is being explored. Either the Pilot Boat Advisory Committee or the Finance Committee (or both) will need to get involved at some point.

Commissioner Captain Prada encouraged everyone to view the presentation with photos of the evolution of the work being done.

#### **14. Pilot Power Committee meeting (Committee Chair Captain Carr)**

**Report on the Pilot Power Committee meeting held on December 22, 2021 and possible recommendation to the Board on the amount of trainees to have in the Pilot Trainee Training Program Possible Board action to approve Committee recommendation on the amount of trainees to have in the Pilot Trainee Training program.**

Committee Chair Captain Carr reported that the Pilot Power Committee met on December 22, 2021, and the Committee reviewed the latest retirement survey data and to assess the adequacy in the current number of trainees in the Pilot Trainee Training Program. The Committee has a recommendation to make to the Board.

The Committee is making a recommendation to the Board to maintain the current number of trainees in the program at seven and give guidance to the Executive Director to not invite more trainees into the Pilot Trainee Training Program at this time.

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The Committee intends to review the recently completed Retirement Survey, which was conducted in January 2022, at a meeting in February and may make an additional recommendation to the Board at that time.

The Committee discussed and based its recommendation on the following factors:

- The so-called “silver tsunami” of pilot retirements has come to an end. In the four-year span of 2018-2021 there have been 20 retirements. 33% of the pilot corps.
- The July 2021 retirement survey had an 88% completion rate, with 6 surveys not returned. The data gleaned may be incomplete.
- The July 2021 retirement survey indicates there are two pilots eligible for retirement in 2022 and none in 2023 or 2024.
- The number of pilots was at 52 on the date of the Committee meeting. One pilot expects to retire effective January 1, 2022, which brings the number of pilots to 51. Another pilot plans to retire on April 1, 2022, which would bring the number of pilots to 50. There are seven trainees in the program right now. That would bring the pilot number to 57 with the current group of trainees.
- The times of the trainees in the program, as of this Board meeting, range from 27 months to 3 months, with five of the trainees having been in the Pilot Trainee Training program nine months or fewer.
- Vessel traffic continues to be significantly below pre-COVID volumes and industry reports a continuation of instability through 2022.
- It is time to slow down and space out the intake of trainees into the Pilot Trainee Training Program. The current group of trainees have no one in evaluation stage and none are likely to enter evaluation stage for several months, except for one trainee whose is currently on probation and could enter evaluation stage as soon as PEC determines his progress warrants doing so.
- The Committee felt it was appropriate to review the upcoming retirement survey before making any changes to the current trainee group. With retirements essentially done and many trainees with less than a year in the program, this action does not jeopardize the flow of replacement pilots.

In preparation for Pilot Power meeting, Commissioner Captain Carr reviewed the Legislative Reports from 2009 to present and found additional data and patterns which influenced his direction as Committee chair and the recommendation of the Committee as follows:

- 2010 was a very similar year to 2022 as there were 53 pilots and only 4 trainees.
- There has been a large number of retirements in one year with few new pilots. 2009, 2015, and 2020 were years of many retirements and few or no new pilots; a resulting expansion of the training program to have 8 trainees only to see the next year with a large number of new pilots and few retirements. This is an interesting phenomenon which will create issues for pilot power in the future as the Board again deals with bunching of

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retirements. We have an opportunity here to stop this effect by spacing out the admission of new trainees.

Executive Director Garfinkle directed the Board and the public to a letter written by Captain Greger, which is available under meeting documents Agenda Item #6A-03. He also clarified he was directed by the Board to keep the pilot training cadre full, which means maintaining the training program at eight or more and he had received approval from the Board to go up to ten. He reflected on the Board meeting minutes in which Commissioner Captain Nyborg expressed great concern about having pilots off the board due to medical issues. Executive Director Garfinkle thinks it is prudent to train new pilots as they are available now, rather than relying on future lists. Safety and fatigue prevention is paramount to the Board and having a full cadre of licensees is an important aspect to providing safe pilotage for the bay.

Commissioner Tynan referenced the letter written by Captain Greger and inquired about the Executive Director's reliance and agreement with the letter. Executive Director Garfinkle stated he is not endorsing the letter; he is pointing it out as correspondence. He explained the statute doesn't mandate sixty pilots, but rather that is a limit. He stated he is concerned that we have had two retirements and another one coming up. He stated the program has room for three additional trainees, as there are enough licenses available, should all ten receive Certificates of Completion.

Executive Director Garfinkle explained it is important to balance the number of trainees in the program and the number of available licenses. Commissioner Tynan inquired if that has occurred before, trainees completing the program with no licenses available. Executive Director clarified the number of pilot licensees has not been at sixty for a long time. He explained there was a period, prior to his tenure as Executive Director, where there were trainees ready for Certificates of Completion and there were no licenses available. Past Board President, Miller confirmed, approximately twenty years ago there were three potential licensees who completed the training program and there were no available licenses.

Port Agent Captain Carlier clarified from the Fall of 2014 to Spring of 2015 SFBP had sixty licensed pilots. He confirmed that on July 1, 1998, there were three trainee graduates who completed the training program and for thirty-six months there were sixty-three pilots in the SFBP.

President Hayes-White stated she participated in the Pilot Power meeting held on December 22, 2021 and raised the issue of diversity. She explained it is a personal goal of hers as a commissioner coming from a field in the fire service, where there is not a lot of diversity, to support diversity as it adds value to the workplace. She stated her comments were minimal during the meeting and independent of the Committee's recommendation, which was based on reduced shipping traffic and reduction of pilot retirements.

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Commissioner Captain Nyborg stated the Board has always relied on the Pilot Power Committee's recommendations when determining how and when to add trainees to the Pilot Trainee Program. The Committee is recommending that the Board wait a month or two before adding any more trainees and this is all about making sure there are enough pilots in the pipeline to adequately staff the SFBP.

President Hayes-White stated 100% participation in the retirement survey is important and that she is available to assist in promoting the survey to obtain 100% participation. Captain Carr stated the January survey is completed and they obtained 100% participation. He stated once the report is collated, the Committee will schedule the next Pilot Power Committee meeting.

- MOTION:** Commissioner Captain Nyborg moved that the Board approve the Pilot Power Committee's recommendation to maintain the Pilot Training Program at seven trainees. Commissioner Tynan seconded the motion.
- VOTE:** YES: Hayes-White, Schmid, Nyborg, Carr, Prada, and Tynan.  
NO: None.  
ABSTAIN: None.
- ACTION:** The motion was approved.

#### **15. Report on 2022 Pilot Trainee Training Program Selection Examination (Executive Director Garfinkle)**

**Report on progress of preparations for the 2022 Pilot Trainee Training Program Selection Examination, including a report on the regulatory changes initiated to change the minimum qualifications and structure of the exam.**

Executive Director Garfinkle stated progress on the exam is moving forward although we do not have regulations changing the minimum qualifications in place quite yet. Executive Director Garfinkle thanked the Pilot Evaluation Committee, CalHR, retired Captains Schisler and Gates for their diligent work on developing the exam and simulator.

Executive Director Garfinkle stated the comment period for the amended regulations ended yesterday and will be submitted to the Office of Administrative Law (OAL) to move regulations forward as quickly as possible to get the changes in place for the June 6, 2022 exam.

#### **16. Proposed Board Rulemaking Calendar for 2022 (Executive Director Garfinkle)**

**Discussion of draft 2022 Board Rulemaking Calendar for submission to the Office of Administrative Law. Possible Board action to accept the draft 2022 Board Rulemaking Calendar in compliance with Government Code Section 11017.6, and direction to Board**



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**staff to submit the 2021 Board Rulemaking Calendar to the Office of Administrative Law.**

Executive Director Garfinkle explained the purpose of the Rulemaking Calendar is to communicate the Board's anticipated 2022 rulemaking activities to the Office of Administrative Law (OAL) and public. He directed the Board and the public to Agenda Item 16 meeting documents for a copy of the 2022 Rulemaking Calendar, Schedule B. He stated the Board is not mandated to complete the projected activities, rather the items on the calendar are placeholders. He explained the regulations included on the 2022 calendar include the pilotage rate process, pilot fatigue, pilot trainee resignation process, and a placeholder for regulation clean-up to remove obsolete items. Executive Director Garfinkle explained the projected calendar does not prevent the Board from working on regulations that are not included on the calendar. He asked for a motion to approve the 2022 Rulemaking Calendar.

Commissioner Tynan inquired about the exam qualification regulation changes. Executive Director Garfinkle explained the comment period for the regulation changes ended yesterday and the next step is for the Board staff to submit regulation changes to OAL to be reviewed and approved by the OAL. He stated we are hoping to have the new minimum qualifications in place before April 15, 2022 when the exam applications are due.

**MOTION:** Commissioner Captain Carr moved that the Board approve the 2022 Rulemaking Calendar. Commissioner Tynan seconded the motion.

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

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

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

Captain McIntyre reported that compared to a normal year, 2021 revenue from pilotage fees was down 28.6% and 2020 revenue was down 15.8%. She explained in a normal year, revenue is approximately \$43 million, and in 2021 revenue was \$31 million, a \$12 million shortfall. She stated SFBP is grateful for the newly implemented surcharges to assist with the decline in shipping, however the surcharges help to recover only \$1.7 million of the \$12 million gap.

Captain McIntyre referenced the Agenda Item #7B meeting document which provides data for ship movements for the previous twenty-four months. She pointed out from the document that in January 2020, pre-pandemic, total moves were 740 while for August 2021 through December 2021 total moves dropped below 600.

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Captain McIntyre stated SFBP expects the congestion to continue into 2022. She stated the International Longshore and Warehouseman's Union (ILWU) contract is up in July and there has not been an agreement to extend the contract. She explained in 2015 it took over a year to resolve the contract and that resolution involved the federal government stepping in. She stated there is a national shortage of 27,000 chassis, which are the wheels the containers get put on. She explained the chassis are manufactured in China. A plant is going up in Texas, but they are estimating it will take a year to make 9,000 chassis. She added the labor issues with longshore and truck drivers are compounding the issue. She has received reports a queueing system has been put in place and plans have been put in place to divert cargo to the east coast and gulf coast in advance of the ILWU contracts. There are unknowns such as the ballpark development and the different priorities of the Port of Oakland.

Mr. Jacobs concurred with Captain McIntyre and noted they are seeing ongoing congestion in Southern California. The queueing system in place for L.A., Pacific Northwest, and Oakland is successful at keeping vessels offshore and not crowding anchorages, which helps with air pollution impacts and safety. The queueing volumes in Southern California peaked in January at over 110 vessels in queue. We see the hangover of that in Oakland, but we've developed our own queue. The Port of Oakland had 16 ships at anchor, adrift, or arriving, and four to five ships at birth. This is estimated to continue for some time to come. Looking back at 2021, we are moving more cargo than ever but doing it with fewer vessels, and the vessels are full, impacting pilot revenue. The larger the queue is in Southern California, the more important it is for the vessels to get back on schedule and leave full. There is less incentive for the vessels to wait again in Oakland where there is congestion; and even when there is no or minimal congestion, if the vessels are full there is no point stopping in Oakland or even the Pacific Northwest as the vessels are getting back to Asia as soon as possible.

Mr. Jacob stated they are under tremendous pressure to clear empty containers. The issue isn't just because of empties but it is also because of the chassis. He stated the trucking industry sources shared that there are over 100,000 pieces of idle equipment because of the chassis and empty imbalance. It was primarily a Southern California issue, but now the problem has migrated to Oakland. The Howard Terminal was identified as an offsite storage for chassis and empty containers but with the ballpark being considered for that site, we are running out of acreage at a time when more is needed. In addition to the other issues, they have also been impacted by Omicron restrictions and the ability to move cargo. Mr. Jacob thanked SFBP for working with PMSA during the pandemic.

Captain McIntyre asked if Mr. Jacob could give an update on the ballpark. Mr. Jacob stated the Howard Terminal Stadium Project final EIR has been published and there was a Planning Commission hearing and a recommendation for certification from the City Council was made. There is no council date set yet, but City Hall is talking about scheduling a council vote in mid-February. That would then require a 140-day period where BCDC has to

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consider an amendment to the Seaport Plan and trigger a litigation deadline for parties who might be looking at contesting the EIR certification. The city would have to develop a set of entitlements, a development agreement, and a community benefits agreement. Seaport compatibility measures are still outstanding. Conversations are still ongoing regarding impacts on trucking, maritime, and rail business in and out of the port. Another factor is whether the Turning Basin expansion is included in the ballpark configuration. The comment period for the Turning Basin expansion feasibility report issued by the Army Corps was extended from January 31, 2022, to February 14, 2022. PMSA will comment in support of that, as it is important that we maintain the full flexibility of the ten acres of Howard Terminal.

Commissioner Captain Nyborg asked Mr. Jacob about carb regulation changes on trucks and impacts to tractors. Mr. Jacob explained they are not seeing a truck power issue right now, but there is a potential for driver shortages, due to COVID and a demand issue. Mr. Jacob stated supply chain issues with microchips are causing supply issues with delivering new trucks, but the main issue right now is the chassis shortage.

Commissioner Captain Prada inquired if Mr. Jacob has approached the city about using the Coliseum for staging, Mr. Jacob said they have not but will look into it.

**18. Incident Review Committee report on the M/V HYUNDAI NEPTUNE and M/V HANOVER EXPRESS interaction with the M/V THALASSA AVRA, resulting in multiple parted lines and contact with a container crane at Berth 37, Oakland Outer Harbor, on May 21, 2020. (Executive Director Garfinkle/Vice President Schmid)**

**A presentation of the Incident Review Committee report on the event involving the M/V HYUNDAI NEPTUNE and M/V HANOVER EXPRESS interaction with the M/V THALASSA AVRA, resulting in multiple parted lines and contact with a container crane at Berth 37, Oakland Outer Harbor, on May 21, 2020. Board deliberation of the Incident Review Committee's recommendations to the Board and determination regarding the event involving the M/V HYUNDAI NEPTUNE and M/V HANOVER EXPRESS interaction with the M/V THALASSA AVRA. 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).**

President Hayes-White called for an eight-minute break at 11:27 a.m.

President Hayes-White reconvened the meeting at 11:36 a.m. Administrative Assistant Wong called the roll and confirmed a quorum.

Executive Director Garfinkle presented the Incident Review Committee (IRC) report on the

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M/V HYUNDAI NEPTUNE and M/V HANOVER EXPRESS interaction with the M/V THALASSA AVRA resulting in multiple parted lines and contact with a container crane at Berth 37, Oakland Outer Harbor on May 21, 2020. He summarized the the incident as follows:

- On the morning of May 21, 2020, the M/V HYUNDAI NEPTUNE (hereinafter HYUNDAI NEPTUNE) was entering the Oakland Outer Harbor (OOH) in the Port of Oakland, bound for Berth 25, with Captain Aune conning.
- The M/V THALASSA AVRA (hereinafter THALASSA AVRA) was alongside at Berth 37.
- As the HYUNDAI NEPTUNE passed Berth 37 interaction between the vessels caused the THALASSA AVRA to surge, parting six mooring lines. The surge also rotated the ship enough to allow the bow of the THALASSA AVRA to contact the adjacent container gantry crane, damaging the crane.
- Approximately 45-minutes later, the M/V HANOVER EXPRESS was inbound at OOH, and while passing Berth 37, the THALASSA AVRA suffered another headline parting.
- There were no injuries to persons. None of the other ships moored in Oakland experienced any damage.
- The IRC consisted of Commissioner Jennifer Ferrera-Schmid as Chairman and Executive Director Allen Garfinkle. The IRC prepared this report pursuant to California Harbors and Navigation Code Section 1180.3 and Title 7, California Code of Regulations Section 210.

Executive Director Garfinkle then discussed the public portions of the report, the evidence gathered by the IRC, and the IRC's analysis of the incident, including whether the pilot was proceeding in a reasonable and cautious manner using the skill and care possessed by the average pilot similarly situated would have exercised, and whether Captain Aune's actions were reasonable and prudent and made using his best judgment. He presented the timeline and images.

Executive Director Garfinkle stated the IRC determined, with respect to the HANOVER EXPRESS and the single parted headline, that there was clearly no pilot error and discontinued the investigation.

Executive Director Garfinkle stated that based on the evidence and analysis, the IRC recommended the following actions to the Board:

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- That the Board find for no misconduct by Captain Aune in this case.
- That SFBP work with Everport Terminal Services and the individual ships (through their agents) moored at Berths 35/37 to provide notification of when to expect passing vessels.
- That SFBP develop a mechanism to disseminate the information contained in the Coast and Harbor Engineering Studies to their membership.

The Board moved to deliberate in a closed session at 1:10 p.m.

The Board returned to the open session meeting at 1:50 p.m. Administrative Assistant Wong called the roll and confirmed a quorum and noted for the record, Commissioner Tynan was not present.

Vice President Schmid stated for the record she recused herself as a member of the IRC from the closed session.

President Hayes-White stated the Board has yet to make a decision and voted to continue the matter until the next Board meeting when all of the Board members are available to participate in the decision since Commissioner Tynan had to leave the meeting early and was unable to participate in the closed session.

#### **19. Public comment on matters not on the agenda. (President Hayes-White)**

Captain Carlier shared that he and Captain McIntyre will be gone on April 28, 2022 for the West Coast Pilot Conference and will be out of town for the April Board meeting.

Captain Art Thomas thanked the Board members and Board staff for running a very good virtual meeting.

#### **20. Proposals for the next Board meeting agenda. (President Hayes-White)**

Mr. Miller stated the pilot fitness and fatigue regulations will be reviewed February 8, 2022. President Hayes-White stated that item will be added to the next Board meeting on February 24, 2022.

#### **21. Adjournment.**

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

**VOTE:** YES: Hayes-White, Schmid, Nyborg, Carr, Prada

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NO: None

ABSTAIN: None

**ACTION:** The motion was approved, and the meeting was adjourned at 1:54 p.m.

Submitted by:



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