

United States Coast Guard
Marine Board Investigation
Commercial Fishing Vessel Destination Casualty
FORMAL HEARING

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915 Second Avenue

Seattle, Washington 98174

August 7, 2017 -- August 17, 2017

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P R O C E E D I N G S

Start Time 0900

OPENING STATEMENT

BY CDR MULLER:

Good morning. This hearing will come to order. Today is August 15, 2017, the time is 0900. We are continuing at the U.S. Coast Guard Thirteenth District, Seattle, Washington.

I am Commander Scott Muller, of the United States Coast Guard, Chief of the Inspections and Investigations Branch, Fifth Coast Guard District, Portsmouth, Virginia. I am the Chairman of the Coast Guard Marine Board of Investigation and the presiding Officer over these proceedings.

The Commandant of the Coast Guard has convened this board under the authority of Title 46, United States Code, § 6301 and the Title 46, Code of Federal Regulations, Part 4, to investigate the circumstances surrounding the sinking of the fishing vessel Destination, with the loss of six lives on (SEPTEMBER) February 11, 2017 approximately three nautical miles north of St. George Island, Alaska.

This investigation will determine as closely as possible the factors that contributed to the incident in order to develop recommendations aimed at

1 preventing similar casualties.

2 Whether there is evidence that any act of
3 misconduct, inattention to duty, negligence, or willful
4 violation of the law, on the part of any licensed, or
5 certificated person contributed to the casualty. And
6 whether there is evidence that any Coast Guard
7 personnel or any representative or employee of any
8 other government agency or any other person caused or
9 contributed to the casualty.

10 This Marine Board has planned for at least
11 one hearing session. The purpose of this hearing is to
12 collect factual information. The Marine Board will use
13 the factual information when developing its report of
14 findings, conclusions, and recommendations.

15 I have previously determined that the
16 following individual is a Party-in-Interest to this
17 investigation. Mr. David Wilson represented by Ms.
18 Spivak of Holmes, Weddle and Barcott. This party has a
19 direct interest in the investigation, and has
20 demonstrated the potential for contributing
21 significantly to complete the investigation or
22 otherwise enhancing the safety of life and property at
23 sea, through the participation as a Party-in-Interest.

24 All Parties-in-Interest have a statutory
25 right to employ counsel to represent them, to cross-

1 examine witnesses, and to have witnesses called at
2 their behalf.

3 I will examine all witnesses at this formal
4 hearing under oath or affirmation and witnesses will be
5 subject to federal laws and penalties governing false
6 official statements. Witnesses who are not Parties-in-
7 Interest may be advised by their counsel concerning
8 their rights. However, such counsel may not examine or
9 cross-examine other witnesses or otherwise participate.

10 These proceedings are open to the public, and
11 to the media. I ask for the cooperation of all persons
12 present to minimize any disruptive influence on the
13 proceedings in general, and on the witnesses in
14 particular. Please turn your cell phones or other
15 electronic devices off or to silent or vibrate mode.
16 Please do not enter or depart the hearing room except
17 during periods of recess.

18 Flash photography will be permitted during
19 this opening statement and during recess periods. The
20 members of the press are, of course, welcome. An area
21 has been set aside for your use during the proceedings.
22 The news media may question witnesses concerning the
23 testimony they have provided here but only after I have
24 released them from these proceedings. I ask that any
25 such interviews be conducted outside this room.

1 Since the date of the casualty the NTSB and
2 the Coast Guard have conducted substantial evidence
3 collection activities. And some of that previously
4 collected evidence will be considered during these
5 hearings. Should any person have, or believe he or she
6 has information not brought, but which might be of
7 direct significance, that person is urged to bring that
8 information to my attention emailing FVDestination@
9 USCG.mil.

10 The Coast Guard relies on strong partnerships
11 to execute its missions, and this Marine Board of
12 Investigation is no exception. The National
13 Transportation Safety Board provided a representative
14 for this hearing, Mr. Michael Karr, seated to my left
15 is the Investigator-in-Charge, for the NTSB
16 investigation. Mr. Karr, would you like to make a
17 brief statement?

18 MR. KARR: Good morning. I am Michael Karr,
19 Investigator-in-Charge for the National Transportation
20 Safety Board for the investigation of this accident.

21 The NTSB has joined this hearing to avoid the
22 duplicating the development of the facts. I do wish to
23 point out that this does not preclude the NTSB from
24 developing additional information separately from this
25 proceeding if that becomes necessary.

1 Fehst, and that is spelled, F-E-H-S-T.

2 LCDR MENDOZA: Could you state your current
3 employment and position title.

4 THE WITNESS: I am currently a Captain
5 onboard the fishing vessel April Lane.

6 LCDR MENDOZA: Do you hold any professional
7 licenses or certificates?

8 THE WITNESS: I hold 1,600 ton master
9 inspected.

10 LCDR MENDOZA: Thank you sir.

11 CDR MULLER: Good morning Mr. Fehst.

12 THE WITNESS: Good morning.

13 CDR MULLER: Again welcome. Thank you for
14 your participation at this hearing. I will now hand the
15 questions to Mr. Paul Suffern of the NTSB, our subject
16 matter expert regarding meteorology.

17 (Brief pause.)

18 CDR MULLER: Excuse me, I'm flipping ahead on
19 the schedule. Actually Mr. James Gillette will initiate
20 the questions. Thank you.

21 **EXAMINATION**

22 BY MR. GILLETTE:

23 Q. Good morning Mr. Fehst.

24 A. Good morning.

25 Q. My name is James Gillette of the United States

1 Coast Guard. If at any time you don't understand a
2 question that is asked, just request that the question
3 be readdressed or rephrased.

4 If at any time you need to take a recess
5 please ask. Also remember, to speak up loud and clear
6 to assist the court reporter to transcribe the hearing.
7 With that said, I would like to start asking questions.

8 I would like to start by getting a little
9 background information on you. Could you start by
10 speaking to us about how long you have been working as a
11 commercial fisherman, and what type of boats have you
12 worked on?

13 A. I started my career in 1984. I started as a
14 crab fisherman on deck. I've been in the crab industry
15 since that time. Actually, I retired from crab industry
16 in 2013 and switched to just cod fishing. It is still a
17 pot fishery, but I have thirty-some years in the crab
18 industry. In all those years, I never missed a single
19 Snow crab fishery, and also participated in the Brown
20 King crab fishery for about twenty-five years. So I
21 have, you could say, vast experience in the crab fishing
22 industry.

23 I obtained my Coast Guard license, my first
24 one, as a 200 ton mate, I got that in 1989. The
25 insurance pool at that time asked the owner of the

1 vessel, or demanded or asked that I acquire a mate's
2 license, so I did. And it was probably one of the best
3 things I ever did in my life, was getting myself
4 licensed. And through the years, up until the current
5 time, I still hold, this license is current. Upgraded
6 all through the years. And it definitely has benefitted
7 my ability in decision-making, when it comes to dealing
8 with the Bering Sea.

9 I mean, my uninspected -- even prior to that.
10 Prior to that was a 1600 ton fishing, and stability was
11 a big part of the license program. And not just
12 stability, but also bridge resource management. So,
13 I've had a fairly safe, career. Minimal damage as far
14 as any bodily injuries, on my crews. So, that's about
15 me history there.

16 Q. You mentioned stability training, where did
17 you get your stability training and when?

18 A. It started with the mate's license. It was,
19 at that time, in the 80's it was basic, I mean, we
20 learned something about, you know, GM and all that
21 stuff. It definitely got stiffer as I increased in
22 licenses. The inspected license was pretty, they hit us
23 pretty hard with stability during that upgrade.

24 But it was extremely helpful, and gave me, you
25 know, a lot more awareness of, you know, checking my

1 load, checking my stability book versus the load. You
2 know, prior to 2005 it was -- before we rationalized,
3 and there was any type of twenty-four hour notification
4 as part of the discretionary demands placed -- added
5 (inaudible word) at that time. I just became more aware
6 of what I was doing in the vessel, in relation to the
7 loading of the gear and stuff.

8 Q. You mentioned something about a twenty-four
9 hour notification. Can you elaborate what you are
10 speaking about?

11 A. In 2005 there was a bunch of different things
12 that we were supposed to do. And you know, the twenty-
13 four hour notification was one of those things. And
14 what it was, or is, is, I believe it is still
15 discretionary, not mandatory. And what it is, is we
16 give the Coast Guard a call in Dutch Harbor prior to
17 starting our season.

18 And it is asking them to come down to the
19 vessel and check our load versus our stability book.
20 And also, check our load against weather conditions at
21 that time, whether it be icing or non-icing conditions,
22 with the forecast. And give us a recommendation
23 whether, you know, should we take some gear off and
24 comply with -- or icing conditions, if we were loaded
25 with a non-icing condition load.

1 You know, in my mind I thought that was a very
2 good idea, and still is today.

3 Q. Do you still use that? I heard that you
4 stopped crab fishing in 2013, however you still use pots
5 to fish now. Are you still using that twenty-four hour
6 notice when you are in Dutch Harbor? And if so, could
7 you elaborate about that?

8 A. Yes I am still using it, even four years later
9 after not crab fishing anymore. With the April Lane, it
10 is a new vessel in the pot fishery this last winter.
11 And we made modifications to the vessel. We changed the
12 deck design, we added equipment, a crane, stuff like
13 this. So it altered the original stability book and how
14 we were loading gear on there. Before it was just nets
15 and a boom, and we changed all the configuration of the
16 mechanics of the vessel.

17 So, when I arrived from Petersburg, I treated
18 the April Lane as I would have with a crab vessel and
19 made the twenty-four hour notification to the Coast
20 Guard. I asked them to come down and check my vessel.
21 We had gear onboard, they came down and checked my
22 stability book.

23 And at that time, we still hadn't updated the
24 stability book for pot configuration. As a licensed
25 master I take it very seriously. Before I leave the

1 dock that my vessel is in the best shape possible,
2 configuration for load limits. You know, I take the
3 safety of my crew, I have the utmost respect for the
4 safety of the vessel. And so it was, I was just making
5 sure that I was in compliance.

6 And the Coast Guard did come down and check my
7 load and check my stability book. And they refrained me
8 from leaving Dutch Harbor until I had my stability book
9 upgraded, to reflect the current condition the vessel
10 was now in, in the pot fishing industry.

11 And we waited. We waited two days. I got a
12 temporary from the architectural marine surveyor,
13 whoever writes those stability books. I got a
14 temporary, and then we got the full book a couple weeks
15 later. But I was in compliance with the stability book.
16 The Coast Guard then came back down and looked again at
17 the new, upgraded, revised stability book versus April
18 Lane, and this new fishery, and they gave me the green
19 light and we went fishing.

20 Q. Are you using the same size and weight of pots
21 that you were using prior when you were crab fishing on
22 the Bering?

23 A. Currently I'm using 6.5 by's, their weight is
24 near 700 pounds. I have used 7 by's, that weighed 750
25 in the crab industry. I have used 7 by 8's that weigh

1 850, so very similar, very close.

2 Q. In reference to your stability book do you
3 also count in the weight of the gear that's inside the
4 pots, your shots, line, your buoys? Do you include
5 those in, when you are assessing your stability book?

6 A. Absolutely. In the stability book it give us
7 a number for accessories, a number for pounds of bait,
8 also tank configurations for fuel, water, oil, any type
9 of that storage. So all of those are taken into account
10 as far as the load goes. I, personally, am one of those
11 Captain's that even though the stability book says I can
12 carry forty-two of these pots on my vessel, I usually
13 always factor in less pots just to give myself a little
14 more breathing room, you know, when it comes to the
15 freeboard. So, even though it says forty-two, I still
16 carry about 32, 35.

17 Q. You mentioned a little about training. Do you
18 train your crew on stability? And if so, how do you do
19 that?

20 A. I do. I am one of those Captains that, with
21 all of the training I've had all through my years, Coast
22 Guard training, that I like to pass down this knowledge
23 to my crews. I like them to be as knowledgeable as
24 possible. Not only in the wheelhouse, but on load
25 lines, and stability, and you know, just taking

1 everything into account, bridge resource management.

2 It goes a lot further than just being a drill
3 instructor and doing safety, you know, stuff on, once a
4 month on the deck or whatever. I want them trained. I
5 want them to notice things. I want them to, you know,
6 when they are behind the wheel and I'm down sleeping, I
7 want them to feel like they are about as educated as I
8 am driving that boat. Because, you know, everyone
9 else's lives is in their hands when they are behind the
10 wheel and everyone else is sleeping.

11 So, I do train them. And they like it, I
12 mean, they like to know. They want to know. So we are
13 always looking at load lines. We put a load on, I mean,
14 I have them walk around and just look at the (inaudible
15 word) rails, just look at the lines, how do we look. So,
16 it's not just me looking at it, it is also them.

17 You know, I always train them for the
18 scenario, what if I pass at sea? Do they have the
19 ability to bring that vessel home? Do they have the
20 ability to take care of the engine room? Do they have
21 the ability to follow the rules, and the (Inaudible
22 word), I mean, it is just -- I want them to be as
23 knowledgeable, as close as I can. And -- before we
24 leave the dock.

25 Q. Could you talk to us a little about weather,

1 and how you forecast the weather onboard the April Lane?

2 A. Well, that particular night, and that day, I
3 got my forecasting from the VHF. The VHF, I think it
4 was February 9th, you know, the forecast was for a broad
5 area. And when I say that, it is from like most of the
6 Bering Sea up through the Pribilofs, Dutch Harbor.

7 So yeah, it was VHF that night, and I upgraded
8 April Lane to internet since that time. So, I now
9 receive my weather through the internet using a Windyty,
10 which is far more accurate than the VHF. The VHF, at
11 times, will give you a broad area, from say Sarichef to
12 Nikoski, and it can be doing several different things in
13 that area. Where you just get a general forecast. So,
14 it's not just listening to the VHF, but also what is it
15 doing where I am at. How does it relate to what I'm
16 hearing?

17 So I listen to a multiple of areas. I will
18 listen to the south side of the chain, the north side,
19 and further down the chain, so I get a better feel,
20 exactly what's occurring, and what's coming my way.

21 Q. Can you talk about what the weather was
22 forecasted on February 9th? Let me rephrase that. Let
23 me start up a little more on here. On February 9th, can
24 you tell us where you were located, and what your voyage
25 plan was?

1 A. On February 9th was the beginning of State
2 waters season for cod fish. I was in Dutch Harbor. The
3 season started at noon that day. I was still in Dutch
4 Harbor. We were scheduled to get some pots off at the
5 light cargo dock, out there by Kloosterboer, in that
6 area. I was scheduled to get pots there at six o'clock,
7 I wasn't in any hurry to leave, to make that opener that
8 day. We had weather that was forecast for northeast to,
9 as I say, crank up after midnight. So I wasn't in any
10 hurry to get out there.

11 My voyage plan was to pick up these pots. And
12 we picked them up around six, six-thirty, it might have
13 been as late as seven when we left the dock that
14 evening. And then proceeded out to Akutan, the north
15 side of Akutan where I was going to set those pots,
16 about a three-hour cruise from Dutch Harbor.

17 At that time, seven o'clock, the northeast
18 winds were picking up, it was about 20, 25 knots. And I
19 knew I had time to get to Akutan, rebait all the gear
20 that was in the water, I was already in State Water
21 grounds. And my plan was to get there around ten, ten-
22 thirty that night, and be done setting this gear back in
23 the water with bait. And put those northeast winds on
24 my stern and head back to Dutch is what we did.

25 We left the grounds about one-thirty in the

1 morning, north of Akutan. And we were about two and a
2 half miles off shore. So it was, I had a tailwind back
3 into Dutch. I knew it was going to be a tailwind at
4 that time. And at two-thirty, three o'clock in the
5 morning it was blowing pretty good. We had, oh I'd say,
6 northeast 30, 35 by that time. And by the time we
7 reached Alaska Bay I had a palling sea of probably close
8 to 15 to 20 foot northeast direction, and the seas
9 coming from the northeast.

10 So, my plan was to just get that gear baited
11 and to stay in Dutch the entire weekend. The forecast
12 was to break Sunday. And so that was my plan not to be
13 out there the entire weekend.

14 Q. I would now like to slightly shift the focus
15 of when you saw the fishing vessel Destination on the
16 9th of February. I would like to show Exhibit No. 5,
17 this is a video from a crewmember onboard the April
18 Lane, showing the fishing vessel Destination transiting
19 into the Dutch Harbor.

20 We are going to show it twice, it is a pretty
21 quick video. And then I want to posit.

22 (Showing video of Fishing Vessel Destination.)

23 Q. Can you share with us when and where this was
24 filmed, and around what time?

25 A. We had just left the light cargo dock. We had

1 picked up ten pots, and we are now heading out to sea,
2 we were in Akutan. This is when the Destination was
3 going by. And when I saw it coming and going by, I
4 looked at that load of gear, and I was like, in my mind,
5 I was saying to myself, they are leaving Dutch Harbor
6 with that stack onboard with this weather forecast.

7 That's -- I called my crew up to the
8 wheelhouse just to witness this. And one of my
9 crewmembers, Shaun Alexander, actually took this video.
10 And I just, it alarmed me when I saw this load on this
11 boat with the forecast that was coming. The alarm
12 probably, in my head went off, because I've been there,
13 thirty-some years of doing this, and knowing traveling
14 from Dutch Harbor to the Pribilofs --

15 Q. Mr. Fehst, can you -- excuse me. Can you
16 bring that a little closer to the microphone, it is a
17 little hard to hear you, sir.

18 A. How's this? Better?

19 Q. Yes. You know, we weren't going to -- hate to
20 start you over.

21 A. Okay.

22 Q. Can you kind of explain, again, what the --
23 you said something, you were alarmed, can you just start
24 that over.

25 A. Right. I was alarmed when I saw this, this

1 configuration of the -- the load that he is carrying
2 right now, knowing that the -- with the forecast that we
3 were getting northeast. And assuming he was traveling
4 up to the Pribilofs, would put him right in the ditch,
5 all the way up to the islands.

6 As you can see, in the mountains here, I mean,
7 there is a little bit of snow, but the temperature was
8 forecast to drop. And it did. And we were just
9 starting off with freezing spray, and evolving into
10 heavy freezing spray, which it did.

11 My concern was, you know, my -- I just looked
12 at this, and I see this stack from stern to the back of
13 the house four high, four wide, I even took the time to
14 count these pots that I could see on top there. It just
15 struck me that this was the load that they -- I didn't
16 know if they were leaving or not leaving that night.
17 Just -- I just said to myself, I hope they are not
18 planning on leaving tonight with that load.

19 Q. When you count pots, you said four high.

20 A. Four high and four wide. So four across the
21 stern, and four high. And that's above the tier that's
22 below. The ones that are standing up on deck. Those, I
23 couldn't get a clear number of. But, you know, to me
24 this would look like a non-icing condition load, based
25 on how high it is compared to the top of the house,

1 going from the back of the house to the stern.

2 I do not know the stability book numbers for
3 this particular vessel. But, if it was me and with this
4 forecast, I would have peeled off, probably the top two
5 tiers, at least before traveling up to Dutch Harbor. Or
6 just waited it out until the forecast was over with.

7 And Sunday was a good day to leave.

8 So, um, I don't know -- I knew Jeff a little
9 bit. I had met him a few times in years past. It just
10 seems like to me, I mean, he has, from what I know about
11 him, pretty good judgment, he's been doing this a long
12 time. It just seems to me like he was under some kind
13 of pressure of some sort to leave town during this
14 forecast.

15 Q. The forecast that you are speaking of, where
16 were you getting that forecast from? Who was giving you
17 the forecast?

18 A. Again, I was getting that off the VHF Wx
19 channel (inaudible word) here in Dutch Harbor.

20 Q. When you saw the vessel passing you, did you
21 attempt to communicate with the Destination, or anybody
22 else to show your concern?

23 A. I wished I would have. But that is really not
24 our culture to call up another vessel on the VHF and say
25 hey Jeff, you know -- this is, kind of, not our culture.

1 I didn't have a cell phone. It is really, you know, it
2 isn't, it's not my business to do something like, that,
3 to call a captain out. You know, if he is following his
4 stability book, like I said, I don't know what his
5 stability book says. It's just not our culture to do
6 something like that.

7 Q. Have you ever seen the Destination transiting
8 in the past? And did it look any different from what
9 you see in this video?

10 A. I've seen it over the years. I'm not quite
11 sure if they have made changes to it. You know, some
12 boats get lengthened, and (inaudible word), and stuff
13 like that, I'm just not sure. I, that's the way I have
14 seen it for quite some time, or remember it anyways.

15 Q. Thank you Mr. Fehst.

16 MR. GILLETTE: Commander I have completed my
17 questions for Mr. Fehst.

18 CDR MULLER: Thank you Mr. Gillette.

19 **EXAMINATION**

20 BY CDR MULLER:

21 Q. Mr. Fehst, I have a few follow-up questions.
22 Earlier on in your testimony you mentioned Bridge
23 Resource Management, I think in connection with some of
24 your training, to sit for some, for your license exams.
25 Can you describe what that is, and how mariners or

1 vessel operators can implement it?

2 A. Bridge Resource Management, it covers a lot of
3 variations of different aspects of what's going on on
4 the bridge, or with the vessel. It teaches you how to
5 be -- situational awareness. It teaches you to notice
6 things more as it occurs, and it helps you understand
7 that a lot of accidents can be prevented if you just,
8 what they say, break the chain of events.

9 So, it is an educational process that I found
10 very useful. Most of it in the training was, has to do
11 with airline crashes, what was going on in the cockpit.
12 Being situational (sic) awareness.

13 It could also apply quite directly with the
14 crab fishing industry, or any other fishing industry as
15 far as situational awareness. And as I said before,
16 earlier, that the captain, a lot of times will have the
17 crew on watch. And even though the captain may or may
18 not have taken a course like this, I believe that it
19 would be beneficial for all captains and crew to take
20 this type of course.

21 You know, even while -- in the past there have
22 been many vessels, casualties, not all lost, but you
23 know, there have been crews that have survived, but they
24 were unable to break that chain of events prior to, you
25 know, the marine casualty, either a sinking, or however

1 it ended up.

2 It just teaches you to notice if boat's
3 rolling more to one side or the other, it teaches you
4 if, hmm, maybe we should slow it down, we are making a
5 lot of ice. Captain is still in bed sleeping, I mean, I
6 should wake up the captain. It just teaches you before
7 you pass off the watch that, you know, you have to do
8 your vessel inspection, you have looked at things a
9 little bit closer than just handing off the baton and
10 going back to your bed because you are tired.

11 It teaches you to notice fatigue much sooner
12 than most people probably realize. You know, look for
13 the signs of fatigue in your crew. So it is a very
14 helpful, useful course. And I'd recommend it to anyone
15 that's a mariner, including crew, not just captains.

16 Q. Right so I, that's a good segue to -- if you
17 could help describe, or illustrate the process which you
18 spoke about. It sounded like there was some
19 collaboration, interaction, discussion between the
20 master and crew, is that correct regarding Bridge
21 Resource Management?

22 A. Absolutely. I mean this is one of the reasons
23 I called up my crew, when the Destination went by, we
24 had a discussion immediately after we passed them on our
25 way out to sea. We had a discussion about load

1 configuration. We had a discussion about icing, non-
2 icing conditions. We had a discussion about other
3 aspects of stability, load lines, what we were doing,
4 just training. And that is coming from my education,
5 just handing it down like the baton to the younger.

6 So, this discussion is just educating. I want
7 them to, when they are on watch, you know, this is what
8 I want you to look for, what to watch, wake me up, if
9 you have any questions wake me up if things just don't
10 look right. This is what I want you to look for, so
11 don't be afraid.

12 Q. Does it involve a process where the crew,
13 potentially, may have some input to the captain, for the
14 captain's considerations?

15 A. Can you say that again, one more time?

16 Q. So Bridge Resource Management, or these
17 discussions --

18 A. Um-hmm.

19 Q. -- is there an element there, a component that
20 encourages input from the crew?

21 A. Ah, just a better understanding of their work
22 platform. I mean, they are going out to sea, they know
23 the risks. But we can lower those risks by better
24 education and understanding of what we are doing. You
25 know this, the risks are still there, but, you know,

1 breaking that chain of event that leads up to a casualty
2 is the most important part here. And I think that's
3 where Bridge Resource Management helps. Educate the
4 captain, but it can also educate the crew in the same
5 way to understand this chain that can happen. And how
6 you can break that chain before it leads to the ultimate
7 catastrophe.

8 Q. Can you help create a picture, or describe
9 perhaps industry practice. What kind of risk
10 assessment, or discussions, if any, take place between
11 the crew and the captain prior to getting underway? As
12 well as, you are welcome to contrast, and give us an
13 example of what takes place onboard your vessel.

14 A. Well, safety is definitely number one.
15 Safety, you know, it doesn't do any good for -- I want
16 my crew to be there at the beginning of the season all
17 the way through the season and go home in one piece at
18 the end of the season.

19 So the discussion of safety is of utmost
20 importance. And that includes all the above, rules of
21 the road, they are driving, you know. Understand other
22 vessels, what their lights mean, what -- who has right
23 of ways, you know, the hierarchy of different vessels,
24 how to notice different vessels, especially at
25 nighttime.

1 Again, Bridge Resource Management, being
2 notice of, notice stability, what are we doing here,
3 this is, you know, I discuss why does my book say forty-
4 two pots, and I'm only carrying thirty-five because I
5 like a little bit of leeway, a little bit of extra
6 cushion. I don't like taking my load to the, you know,
7 the limit of the stability book. It looks good at the
8 dock, but sea conditions can throw, you know, different
9 variables at you.

10 You know, I've seen it over the years where,
11 you know, they say ten foot seas we will get -- but ten
12 foot there, could be a nineteen-foot in there, and then
13 a twenty-foot in there. Or an odd wave from getting
14 into an area where there is more current or an opposing
15 current, upwellings. I mean, there is just all kinds of
16 different things that crew needs to be aware of.

17 So we talk about this. We talk about -- I
18 show them on charts, I mean, we are looking at areas not
19 to transit through. You know, stay out of it, stay out
20 of it from this point on. Stay left of this area, you
21 know, teaching them that there are tide rips and stuff
22 like that in this area, just stay, you know, when we are
23 transiting this is why we are doing this course, then
24 altering to that course at the certain point. I teach
25 them the reasons behind all that.

1 So, I want them to be good mariners, not just
2 good deckhands, but good mariners.

3 Q. Thank you. Also earlier, you mentioned that
4 you participated in Coast Guard spot checks. And you
5 recalled an incident, or an instant where the Coast
6 Guard spot check resulted in your vessel being held at
7 the dock until the stability book was updated, is that
8 correct?

9 A. Yes.

10 Q. Okay.

11 A. That was April Lane, my vessel.

12 Q. Do you recall about what year that took place?

13 A. Pardon me?

14 Q. Do you recall what year that took place?

15 A. That was this year. No wait.

16 Q. 2016?

17 A. That was 2016, and that was when we arrived
18 about mid-November, about the tenth of November.

19 Q. Do you recall how the Coast Guard examiners
20 who conducted that spot check how they implemented
21 holding you to the dock? Did they issue you any
22 paperwork? Any instruction? Any requirement? Was
23 there a mechanism, or paperwork? Was it even a caption
24 of the port order, do you recall?

25 A. Again, it was a voluntary act on my part, to

1 make this call. It is just something I've done since
2 2005, with the twenty-four hour notification, it was
3 just, you know, when I leave port, I want to leave port
4 knowing that my vessel is in the best condition
5 possible. So I made the call when we arrived. We came
6 from Petersburg, to Dutch Harbor with twenty-four 7 bys
7 onboard --

8 Q. Right. I understand the scenario. But do you
9 recall if the Coast Guard issued you any paperwork that
10 required you to stay at the dock? Or was it --

11 A. They had a checklist, I was going over my
12 safety equipment, they had a checklist, and they did not
13 check off my stability book, it was updated -- not
14 updated to be in the new configuration. So they did not
15 check that off. And asked me to get it updated, get it
16 revised, asked me to not leave Dutch Harbor until this
17 was done. This was over the weekend.

18 And I contacted my partner down in Petersburg,
19 and we got on it right away. So that the marine
20 architects or whoever issues those stability books, and
21 they gave us a temporary copy that reflected the
22 changes. And I presented that to the Coast Guard, I
23 believe, a couple days later when I got it. And they
24 looked at it, and agreed with it, and then they let us
25 go sail.

1 CDR MULLER: Okay, thank you. I have no
2 further questions. NTSB? Mr. Karr?

3 **EXAMINATION**

4 BY MR. KARR:

5 Q. Good morning Captain.

6 A. Good morning.

7 Q. Is my microphone working? Let the record show
8 the green light is on. What's the length of the vessel
9 that you are currently operating?

10 A. It is fifty-eight foot.

11 Q. And when you were a crab boat captain, what
12 was the length of the last crab boat that you captained?

13 A. The very last one was the Fierce Allegiance,
14 and that was about a hundred and eighty footer.

15 Q. And how many crew do you currently have you
16 your current vessel, and on that hundred and eighty
17 footer, what was the crew?

18 A. On my current vessel it is four. The other
19 crab boats that I have run through the years, anywhere
20 from 98 foot to about a 175, I'm not sure what the
21 length overall is of the Fierce. But generally for
22 crabbing it is five. Years ago we did it with four, but
23 five seemed to be a better number. So, I'd say the last
24 10 to 15 years of my career crab fishing was five.

25 Q. Even on that hundred and eighty foot vessel?

1 A. Yes.

2 Q. How long does it take -- first of all, your
3 crew, how often do you have to hire a new crewmember for
4 your current vessel?

5 A. My current vessel I started off with four
6 originals, four original crewmembers from Petersburg,
7 and we had factored in a rotating guy that would come in
8 later on in the season, so each one of the crewmembers
9 that I current, you know, left with me from Petersburg
10 could take a couple week vacation. So in total, there
11 was five, but always, I had four original, and by the
12 end of the season it was back to the four original.

13 Q. So how long have those crewmembers been
14 working for you?

15 A. Um --

16 Q. A rough estimate.

17 A. One of them a number of years, probably five,
18 six years, he was my chief engineer. And the other ones
19 are fairly new, if not new to the pot fishery in the
20 Bering Sea.

21 Q. And then how about when you were captaining
22 the crab boat, was your -- did you have much turnover,
23 or was it pretty much the same crew?

24 A. There's turnover. You know the seasons, years
25 ago were long. And you know, anywhere from the

1 beginning of August through April, that's a pretty long
2 time for a deckhand to remain without taking a vacation.
3 So there is turnover.

4 Q. Well when I say turnover, I mean, were they
5 people that never knew you before? Or did you -- when
6 you are talking about people coming back to work for
7 you, were these people that, you know, had worked for
8 you in the past?

9 A. Yeah, both. Crewmembers that I knew from the
10 past, and also new crewmembers eight that have
11 experience, and then there is always a spot sometimes
12 for a new crewmember, a first timer.

13 Q. How long did it take you to train your crew to
14 serve as a wheelwatch at night when you were, you know,
15 when you were asleep?

16 A. It begins with an introduction to the
17 wheelhouse, the electronics, showing them how the
18 electronics work. Don't be afraid to skip around
19 through the plotters, and the radars, and you know, that
20 all begins before we set sail.

21 I have the rules of the road book right beside
22 the wheelwatch station. I give them a brief general
23 oversight. Or a brief introduction to the rules of the
24 road, so they understand right away. A brief
25 introduction to lights most likely to occur in the area

1 that we are fishing. What we are most likely to see.

2 And then the education doesn't stop there, it
3 continues. Every time I'm there on the bridge, I'm on
4 the bridge, and we have a discussion. Either about
5 Bridge Resource Management, or rules of the road, or
6 just carry on a discussion. We talk about safety on
7 deck, what we do different, what you should be doing
8 different. Things, areas to watch, common sense, you
9 know, just for them to have as much knowledge as
10 possible to avoid injury.

11 Q. Can you describe if you have ever told
12 someone, you know, I can't have you stand the watch
13 because I don't trust you?

14 A. Absolutely.

15 Q. And what was it about them that made you make
16 that decision?

17 A. Their inability to follow rules, conduct on
18 the bridge. You know, we have a watch alarm, and if you
19 can't even stay awake for fifteen minutes, you know, you
20 are jeopardizing the entire crew, and the vessel. So
21 anybody that violates the no sleeping rule will be
22 excused. Worst case scenario, will be excused from the
23 vessel, period.

24 Q. Is it a one strike rule? Or, with regard to
25 falling asleep on watch, do you have a one strike rule.

1 Or do you allow them a few times?

2 A. I have a one strike rule, don't do it.

3 Q. Those people that don't qual -- that didn't
4 qualify to stand the watch, did they continue to work
5 onboard the boat, or were they let go soon thereafter?

6 A. They were let go.

7 Q. In all cases?

8 A. The ones I could I find a replacement, you
9 know. I wouldn't allow someone to be onboard the vessel
10 that can't follow that simple rule of staying awake on
11 watch. It is just, it doesn't work for anyone.

12 Anybody, you know, the rest of the crew, you know, all
13 our lives are in their hand when they are on watch. So
14 if they can't follow that one rule they are done.

15 Q. The folks that fell asleep, if -- can you
16 remember what excuses they gave? In general, can you
17 tell me what excuses they gave for falling asleep?

18 A. That they were too tired, or under some other
19 influence.

20 Q. The ones that said they were too tired, did
21 they explain in detail what made them tired?

22 A. Working in the crab industry we do work long
23 hours. But as the Captain I have scaled back
24 dramatically the work hour load that I place upon them.
25 I take all the watches from -- to and from port. So it

1 doesn't occur on my vessel anymore, I just -- they do
2 very little driving. But that's because I'm so close to
3 shore. But crabbing, I mean, you have to watch their
4 fatigue. And again, that goes back to Bridge Resource
5 Management. And I pull them off deck when I see any
6 sign of fatigue it is time to come off.

7 So, I have lessened those chances of them
8 falling asleep at the wheel. Anytime I'm going near an
9 island, or anywhere near traffic, where there is
10 freighters and stuff involved, I take those watches I
11 don't place that upon the crew. So, I take more -- I
12 take the lion's share of the wheelwatches, even though
13 I'm training them, I don't put them in those positions
14 as, probably as often as most captains do.

15 Q. Referring back to an earlier question about
16 pot weight. The question was asked about whether the
17 lines and buoys that are in crab -- or in a pot, do you
18 count that as the overall pot weight? Or is that
19 associated with the accessories that are listed in the
20 stability book?

21 A. That's added with the pot weight. So, in
22 addition to the steel, there is consideration for the
23 buoy's and line that's attached to it.

24 Q. I want to ask one question and then I'd like
25 to refer back to the video can we have that picture put

1 up again? That was fast, so I will ask the question.
2 On that night, I'm interested in hearing what you were -
3 - if you foresaw, if you were thinking ahead to what
4 would happen to a vessel like this that might sail that
5 night. At -- I'm only asking you if you thought about
6 it that night. And if you did, I'd like to hear what
7 you were thinking.

8 A. If I was the captain onboard that vessel? Is
9 that how you are putting this?

10 Q. What I am -- no, just your thoughts, with
11 regard to what you thought might occur over the next day
12 or two, based on the weather forecast.

13 A. When they went by and I saw them in this
14 configuration, I didn't even know that they had loaded
15 more bait later. In the picture, here, can you -- don't
16 really have a close up look at the (inaudible word)
17 rail?

18 Q. Yeah, well let me be specific, because
19 particularly I'm interested in how you thought ice would
20 accumulate on this vessel.

21 A. It would definitely be on the starboard side,
22 the majority of it. They were traveling northwest,
23 north-northwest, more northwest than north. With -- the
24 forecast was for northeast, would put them right in the
25 ditch.

1 Q. And the ditch you refer to is the --

2 A. Broad side to the waves.

3 Q. -- trough of the seas? Or how did you explain
4 it?

5 A. Broad side to the seas.

6 Q. Thank you.

7 A. So they would have been taking the majority of
8 the ice spray on the starboard side, that's not
9 distributing the weight evenly. I've been there before,
10 I mean, I've been there before on the Viking Queen one
11 time we were heading up and we made it to St. George,
12 and we pulled in, and it was pretty bad. We were
13 listing, hard list to starboard.

14 And just to get rid of one pot took over an
15 hour, it was climbing an ice wall. To get to the pot
16 ties. I mean, it took quite some time just to get one
17 pot, or to get the pot ties undone you had to use the
18 crane to pull the shots out of the pot. I mean it is
19 pretty solid. And that was predominantly on the
20 starboard side.

21 So when I look at this load here, and think
22 back to that time, and the forecast that we were
23 supposed to get, predominantly the starboard side of
24 that vessel would have been iced up pretty bad. Again,
25 I don't know if they slowed down, I don't know if they

1 jogged into it. I have not seen any of the tracking, or
2 speed that they were making. I've seen none of that, so
3 I'm just -- I cannot say what they did.

4 But this is what I would have done. I would
5 have slowed down, gone into the wind, to the point of --
6 if it looked like I was in jeopardy, and I was still out
7 here, and off the island, you know to stick and rudder,
8 not drift, just in and out of gear, taking each wave as
9 softly as possible to minimize any further icing.

10 There are times when you are in seas like
11 that, and you are that iced up, to even put the crew out
12 there can jeopardize them, falling off the stack. I
13 mean that's -- it can go either way. You put them out
14 there to try to start breaking these pots off, and be
15 successful in getting these pots off. In the time that
16 the vessel, you know, doesn't ice up too bad on one side
17 and rolls. But you also take the chance that your crew
18 can slip. You take the chance that, you know, that a
19 fairly large slab of ice can knock them in the head --
20 I've seen this before. You know, falling off, big
21 chunks off the frames or whatever.

22 So it's, you've got to really take a lot of
23 consideration, in looking at this, again. And you know,
24 for me, this is what brought it to my attention in the
25 first place is, you know, we shouldn't have to do this

1 anymore. So I just wondered what pressure Jeff might
2 have been under to leave that night with that forecast
3 that was in our future.

4 Q. When you were a crab boat captain, did you
5 operate with, did you ever operate with four or more
6 stacks of crab pots?

7 A. The vessels that I was on, the (inaudible
8 words) was three of them, three trays on top. Some of
9 the bigger one four. The Fierce Allegiance I think we
10 went five, and it was rated, you know, you look, again,
11 at your stability book. So for this part size vessel, I
12 mean, four would definitely, in my mind and just looking
13 at the height of it versus the house, would be a
14 definite max right there. But again, I don't know what
15 the stability book says for this vessel. But just
16 looking at, you know, the house and the stack in my
17 mind, that's questionable.

18 Q. Can you tell me how, based on your experience,
19 how ice would have, may have accumulated on a vessel
20 such as this? Would it have been evenly distributed
21 over the entire starboard side of the vessel, or would
22 there be more lower, would there be more higher?

23 A. I would say that the build-up is probably most
24 mid-ship. The starboard side of the house, the bow of
25 the bridge there, the starboard side of the wall of the

1 wheelhouse. I would say the lower part of the stack, in
2 the exhaust area there. The mid-ship, right there where
3 you see where the hull box in that vicinity right there,
4 would probably take the most ice, make the most ice.

5 And more than likely it would become less as
6 you get towards the pots near the stern. So, most of
7 the load would be mid-ship, this lowest point, really.
8 And you know, most of the spray that is coming, anything
9 off the bow will hit the house, and hit those first few
10 pots, those first few rows. So that's, again, why I
11 would say that that part of the ship would make the most
12 ice.

13 The port side, if they did not alter course,
14 would definitely have the least. Most of that ice.
15 Unless you, you know, closed up the web, as far as ice
16 or water not getting through the web of the pots, it now
17 becomes a complete build-up on the exterior of those
18 pots. And that's what I mean by like an ice wall.

19 Q. Have you ever seen on the crab boats that
20 you've been on, have you ever seen the crab pots
21 completely filled with ice?

22 A. I have. Completely full? No, not a solid,
23 but pretty darn close. To the point where, you know,
24 even the crane was having trouble lifting it. You know,
25 the seventy-five -- or 700 pound, 800 pound (inaudible

1 word), could probably easily become 2,000 pounds when it
2 is fully loaded with ice.

3 Q. When you engaged with the Coast Guard during
4 those spot checks, could you tell me what your
5 conversation -- can you tell me what, can you describe
6 the conversation you had with the Coast Guard?
7 Particularly, were there any points that the Coast Guard
8 wanted to make while they were on board your vessel?

9 A. Are you specifically talking about the April
10 Lane?

11 Q. About the what?

12 A. April Lane, my current vessel? Or others in
13 the past?

14 Q. Let's start with your current vessel.

15 A. Well we go through all the normal safety
16 checks, life rafts, EPIRB's, alarms, tank alarms, engine
17 room alarms, make sure everything's operable. You know,
18 I want their stamp of approval before I leave the dock.
19 I will normally know if it works or if it doesn't work.
20 If it doesn't work, I'm going to fix it. I just want
21 their stamp before I leave the dock.

22 So we look at the safety, heavily on the
23 safety side. Stability book again, we look at the
24 stability book non-icing, icing. They don't necessarily
25 -- they are not there to train me how to look at the

1 stability book or read it. It is just, they want me to
2 understand the load configuration, you know, tank
3 capacities, fuel, stuff like that. So, it's helpful.

4 Q. Any discussions about safety issues?

5 A. No.

6 Q. Besides -- let me ask you this, any discussions
7 about safety issues besides all the vessel equipment
8 that you are required to carry for the stability book?

9 A. No, not during this inspection that I had.

10 Q. Any discussions about the threat of icing?

11 A. No. This was in November, it was still fairly
12 warm.

13 Q. All right. Going back to your crab days, same
14 question, when you were -- when you underwent a spot
15 check was there any discussion the Coast Guard had with
16 you to make you more aware of the hazards of what you
17 might face?

18 A. I believe there were (inaudible word) post-
19 2005, for the snow crab fishery, when we were doing our
20 -- I always did the twenty-four hour notification, even
21 though it's not mandatory. I, you know, at that time,
22 and all these years, I just found out recently that is
23 it is discretionary, not a mandatory. Somebody had a
24 good idea. I think it is a great idea.

25 But yes, there's been times where the Coast

1 Guard said, you know, the forecast, you are in a non-
2 icing condition with your load. Basically asked me to
3 stand down or take some of that gear off. I chose to
4 stand down and wait the weather out.

5 Q. All right, thank you Captain.

6 MR. KARR: I have no more questions.

7 **EXAMINATION**

8 MR. SUFFERN:

9 Q. Thank you Mr. Fehst. My name is Paul Suffern,
10 I'm a meteorologist and I'm going to be asking you a few
11 general questions about the weather here. When you were
12 sailing out on the, it sounds like the morning of 10th
13 there and heading out. Were there any communications
14 between yourself and other vessels while you were out
15 there as far as what weather they were experiencing?

16 A. It was that evening that we sailed, it was
17 about 7:30, 8:00 that evening, just prior to -- it was
18 just between dusk and dark when we left Dutch Harbor. I
19 did not have any discussion with any vessels on my way
20 out of town. I did not have any discussion with vessels
21 when we were in the fishing grounds. And I re-baited
22 gear and did not have any discussion with any vessels on
23 our way back to port, which was the following morning.
24 I think we arrived in port around five a.m. Friday
25 morning.

1 Q. Thank you. Could you again, go into how you
2 gather your weather information? You said on the 9th
3 you gathered it through the VHF, but now you have
4 internet. Is that, do you receive all your weather
5 information via internet, or emails, or --

6 A. I've had internet before prior to the April
7 Lane. It is a much more accurate way of receiving more
8 correct information on your weather forecast. At the
9 time, I only had the VHF, which was good enough. I
10 mean, I'm only a couple hours from any port, either
11 Akutan or Dutch.

12 So, it is sufficient enough for me to gather
13 enough information from the VHF, by listening to
14 multiple areas, in the vicinity that I am in. And, you
15 know, I can look at the weather outside my window and
16 what they are telling me on the radio, and you know, is
17 it doing what they are saying on the radio or is it
18 different than what they are saying on the radio. So I
19 will look at, I'll listen to other areas, and then is it
20 coming my way or is it going in a different direction.

21 So, I put a lot of emphasis on multiple areas.
22 So that particular night, I mean, the warnings were
23 there for heavy freezing spray throughout the weekend.
24 And starting off with, you know, freezing spray to heavy
25 freezing spray the further north of the Pribilofs was

1 all heavy freezing spray warnings.

2 So my plan, as I said, was as I said, just to
3 get out there several hours, bait the gear which took
4 about three hours, and get back to Dutch Harbor using
5 the tailwinds, the tailwind sea, falling sea to get back
6 to Dutch Harbor. And remain in Dutch Harbor for the
7 remainder of that weekend.

8 I do know of other vessels that were in the
9 pot fishing industry, and the State water fishery that
10 were fishing over by Giamat (phonetic) Pass. And, you
11 know, and some communication with one of the vessels,
12 they were telling me that, you know, be glad that you
13 are in Dutch Harbor, it was pretty messed up out there
14 too. You know, cold, some guys were getting frostbite,
15 it was cold. The temperature came way down that
16 weekend.

17 Q. Are there any other ways that you wish you
18 could receive weather information?

19 A. I think the internet, we installed KDH, is a
20 great way to get the weather forecast. It is much more
21 accurate. You can get a pinpoint, you can get icing
22 conditions, you can temperature, you get sea wave, you
23 get currents, you get the -- all these things are
24 involved with the Windydy line, is, I think it's call
25 now. These are things that you can't get on the VHF,

1 that type of information. So, I mean, I can look all
2 over my geographical area that I might be traveling.
3 What's it doing thirty miles over there, versus what I'm
4 seeing here.

5 I have found it to be very accurate. You
6 know, the VHF is prehistoric compared to what we can get
7 now, as far as weather forecasting, and the sea up
8 ahead, you know, we can look at our whole travel plan
9 and look days ahead. And it is -- I, mean, you get
10 beyond four or five days in the Bering Sea, you know,
11 changes occur. But it is pretty accurate within the
12 first forty-eight hours. So, I found it to be pretty
13 accurate for forty-eight hours.

14 Q. Do you ever take any weather logs of the
15 weather that you encounter on ship, while you are out
16 sailing?

17 A. No, not so much.

18 Q. Do you feel like you receive enough warning
19 when you are getting a heavy freezing spray, a freezing
20 spray warning, do you feel like you receive enough time
21 to make precautionary measures?

22 A. Absolutely. I take it fully into account
23 whether to pull back into the dock or you know, just
24 listen to what it's telling me and act accordingly.

25 Q. Thank you.

1 MR. SUFFERN: Commander Muller that's all my
2 questions.

3 CDR MULLER: Ms. Spivak any questions?

4 MS. SPIVAK: No questions, thank you.

5 CDR MULLER: I have one more question.

6 **EXAMINATION**

7 BY CDR MULLER:

8 Q. You just mentioned the term, and maybe I need
9 you to repeat it so I make sure I have it right. You
10 said you recently installed an ABH?

11 A. It is called KDH, and it is a company, now
12 they are, I think there are several out that have global
13 satellites out there that we can get marine information
14 through the internet. So we went over KDH, you know,
15 our particular unit is a couple different units.
16 There's a bigger dome, there's a smaller dome for my
17 size vessel, we went with the smaller dome, about
18 \$15,000 up front for the unit. It delivers what I need
19 as far as emails.

20 But the main thing I wanted was to have the
21 WindyT, this different form of forecasting. I feel
22 like, in the long run, you know, a lot of, a big part of
23 our business is dollars and cents. And keeping expenses
24 down, keeping the fishing revenue incoming as best we
25 can without, you know, causing safety issues with the

1 vessel.

2 So, I find this very helpful in making
3 decisions whether to leave port or not leave port.
4 What's it doing where my fishing gear is, versus where I
5 am at. What's it doing between here and there? This
6 kind of stuff, you are not going to get over the
7 sideband, or VHF. It's just a far more into the present
8 type of forecasting that's available now to us.

9 Q. So, it is essentially satellite access to the
10 internet.

11 A. Yes.

12 Q. And did you say, Windy?

13 A. Windy TY, it used to be TV, but I think now
14 they changed it to WindyTY.

15 Q. Okay. Is -- does this look like it? I have
16 the app on my cell phone.

17 A. Yes, it does.

18 Q. Okay. So using that capability and in
19 conjunction with the application of your stability book,
20 does your stability book have different provisions for
21 summer, winter, or icy, non-icy?

22 A. It has provisions for the different fisheries
23 that we are involved with, different equipment that will
24 be on board, versus pots, versus pursing. Crane versus
25 a boom that is used for pursing, so there is different

1 variances in, within the stability book. And also now
2 that we pot fish with this vessel, there is the non-
3 icing condition load, which includes levels of fuel
4 tanks, oil, any other stores, any other provisions.

5 And there is also, again with the fishing, the
6 salmon fishing has those same stability, as far as non-
7 icing/ icing. So it covers all bases, and what the boat
8 participates in. It covers both bases of icing/non-
9 icing.

10 Q. Okay so, how did you apply the icing criteria?
11 Especially what I'm looking for is it -- when -- do you
12 apply it when icing is actually occurring? Do you apply
13 it during a seasonal timeframe? Or based on your voyage
14 plan and given the upcoming weather information?

15 A. It's going to be based on the voyage plan,
16 what is it doing currently with the, what configuration
17 I am in. Am I starting seasonal, am I planning on
18 moving all my gear up north? So it's, for that
19 particular trip is, it's part of the preplan for
20 loading. Looking at the weather, what's coming ahead.
21 Is this trip two -- going to take me two days, is it
22 going to take me three days to where I'm going? You
23 know, looking at all that.

24 Not just where I'm at but where I'm going to.
25 All those are considered as far as how much gear I'm

1 going to load, or when I'm going to leave. You know, if
2 I am only traveling three hours I know that the heavy
3 freezing spray's going to start at two in the morning,
4 and I leave at noon, I know I am going to get there in
5 time to get that gear off. Is there a place I can get
6 that gear off if I need to before the weather is, you
7 know, wrong as far as timing?

8 So I look at, you know, what kind of depths am
9 I traveling over, you know, if there is a big gap in an
10 area if you are traveling northwest that is too deep to
11 set your gear if you are trying to save it, and come to
12 it. So, that's all part of the pre-plan as far as what,
13 you know, condition, weather conditions that are ahead
14 of me.

15 I don't leave port with a, a non-icing
16 condition load and then listen to the weather a day and
17 a half later while I'm out to sea and oh, we've got a
18 heavy freezing spray coming. No, it is not that type of
19 deal, it is done prior to departure.

20 Q. Okay, thank you.

21 CDR MULLER: Let me check in. Any questions
22 Mr. Gillette?

23 MR. GILLETTE: I do have a couple follow-up
24 questions, thank you Commander.

25

EXAMINATION

1 BY MR. GILLETTE:

2 Q. These are follow-up questions, for questions
3 Mr. Karr asked, just to get some reference on it. Did
4 you, were you cod fishing in January of 2017?

5 A. Yes.

6 Q. Where was your location?

7 A. Again it was Unimak Pass, the northern side,
8 the Bering Sea side.

9 Q. While cod-fishing, you did talk a little about
10 hours that your crew were working and rested. And you
11 did mention about reducing the hours. When you were
12 cod-fishing what was the average work-day for your
13 deckhands?

14 A. It is based upon the tides, it is based upon,
15 you know, it is based upon the timing of the tides for
16 me. So, it is usually about six on four off, six on
17 five off. So we get through the gear and I give it
18 twelve hours (inaudible word) total.

19 So, you know, I fish a little differently than
20 some. So I'm trying to run as much gear as possible a
21 day. I fish the tides though. And in a twenty-four
22 hour period, they are going to be working two periods.
23 And we are probably closer to fourteen hours, fifteen
24 hours in that period, split, the sleep time split. So -
25 - there is at least nine hours, maybe four and a half

1 here, seven hours later, another four and a half for the
2 sleep period, within a twenty-four hour period.

3 Q. So just to understand what you just said about
4 14 to 15 hours work.

5 A. Total in a day, but not in a row.

6 Q. Okay. And then you also mentioned about
7 pulling, you said, "Pulling them off the deck for
8 fatigue", that's what you said. Not during that cod
9 season which you just mentioned. Before --

10 A. Oh, even during the cod season. And we, we
11 are allowed seventy-two hours for these trips. And
12 maximum for, to deliver fish. So I watch them. You
13 know, if we are fishing in rougher weather, obviously
14 they are using, expending more energy. I watch them
15 very closely. If I see like they making, start making
16 mistakes, (inaudible word) pots, pulling pots, whatever,
17 you know. I keep a close eye on that, and I have no
18 problem, that's it, we are done pulling.

19 Q. Have any of the deckhands ever not been
20 rehired due to fatigue, basically, not keeping up with
21 the hours that are asked for them to work?

22 A. No, I find them keeping up with my schedule.
23 Even the new ones. You know, the first thirty days they
24 might be a little stiff and sore, but they get used to
25 it. You know, so adding sleep periods, and meals, and

1 having a, you know, pretty defined schedule, they know
2 what to expect, you know, work, eat, sleep, work, eat,
3 sleep. Has reduced fatigue dramatically, and better
4 performance, and better safety. I have, this last year
5 no injuries. So that's the bottom line.

6 Q. When you were working on the crab boats up in
7 the Bering Sea, what type of hours were they putting in
8 at that time, for 2013? That's the last --

9 A. Well, I gotta be honest with you, in my
10 younger years, it exceeded sometimes 19, 20 hours. It -
11 - you know, some of this was based upon making delivery
12 dates. Some of this, longer hours were based upon
13 weather. When we had a stretch of good weather, we
14 would utilize that weather more, working on deck. And
15 when weather did approach, or came on, we would cut
16 back, ease back on (inaudible word), and sleep, you
17 know, during those periods.

18 As the years went, and I started being a
19 Captain, you know, again, getting more educated on
20 Bridge Resource Management, so I'm noticing fatigue and
21 stuff like that. I just found it better just to work
22 smarter, not harder.

23 And it actually has been beneficial to cut
24 back on hours, and you know, give them more rest, let
25 the gear do the work. You know, education has played a

1 big part in my role of getting more for less from the
2 crew, as far as, you know, resting them more often,
3 feeding them more often. And, yeah, it just has
4 improved my safety record, and production, so it is a
5 win-win.

6 A. All right, thank you Mr. Fehst.

7 MR. GILLETTE: That's all the questions
8 Commander.

9 CDR MULLER: Thank you Mr. Gillette. NTSB,
10 Mr. Karr?

11 MR. KARR: I have none.

12 CDR MULLER: Thank you.

13 MR. SUFFERN: No questions.

14 CDR MULLER: Ms. Spivak, do you have any
15 questions?

16 MS. SPIVAK: No questions.

17 CDR MULLER: Okay. Mr. Fehst, that concludes
18 the questions that we have for you this morning. Before
19 I begin the process of releasing you as a witness, we
20 usually ask all out witnesses if there is any
21 information that you believe the Board should consider
22 that was not otherwise addressed this morning with
23 regards to the investigation.

24 THE WITNESS: No, I think the Board asked very
25 tough questions, great questions. And, you know, I

1 think personally I leaned on education. I, you know,
2 personally I think I leaned on more education for
3 crewmembers. You know, just from what I've seen over
4 the decades, I almost wish that we could create a new
5 category, a category that would be different than a, say
6 a mate's license, which requires a lot of time and
7 money. Just a certification for the rules of the road,
8 Bridge Resource Management, and stability are the three
9 that I would highlight and find some way to, you know,
10 educate, all crew including the captain.

11 You know, drill instructor and all that stuff
12 is good, but it doesn't cover, that doesn't cover some
13 of these catastrophe's that have just, you know,
14 happened recently, and has happened in the past. I can
15 name multiple vessels, and you know, I heard some of
16 them mentioned here. But it doesn't cover all of them.
17 So education would be a big, I think help.

18 One of the other things that I would, I, I
19 think is a great idea is that twenty-four hour
20 notification, which apparently is just a discretionary -
21 - you can make it, but don't have to make it. I would
22 like to see that become mandatory. I think between the
23 education and that twenty-four hour notification, if it
24 became mandatory that it could be very helpful, in
25 stopping something like this from occurring again.

1 You know, I see no reason why there would be
2 so much pressure on your captain, or company that we
3 couldn't take, 8, 12 hours to get this done. Just
4 double check, it's like a check and balance with the
5 captain and his load of gear prior to leaving, that's
6 just a check and balance. So those things I feel
7 strongly about.

8 CDR MULLER: Okay, thank you.

9 THE WITNESS: Thank you.

10 CDR MULLER: You are now released as a witness
11 at this Marine Board of Investigation, thank you for
12 your testimony and cooperation. If I later determine
13 that this Board needs additional information from you, I
14 will contact you.

15 If you have any questions about this
16 investigation you may contact the Marine Board Recorder,
17 LCDR Mendoza. Thank you again.

18 THE WITNESS: Thank you.

19 CDR MULLER: We will take a fifteen minute
20 recess.

21 (At 1:25 a fifteen minute recess was taken.)

22 CDR MULLER: Good morning again, the hearing
23 will come to order. We will now hear testimony from Mr.
24 Osiensky. Mr. Oseinsky if you would please come forward
25 to the witness table, and LDCR Mendoza will administer

1 your oath and ask you some preliminary questions.

2 LCDR MENDOZA: Please raise your right hand.

3 **WITNESS**

4 **JEFFREY MICHAEL OSIENSKY**

5 A witness produced on call of the Coast Guard
6 was duly sworn according to the law, was examined and
7 testified as follows:

8 THE WITNESS: Yes, I do.

9 LCDR MENDOZA: Please be seated. Sir, please
10 state your full name and spell your last name for the
11 record.

12 THE WITNESS: Jeffrey Michael Osiensky, that
13 is O-S-I-E-N-S-K-Y.

14 LCDR MENDOZA: Could you please state your
15 current employment and position title.

16 THE WITNESS: Yes, I am employed with the
17 National Weather Service, Alaska Region. And I am the
18 Deputy Chief of the Environmental and Scientific
19 Services Division.

20 LCDR MENDOZA: Do you hold any professional
21 licenses or certificates?

22 THE WITNESS: No sir.

23 LCDR MENDOZA: Thank you, sir.

24 CDR MULLER: Mr. Osiensky, welcome, thank you
25 for your participation. Now Mr. Suffern will lead some

1 of the questions that we have for you this morning.

2 THE WITNESS: Thank you.

3 **EXAMINATION**

4 BY PAUL SUFFERN:

5 Q. Good morning Mr. Oseinsky, thank you for being
6 here this morning. And just to lead into some general
7 questions about how the National Weather Service in
8 Alaska Region makes their forecast for the Bering Sea.
9 How do the forecasters go about doing that?

10 A. The forecasters actually use a program, a set
11 of algorithms through a computer program that actually
12 simulates various environmental factors: temperature,
13 sea surface temperature, wind. And actually that
14 information gets generated and creates, basically, an
15 area of freezing spray and heavy freezing spray type
16 conditions, wind and wave information, and temperature
17 across that area.

18 So the forecasters, basically, take that
19 information that is derived, and then work through some
20 procedures to create text and graphical information from
21 that.

22 Q. How many times a day are the forecasts issued?

23 A. The forecasts are issued twice a day. The
24 general issuance times are four a.m. and four p.m.
25 local, and can be updated as necessary, throughout the

1 day.

2 Q. About how long does it take a weather
3 forecaster to make, to generate these products?

4 A. It usually takes them several hours, actually,
5 because they are having to look at various types of
6 information. They are looking at reports, buoy
7 information, land observation information, satellite
8 data, radar data, and a whole host of other information,
9 weather information. And then they have to assimilate
10 that and compare it with what the model output is
11 showing in their computer system.

12 And then they have the ability to then go in
13 and make adjustments using their professional judgment,
14 make adjustments to the forecast before it is issued.

15 Q. Could you go in, specifically -- so that', in
16 general, how the forecasts are made. How, specifically,
17 do they make determinations on freezing spray and heavy
18 freezing spray criteria?

19 A. The freezing spray is determined through,
20 through basically an algorithm. The National Weather
21 Service uses the, what we call the Overland Method, Jim
22 Overland from the University of Alaska, Fairbanks
23 developed this back in the 1980's, he was working on it,
24 and I believe he published a paper in 1990.

25 And so we've adopted that method. And so

1 basically, his methodology is incorporated in our
2 computer systems. And so, all those equations are
3 solved, and then displayed for the forecaster to use.

4 Q. So do forecasters strictly stick with, you
5 know, what the computer is outputting? Or do they, you
6 know, use any professional judgment or opinion when they
7 are drawing these graphics?

8 A. With freezing spray, they pretty much go with
9 what the algorithms generate. Jim Overland's Method,
10 there are several Nomograms, which are basically graphs.
11 When you look at the parameters for wind, temperature,
12 sea surface temperature, it will basically create a
13 graph showing areas where light, moderate, or heavy, and
14 I guess even extreme freezing spray would occur. And
15 so, what we've done, essentially, is ingested that
16 information into the computers, and whatever output we
17 get is what we go with.

18 Unfortunately, for freezing spray, and for
19 marine information, in general, we get very little
20 information back from the National Weather Service to
21 help verify or validate the forecasts. So the
22 forecaster's procedure is to go with what is generated.

23 Q. So, we are speaking about four levels of
24 criteria there, light all the way through extreme.
25 What's the cut-off for heavy freezing spray, and then

1 for, just in general freezing spray?

2 A. Well we have basically, again, to simplify the
3 process again, because we don't have the data to help
4 verify or refine those categories, we have basically,
5 split it into two areas. We either forecast freezing
6 spray, or heavy freezing spray. So light, basically is
7 freezing spray, and anything from moderate or greater is
8 considered heavy freezing spray.

9 Q. How far ahead of time will the National
10 Weather Service issue warnings, or advisories for
11 freezing spray conditions?

12 A. We can issue those several days in advance.
13 Again, knowing that folks that use that information that
14 are out fishing need to make pre-planning decisions. We
15 take that into consideration. So we try to give as much
16 of a heads up as we can for those conditions. So, it is
17 pretty common to see a forty-eight, and sometimes as far
18 as a seventy-two hour forecast, with headlines in the
19 forecast.

20 Q. Was there any thought to having headlines
21 longer than seventy-two hours. Is that the cut-off, or
22 what was the determination there?

23 A. Yeah, it really, you know, as the models
24 improve over time, I think we are looking at, you know,
25 maybe extending some of these. But really, the weather

1 gets pretty -- can be very changeable, and if the models
2 are not giving a consistent output, really beyond that
3 forty-eight to seventy-two hour timeframe, our
4 confidence is fairly low. And because there is so much
5 uncertainty we tend to, you know, not want to extend it
6 too much further unless we can start getting some
7 validation that this is actually occurring.

8 Q. So speaking of validation, has the National
9 Weather Service issued any calls for gathering of
10 information from mariners to see if seventy-two hours is
11 long enough? Has the weather service received any
12 feedback in that criteria?

13 A. We do, actually, survey. There was a survey
14 that was put out within the past year or two, I don't
15 have the exact date, but asking these kinds of
16 questions. So, there is customer interaction.

17 We do participate in marine workshops that are
18 being held. And we try to gather information, talk to
19 customers, to try to get input. And we really continue
20 to try to drive home the point that we need more
21 observations. Really, observations are the key to
22 improving the forecast. Because we have very little
23 data out in the Bering. The models are only so good.
24 And they actually are pretty good, and they are getting
25 better.

1 But, there is a huge data gap out there. And
2 weather, as I've always said, weather is very local, and
3 as we have heard through some of the testimony that --
4 depending on where you are, conditions can be very
5 changeable. So the more granularity we have, the better
6 we can translate that into our forecasts.

7 Q. So one ship observation, or one observation
8 from a mariner could change a weather forecast for the
9 following eight hours, twelve hours in the wintertime?

10 A. Absolutely, yeah. And one observation, you
11 know, you can't put a dollar amount on every
12 observation. But we treat, and look at every single
13 observation, and put a lot of credibility into that.
14 And it can change either issuing, or expanding an area
15 of freezing spray, or possibly ending a freezing spray
16 forecast, based on an observation, it can help to
17 confirm that. So, it is very important.

18 Q. How accurate have you seen the weather models
19 compared to buoy observations, or other non-human
20 observations?

21 A. They are pretty good. I've heard, you know,
22 pretty consistently folks say that our forecasts may be
23 a little bit on the low side by five knots. I mean,
24 that's been pretty much fairly common. I think if we
25 compare it against the buoy observations, we do well.

1 But, you know, the buoys are not located,
2 maybe in some of the areas where some of the stronger
3 winds are located, and again, there are very few
4 observations. So, again, it gets back to this
5 validation issue, trying to validate the forecasts.

6 I think they are pretty good. I think when it
7 comes to freezing spray, you know, forecasters pretty
8 much know, at least in the Anchorage Forecast Office,
9 and in Fairbanks as well, where they are dealing with
10 winds off the ice edge, you know, it's pretty, it
11 becomes pretty obvious when you get wind, and you get
12 cold air, obviously to a certain criteria, and sea
13 surface temperatures at a certain criteria that freezing
14 spray is going to be an issue.

15 The problem that we have, is something that's
16 been brought up in the past is the accrual, and trying
17 to understand how quickly the ice accrues. And I think
18 there are a lot of factors in that: speed of the vessel,
19 the direction the vessel's transiting versus the wind
20 speed, or wind direction, and there's a whole bunch of
21 other factors involved there, so it gets, it gets a
22 little tricky.

23 Q. So, you mentioned that the National Weather
24 Service uses the Overland Method from the 1990 paper,
25 has the -- it's about 25 to 30 years ago. Has there

1 been any improvement in freezing spray determination?
2 And has the National Weather Service considered using
3 other methods?

4 A. Yes. And actually, Jim Overland's done some
5 work, obviously since then. And he's incorporated other
6 parameters that we've incorporated, including Fetch and
7 other things into. So, there's kind of a, there's kind
8 of the original Overland Method, and then an advanced
9 version of that.

10 There are also others out there Sovata
11 (Phonetic) and then the Canadians use Stalagraph
12 (Phonetic), which is another, another technique. We are
13 very much aware of those, and are looking at some of
14 those techniques. But, I think the problem with, you
15 know, with the calculations is really previous to about
16 say ten years or so ago. We didn't have the computer
17 power to be able to do those intensive calculations over
18 a broad area.

19 As the computers are getting faster, and we
20 have more computing power available to us, I think we
21 can look at, maybe some more of these techniques that
22 are a little more computer intensive to integrate into
23 our system. So we look forward to any, any new work
24 that's being done in this area.

25 Q. So shifting gears a little bit. I talked over

1 the past day and a half, kind of, the testimony from the
2 captains, and understanding their methods that they get
3 the weather forecasts there. What avenues does the
4 National Weather Service have to issue their weather
5 forecast, and for mariners to be able to get that?

6 A. There are a couple different methods. VHF is
7 still, it's still a main way that we do that. Through
8 NOAA weather radio. The Coast Guard has partnered with
9 the National Weather Service over the past several years
10 to create these, they call them high sites. They are
11 basically low watt transmitters along the coast, to
12 increase the density of transmissions. There is also a
13 marine radio fax system that's used. Granted it is
14 pretty, it is pretty antiquated. But it is still being
15 used, and it is a method to get fax charts out to the
16 boats.

17 And now, with the advent of internet, and the
18 cost starting to come down as more and more people have
19 access to the internet, that's being -- that's really
20 kind of the main tool that we are looking at to get our
21 texting graphical forecasts out.

22 Q. Have there been any other avenues that have
23 been expressed by mariners that the National Weather
24 Service hasn't been able to pursue as far as getting
25 weather forecasts out?

1 A. No, they're really -- the problem with the
2 internet was, it was really a cost issue. But we are,
3 you know, expanding more and more, putting more and more
4 of our products on the web. And it seems to be fine
5 when folks are, you know, like at Dutch or places where
6 they have good cell service or good internet service.

7 But once they get out, you know, out on the
8 seas, it is more difficult sometimes to get some of
9 these products. But again, with the advent of new
10 services that are being made available, and the costs,
11 which are driving the costs down a little bit. That's
12 going to be the area, as we look to the future, to be
13 able to get more products out there.

14 Q. So shifting to the reports that the
15 forecasters receive from the mariners, what do those
16 reports look like when the National Weather Service
17 receives them, and how many, you know, specifically in
18 the Bering Sea and along the Aleutian chain how many
19 ship reports do, does the National Weather Service
20 receive a day?

21 A. Well, the National Weather Service
22 participates, and actually leads a Voluntary Observing
23 Ship, VOS Program. And we actually have a program
24 manager that works in our regional office in Anchorage,
25 he's -- that's part of his duty. That's not his whole

1 job. So, he's pretty limited in terms of how often he
2 can get out.

3 But part of what they do is they, they go out
4 to the ships, they calibrate barometers, they talk with
5 the captain and the staff, the crew. Make sure that
6 there is a little bit of weather education that goes on
7 there. And also basically, some instruction on how to
8 take a marine observation. So, through that program we
9 do get some mariner observations back to the National
10 Weather Service.

11 But it is certainly, you know, nowhere near
12 the level that we, that we would like to see. We would
13 like to see either more people involved in that program,
14 if possible. Or look toward other avenues to be able to
15 get these observations, maybe to a central coordination
16 point, and then transmitted to the Weather Service
17 forecasters.

18 Q. So on a daily basis do you have any ballpark
19 idea about, in the Bering Sea and in the Aleutian chain,
20 how many marine observations are received, specifically
21 from vessels?

22 A. Probably a handful, at most, if we are lucky.

23 Q. As far as feedback, in that program, and other
24 avenues, what feedback has the National Weather Service
25 received, in general about the Bering Sea forecasts from

1 the mariners? Are they -- forecasts too high, too low?

2 A. Yeah, as I mentioned before, I think there is
3 a bit of a bias that maybe we are a little bit on the
4 low side. The forecasters are very well aware of that,
5 both wind and seas. Again, we try to take that into
6 account.

7 And when I mentioned before, you know, the
8 process that we go through where the models present sort
9 of a solution to the forecaster, and then they have the
10 ability to go in there, and "Tweak the forecast", or
11 adjust it. That's usually where the professional
12 judgment comes in.

13 There are certain wind directions, and certain
14 weather regimes, where the models may not do
15 particularly as well, and the forecaster does have the
16 ability to go in there, and make those modifications.
17 So, I think it is getting better, it's getting better.

18 Q. Okay, and more specifically, so that was
19 basically, you know, wind and sea information. Does
20 the National Weather Service receive any feedback as far
21 as the freezing spray forecasts, and how, it's on the
22 low side or high side, or --

23 A. Very little, very little. It's definitely an
24 area of, you know, improvement that we would like to get
25 more information back from folks on what they are

1 experiencing so that we can -- that will help calibrate,
2 sort of our conceptual model of what's actually
3 happening out there. And then we can translate that
4 information back into the forecast.

5 Q. Are there ever times that a forecaster -- I
6 know you mentioned there is one person that seems like,
7 at the regional office that goes out and visits these
8 ships, so are there ever opportunities for forecasters
9 to go out and meet the mariners and gather information
10 from them? Or does the National Weather Service have
11 any other outreach to mariners there?

12 A. There are, there are, we do have folks,
13 forecasters in the offices that do participate in
14 outreach. You know, there was even some talk about
15 trying to spin up a marine, sort of a marine customer
16 board or a committee where we could get, you know, get
17 Coast Guard, get fisherman, weather service people
18 together so that we can have this dialogue and talk
19 about some of these gaps. And that's, so that's
20 something that's being looked at as well.

21 Q. So during these outreach events, does the
22 National Weather Service ever collaborate with the Coast
23 Guard as far as using, pooling both resources together
24 and doing outreach together there, where other folks may
25 be located?

1 still make go decisions, possibly, with freezing spray
2 in the forecast, because it occurs so often in the
3 wintertime. But, the idea behind that is to give them
4 another piece of information to put together in their
5 situational awareness. I'm trying to think of the right
6 word. When they are trying to make a decision.

7 Q. Right.

8 A. You know, that's one piece to the puzzle. So
9 maybe that would be, maybe that combined with a bunch of
10 other things, would maybe have them say, okay, you know,
11 what, this is a no-go.

12 Q. Right.

13 A. Yeah.

14 Q. So let me put that in context. So is freezing
15 spray or heavy freezing spray, is that defined for the
16 mariner by something that is transferable and
17 applicable. Is it by rate, you know, number of inches?

18 A. It is.

19 Q. I understand it is a very dynamic situation --

20 A. Right.

21 Q. -- depending on the vessel's course, speed,
22 matrix, and so on. So that's why it is somewhat of a
23 complex question. But, you know, when I listen to the
24 wintertime, the weather report, and they say, oh it's
25 just going to be a dusting, or a blizzard.

1 A. Sure.

2 Q. Okay, you know, so they might say dusting
3 would just be like half an inch. Blizzard we are
4 talking six or more inches, or something like that. Is
5 that, is that the kind of framework that you expect
6 mariners to be applying. Like, freezing spray we are
7 talking so many inches. Heavy freezing spray above so
8 many inches?

9 A. So yes. To answer your question, yes. And so
10 through the work of Overland and some of these other
11 folks that have been working over the past several
12 years, there are tables available that do list these
13 different thresholds. And then they are defined by
14 accrual rate and by thickness, by ice thickness as well.

15 So that information is available. I guess the
16 missing piece, as I mentioned before, is that -- I look
17 at things in a 360-degree loop, and we are not getting
18 the feedback, necessarily, to see if we are actually
19 attaining those. And that's why we've kept the
20 thresholds down to two levels, basically, freezing spray
21 and heavy freezing spray at this time. Yeah, but they
22 are defined, to answer your question, yes.

23 Q. You mentioned networking, or workshops,
24 surveys that you conducted in the past, or your office
25 has conducted in the past. Are there any specific

1 fishing vessel associations, or organizations, or
2 agencies that actually, that participate in such
3 workshops?

4 A. Not to my knowledge. I know that it's --
5 there are general, you know, when I say workshops, you
6 know, for instance, the Pacific Marine Expo is an
7 example. Like, we send representatives there, and
8 we'll, we'll staff a booth there, the Weather Service
9 does. And so as mariners are coming through there'll be
10 dialogue, essentially, with them in discussion. So it
11 is on a very informal basis.

12 What I was saying before is, we would like to
13 maybe look at something more formal where just as you
14 were saying, we get some of these organizations, you
15 know, represented along with the Coast Guard, along with
16 the Weather Service, to sit down more formally, and have
17 these very pointed discussions about some of these
18 hazards. That's something that we'd like to do, we are
19 not doing currently.

20 Q. Okay. So if -- you might have been in the
21 room for the last few days, you might have seen some
22 pictures of some of the icing conditions on board some
23 of the vessels yesterday. (Inaudible word), my
24 question, thank you, I'm not going to ask my question.

25 CDR MULLER: So, I have no further questions.

1 Mr. Gillette?

2 MR. GILLETTE: Yes Commander, I have one
3 follow-up question.

4 **EXAMINATION**

5 BY MR. GILLETTE:

6 Q. It has to do with the, your definition, again,
7 of heavy freezing spray, and freezing spray. You were
8 talking about cut-off levels, could you define that one
9 more time for me?

10 A. Right. So in the Overland model, the
11 technique that we employ, there are basically, there are
12 thresholds based on the work that was done, which takes
13 into account wind speed, sea surface temp, and air
14 temperature, essentially, and I believe fetch
15 incorporates into that as well.

16 So looking at all of those parameters,
17 there's, there are thresholds that are decided whether
18 or not we would expect light, moderate, heavy, or in the
19 worst case extreme freezing spray conditions.

20 Q. Okay, thank you.

21 A. You are welcome.

22 MR. GILLETTE: That's all the questions I
23 have.

24 CDR MULLER: Thank you. NTSB, Mr. Karr?

25 **EXAMINATION**

1 BY MR. KARR:

2 Q. Mr. Osiensky, how long has the National
3 Weather Service been putting out heavy freezing spray
4 warnings?

5 A. They've been putting them out at least since
6 the early 1990's. When I came up to Alaska and first
7 was exposed to this, I know that they've been, they've
8 been out since that time, at least. And certainly
9 prior to that, as well.

10 Q. And off the top of your head can you tell me
11 at the extreme level, what is the rate of ice
12 accumulation?

13 A. I don't recall what that number is to be
14 honest with you.

15 Q. Does the National Weather Service currently
16 have a guide for how boat captains should apply the
17 heavy freezing spray or the freezing spray forecast?

18 A. I'm not aware of a guide per se. I know that
19 there have been papers, and SOP's, essentially, Standard
20 Operating Procedures that have been written internally
21 for the forecasters on how to make these determinations.
22 But I don't believe there is anything that's been made
23 available to the captains, themselves, I'm not aware of
24 anything.

25 Q. Well, the SOP's that you are describing for

1 the forecasters would be about how to come up with the
2 forecast.

3 A. How to come up with the forecast, yeah.

4 Q. Okay. I was wondering if there was something
5 about the captains, how to apply what they have learned.

6 A. Yeah, not to my knowledge.

7 Q. All right. Have you, in those workshops, do
8 you know if, do you personally know of any positive
9 feedback that you've gotten from the captains for having
10 this information available?

11 A. There's -- I've seen some, some of the survey
12 results, and some of the dialogue that's taken place.
13 And it's been received favorably. Honestly, I didn't
14 know of anything, you know, negative that stood out that
15 said, you know, we, you know we experienced freezing
16 spray, but it wasn't in the forecast.

17 It's very much along the lines of what we've
18 been hearing, that the freezing spray forecasts have
19 been out, and have usually been out for long enough for
20 folks to make a decision, you know, whether it be a
21 couple days, 2, 3 days in advance, as is the case with
22 this --

23 Q. Do you personally know of any anecdotes of
24 captains that have told you how it benefitted them?

25 A. I have seen results, saying that it's been

1 beneficial in helping them to make a go or no-go
2 decision. It's not the, it's not the sole piece of
3 information they look at, but it's a critical piece of
4 information.

5 Q. Thank you Mr. Osiensky.

6 A. Thank you.

7 CDR MULLER: Thank you Mr. Karr. Mr. Suffern?

8 MR. SUFFERN: Yes, I have one follow-up
9 question, Commander Muller.

10 **EXAMINATION**

11 BY MR. SUFFERN:

12 Q. Mr. Osiensky, if you could have any feedback
13 from the mariner community, I mean as far as the
14 National Weather Service, what would you like to see?
15 Would it be more reports? Would it be actual pictures
16 of the wind and waves to further verify the forecast?
17 What type of information would the National Weather
18 Service most like to have from the mariner community?

19 A. Just what you, just what you stated, more
20 reports. So that would be both textual and graphical
21 pictures would be very helpful. We can, we can make --
22 a picture's worth a thousand words. So having a visual
23 of what's actually happening, whether it be with regard
24 to the waves, or with regard to ice would be very
25 helpful for us.

1 Q. And what way can a mariner send that to the
2 National Weather Service? Is there an email, website
3 they can send it to? Is there -- can they do it via
4 Twitter? What ways can mariners get that information to
5 the National Weather Service?

6 A. Yes, we have Twitter accounts, we have all the
7 social media platforms, just about, active. We are most
8 active with Facebook and Twitter. But that's one good
9 way of communicating. We actually will take phone calls
10 directly, the phone will ring and be answered by a
11 forecaster. So you could call the forecast office,
12 directly or email, we have operational email addresses
13 that go to all the forecasters that are working on a
14 shift, and they monitor those. So, there are multiple
15 ways of doing it.

16 I know that mariners have expressed to us that
17 it is very difficult for them in the course of their
18 shift, they are doing a lot of different things, and
19 they are usually too busy to actually reach out and do
20 that. So, you know, my thought would be is, if there is
21 a coordinator, or somebody that they could pass that
22 information on to, that could then call the Weather
23 Service, that would be another avenue.

24 We will take it any way that we can get it,
25 honestly, and we try to, we try to keep the options

1 pretty broad so that we can get the information.

2 Q. So would the National Weather Service be okay
3 with receiving weather information even after the fact,
4 even, you know, if the mariner doesn't have time while
5 they are going in between sites, but they are safely in
6 Dutch Harbor, or safely -- and they give you a picture
7 or something that's a day after the forecast, and this
8 was worse or better. Would the National Weather Service
9 take that information?

10 A. Absolutely. We do post-mortem case studies,
11 especially on significant events. And so even if we get
12 the information after the fact, we can use it to help
13 validate that event. And we can also use it to help
14 make adjustments to our forecast models, too, in a post
15 environment. So, the information is very useful, and
16 it's looked at, trust me it is very critical.

17 Q. Thank you.

18 MR. SUFFERN: Commander Muller.

19 CDR MULLER: Thank you. Ms. Spivak?

20 MS. SPIVAK: No questions.

21 CDR MULLER: Well Mr. Osiensky that concludes
22 the questions that we have for you this morning. Before
23 we release you as a witness, is there any elements or
24 factors that you think the Board should consider that
25 was not otherwise addressed?

1 THE WITNESS: No. I think we've, we've
2 addressed all the topics, thank you.

3 CDR MULLER: Okay, thank you. So you are now
4 released as a witness at this Marine Board of
5 Investigation, thank you for your testimony and
6 cooperation. If I later determine that this Board needs
7 additional information from you, I will contact you.

8 If you have any questions about this
9 investigation, you may contact the Marine Board
10 Recorder, LCDR Pedro Mendoza. Thank you.

11 THE WITNESS: Thank you.

12 CDR MULLER: We are moving with speed this
13 morning. I have about 11:20. So, in my book it is
14 never too early to have lunch. So we are going to take
15 a one hour recess, thank you.

16 (At 11:20 a one hour luncheon recess was taken.)

17 CDR MULLER: Good afternoon, the hearing will
18 come to order. We would like to call our next witness,
19 Mr. Jack Kemerer. Mr. Kemerer if you would, please come
20 to the witness table and LCDR Mendoza will provide the
21 oath.

22 LCDR MENDOZA: Please raise your right hand.

23 **WITNESS**

24 **JACK ANDREW KEMERER**

25 **CHIEF OF FISHING VESSEL DIVISION**

1 **OFFICE OF COMMERCIAL VESSEL COMPLIANCE, U.S. COAST GUARD**

2 A witness produced on call of the Coast Guard
3 was duly sworn according to the law, was examined and
4 testified as follows:

5 THE WITNESS: I do.

6 LCDR MENDOZA: Please be seated. Sir, please
7 state your full name and spell your last name for the
8 record.

9 THE WITNESS: Jack Andrew Kemerer, K-E-M-E-R-
10 E-R.

11 LCDR MENDOZA: Could you state your current
12 employment and position title.

13 THE WITNESS: My current position is Chief of
14 the Fishing Vessels Division, the Office of Commercial
15 Vessel Compliance at Coast Guard Headquarters.

16 LCDR MENDOZA: Do you hold any professional
17 licenses or certificates?

18 THE WITNESS: I do not.

19 LCDR MENDOZA: Thank you, sir.

20 CDR MULLER: Good afternoon Mr. Kemerer, it's
21 a pleasure to see you again. I'll be leading off the
22 questions for you this afternoon.

23 **EXAMINATION**

24 BY CDR MULLER:

25 Q. And essentially my aim is to understand, you

1 as the Program Manager for the Coast Guard's Commercial
2 Fishing Vessel Program, yourself as the Program Manager,
3 I'm trying to get an appreciation for the broader
4 Program elements. As well as get a further
5 understanding of some specific regulations that we have
6 a particular interest in, related to this marine
7 casualty.

8 So, by way of introduction, before we go too
9 much further, can you further describe your capacity and
10 responsibility as the Commercial Fishing Vessel Program
11 Manager at Coast Guard, Coast Guard-CVC-3?

12 A. Well, I'd say our goal, or our mission, I
13 guess in Fishing Vessel Safety Program is to enhance
14 safety within the commercial fishing fleet, reduce
15 casualties associated with that industry.

16 And also we develop policy, put out guidance
17 documents to both Coast Guard personnel, and industry
18 personnel. We promote awareness and training for safety
19 initiatives. And we also develop, or initiate any Reg
20 projects that may be needed to implement laws and
21 regulations.

22 Q. How long have you been employed in that
23 program office?

24 A. I served, or worked in the Fishing Vessel
25 Safety Program from 1995 to 1997, while I was active

1 duty. And then more recently, since 2005, when I came
2 back on staff as a federal civilian employee, and I've
3 worked in the Fishing Vessel Safety Division since then.
4 And took over as Division Chief in 2009.

5 Q. In your capacity, does -- well more your
6 program, your staff, who do they typically interact with
7 both as to the field, or, and/or up the chain?

8 A. Myself, and my staff interact with all the
9 District Fishing Vessel Safety Coordinators, of course.
10 At some point or another, with all the examiners in the
11 field. We interact with the Auxiliary personnel who are
12 qualified to conduct exams on behalf of the Coast Guard.
13 We certainly interact with any number of organizations
14 and facets within the industry.

15 We have a Federal Advisory Committee that
16 makes recommendations to us, and to the Coast Guard, and
17 department as well on activities and safety issues
18 within the industry. We conduct a lot of outreach at
19 conferences, and industry association meetings, and, you
20 know, just anything that comes up that we can contribute
21 to. They are our partners in safety and fishery related
22 activities.

23 We certainly liaison with NOAA, and the
24 National Mariner Fishery Service in their
25 responsibilities with permitting and national standards.

1 We also work closely with NIOSH, The National Institute
2 of Occupational Safety and Health. We have an MOA with
3 them, to share casualty data that they can analyze and
4 give recommendations, and also implement some
5 initiatives or recommendations for safety within the
6 fleet.

7 Q. Thank you. So, if you would, to establish
8 some background, can you briefly describe the history of
9 the laws and regulations applicable to commercial
10 fishing vessels, in general. And in particular,
11 focusing more for the harvesting, catching vessels.
12 That is, when were the regulations created, what factors
13 were they designed to address, and what significant
14 changes have taken place over the years?

15 A. I can take a long time on that, or I can take
16 a short time. Quite a history there.

17 Q. Briefly, overview.

18 Q. Well there is a very good article written
19 Richard Hiscock, for I FISH, that talks about, I think
20 the title of it is Missed Opportunities, and it gives a
21 very good history of the commercial fishing industry and
22 initiatives to increase safety and reduce casualties
23 there.

24 So, it goes back, actually to about the 1930's
25 when there was some, some legislation enacted that

1 affected fishing vessels as well. In the 1940's there
2 was some other initiatives. Some of these got adopted,
3 some of them did not get passed into law.

4 But the big push was in the 1980's. There
5 were a number of accidents, casualties, and fatalities,
6 and the Commercial Fishing Vessel Industry Safety Act of
7 1988 finally got passed and enacted. And that is the
8 real genesis for the Fishing Vessel Safety Program.

9 Subsequent to the Safety Act, the advisory
10 committee was established, the Coast Guard initiated
11 rulemaking to implement regulations from the law. And
12 those regulations are found in the Code of Federal
13 Regulations, Title 46, Part 28. That's the main crux of
14 the Fishing Vessel Safety requirements, equipment and
15 everything for the fishing vessels.

16 Subsequent to -- and that legislation, or that
17 -- I'm sorry. The regulations were finalized in August
18 of 1991. Subsequent to that, there were some technical
19 amendments, there were some minor revisions to the
20 regulations, there were some -- some new regulations
21 were proposed that never got through, they were
22 withdrawn, or just didn't get final action for the
23 rules. So the regulations have not been changed
24 significantly, since 1991. And they deal mainly with
25 safety and survival equipment.

1 There were pushes a couple times to get
2 fishing vessels inspected as other commercial vessels,
3 that were never adopted, it never passed. The support
4 was not there in various areas, but particularly on The
5 Hill. There was also a licensing plan submitted to
6 Congress that was not adopted. So it's mainly a safety
7 and survival effort of the Coast Guard and the industry
8 in trying to prevent accidents. But they are not
9 inspected vessels, they are not licensed operators to a
10 big extent, like there are with other commercial
11 vessels.

12 Since then, and more recently, there were a
13 couple Coast Guard Authorization Acts that have given
14 the Coast Guard more authority, and we have been working
15 on trying to get some regulations into effect as a
16 result of that authority. The 2010 Authorization Act,
17 added a lot of new safety requirements for fishing
18 vessels, such as mandatory exams, classing of new
19 vessels, out of water survival craft for fishing
20 vessels. And a lot of this deals with vessels in
21 particular that operate beyond three miles, not the
22 boundary line anymore.

23 The 2012 Act made some adjustments to the 2010
24 Act. And the most recent Act, the 2015 Act, that was
25 signed February of 2016, actually gave some relief to

1 the class requirements of the vessels, 50 to 79 feet,
2 new vessels operating beyond three miles can build to
3 class alternatives, or class equivalents and not
4 actually use some class society rules, or have class
5 inspectors, examiners follow the vessel and issue class
6 certificate.

7 So, we are working on some rules to get into
8 Part 28, there was a Notice of Proposed Rulemaking
9 issued in June of 2016. We extended the comment period
10 until December of 2016. We are reviewing those comments
11 that were submitted to the docket, and are looking at
12 hopefully issuing a final rule for those items in the
13 Auth Acts that basically were non-discretionary, so that
14 they can probably be implemented by law but having it in
15 a regulation makes it much simpler to enforce it.

16 Q. Thank you. Certainly well done, it's a long
17 history and you were able to encapsulate that, thank
18 you. Do commercial fishing vessel captains, are they
19 required to have a Coast Guard license?

20 A. I would say --

21 Q. And specifically, what kind of vessels need a
22 license?

23 A. Okay. Probably the majority of the vessels do
24 not require a licensed master or a licensed engineer.
25 The law and regulation is a vessel over two hundred

1 gross tons requires a master be licensed, or an engineer
2 to be licensed. And there are licenses specifically for
3 master of uninspected commercial fishing vessels, and
4 engineer, chief engineer of uninspected commercial
5 fishing vessels.

6 Q. Okay. Now, I would like to move on to the
7 topic of compliance, how Coast Guard verifies a
8 commercial fishing vessel is in compliance, or meets the
9 regulatory standards.

10 A. The real mechanism for enforcement of the
11 requirements in regulation is, kind of rests on the
12 boarding officers, the patrol vessels, the cutters that
13 do fisheries enforcement as well. They are the law
14 enforcement arm.

15 Our examiners go on the vessels dockside, and
16 conduct an exam, some people refer to them as
17 inspections, but they are safety examinations. And
18 almost all of our examiners are civilian employees. So,
19 there is really not a law enforcement authority there.
20 So it is kind of a no-fault check on the vessel.

21 Except now, under the law, and hopefully in
22 the regulations, we will have a requirement to do an
23 exam. But the law enforcement part to ensure
24 compliance, really rests with the boarding officers.

25 Now, when the examiners go on the vessel,

1 there is an exam booklet, a form that they use for all
2 the applicable requirements in Part 28, prevention
3 requirements for vessels. They go through and check
4 those items on the vessel with the master or the
5 engineer, who's ever on there. And if they are in, you
6 know, compliance, with all those requirements, they will
7 issue a safety decal to the vessel that is valid for two
8 years.

9 Now under the law right now, it says that a
10 vessel has to be examined at least once every five
11 years. So, there could be vessels out there that have
12 an expired decal, but are in compliance with the law for
13 the exam period.

14 So, our examiners check everything. If they
15 are not in compliance they give a work order to the
16 vessel, to the operator, the owner. And say, you know,
17 call me when you have completed those, fixed those
18 items, add those items on, we'll come back and re-
19 examine the vessel and give you a decal if you are in
20 compliance.

21 The information about the vessel is in the
22 MISLE database. So any of the boarding officers can see
23 that, and see who's in compliance, or who has a decal,
24 and everything for the enforcement purposes.

25 So we, you know, we hear that they are

1 boarding vessels out there, and you know, that it is
2 both for fisheries enforcement, and for compliance with
3 the safety requirements.

4 Q. Okay, so I heard you mention exam versus
5 inspection. What is the difference, and I'll preference
6 that by -- well, is an exam -- well, you let me know the
7 difference, I don't want to answer it for you.

8 A. Okay. I would put it this way, our Dockside
9 Safety Examination looks at safety and survival
10 equipment, some systems, you know, whatever's outlined
11 in Part 28, and pollution prevention requirements as
12 well. The examination does not really get into
13 structural integrity or the, you know, some of the
14 maintenance of the vessel, as it does with a vessel
15 that's inspected.

16 So those, an inspected vessel will have a
17 certificate of inspection, which talks about, I think
18 includes, you know, required systems as well, but also,
19 manning requirements. And, you know, so the big
20 difference is looking at the structural integrity of the
21 vessel, more than anything.

22 Q. Okay. So you mentioned commercial fishing
23 vessel safety examinations, otherwise known as decal
24 program, or safety decal exams, is that correct?

25 A. Some people --

1 Q. Are they interchangeable to some extent?

2 A. You could refer to it that way. We think more
3 -- in the program, call it the dockside safety exam.

4 Q. Okay. So who are the individuals in the Coast
5 Guard that conduct these dockside safety exams?

6 A. There is a, within the Coast Guard, itself,
7 there are, I believe about fifty-eight examiners at the
8 Sectors, Sector Offices, and some of the Marine Safety
9 Detachments, Marine Safety Field Offices. They are all
10 civilian employees. And they are billeted positions for
11 the Coast Guard. They have to have knowledge about The
12 Fishing Vessel Program, and the requirements. Some of
13 them may be marine inspector qualified, but that's not a
14 prerequisite to hire them into that position.

15 There are also a number of Coast Guard
16 Auxiliarists who are qualified to conduct exams. They
17 must go through the same training and qualification
18 process as our civilian employees, our civilian
19 examiners, or our reservists, if there is a reservist in
20 the program. And then in the Coast Guard, that's it.

21 Then there are, what we call, an accepted
22 organization, or third-parties, who have been accepted
23 to and designated to conduct safety exams for, on behalf
24 of the Coast Guard, and they can issue the decals, as
25 well.

1 Q. Okay. We will touch more on third-parties in
2 a moment. In testimony earlier during this hearing, we
3 heard some exams -- well, we heard from some witnesses,
4 petty officers, MST's that conducted exams in the past
5 on the fishing vessel Destination. So, in the Coast
6 Guard are petty officers part of the exam program?

7 A. Petty officers may conduct exams. Officers
8 may conduct exams, if they are, have gone through the
9 training and designated as an examiner. There is a
10 qualification code for those who go to the school and go
11 through the whole PQS. But they can be designated at
12 the unit level by the command. The petty officers, were
13 officers that may do exams, it is more of a collateral
14 duty, or an additional duty that they have.

15 There are no, other than one District billet,
16 there are no billets, positions in the Coast Guard
17 designated as commercial fishing vessel examiners other
18 than the civilian examiners.

19 Q. So you mentioned training and qualification
20 process. So, what, what kind of criteria, briefly can
21 you describe what that process entails?

22 A. There are two ways that an individual can be
23 designated as an examiner, qualified examiner. One,
24 they can go through our examiner course at Yorktown, and
25 get their qual code that way. There would be some

1 follow-on OJT type requirements for them.

2 There is a standard, Performance Qualification
3 Standard, PQS program that everyone should go through as
4 well. And that lists, covers the laws and regulations,
5 all the equipment requirements, standards in Part 28,
6 other requirements that may apply to the vessels,
7 training requirements if any of them apply. So it is
8 just, whatever is required for that vessel and the
9 operator to be in compliance with the law and
10 regulations, that is covered in the training and the
11 qualification standard that all examiners should be
12 completing.

13 Q. Does the qualification process require the
14 trainees, or an eventual qualified examiner to verify or
15 to demonstrate competency, and the ability to verify
16 compliance with stability requirements?

17 A. Would you repeat the last part of that,
18 please?

19 Q. So during the qualification process, in order
20 to obtain a qualification, does the Coast Guard examiner
21 need to demonstrate the ability to verify stability
22 requirements on the commercial fishing vessels?

23 A. To demonstrate stability?

24 Q. Not demonstrate, but verify compliance with
25 stability requirements.

1 A. Yes. They would be, they would have to cover
2 that information and those requirements as well. But
3 the stability requirements only apply to a small portion
4 of the fleet. So it is one of the, kind of extra -- in
5 the exam booklet, there is a page of requirements that
6 apply to all vessels, and this is the way the Regs are
7 broken up too.

8 And then there is a group of additional
9 requirements that apply to documented vessels, currently
10 documented vessels that operate beyond the boundary
11 lines. And then, vessels that were built after 1991,
12 with so many people on board, processors and tenders.

13 So, those vessels, where stability
14 requirements might apply, they would know that that is
15 something they have to check, and you know, under the
16 Regs, I think mainly it is just that they have had the
17 stability test, and they have stability instructions.
18 If they don't have a loadline, I believe it is. That's
19 in Subpart E of Part 28.

20 Q. Okay. So, do Coast Guard commercial fishing
21 vessel examiners document or capture the results of the
22 fishing vessel exams? And if so, how and where is that
23 information documented?

24 A. The Exam Booklet that they use, is pressure
25 sensitive, so it makes a copy. They annotate each area,

1 each requirement, yes or no, or not applicable, whatever
2 the case may be. And when that's done, a copy is given
3 to the owner/operator. The other, the other part is the
4 Coast Guard file. And the procedure now, or the
5 standard is supposed to be to scan that, and put that in
6 the MISLE database. So, there should be a copy of the
7 Exam Booklet, and the result of the exam in the vessel
8 file in MISLE.

9 Q. So what is the purpose of this exam form? In
10 other words, what is the expectation on how an examiner
11 is supposed to utilize that form? And if you would
12 like, for a reference it is in front of you, starting -
13 page two of Exhibit No. 137.

14 A. Well the Exam Booklet is, I guess, kind of a
15 job aide for them. But is also a record of the
16 examination that the person doing the exam has checked
17 that they meet all the requirements according to
18 regulation. And so, that is documented there.

19 And if it is filled out completely, there is
20 extra information that is on there about the vessel,
21 about the owner, the EPIRB Hex ID number maybe, when the
22 hydrostatic release of the life raft expires, those kind
23 of things. Or they can be noted on the, on a notes page
24 at the end of the booklet.

25 So, it becomes a record for both the owner

1 operator and the Coast Guard that the exam was conducted
2 according to a particular process that everyone's
3 supposed to be using. And that the owner operator gets
4 to keep a copy, and the Coast Guard does document it.
5 And if they are in full compliance the decal is issued,
6 and that's recorded on the Exam Booklet as well.

7 Q. Okay. I'd like to -- and for the record,
8 Exhibit No. 137 is a copy of the Exam Form utilized by
9 the third-party examiner who conducted the last safety
10 exam in June of 2016. I'm using it here, more as a
11 reference. If you can turn to page five of six of
12 Exhibit No. 137. If you could take a look under the
13 miscellaneous section, column on the left, it is 46
14 C.F.R. 28.500.

15 Can you describe the intent of that associated
16 component on this exam form?

17 A. Would you repeat that?

18 Q. Well, in the middle column is a description, I
19 don't know what to call the middle column, it's not
20 labeled, per se. But I would mention that it is a
21 description, the applicable description of that Reg
22 cite. So, can you describe -- and then off to the right
23 it says, "Yes" and "No" -- so what is the intent of this
24 row on this form?

25 A. That's the part, Subpart E where it starts

1 with 28.500, deals with vessels that are over 79 feet
2 that are not required to have a loadline until 2010, and
3 new constructed. That, if they had a major
4 conversion or a substantial alteration after 1991, they
5 were supposed to meet the requirements of Subpart E.
6 Which included some additional integrity parts of the
7 vessel, including stability checks.

8 And so on this, this form, it says: if it is
9 yes, then they should use the supplement to the Exam
10 Booklet, which covers some additional items that would
11 apply under Subpart E.

12 Q. So, on this row, as an examiner -- if an
13 examiner became aware, or understood, let's say the
14 vessel was originally built in 1981, and in 1992/1993
15 timeframe was lengthened, and widened, would you say a
16 vessel would be required and is applicable to this
17 requirement?

18 A. If the alteration of the vessel met the
19 definition of major conversion, or substantial
20 alteration, yes.

21 Q. Okay. Okay, you can take that down. Okay.
22 Stepping back a little bit, apart from the dockside
23 safety exams, are there any other kind of exams that may
24 take place from time to time. In other words, surge ops
25 or pulse operations.

1 A. There are other exams that the Coast Guard
2 will conduct on a vessel. It is kind of the same thing
3 as a dockside safety exam. But, usually any time that
4 a vessel is involved in a Search and Rescue case, when
5 they come back into port, usually the boarding team, or
6 generally, it will start with the boarding team, they'll
7 do a safety check on the vessel to see if they are in
8 compliance. They may call ahead for the examiner to
9 meet them, or the next day, come down and do a follow-up
10 examination of the vessel, make sure it is in
11 compliance.

12 Also, a similar type exam would be conducted
13 if the vessel's voyage is terminated. Which means, in
14 28.60 there's a list of extremely hazardous conditions,
15 that if they are found to exist on the vessel by the
16 boarding officer, they can direct that vessel back to
17 safe harbor, or to port, until the conditions are
18 corrected. And then they can go back out and operate,
19 and fish. So a post-termination examination would be
20 conducted as well.

21 The pulse operations that you referred to,
22 there are a number of them done around the country, Safe
23 Crab, different ones. Those have not been directed, or
24 initiated from headquarters standpoint. The Districts
25 have identified a high-risk fleet, and they conduct

1 those operations. But it is certainly within the realm
2 of, you know, policy and guidance from headquarters to
3 address the high-risk fisheries in those areas.

4 And it is really a compliance check. I don't
5 think most of those type operations, do they do a full
6 dockside safety exam. But they spot-check for
7 compliance with critical equipment and systems on those
8 vessels. Some of the vessels may not be required to
9 have an exam anyhow, if they are not operating beyond
10 three miles.

11 Q. So you mentioned, spot-check. So, are you
12 familiar with, we learned up in D13 they have a, what
13 they call a Safety and Stability Spot-Check Program, are
14 you familiar with that program?

15 A. I am familiar with different types of
16 operations that various Districts or Sectors may conduct
17 to look at certain type vessels or fisheries.

18 Q. Okay. And just for a basis, I put in the same
19 bucket, dock walks. When somebody says dock walk, we
20 are going to go walk the docks, what does that usually
21 imply?

22 A. Well, dock walking is, I guess when I first
23 heard the term being used it had to do with the
24 Auxiliary personnel going out and meeting with the
25 fisherman, giving them, maybe the Federal Requirements

1 Pamphlet that talks about all the requirements,
2 encouraging them to sign up for an examination, a safety
3 exam. It is an outreach program.

4 But again, trying to get the owner operator to
5 participate in the exam program and make sure they are
6 in compliance. And that, the exam, when it was started
7 out, the program, it was a voluntary program, and you
8 know, it was kind of advertised a little bit that hey,
9 if you get an exam and you have a decal you might not
10 get boarded as often. But the Coast Guard is still
11 going to board you for fisheries enforcement because we
12 are obligated to do that.

13 So a safety check -- those vessels that had a
14 decal probably don't get looked at quite as closely from
15 all the, all the requirements that a vessel without a
16 decal would have. But they certainly will check the
17 major items, such as survival craft, EPIRB, fire
18 extinguishers, and those kind of things.

19 Q. So are there times, or does the Coast Guard
20 leverage certain authorities under certain
21 circumstances, particularly if there is a, in these, one
22 of the voluntary dockside safety exams where the Coast
23 Guard might want to place the vessel under some kind of
24 control and prevent it from conducting operations. Is
25 there any kind of action the Coast Guard can take to do

1 so?

2 A. Sure the Coast Guard can put operational
3 controls on any vessel, if the condition is warranted.
4 For a fishing vessel, because they are not an inspected
5 vessel, you can't pull their certificate. However, if,
6 you know, if it was determined that the vessel was not
7 seaworthy the Captain of the Port could put an order on
8 it and say you've got to fix the vessel before you can
9 go out.

10 The operational controls usually don't come
11 into play until a post-termination exam, where there's
12 been serious conditions, hazardous conditions on the
13 vessel. But it could be for other reasons.

14 I think what you find more often with,
15 particularly with the examiners, because up to this
16 point the exam has been a no-fault. Because if they've
17 got some deficiencies, some critical areas that they
18 should have corrected before they go out, you know, I'm
19 sure examiners have said, look, you need to fix these
20 things, you need to replace that fire extinguisher, or
21 get a new battery for your EPIRB, whatever it might be,
22 before you go out to fishing. Because of if you go out
23 and you get boarded, your voyage is probably going to be
24 terminated, because it's one of those hazardous
25 conditions.

1 So, the Captain of the Port could put controls
2 on the vessel for other reasons. But, I would say for
3 the most part we don't see too much of it.

4 Q. So imagine, if you will, what I have
5 envisioned trying to calibrate something here as we
6 conduct our investigation. When Coast Guard examiners
7 are doing dock walks during spot-checks, they are
8 walking down the dock and they are approaching fishing
9 vessels and mentioning hey, we are here to do voluntary
10 safety spot-checks. Would you like us to come on board
11 and do a voluntary exam? So, that's just dependent on
12 if the vessel operator says yes or no.

13 This is a scenario-based question. So if
14 there is, is there any kind of regulation or law that
15 would prevent the Coast Guard to go on board at the dock
16 because -- and they would want to go on board to verify
17 compliance, that they may see something that is overtly,
18 or potentially in non-compliance.

19 A. My understanding is that our civilian
20 examiners cannot go on board if the owner operator does
21 not invite them, or does not let them come on board.
22 But, the active-duty personnel could do that under Coast
23 Guard authority.

24 Q. They could go on board at the dock? Active-
25 duty Coast Guard personnel can go on board the vessel at

1 the dock? Is that correct?

2 A. Yes. They are law enforcement officers.

3 Q. Okay. I would like to now, you mentioned
4 earlier, third-party exams. Can you describe that
5 process, where in the regulations that's provided, and
6 the intent of that program?

7 Q. The Third-Party Exam Program was started in
8 the early 1990's. There's a NAVIC that outlines the
9 process to be accepted as a similarly qualified
10 organization. They can do the exams, or they can do the
11 classing, the accepted organizations that can do the
12 exams for the Coast Guard. It is outlined in the
13 regulation, 28.7.

14 And, but the NAVIC explains the process, well
15 the regulations as well, that they have to, if an
16 organization wants to be designated as such, has to
17 apply and show that they have a training program that
18 they, how they qualify their individuals, that they have
19 knowledge of the requirements for fishing vessels. That
20 they have a grievance process, that they have an ethics
21 program. And so on, and then designate those
22 individuals.

23 There are six organizations that are accepted
24 organizations, and can have their surveyors conduct
25 exams for the Coast Guard. And my office issues the

1 decals to those organizations to be given to their
2 examiners, or to their surveyors, examiners that do the
3 exam.

4 So, there is a process that they have to go
5 through to get accepted and designated by the Coast
6 Guard. We review their requirements periodically. And
7 get updates and track that they have, you know, kept
8 control of the decals, because they are serial numbered.
9 And so there is a NAVIC 1391, I believe it is. And
10 Policy Letter 0407, I believe, that explains the
11 process, and everything.

12 Q. Is the Commandant -- your office designates
13 these accepted organizations?

14 A. Yes.

15 Q. Are these acceptable organizations, is there a
16 list of them available for review or reference by the
17 industry, or examiners?

18 A. They should be listed on our website. Not
19 necessarily a list of all the, or their qualified
20 examiners because those can change. But anyone in our
21 office can get that for you, should be able to. But
22 real quickly the accepted organizations are, ABS, DND,
23 SAMMS, NAMS, Navtech, which is also USSA, and Baldage
24 Marine.

25 Q. So Navtech is also USSA?

1 A. U.S. Surveyors Association I believe it goes
2 by as well.

3 Q. And your office designates an accepted
4 organization, is there a designation letter in writing?

5 A. There is.

6 Q. Is there one for Navtech?

7 A. There is.

8 Q. Is there one for USSA?

9 A. They are the same.

10 Q. How are they the same?

11 A. Well, they go by both names, as far as I
12 understand.

13 Q. Okay. For an accepted organization, such as
14 Navtech, are they required to have their surveyors
15 familiar with the commercial fishing vessel regulations?

16 A. Yes.

17 Q. Does this include stability? In other words,
18 a surveyor working for one of these accepted
19 organizations, do they have to have familiarity,
20 particularly as it applies to commercial fishing
21 vessels, regarding stability?

22 A. They should, they should understand the
23 regulations in Part 28.

24 Q. And when you say --

25 A. And they use the same Exam Booklet. If they

1 don't use our Exam Booklet, they use an in house one
2 that they develop but it has pretty much all the same
3 check points that are on our Exam Booklet, the 5587.

4 Q. Does the Coast Guard conduct oversight, or
5 audits of accepted organizations?

6 A. We conduct oversight of them, certainly. We
7 do, I guess if you want to call them audits. We
8 actually go to their offices, and look at how they
9 maintain their records. Who has done exams, what decals
10 have been issued, who is on their qualified list, we
11 look at their ethics statement that they have, and their
12 process to get a surveyor designated to conduct exams.
13 So we do that, we are getting ready to do that this year
14 with all of them.

15 Q. Did you say, all of them?

16 A. All six of them, yes.

17 Q. Okay. How often are they conducted?

18 A. The last one we did was like two years ago.

19 So we don't, don't necessarily do an on sight visit
20 every year. And we haven't in the past.

21 Q. Have you -- okay. Have you conducted an audit
22 on Navtech?

23 A. We did.

24 Q. Were there any issues discovered? And if so,
25 what were the results? In other words, any corrective

1 actions, and were they completed?

2 A. I, personally, did not do the audit. But,
3 staff that conducted it came back and said there were no
4 significant discrepancies in their records, and how they
5 conducted things.

6 Q. Okay, thank you. Okay, that's the first half.
7 I am going to recommend we take a ten minute break.
8 That being, the next block I have, I would like to walk
9 through the regulations with you. Not all of them, but
10 the particular ones that we are particularly interested
11 in. So, I want to take a break before we do that. So
12 we will take short recess for ten minutes.

13 (Whereupon a ten minute recess was taken.)

14 **JACK KEMERER**

15 **EXAMINATION (cont).**

16 CDR MULLER: Good afternoon again. This
17 hearing will now come to order. We are continuing our
18 questions for Mr. Jack Kemerer. Mr. Kemerer, just want
19 to remind you that you are still under oath.

20 BY CDR MULLER:

21 Q. We last finished off with the Third-Party Exam
22 Program. One quick final question to that topic. You
23 mentioned that you have done audits in the past on these
24 accepted organizations. Can you describe in the past
25 the process? If there were any issues that were raised

1 at the audits, how were those issues addressed? What
2 was the nature of those deficiencies?

3 A. When we did the audit last time, we actually
4 provided the organizations a checklist of things we want
5 to review: their documentation on how they establish
6 their training program, and the records they kept of
7 personnel, and their qualifications, the number of exams
8 they conducted, who was doing the exams, the decals that
9 were issued. There were probably a couple other items
10 on the checklist.

11 So, a couple of the organizations have very
12 detailed, very organized records. And, you know, some
13 of them are not quite as well organized. But everyone
14 had the information there. And if they didn't have it
15 readily available, they provided it to us after the
16 fact. So, there was nothing on any of them that was
17 serious. They all had the required information, they
18 had the required records. And, you know, we were
19 satisfied with reviews of all the organizations.

20 Q. Okay, thank you. Okay, as discussed earlier,
21 I would now like to focus our attention in reviewing
22 some of the applicable commercial fishing vessel
23 regulations.

24 And some I'll be physically referencing. So
25 are there any commercial fishing vessel regulations that

1 require the vessel master, and/or crew to conduct any
2 form of pre-voyage planning or risk assessments? If so,
3 what regulation?

4 A. There is nothing in Part 28 that I'm aware of
5 that requires that.

6 Q. Okay. If we can now turn to Exhibit 34 page
7 19. Exhibit No. 34 is a copy of 46 C.F.R. Subchapter C,
8 Part 28, Requirements for Commercial Fishing Industry
9 Vessels. So on page 19.

10 A. Since you are going into this, and referring
11 back to your previous question, as to if there is
12 something specific, a checklist of something before they
13 depart.

14 Q. It was, that might be one way, how they may
15 have secured it. But they, broadly the question was,
16 does the vessel master or crew conduct any form of pre-
17 voyage planning or risk assessment?

18 A. Okay not, let me re-visit that. Not in
19 general, but there are some specific equipment items
20 that are supposed to be checked, you know, frequently.
21 And generally the guidelines we give them, is before
22 each voyage they should make sure those things are
23 working. I think you are probably going to lead into
24 that.

25 Q. Okay, so you are saying those regulations

1 require them to check certain equipment before getting
2 underway?

3 A. Well, on a periodic basis. I think it is
4 point 140, it deals with maintenance.

5 Q. All right, 140 is Operational Readiness,
6 Maintenance, and Inspection of Life-Saving Equipment.

7 A. Yes. The only one that is outlined there is
8 the monthly EPIRB check. But, it would be good marine
9 practice to make sure that all your other equipment is
10 working properly before you get underway on a trip.

11 Q. That would be page 14. Okay. So on page 19 is
12 46 C.F.R. 28.255. Which is bilge pumps, bilge piping,
13 and de-watering systems. Mr. Kemerer, would you be kind
14 enough to read us paragraph A?

15 A. Sure, 28.255 "Bilge Pumps, Bilge Piping, and
16 De-watering Systems: A. Each vessel must be equipped
17 with a bilge pump and bilge piping capable of draining
18 any water tight compartment other than tanks and small
19 buoyancy compartments, under all service conditions.
20 Large spaces such as engine rooms must be fitted with
21 more than one suction alarm."

22 Q. So, in that section, it mentions tanks,
23 specifically other than tanks. So what is a tank? And
24 by way of reference, would you consider the crab holding
25 tank on a crabber to be a tank?

1 A. I suppose you could consider it to be a tank
2 or not. It may be up to, you know, the definition in
3 the regulation somewhere, what is a tank. But a naval
4 architect or a marine engineer may call it a tank, or
5 they may call it a hold.

6 Q. Okay, fair enough. Okay, so on these crab
7 fishing vessels, crabbers, they have holds that are
8 tanked with water through a sea water circulation system
9 piping. On the, in the case of the Destination, that
10 piping system, and pumps, and manifolds, was located in
11 the engine room. So, would you call that a tank then?
12 That a hold? Would that be a tank for the purpose of
13 this? And to be fair, what I'm trying to get at is,
14 later on there's a requirement in 2855(f), which
15 indicates the line should be fitted with a check valve.

16 So, what I'm ultimately after is, in the
17 application of this Reg, would those crab holding tanks
18 be exempt from its requirements? However, noting that
19 those tanks are fitted with a salt water circulation
20 system, would a Coast Guard examiner look at this Reg
21 and then require that piping system to have a check
22 valve?

23 A. I don't know. You would have to ask an
24 engineer that. I, I just don't know how they would look
25 at it. But, if there's a pumping system, and there's

1 valves there, there should, I would think that there
2 would be a mechanism to block it so that it doesn't move
3 to uncontrolled flooding of other spaces. From a leak
4 from that hold or tank, if that's what you want to call
5 it.

6 Q. Concur. I, certainly that would be best
7 marine practice to install a check valve in the salt
8 water circulating system as to prevent gravitation, or
9 unintended flooding in that space.

10 But as an examiner asked to verify or ensure
11 for the issuance of a decal, would they be expected to
12 verify the vessel, if such equipment is installed, has
13 that check valve?

14 A. Well, this particular part talks about bilge
15 pumping, and the tank, or the hold is not part of the
16 bilge. So, I don't know.

17 Q. Okay. Let's move on to freeing ports, 46
18 C.F.R. 28.555. It's on page 34 of Exhibit No. 34.
19 Okay.

20 (Brief pause.)

21 Q. Okay. Under this section regarding free-
22 ports, can you confirm that each (inaudible word) vessel
23 fitted with bulwarks, must be fitted with freeing ports,
24 or freeing ports, essentially paragraph A.

25 A. In paragraph A? Right. So, if you've got the

1 bulwarks, you have to have the freeing ports there.

2 Q. All right. So during the course of a Coast
3 Guard, or a third-party executed fishing vessel exam are
4 freeing port, are those examiners, do they verify that
5 those freeing ports meet, or are in compliance with
6 these requirements?

7 A. This would apply to vessels over 79 feet,
8 built after 1991, or went through a major conversion or
9 substantial alteration. That's the applicability of
10 that section. So, it's not a great number of vessels
11 probably. But if that applies, then I think the
12 supplement, the 5587 supplement probably has that in for
13 those vessels. And we don't have a copy of the
14 supplement to see if that's an actual item to check on.

15 Q. Thank you. Let's turn now to Subpart B,
16 Stability, starting on page 30. So, roughly speaking,
17 you have addressed any of the -- with these regulations,
18 under what conditions would you expect the commercial
19 fishing vessel, and specifically a crabber using pots,
20 conducting reassessment, or make amendments to its
21 stability information book?

22 A. How often, did you ask?

23 Q. Well, in other words, under what circumstances
24 or when would a vessel owner conduct either initial
25 stability, and to complete or produce a stability

1 information booklet, as well as under what conditions
2 would a vessel owner amend or update that stability
3 booklet?

4 A. Okay. As I understand the regulations if the
5 vessel was built before 1991, and has not been altered
6 in any way, or major conversion, they don't have to have
7 stability tests, or stability instructions.

8 If they were built after 1991, greater than 79
9 feet also, built after 1991, or undergone substantial
10 alteration or major conversion by definition in here,
11 then they need to have either a stability test
12 performed, but they at least have to have stability
13 instructions and guidelines to the operator, I believe
14 it is.

15 Q. Okay. Can you confirm in 28.505 on that same
16 page that it is, indeed, the owner's responsibility per
17 the regulations?

18 A. That is so stated.

19 Q. Does the Coast Guard approve stability
20 evaluations and stability booklets?

21 A. The Coast Guard does not have to approve that.
22 It is a qualified individual that must conduct the
23 testing, and provide the stability instructions. So,
24 you know, maybe a marine surveyor, maybe a naval
25 architect, whoever is qualified to do it. But, I don't

1 believe or recall that the Coast Guard has to review it,
2 conduct it, and approve it.

3 Q. I'm going to look, specifically, now at
4 28.501, Substantial Alterations. Specifically, in
5 paragraph C. Will you be kind enough to read paragraph
6 C?

7 A. With all the subparagraphs?

8 Q. How about, no just Paragraph C.

9 A. Okay. C says, "The following changes to a
10 vessel's lightweight characteristics are considered to
11 adversely affect vessel stability". And then it gives
12 three criteria.

13 Q. Right. And if you look down with me, I think
14 we can agree that the first one is the vertical center
15 of gravity. The second one is lightweight displacement.

16 A. Yes.

17 Q. And then shift in longitudinal center of
18 gravity, correct?

19 A. Yes.

20 Q. And that is specific movements that if
21 exceeded, then it meets that criteria. Okay. So my
22 question is this, is the intent of this regulation --
23 well, let me start off with, establishing what is
24 lightship?

25 A. I don't know. I'm not the engineer, you have

1 to get a marine inspector. I'd have to go back and look
2 it up, what lightship means.

3 Q. Would you expect a qualified commercial
4 fishing vessel examiners be it Coast Guard or a third-
5 party to understand what lightship is?

6 A. If the examiner is a marine inspector, or has
7 a marine inspector background, he probably would know
8 that. But, I wouldn't say that every one of our
9 examiners would know that, they might, I don't know.

10 Q. I am at a little of an impass here, help me
11 out. Stability is a, under -- certain vessels,
12 commercial fishing vessels if they meet the
13 applicability criteria, built after 1991 or had a major
14 conversion after 1991 or a substantial alteration, they
15 are required to have a stability information booklet,
16 correct?

17 And our Coast Guard examiners, or third-party
18 organization surveyors to carry out their functions, in
19 issuing dockside safety decals, that's part of the
20 checklist as we established earlier, right?

21 A. Okay.

22 Q. So what, would those examiners also be
23 conversive in stability criteria? In this, in these
24 provisions?

25 A. To some extent, an examiner may be conversive

1 in it, most of them probably are. But the -- the point
2 is --

3 Q. And trust me, I'm not asking them to do
4 stability calculations, themselves. You know --

5 A. Right.

6 Q. We all know a good naval architect when we
7 need one. But, at least for, to verify compliance,
8 that's what I'm --

9 A. The examiner's responsibility on this item, I
10 think, would, you know, or could be limited to does the
11 vessel, and does the owner operator have a record of a
12 stability test, and stability instructions. And if they
13 do, they are going to be stamped by a competent person,
14 qualified person who conducted it. And, you know, those
15 folks are licensed or registered or whatever.

16 So, if there is a valid booklet on board the
17 vessel that's stamped, that shows that they have a
18 stability test and stability instructions, then they are
19 meeting the requirement. The examiner doesn't have to
20 go into real detail on it, looking at it. I mean, the
21 instruction and the booklet is going to have the vessel
22 name, and particulars right up front in it anyhow, I
23 believe.

24 Q. Okay. I see where you are going. So your
25 frame of reference is, of course, how I mentioned it,

1 the fishing vessel examiner, how they enter and verify.
2 Concur.

3 How about if we do a little, from a different
4 perspective. How about from the perspective of the
5 vessel owner? The one who is responsible to provide a
6 stability booklet. How do they approach this, these
7 requirements? And so, when they are operating, owning,
8 and managing, and maintaining a commercial fishing
9 vessel under what kind of criteria should they be
10 updating the stability book?

11 A. Well, I mean, the regulations point out that
12 it is the responsibility of the owner, I believe, to
13 have the test, if the vessel, if it is applicable to the
14 vessel, this Subpart, that the owner needs to make sure
15 there is a test done and the instructions are provided
16 to the operator. You have to go back to the previous
17 section to see who is required to have the stability
18 instructions, and the booklet.

19 Q. I just -- by way of moving forward with this
20 line of questions. I just took a look at the definition
21 section, both in 28.510, on page thirty. And then the
22 general definitions for Part 28, starting on page four
23 of the Exhibit. I didn't see a definition of lightship.

24 A. That's correct. You'd have to go to the
25 Marine Safety Center, or a naval architect, or someone

1 that uses general nautical terms, I suppose, and
2 (inaudible word) terms to find out what the definition
3 is. I don't know it off the top of my head.

4 Q. Okay. Let's step away from this regulation
5 for a second, and just go a little higher level, and
6 talk stability, in general. And have you heard the
7 term, weight growth, as it refers to stability?

8 A. Weight growth?

9 Q. Yes.

10 A. I don't think I've heard it that way.

11 Q. Okay.

12 A. Weight creep.

13 Q. Weight creep. So you know what it refers to?

14 A. I interpret it referred to over time,
15 additional equipment, or whatever, gets added to the
16 vessel, and the weight of the vessel increases over
17 time.

18 Q. Now, with weight creep, adding weight over
19 time, typical example scenarios would be like adding a
20 new crane, adding spare parts.

21 A. Yes.

22 Q. That's to the vessel itself, right? What
23 about -- would you consider the carriage of crab pots,
24 being heavier over the years, hypothetically, would that
25 be considered weight creep?

1 A. I don't know if I would or not, some people
2 might say that. But, that would come in to play with
3 the stability instructions, the loading instructions for
4 the vessel. Because -- but you know, the design of the
5 posts, the size of the pots will change sometimes. But
6 on the other hand, pots are not replaced every year, so
7 you know, they rust over the years, so pots may actually
8 get lighter.

9 Q. Okay. Okay, so let's step away from the Regs
10 now. Now let's talk about program, and, you know, one
11 of the functions you mentioned is you provide
12 information, guidance, policy, to examiners as well as
13 industry, is that correct?

14 A. Yes.

15 Q. Okay. So, can you inform us where your
16 program provides guidance and policy? Or what are some
17 of the ways or processes, you use to inform the fleet,
18 or the examiners of policy and guidance?

19 A. I wouldn't say that our program is any
20 different than other Coast Guard program. And that when
21 there is something that needs to be put out to the
22 industry, there are a number of different ways we can do
23 it.

24 There's NAVICS, of course, to give guidance on
25 how to implement things. There is policy letters where,

1 as well as NAVICS that we explain an issue, and try to
2 give better interpretation of whatever the requirement,
3 the regulation or the law is. And some guidance
4 involved there. There is marine safety information
5 bulletins that are also issued for particular issues
6 that come up.

7 We have other overall is our safety alerts,
8 when there's a problem that's been uncovered generally,
9 or a concern, there is a safety alert issued. Within
10 our program, we haven't done many recently, but we used
11 to write one-page little, we called them flyers or
12 newsletters, but topical areas to get information out,
13 some explanations about equipment or operations or
14 something out to fishing vessels. And that was
15 specifically for us.

16 If there is, you know, a lot of those things
17 now are put on maritime commons, which is the Coast
18 Guard blog. But, it's posted on websites everywhere,
19 it's sent out to industry contacts and those are
20 advertised, you know, pretty far and wide, I think.

21 Beyond that I can't think of any other
22 publications. We have a Federal requirements pamphlet
23 that's handed out to all the fisherman and at
24 conventions and expos and that's a summary of Part 28
25 Regulations with some of the other things.

1 There was a, in 2011 the Coast Guard's
2 Proceedings magazine, focused on commercial fishing
3 vessels, and had been ten years prior to that, for the
4 last time it was done. So there is a number of ways
5 that we do outreach and get program information to the
6 industry.

7 Q. Okay. And one of those ways includes your
8 Program's website, right? On CG.mil?

9 A. Yes.

10 Q. Okay. And we have that as an Exhibit, Exhibit
11 No. 35. There's two pages to this Exhibit. Exhibit
12 No. 35 is a screenshot of the Fishing Vessel Safety
13 Division, CG-CVC-3 webpage. Do you recognize this
14 webpage?

15 A. Do I recognize it? Well, it doesn't look
16 quite like that on the computer, but...

17 Q. It's from your office, correct?

18 A. Yes.

19 Q. Okay. On page two, if you would. This is at
20 the bottom of the page, towards the bottom there is a
21 number of links to several documents regarding
22 stability, correct?

23 A. Yes.

24 Q. If you would, I'm referring to the first link
25 called, "Stability Card". How about this, if you would,

1 if you could just briefly describe some of these links,
2 and what information it provides, and how that could be
3 used by a mariner.

4 A. The stability card, I believe is a, might also
5 be referred to as a stability placard, it's a one-page
6 pictorial, but it describes terminology associated with
7 stability. And I don't believe that it gives a whole
8 lot in the way of guidelines. But it, it describes what
9 is involved with stability.

10 The modifications sample I am not sure what
11 that's referring to, exactly. The stability reference
12 guide is a publication maybe twenty-seven pages, that
13 goes through stability terminology, it has a lot of
14 graphics in it to show, you know, listing, the righting
15 movement, and you know, metacenter, or whatever all the
16 different terms are with stability.

17 It is a very, it's a very good guide, and it's
18 not real technical, I don't think, so that's been out
19 there. And stability sample log, and types of fishing
20 boats, I can't recall what those are exactly. Some of
21 the, some of these items in here have been moved over
22 from another site, and you know, some of it done before
23 my time in the Program, even.

24 Q. Understood. Do you recall, because -- do you
25 recall having a fishing vessel modification and

1 alteration logging sheet provided by one of these links?

2 A. No, I don't

3 Q. Okay. Have you heard of a -- well,
4 modification and alteration logging/login sheet, are you
5 familiar with one?

6 A. No. Is -- I don't know if that would be
7 anything the Marine Safety Center put out or not, but I,
8 I'm not familiar with it. I can't recall right now.

9 Q. Okay. Thank you. That concludes my set of
10 questions, thank you for your patience.

11 CDR MULLER: Mr. Gillette do you have any
12 questions?

13 MR. GILLETTE: I do, Commander.

14 **EXAMINATION**

15 BY MR. GILLETTE:

16 Q. Good afternoon, Mr. Kemerer, my name is James
17 Gillette with the United States Coast Guard. First one
18 is to receive a fishing exam decal, does the vessel have
19 to be in a hundred percent compliance, or can they
20 receive that decal if any deficiencies are noted?

21 A. They are supposed to be one hundred percent
22 compliant with the requirements in Part 28.

23 Q. Okay. And another question, this has to do
24 with the, as far as the Program, in the beginning you
25 were mentioning where the commercial fishing examiners

1 are located. You didn't go into detail of exactly where
2 they are located, but you said that they were civilian
3 employees.

4 Up in the Alaska area, as far as Dutch Harbor,
5 just say Dutch Harbor, has there been ever concerns
6 about placing a commercial fishing examiner there
7 because of the amount of crab boats? Can you speak a
8 little about that?

9 A. There was an examiner assigned to Dutch Harbor
10 at one time, and when he left, I don't recall exactly
11 all the details of why they didn't put another examiner
12 back out there. Other than maybe cost and the
13 resources, so there is an examiner at Kodiak, Anchorage,
14 Juneau, Sitka, Ketchikan, Seward, I believe.

15 Q. Anchorage, I guess you have an examiner in
16 Anchorage as well, to help Dutch Harbor out?

17 A. Yes.

18 Q. Since we didn't put in a civilian employee,
19 has anything been done, you had mentioned about, I guess
20 you mentioned like collateral duties, for the petty
21 officers that were mentioned earlier, or officers. Does
22 the Program put any input into the billeting structure
23 of Dutch Harbor in concerns to commercial fishing exams
24 to make up, since there is, the closest commercial
25 fishing examiner would be, in that case, let's say,

1 safety.

2 So, first of all, how many folks do you have
3 working for you at Coast Guard headquarters in the
4 Fishing Vessel Safety Division?

5 A. I have three civilians working under me.

6 Q. And you mentioned, right now you said you are
7 working on regulations for classification.

8 A. The MPRN that was issued in June of 2016
9 included a new Section, Part 28 requiring vessels, new
10 construction over fifty foot operating beyond three
11 miles to be surveyed, meet survey and classification
12 requirements.

13 Q. All right. And what does the Coast Guard hope
14 that will do, what particular casualties are you hoping
15 that that will reduce?

16 A. Well the classing requirement was put out by
17 Congress. They passed the law, The Auth Act, and are
18 requiring us to do that. I believe the intent is that
19 new construction will be built to better standards than
20 they have in the past.

21 In the past you could build a fishing vessel
22 in your back yard. And, you know, there wasn't much in
23 the way of structural requirements, and watertight
24 integrity unless it was over a certain size. So,
25 meeting survey and classification requirements is going

1 to give you a much better vessel built to accepted
2 standards, and marine standards.

3 Q. Did Congress --

4 (Brief pause.)

5 Q. Do you know what, specifically, what problem
6 Congress wanted to address by that? I mean, were
7 fishing vessels falling apart out at sea?

8 A. Well, the Coast Guard issued a Casualty
9 Analysis Report in 2007, I believe it was. And they
10 looked at the casualties from, I believe 1992 to 2007,
11 and may have looked at some earlier than that. But the
12 result of that study showed that the older the vessel
13 was the higher the rate of casualties for those vessels.

14 So, I think they wanted to make sure that new
15 construction would be up to a certain standard. And
16 maybe encourage more vessels replacement. I don't know,
17 but the data showed, you know, the older the vessel, and
18 these vessels were going to have to be replaced. So
19 rather than just constructing to the same old standard,
20 have a new standard, accepted standard from a class
21 society.

22 Q. What other initiatives, what other fishing
23 vessel safety initiatives does the Coast Guard have
24 underway right now. And to put it into context, you've
25 got the dockside exams, you are working on a

1 classification rule, so what other safety strategies
2 does the Coast Guard currently doing or have in mind to
3 reduce sinkings and deaths?

4 A. There were several mandates in the 2010, and
5 2012 Auth Acts that will take regulatory implementation
6 to do it. The other big one as far as safety and
7 survival, is that vessels operating beyond three miles
8 have to have an out of water survival craft. Which
9 means, an inflatable life raft, or an inflatable buoy
10 and apparatus. The old life floats, and life rings will
11 no longer be acceptable once the regulations are put in
12 place. There may be a grandfather, and some period of
13 time, I don't know. But basically, something that is
14 going to keep you out of the water if you have to
15 abandon your ship. That's one requirement.

16 You mentioned class already, the exams, the
17 mandatory exams. There is also a provision that
18 operators will have to complete a certain level of
19 competency training. And training was mentioned a
20 number of times, I think, throughout this hearing. That
21 there were 8 or 10 categories of topics that were
22 designated or specified in the training requirement.
23 Navigation was one, weather information, stability,
24 survival, drills and training, I don't recall the other
25 couple.

1 But, our Federal Advisory Committee has worked
2 on that for a couple years putting together goals and
3 syllabus for those particular topical areas, and we are
4 going to be working on trying to get a, I think, a
5 national standard curriculum, or some sort of a standard
6 outline that any training organization will be able to
7 use. But that's a, that's in the Auth Act, that
8 operators will have to have competency training.

9 If they have a license already, or they've got
10 a certain amount of time at sea, that's supposed to be
11 taken in to consideration whether or not they will have
12 to complete the training or not. So we are working on
13 that, and then, yeah, that's one of the items.

14 Q. And let me stop -- let me ask you this
15 question. So I will not ask you any more questions
16 about that if you tell me all those details are in the
17 Advisory Committee Minutes.

18 A. They are.

19 Q. Good, then I won't any more questions on that.

20 A. On that, go to the fact, the database and look
21 up Commercial Fishing Safety Advisory Committee, and you
22 can find everything about the Committee you need.
23 Members, and meeting dates, and minutes, and summaries,
24 and recommendations all that should be out there.

25 Q. Any ideas when that might become an NPRM?

1 A. I would not want to guess. The regulatory
2 process is long and arduous.

3 Q. All right. And NPRM, is Notice of Proposed
4 Rulemaking. Any other initiatives underway? Are, would
5 it be safe to say that all the initiatives are being
6 evaluated by the Fishing Vessel Advisory Committee?

7 A. That's a safe statement.

8 Q. Okay.

9 A. We are always looking at updating and revising
10 any guidance documents that are out there.

11 Q. Your fifty-eight fishing vessel safety
12 examiners, the civilians, are all of them employed full-
13 time, working in your Program? Have some been detailed
14 somewhere else, or assigned other duties?

15 A. They are all designated fishing vessel
16 examiners at their respective units. Of course, as
17 demand might come up, they might be tasked to do
18 something else periodically. But their primary duty,
19 and their position description, is for a fishing vessel
20 examiners.

21 Q. And as far as you know they are performing a
22 primary duty.

23 A. They are.

24 Q. Every day? With the exception of when they
25 are called do something else.

1 A. (Laughs.)

2 Q. Is the Advisory Committee working on fatigue
3 issues?

4 A. Yes, they did. And that was one of the topics
5 in the competency training that I didn't think of
6 earlier.

7 Q. In the Coast Guard organization, how do you
8 all crunch data? For instance, you now, we are going to
9 produce a report, with recommendations, and there have
10 been other fishing vessel casualties with
11 recommendations. How do those recommendations -- how do
12 you take those recommendations and make improvements to
13 the Coast Guard Fishing Vessel Safety Program?

14 A. Well it will depend on what the recommendation
15 is, I'm sure. Whether it is achievable, or attainable,
16 you know it's not, probably wouldn't be too much unlike
17 recommendations we get from the Advisory Committee.
18 Some of the recommendations, and some of the actions
19 that would be warranted or expected as a result of the
20 recommendation, sometimes you can get it done, and
21 sometimes you can't.

22 If it is -- if it requires additional
23 resources, that take, you know, extra submittals and
24 approvals, and everything else to get the personnel or
25 the funding. So, it just depends on what it is, and

1 whether it is something that can be obtained, or
2 achieved, or not.

3 Q. Does your organization, does your division, or
4 does the Coast Guard have to submit anything to the
5 Office of Management and Budget, with regard to how you
6 are performing with reducing the number of fishing
7 vessel sinkings and deaths? Or any other -- you know,
8 is there a performance metric you have to meet.

9 A. I don't recall if OMB requires that. But we
10 do, there are reports, periodic reports through the
11 Department and, you know, to Congress. Anytime there is
12 a regulation proposed, of course, OMB gets to review
13 that, for the cost involved, and whether it is a
14 significant rule-making or not. And on every, other
15 conditional things that we would have to justify the
16 cost benefit analysis of it.

17 Q. All right. I'm going back in time now, with,
18 there was something called the Government Performance
19 Review Act, which told organizations to do stuff out of
20 the box to improve productivity. Has that term been
21 used recently at Coast Guard headquarters?

22 A. I don't recall.

23 Q. All right. All right, thanks.

24 CDR MULLER: Thank you Mr. Karr. Ms. Spivak,
25 do you have any questions?

1 MS. SPIVAK: No questions, thank you.

2 CDR MULLER: Okay. Mr. Kemerer that completes
3 the questions that we have for you this afternoon.
4 Before we close is there any elements or factors that
5 you believe the Board should consider that may not have
6 been otherwise discussed this afternoon?

7 THE WITNESS: Can't think of anything that
8 would need to be added.

9 CDR MULLER: Okay. Very well, thank you. So
10 Mr. Kemerer, you are now released as a witness at this
11 Marine Board Investigation. Thank you for your
12 testimony and cooperation. If I later determine that
13 this Board needs additional information from you, I will
14 contact you.

15 If you have any questions about this
16 investigation you may contact the Marine Board Recorder,
17 LCDR Pedro Mendoza. Thank you, again.

18 THE WITNESS: I would just like to add one
19 thing, Commander. That, if you intend to follow-up with
20 me at a later date, you would need to do it within two
21 months because I will be retired after that.

22 CDR MULLER: Well, congratulations, well
23 deserved, thank you. We are going to recess for ten
24 minutes. So ten minutes, thank you.

25 (Whereupon a short recess was taken.)

1 CDR MULLER: Good afternoon again, the hearing
2 will come to order. We would like to call our next
3 witness, Mr. Scott Wilwert. Mr. Wilwert if you would
4 please approach the witness table, LCDR Mendoza will
5 provide the oath.

6 LCDR MENDOZA: Please raise your right hand?

7 **WITNESS**

8 **ANTHONY SCOTT WILWERT**

9 **DISTRICT 17**

10 **COMMERCIAL FISHING VESSEL SAFETY PROGRAM COORDINATOR**

11 A witness produced on call of the Coast Guard
12 was duly sworn according to the law, was examined and
13 testified as follows:

14 THE WITNESS: Yes, I do.

15 LCDR MENDOZA: Please be seated. Sir, could
16 you please state your full name and spell your last name
17 for the record.

18 THE WITNESS: Yes, Anthony Scott Wilwert W-I-
19 L-W-E-R-T.

20 LCDR MENDOZA: Could you please tell us your
21 current employment and position title.

22 THE WITNESS: I am currently employed with the
23 U.S. Coast Guard, District 17, and I am the Commercial
24 Fishing Vessel Safety Program Coordinator there.

25 LCDR MENDOZA: Do you hold any professional

1 licenses or certificates.

2 THE WITNESS: I do not.

3 THE WITNESS: Thank you, sir.

4 CDR MULLER: Good afternoon Mr. Wilwert.

5 THE WITNESS: Good afternoon.

6 CDR MULLER: Welcome, and thank you for your
7 participation at this hearing.

8 **DIRECT EXAMINATION**

9 BY CDR MULLER:

10 Q. If you would, could you further describe your
11 capacity and responsibility as the Commercial Fishing
12 Vessel Program Manager at Coast Guard District 17?

13 A. My primary duties, as I see them, as the
14 Program Coordinator for Fishing Vessel Safety, are, is
15 primarily to support the examiners in District 17, our
16 civilian examiners as well as Auxiliary, Reserve, and
17 Active-Duty that go out and perform the mission of
18 performing dockside exams.

19 Q. Can you describe the persons you typically
20 interact with during the course of your duties both
21 within the Coast Guard and with external industry
22 representatives or partners?

23 A. Sure, within the Coast Guard, I wouldn't say
24 daily, but you know, on a weekly basis it is likely that
25 I'll be in contact with Mr. Kemerer, our program manager

1 at headquarters. Some of my counterparts at different
2 districts, Dan Pardon down here in Seattle, a lot. And
3 I talk with my examiners daily, and then some.

4 As far as industry partners, there are
5 certainly fishing, commercial fishing associations,
6 i.e., the Tenderman's Association, or the Longline
7 Association, that I'll talk with from time to time if
8 they have issues or questions, or if I am just trying to
9 pass some information to the industry.

10 As well as the Safety Training Associations
11 like AMSEA, The Alaska Marine Safety Education
12 Association based out of Sitka. And NIOSH, the
13 Anchorage office, the National Institute for Safety
14 Occupational Health.

15 Q. Okay. I would like to now ask some questions
16 regarding compliance. So if you could briefly explain
17 the type of exams that take place on commercial fishing
18 vessels across District 17.

19 A. The dockside examination, or the Part 28
20 examination as we refer to it sometimes, can be done
21 either in a voluntary or now mandatory capacity. So, as
22 Mr. Kemerer stated earlier, as of October 15th of 2015,
23 vessels that operate beyond three miles from the
24 territorial sea baseline are now required to get the
25 dockside examination.

1 Whereas, in certain parts of Alaska we have
2 quite a few fisheries, and people that make a living
3 staying inside that three nautical miles, inside that
4 three miles from the baseline. So we do still do a lot
5 of voluntary dockside examinations for folks who operate
6 on those waters that don't take them beyond the
7 baseline. Is that all you wanted from that?

8 Q. Oh yes. Now we've heard some -- what about,
9 we heard about spot checks, and something about
10 enforcement exams from Mr. Kemerer, did those take place
11 in D17?

12 A. Sure, absolutely. So the enforcement exams,
13 like a dockside examination, that would be a result of a
14 termination during an at sea boarding for, you know,
15 maybe some especially hazardous conditions, were
16 discovered. The vessel is sent in, and then usually
17 there is coordination between the response unit that
18 maybe did that boarding. Or the Command Center, or the
19 Sector, and we'll get a dockside examiner out there to
20 clear those especially hazardous conditions so the
21 vessel can go back out.

22 Sometimes dockside examinations will be as a
23 result of a, what we call a post-SAR boarding. So after
24 a vessel's involved in a search and rescue case, and it
25 is maybe towed in, or assisted in, or makes its own way

1 in we may attend that vessel as well to check for
2 compliance.

3 And the Safety Stability Compliance Checks, or
4 the spot checks, are pretty particular to our pulse
5 operation, where we send folks out to Dutch Harbor in
6 advance of the King crab fishing season opener on or
7 about October 15th. And we help supplement the staff
8 out there at the Marine Safety Detachment in Dutch
9 Harbor.

10 And we conduct these additional safety
11 compliance checks for primary lifesaving and the purpose
12 of verifying stability instructions if they are required
13 to be in place. That they are there, and that the
14 vessel is loaded in accordance with what the stability
15 instructions say.

16 Q. Okay, thank you. I'm going to revisit those
17 spot checks in a moment. But, so across these type of
18 activities, dockside, Part 28 exams, post-SAR, or
19 enforcement exams, and the spot check exams, can you
20 describe how or if examiners document the results of
21 those exams?

22 A. Sure. Every time an exam is conducted,
23 regardless of the reason it is conducted, voluntary,
24 mandatory, post-SAR, termination, every dockside
25 examination that's conducted is captured on the Dockside

1 Examination Form 5587, I believe is the form number.

2 And that form is then, you know, a copy of
3 that is left with the vessel representative that was
4 there for the dockside exam. And a copy of that is
5 brought back with the Coast Guard to that office, the
6 office that the, you know, the examiner went out of.
7 The form is then electronically scanned, and then,
8 electronically attached to the MISLE case, or the vessel
9 file for that vessel, and becomes a permanent record.

10 So you can go back at any time, pick a vessel,
11 and go through their activity history, and find out when
12 their last dockside exam was. And kind of open that and
13 then see the actual pen to paper form that was used.

14 Q. Thank you. I'd like to now, can you describe
15 any kind of quality review, or oversight of these
16 activities that are input into MISLE both at the local
17 level? And as well do you conduct oversight or quality
18 review at your level, at the District?

19 A. At my level, I do not have a, you know, a
20 policy or a District policy to check MISLE entries after
21 dockside exams are conducted. I believe many of the
22 Sectors, Marine Safety Detachments, and Marine Safety
23 Units have a process in place where after an examiner
24 whether that is a civilian examiner or a petty officer,
25 or an officer, or anyone else that conducted the

1 examination and entered it into MISLE, likely submits
2 that for review. Which is a category you can choose
3 from a drop-down, you know, in MISLE, and then a
4 supervisor, or someone in that chain may close that
5 activity as approved. I can't speak for every unit.

6 I don't think there is a standard for MISLE,
7 or a Coast Guard standard that it has to be done that
8 way. I believe that it is probably a comfort level,
9 from time to time, within units to people's ability to
10 do MISLE, and the length of time they've been qualified.
11 So I can't say that the review process on a local level
12 to what extent that's done.

13 And I can tell you that I do randomly go into
14 MISLE, and see the activities that are being done, who's
15 doing them, when they are getting done. And I open them
16 from time to time, but not for the purpose of checking
17 up on anyone's work. If I see a deficiency, or I have a
18 question about how something was entered, I certainly
19 would reach out. But, I don't do that as a regular part
20 of my job.

21 Q. We've heard earlier testimony regarding third-
22 party exams. Do third-party exams take place in D17 for
23 commercial fishing vessels?

24 A. Yes, they do. We have several surveyors from
25 some of the different associations, NAMS and SAMS, not

1 so much Navtech up in Alaska, but NAMS and SAMS seem to
2 be the two of the primary organizations that we have
3 surveyors from that are qualified to do dockside exams.

4 When they do dockside examinations in any
5 state or district the current guidance is that the
6 Examination Booklet and Form will be sent to the area
7 coordinators. So we have a Pacific Area Coordinator,
8 Chris Atkinson, and we have an Atlantic Area
9 Coordinator. And third-party exams per the NAVIC
10 guidance right now go to the area coordinators for entry
11 into MISLE. And they will actually, because the third-
12 party folks, obviously don't have access to MISLE, we
13 enter that for them, or the area coordinators do.

14 Q. So do you have visibility over their
15 activities, the third-party examiners?

16 A. We do. The activities are entered by the
17 Coast Guard. So again, if we have interest in a
18 particular vessel it would show up that the dockside
19 examination was conducted by third-party surveyor so and
20 so, and is entered the same was as, and it is available
21 the same way as if a Coast Guard person did it.

22 Q. Right, so you can review the activity. But
23 you don't necessarily get involved with the, any kind of
24 quality review. That would be for the area, is that
25 correct?

1 A. So what we do, in District 17 with our third-
2 party surveyors from NAMS and SAMS, we annually
3 accompany them on dockside exams. And you know,
4 frankly, we don't get a lot of chances to interact with
5 them on a daily basis. And the way things, you know the
6 way thought processes change, and things change within
7 the Program, and things change with equipment, a lot of
8 times it kind of dawns on us that they might be on the
9 outside looking in.

10 So we try to touch base with them on a pretty
11 regular basis, keep them informed of, you know, our
12 current thinking on certain things. And at least
13 annually, accompany them on a dockside exam so we can
14 make sure that they are doing things the way that we do
15 them.

16 Q. Thank you. All right, I'd like to now turn to
17 the safety and stability spot check exams that you, your
18 District conducts. Can you explain a little background
19 about this Program, or this effort, or initiative? A
20 little history, who executes them, who plans for them,
21 what kind of training and support is provided?

22 A. Sure. As I know it, the Safety Stability
23 Compliance Check Program, it kind of predates me and the
24 Fishing Vessel Safety Program. I believe in around
25 October of 1999 there were some folks that were in the

1 program, some folks, I think that you are probably going
2 to see tomorrow.

3 And they were kind of the pioneers of the
4 Safety Compliance Check Program. They realized in the
5 1990's before dockside exams were mandatory that there
6 were just too many casualties, frankly, in that
7 particular fishery, in the crab fishery. I mean there
8 were casualties everywhere. But the fatality rates, and
9 the casualty rates were high for the crab fishery.

10 And these folks saw that, and took it upon
11 themselves to collaborate with the Alaska Department of
12 Fish & Game, with a cross-section of that, the crabbers
13 themselves, and formed a coalition of sorts. And they
14 sat down at a table one day and decided on a couple of
15 things.

16 And those couple of things were that the State
17 would agree to make the dockside examination mandatory
18 at that time for people participating in the Bering Sea,
19 Aleutian Island crab fisheries, the seven crab
20 fisheries. And the other thing is that the State would
21 put into Alaska State statute the requirement that a
22 loaded crab vessel participating in one of those seven
23 crab fisheries, would call the Coast Guard twenty-four
24 hours prior to their intent to leave a port with a load,
25 in a loaded condition. And that, so that's the

1 background, and the history, as I know it, how it came
2 about.

3 And we've continued to do that from 1999
4 through, well we still do that. We are planning our
5 October trip as we speak. So we've been doing that for
6 eighteen years with great success, I believe.

7 As far as the people that do it, it is
8 primarily a function of the Marine Safety Detachment in
9 Dutch Harbor. Though they are a small office, and they
10 change out every year, it's kind of a unique office.
11 They have a seven person office. So seven come in every
12 year and seven go out. And, you know, so we never know
13 who is going to report in, and their level of competency
14 with regards to fishing vessel safety qualification.

15 So because of that, we augment that group with
16 a group of folks from Sector Anchorage, usually. And we
17 can send somewhere between, you know, between 4 and 6
18 people will make the journey out to Dutch Harbor in
19 early October and conduct full dockside exams if vessels
20 are requiring those. And Safety Stability Compliance
21 Checks.

22 The training that the people that go out there
23 are giving and getting, we send a combination of
24 qualified dockside examiners, as well as usually there
25 is a petty officer or two from the Sector Anchorage

1 Office, that is in the process of becoming qualified.
2 So we will fund their travel out there. Because it is a
3 pretty unique opportunity to go out to Dutch Harbor and
4 to be exposed to this amount of activity in a short
5 period of time. So it actually, really helps their
6 qualification process.

7 So we will, we usually augment Dutch Harbor
8 with like four qualified folks, and maybe take two
9 trainees. And of course the Marine Safety Detachment
10 will provide training to their folks that are not
11 qualified, maybe, or even if they do hold a fishing
12 vessel qual, if it is their first time in Dutch Harbor
13 there is a lot to learn.

14 It is, you know, a lot different doing a
15 dockside exam in Dutch Harbor than it is in, you know,
16 Charleston, South Carolina, I'm sure. So, a lot of
17 different things to look at and look for. So we provide
18 training to that unit. While we are, kind of OJT while
19 we are out there doing it.

20 As part of the pulse op, we also send folks,
21 we kind of try to get a snapshot for where some of the
22 crab vessels may be staged up. And so sometimes we may
23 send some folks at the same time we folks at Dutch, we
24 may have a couple Anchorage petty officers, or the
25 civilian examiner there, go to King Cove, or possibly to

1 Sand Point, but generally King Cove. It seems to be a
2 place that finds that if we send some folks there in
3 early October we can, you know, have exposure to a
4 handful of crab vessels that we otherwise may not have
5 seen.

6 Q. For the Commercial Fishing Vessels, the
7 crabbers, is it voluntary to participate in these spot
8 checks?

9 A. My understanding of the spot check program
10 since 1999, is that the phone call to give the awareness
11 to the Coast Guard that you are leaving is required per
12 Alaska State statute.

13 Q. Well I'm --

14 A. But the --

15 Q. -- I'm referring to the spot checks.

16 A. Right. But when it comes to the spot check,
17 it is my understanding that it is not mandatory. I
18 believe when the spot checks were created, or spot check
19 program, I think the owners of that program would tell
20 you it was their goal to try to get on 70 to 80% of the
21 boats. So, to me that would imply that is was not
22 intended to be a mandatory function before leaving port.

23 I think practically, it would be very
24 difficult to hang that requirement on every vessel,
25 because I am not sure we could get everywhere, you know,

1 that vessels are departing from. So for that reason, in
2 my mind that's why this was never a mandatory Safety
3 Stability Compliance Check.

4 Q. Does District 17 have any written policy that
5 dictates the process, or provides guidance on the
6 execution of these spot checks?

7 A. I believe the -- not so much, not a policy or
8 a District policy. But in our Fishing Vessel Safety
9 Strategic Plan, which is kind of dated, and on my list
10 of things to do, I think it is mentioned in there the
11 Safety Stability Compliance Check Program.

12 Q. Okay. And for clarification, these spot
13 checks, done on an annual basis at the start of King
14 crab season, mid-October, are those organized, planned,
15 and essentially executed by the District, itself, using
16 field resources? So, who leads the project?

17 A. No, my biggest function with that operation is
18 funding and support. Sector Anchorage has, pretty much
19 has the ball on that. They are the unit that has been
20 the closest to that. They are kind of the corporate
21 knowledge since the Dutch Harbor Office does change out
22 every year a hundred percent.

23 So, I would say that the planning and
24 execution is more between Sector Anchorage and the
25 Marine Safety Detachment. With the District, myself,

1 providing them anything they need to make it happen. To
2 include money, personnel, whatever they need.

3 Q. Well, you mention money, why are there
4 specific funding needs? I guess what I'm getting at is,
5 reaching Dutch Harbor and even Kings Cove is pretty much
6 by air travel, right?

7 A. Correct.

8 Q. So how does District 17, either the Sector,
9 the MSD, or yourself track, or do you track spot check
10 data, or the number of vessels that get spot checked?

11 A. We do. So the spot checks are actually entered
12 into MISLE as a, I believe it is a Safety Compliance
13 Check, I think that's an actual choosable category in
14 MISLE. So when these are conducted, they are entered
15 into MISLE.

16 And in addition to that, for the in-season
17 tracking, we have a spreadsheet that I maintain at the
18 District, and I work really closely with the Alaska
19 Department of Fish & Game Office in Dutch Harbor, who
20 handles all registrations for the crabbers that are
21 coming in to register to participate in the fishery.

22 So once the Alaska Department of Fish & Game
23 Office, starts to get a database of who is coming in,
24 registered, and gotten their tags and shown intent to
25 fish, she'll send me those vessel names. And what I'll

1 do, is I'll cross-reference our MISLE database, and I
2 will create a spreadsheet, a four or five column
3 spreadsheet that shows the vessel, it's official number,
4 it's Alaska Department of Fish & Game number, it will
5 show when it's fishing vessel safety decal due to
6 expire, there will be a column saying if they received
7 one of our safety compliance spot checks, and what date.
8 And then there is a column if we boarded the vessel at
9 sea.

10 So that kind of paints a picture of our, what
11 our Coast Guard contact rate is with this fleet. We
12 have the dockside exam, which we know everyone is
13 getting, because they are all mandatory now for that
14 fleet. And then we have a Safety Compliance Check
15 column.

16 And that spreadsheet, or that tool, can then
17 be used by the cutters in the Bering Sea as sort of a
18 decision matrix on, as they see boats day to day then
19 can look at the spreadsheet that we provide them, and
20 make decisions on who they may or may not want to board.
21 If we were just on board them two days ago, it is
22 possible or likely that maybe they will, point another
23 direction and maybe look for a boat that we didn't have
24 the opportunity to have contact with, and then give them
25 an at sea boarding. So that just increases the contact

1 rate at the end of the day.

2 Q. Right. So would you say that's a way for the
3 Coast Guard cutter, or at sea boarding to prioritize
4 which vessels they go on board, and also is, does that
5 act as an incentive to participate for the fishing
6 vessels?

7 A. Well, the first part of the question, I think
8 it definitely works as a way to, for the cutters to
9 prioritize which vessels they may or may not board. I
10 don't see that, that program as too much of an
11 incentive. We generally don't get a lot of resistance
12 at the dockside, or even at sea to, you know -- and you
13 know, from what I've been told anyway, it's been a long
14 time since I've been a boarding officer.

15 But, I don't think folks are getting a Safety
16 Compliance Check, for, in the hopes that they won't be
17 boarded or bothered at sea. You know, I think they are
18 doing it because they believe in it. So I don't think
19 it's much of an incentive to, you know, let's get this
20 done now because maybe they won't bother us during crab
21 season. Not for that fishery, I don't think.

22 Q. Do you happen to recall if the fishing vessel
23 Destination underwent a Safety & Stability Compliance
24 spot check during the 2016/2017 crabbing season?

25 A. No. According to my records, and of course we

1 certainly looked and asked Dutch Harbor about any spot
2 checks. Dutch Harbor would provide me multiple times a
3 week when the crab fisheries were getting ready to start
4 up, a spreadsheet of what they had done for the week,
5 who they had done docksides on, who they had done Safety
6 Compliance Checks on, and I used that to build the
7 bigger spreadsheet that I referred to earlier. And up
8 through the date that they sailed they had not had a
9 Safety Compliance Check.

10 Q. Okay, thank you. Now, earlier you mentioned,
11 made reference to some Alaska Department of Fish & Game
12 regulation, reporting regulation. So by way of
13 reference, if we can take a look at Exhibit No. 42
14 paragraph 7. It's a short paragraph.

15 A. Did you want me to read that?

16 Q. Would you mind reading that?

17 A. Oh, sure, (reads) "An operator of a vessel
18 participating in and IFQ, CDQ, or ADAK community
19 allocation crab fishery in the Bering Sea, Aleutian
20 Island area must notify the United States Coast Guard
21 at least twenty-four hours prior to departing port when
22 carrying crab gear."

23 Q. So, can you describe what actions the
24 receiving Coast Guard office would take when they obtain
25 such notifications from a fishing vessel?

1 A. Sure, I think the intended result from this
2 phone calls, or the reason that phone call was created
3 back in 1999, was to provide the Coast Guard with an
4 opportunity to, in that twenty-four hours say to the
5 operator of the vessel, hey I'm going to come down there
6 tomorrow, would you like us to come down there tomorrow
7 and give you a Safety Compliance Check.

8 So I, I would hope that when these calls are
9 being made, that when we do have the opportunity, and
10 these calls that these vessels are leaving from ports
11 where we do have a Coast Guard presence, that we are
12 taking advantage as much as we can of the opportunity to
13 go out and do the Safety Compliance Check.

14 In the cases where that call maybe it comes in
15 the middle of the night, on a duty phone, after hours,
16 or otherwise it is not practical to go out and attend
17 the vessel. I would assume that the information likely
18 gets logged by the unit that took the call. And just to
19 make a record that the vessel did, you know, was
20 following the Alaska State statute, and made the
21 required phone call.

22 Q. Okay, thank you.

23 A. Okay.

24 CDR MULLER: Mr. Gillette, I have no further
25 questions, do you have any questions?

1 MR. GILLETTE: I do, Commander.

2 **EXAMINATION**

3 BY MR. GILLETTE:

4 Q. Mr. Wilwert, my name is James Gillette with
5 the United States Coast Guard. I just have questions
6 that just has to do with, about the spot checks. And
7 just trying to get an understanding. I want to first
8 start with understanding, to get a Commercial Vessel
9 Examiner's Qualification, does anybody that is trying to
10 achieve that qualification, do they need to know
11 anything about crab pots or fishing gear to receive that
12 qualification?

13 A. I believe in the Personal Qualification
14 Standard, the PQS, there are sections -- it's been a
15 little while since I've looked at a PQS -- but I believe
16 there are sections in there that do discuss gear and
17 gear types.

18 When talking about the Bering Sea crab
19 fishery, obviously the folks in the Anchorage Office or
20 the Dutch Harbor Office, that's going to be an area of
21 focus, because of the fishery happening in their area,
22 maybe more so than an examiner or a person trying to get
23 qualified say in Ketchikan where there is not a, you
24 know, a thriving King crab fishery, like there is in the
25 Bering Sea.

1 But overall, there are some sections of the
2 qualification process that do discuss gear, maybe not to
3 the extent of understanding crab pots, and the weight of
4 crab pots, and associated shots of line and gear that is
5 stowed in them, you know, across the board for every
6 examiner.

7 Q. Do those members that are associated with
8 let's say, Sector Anchorage, or MSD Dutch Harbor, do
9 they get any outside stability training courses or
10 classes, do they attend any of those to learn how to do
11 stability training?

12 A. To my knowledge, no. I believe if there are
13 people at Sector Anchorage Office who participate or
14 assist with dockside examinations that maybe are already
15 Marine Inspector qualified, they may have had
16 opportunities, maybe they've taken the National Harbor
17 Bureau Stability Course, or had opportunities to attend
18 some sort of resident stability training.

19 But, I would say that across the board, I
20 don't think that the examiners in any part of Alaska, or
21 probably in the county have any real resources for
22 stability training, real, intensive stability training.
23 I am not implying it doesn't exist. But, I don't think
24 it is part of their qualification process.

25 Q. Over the last week, a couple days now, we've

1 had testimonies referring to, let's say, stability
2 books. And from sitting up here learning about
3 stability books, they seem to be different from vessel
4 to vessel. So the expectation of the Coast Guard
5 personnel going out there to do the exam, even with
6 experienced, even with experienced inspectors, I guess
7 that you are talking about that have qualifications, how
8 are they expected to know what they are looking for, I
9 guess, in a stability book to complete a stability spot
10 check?

11 A. I think, as you heard through the last couple
12 days, or I did, that there is a, quite a variance in
13 what some of the captains the other day were explaining,
14 is contained in their stability book, and others maybe
15 not.

16 When we send folks aboard to do the safety
17 spot checks, you know, we have them ask the captain, you
18 know, how are you loaded, what does your book say you
19 are supposed to load to in this condition, how much do
20 your pots weigh, have you weighed them. And then we
21 will verify in the book.

22 And in a lot of cases they will go through the
23 book together to the page and the chart that shows the
24 amount of pots that are supposed to be on for a
25 particular loading condition, icing or non-icing. They

1 will query them as to, okay, well your book was made up
2 for seven hundred pound pots, is that what you have
3 today.

4 In very rare occasions, I think this last year
5 we were successful, our Sector Anchorage Examiner was
6 successful in getting some random pot weighing done. It
7 is not as easy as it sounds to, first of all we don't
8 carry around those huge scales. But there were a couple
9 opportunities where they came across a vessel that was
10 loading its pots, and were able to take some weights.
11 So we did get some actual sample weights. Just from a
12 very small, you know, a couple boats.

13 But -- and that's pretty much what the folks
14 are looking for. They are -- and when they look in the
15 stability book, if the stability book is made up, I'm
16 not going to say correctly, if it is made up in a way
17 that the pot weights are there, the loading conditions
18 are there, and it is telling the operator how many pots
19 of this weight they can have on board. We are just --
20 we are verifying that that's the case when we are on
21 board, by physically counting and then comparing it to
22 what the book says.

23 Q. There is no other special training that the
24 Coast Guard provides, other than OJT as far as learning
25 how to do those spot checks?

1 A. The spot checks, I think are pretty specific
2 to, you know, to District 17, and to Dutch Harbor. So
3 there certainly is no Coast Guard wide training program
4 for stability spot checks. But Sector Anchorage does
5 have a training PowerPoint and sort of a training
6 outline that they do go through with their examiners,
7 and with the Dutch Harbor office.

8 Q. Is there a specific form that our examiners
9 fill out? Or is it a separate form from Anchorage to
10 Dutch Harbor, or are they all filling out the same form
11 for the spot checks?

12 A. For the spot checks, to my knowledge there is
13 only one form, and it was a, you know, a form that was
14 generated, I'm not sure which version or rendition of
15 it, it might be. But it's a very short form that's
16 tailored to the things that are checked during the spot
17 check, carbon copy form, I believe. And so that's the
18 same form that's been in play, and used by both units,
19 to the best of my knowledge, since we've been doing
20 this.

21 Q. Do we know how the, our examiners are being
22 trained as far as identifying what's winter, summer, or
23 icing conditions as far as the loading of a vessel goes?

24 A. Could you rephrase that, maybe?

25 Q. Yes. This goes back to the training of the

1 examiners that are doing the spot checks. How are they
2 getting training on knowing when they are reading the
3 stability book, because the stability book, the
4 varieties of stability books that we've heard this week
5 alone are different. There's different literature there
6 that's talks about winter loading, summer loading, or
7 icing conditions loading.

8 So, are our examiners, are they trained on
9 knowing the difference between winter, summer, and
10 icing?

11 A. So the training that the Sector Anchorage
12 Office provides during the Dutch Harbor trip, during the
13 pulse op trip, I do, I believe discusses the different
14 loading conditions. Since we are primarily there for
15 the surge op in October that is generally a pretty low
16 risk icing condition time of year, even for Dutch
17 Harbor. And so it is probably not as high a concern
18 during that operation. And for that fishery they are
19 going to head out on October 14th or 15th, that icing is
20 considered.

21 Whether it is talked about during the Safety
22 Stability Compliance Check in October, that, hey in
23 January or February obviously, you know, you need to
24 consider possible icing conditions. And the Safety
25 Stability Spot Checks, they will trickle in to, like,

1 there are certain people who don't fish King Crab, so
2 their first evolution may be in opilio winter season.
3 So they will call for a spot check in that season. And
4 during that season we would certainly be cognizant of
5 the fact that we are in icing conditions. And that's
6 the part of the book that we should be considering.

7 Q. All right. Thank you Mr. Wilwert.

8 MR. GILLETTE: Commander, those are all the
9 questions I have.

10 CDR MULLER: Thank you Mr. Gillette. NTSB,
11 Mr. Karr?

12 **EXAMINATION**

13 BY MR. KARR:

14 Q. Mr. Wilwert do you oversee any other fishing
15 vessel safety related tasks other than the Dockside Exam
16 Program?

17 A. Well, I like to think I oversee all of them.
18 So, I mean, there's --

19 Q. Well, could you describe what those tasks are?
20 You know, for instance are there any partnerships you
21 are working with, you know, I'm looking for any, for a
22 description of programs that the Coast Guard undertakes
23 in the Seventeenth Coast Guard District to promote
24 safety and reduce casualties.

25 A. Sure, we work often with the NIOSH field

1 office in Anchorage, and their staff. So we collaborate
2 with them for different initiatives. You know, some of
3 the life jacket wearing initiatives that we've had in
4 the past that, you know, NIOSH is primarily the driver
5 behind a lot of that. But we support them however, and
6 whenever we can.

7 So, as far as initiatives, I mean, we always
8 look for safety initiatives, we always look for
9 opportunities to work with any agency that we can help,
10 or that can help us make the commercial fishing industry
11 safer. I'm not sure if I'm answering your question
12 entirely or not, but...

13 Q. Well, I'm looking for specific programs, the
14 NIOSH one that you described is a good example. I'll
15 leave it at that. And then the last question I have for
16 you is that strategic plan that you described, is that a
17 fishing vessel strategic plan for D17, or is it the D17
18 overall strategic plan?

19 A. It's a Fishing Vessel Safety Strategic Plan.

20 Q. All right.

21 A. And it was authored by my predecessor a few
22 years ago, prior to me taking this position over. So,
23 it's about due for an update.

24 Q. All right. But is it on the website? Or, if
25 it's not we'll get a copy. All right.

1 A. Right.

2 Q. Thanks.

3 MR. KARR: No more questions.

4 CDR MULLER: Thank you Mr. Karr. Ms. Spivak?

5 MS. SPIVAK: No questions.

6 CDR MULLER: Thank you. Mr. Wilwert that
7 concludes the questions that we have for you this
8 afternoon. Is there any other factors that you believe
9 the Board should consider that has not otherwise been
10 discussed today?

11 THE WITNESS: No, not that I can think of. No
12 other factors. The only thing I have not had an
13 opportunity to say in person, and only through some
14 media, is obviously to express my condolences to the
15 family and friends of the Destination. I know they are
16 behind me, and that's kind of rude. But I don't think
17 they will hear me if I turn around away from the mic.
18 So, that's it.

19 CDR MULLER: Thank you. Mr. Wilwert you are
20 now released as a witness at this Marine Board
21 Investigation, thank you for your testimony and
22 cooperation.

23 If I later determine that this Board needs
24 additional information from you I will contact you. If
25 you have any questions about this investigation, you may

1 contact the Marine Board Recorder, LCDR Pedro Mendoza.

2 Thank you, again.

3 THE WITNESS: Thank you. And unlike Jack,
4 I'll be around for the next ten years or so probably.

5 CDR MULLER: Thank you, good to know. We
6 would like to now call our next witness Mr. Dan Hardin.
7 Mr. Hardin if you would, please approach the witness
8 table and LCDR Mendoza will provide the oath.

9 LCDR MENDOZA: Please raise your right hand.

10 **WITNESS**

11 **DANIEL ELMER HARDIN**

12 **DISTRICT 13 FISHING VESSEL SAFETY COORDINATOR**

13 A witness produced on call of the Coast Guard
14 was duly sworn according to the law, was examined and
15 testified as follows:

16 THE WITNESS: I do.

17 LCDR MENDOZA: Please be seated. Sir, if you
18 could please state your full name, and spell your last
19 name for the record.

20 THE WITNESS: Daniel Elmer Hardin, H-A-R-D-I-
21 N.

22 LCDR MENDOZA: Would you please state your
23 current employment and position title.

24 THE WITNESS: I am th0e Thirteenth District
25 Fishing Vessel Safety Coordinator.

1 also feel my job is to help the commercial fisherman
2 understand what it is that they need to do to get into
3 compliance and make that easy for them, to make their
4 job easier, and our job easier.

5 I also do work with third-party class
6 surveyors. I work with the National Institute for
7 Occupational Safety and Health to get casualty data,
8 since they are really good experts at that. I work with
9 the North Pacific Fishing Vessel Owners Association,
10 they often do training, and we assist them in that
11 training. And we have damage control trainers, and
12 other tools that we can share with both the NPFVOA and
13 the fishermen if they ask us, we can go out and do
14 training for them.

15 Q. Thank you. So, in the same lane as you just
16 mentioned, you provide information that you believe is,
17 tries to be helpful to the fishing fleet as they
18 consider their safety. And so, during the course of
19 this investigation we've become more and more familiar
20 with a particular website called FishSafeWest, is that
21 correct?

22 A. That's right, yes.

23 Q. And I understand you are the champion and
24 author of a bunch of its documents, is that right?

25 A. I am, yes sir.

1 Q. Okay.

2 A. It is FishSafeWest.info, not .com, but .info.

3 Q. All right, Fish Safe --

4 A. West.info.

5 Q. West.info, okay.

6 A. Right.

7 Q. So after learning of that and reviewing that
8 website over the last few months, I thought it would be
9 appropriate to provide an opportunity for the Board to
10 learn a little bit more about that website, and
11 particularly maybe some of its highlights. So, if you
12 would, we have it as an Exhibit, No. 39, which is, I'll
13 just call it as some screenshots of the website.

14 A. Right.

15 Q. And so, if you would, using this Exhibit, if
16 you could briefly describe some key elements provided on
17 the website.

18 A. Sure. So one of the things, when I first came
19 into this job back in 1998, one of the things I found is
20 that the commercial fishing vessel safety regulations
21 are in Part 28, so that's easy enough to find, and it's
22 all in one place.

23 But there are a myriad of other references to
24 the Program. And often I would call around to the
25 different coordinators to try to get a particular

1 Navigation And Vessel Inspection Circular, or a policy
2 letter that was from, you know, way back in the day or
3 whatever.

4 And I, so I was constantly looking for those,
5 and then everybody would reach into their file folder
6 and find a copy and fax it to me, or whatever. And I
7 thought, what if I could put them all in one place, so
8 we could all have them.

9 And I'll go ahead and kind of point out what
10 it is. And what's available on it, or at least three
11 major things, and there is a lot of searching you can do
12 on it. But, this is its homepage. And this is actually
13 not what it usually looks like. But the Coast Guard is
14 currently in transition from an old server to a new,
15 more protected server inside the Armed Forces server
16 system or whatever. And so, right now FishSafeWest.info
17 looks a little bit different, as you had noted, than it
18 did before.

19 And eventually, when I get transitioned over
20 to the new system, it will look a little bit different.
21 But it will always, you can always get to it by going to
22 FishSafeWest.info. I, right now, this is a website that
23 is outside the Coast Guard's mainframe, but will be back
24 in as soon as we get it transitioned over. But the old
25 one's out of service now. So we had to put it

1 somewhere.

2 And so you just happened to hit me right in
3 this middle of this transition. So this is its own
4 page. And if you go to the next screen, you just kind
5 of look around the home page and you will see that,
6 anything new that's taking place, I put it on the home
7 screen.

8 So for example, we just got new guidance on
9 using electronic charts in lieu of paper charts, that's
10 been a big thing that the fisherman, or actually, all
11 mariners have been wanting for a long time. To be able
12 to get rid of their paper charts that they have to keep
13 updated manually, and use electronic, electronic charts.
14 And so that's right there at the very top. And that's
15 the very latest thing that got released.

16 And just to make one more quick note here, the
17 Coast Guard will also release Marine Safety Information
18 Bulletins, on certain items. And so GMDSS, which is
19 communication equipment for vessels operating in Alaska
20 we were clarifying some confusion about what those
21 requirements were for certain vessels. So, again, it's
22 -- they are on our home page. So all new information can
23 be found there.

24 But I would like to kind of point to the
25 different parts of the website. So across the top

1 there, you see the arrow, there's the home page. Then
2 there's a link to the Dockside Examination Page that
3 tells commercial fishermen about dockside exams and how
4 to get one. And how to prepare for one.

5 There is also a section in there called
6 Regulations. So any regulation, any guidance, any
7 policy letter. Anything having to do with anything
8 commercial fishing vessels is in that, on that page, and
9 so I will show that to you.

10 I have a section on enforcement, in other
11 words, what does a termination look like, when does the
12 Coast Guard terminate a vessel's voyage. You see one
13 called ACSA, that's a particular program for our large
14 fleet of vessel in Alaska.

15 We do have some casualty information, that's
16 NIOSH information on casualties in the fishing industry.
17 And then the last, the link is to a training page. And
18 so I'll briefly touch on a few of those. (So if you
19 will give me the next, next slide.)

20 Okay, so one of the things that we did is when
21 the Coast Guard, or when Congress mandated that
22 commercial fishing vessels get a dockside exam if they
23 operate more than three nautical miles from the
24 territory (inaudible word) baseline, that date was, 15
25 October 2012, 2013, I forget.

1 And so I was concerned about the fact that any
2 vessel new to our program was not familiar with what
3 their vessel was required to have. Those regulations
4 are dependent on various operating parameters of the
5 vessel, like the vessel length, how many people are on
6 board, whether or not you are documented or state
7 registered, how far off shore you operate, a bunch of
8 different variables, about thirty-five different
9 variable make the regulations apply or not apply.

10 So normally what happens is the Coast Guard --
11 when the mandatory exams came out, the Coast Guard was
12 going to have to visit every vessel twice. The first
13 visit would be an informational visit where we would
14 tell them, these are the things you need, find out where
15 they are operating, and leave them with a list.

16 And then we'd have to return after they got
17 all their items, and then do another exam of the vessel
18 to finally issue them, hopefully issue them a decal. So
19 my idea was to create what I call the checklist
20 generator that would take any vessel's operating
21 parameters, and give them a custom checklist for their
22 particular vessel.

23 They could then use that checklist to prepare
24 for their exam and in about ninety percent of the time
25 the fishermen were able to complete their exam on the

1 first visit. Which cut down on the number of visits
2 they had to have from the Coast Guard, and the number of
3 visits the Coast Guard had to make, and man hours it
4 would take to get the vessels examined.

5 So I'll kind of walk you through the checklist
6 generator. So you can get the checklist generator, here
7 from the home page. Or if we go to the next slide, or
8 if you go to the dockside examination page, next slide,
9 there is the dockside examination page. And if you go
10 to the next slide, there is a section here that talks
11 about preparing for your exam. And it advises the
12 fishermen that they can use their laptop, desk top,
13 tablet or smart phone and determine what their vessel's
14 required to have by using the checklist generator.

15 Then we ask them to use that examine their
16 vessel, and then finally call and get their exam. And
17 then there's a link to each dockside examiner around the
18 country.

19 So if you go to the next slide, we will just
20 kind of run through what the pages of the checklist
21 generator look like, these are just a few of them. And
22 so this is the -- yes sir?

23 Q. Just for the record, this is now page seven.

24 A. Go ahead? So this is the home screen, and it
25 just has the legalese on it, and says it is a tool for

1 you to use to prepare for your exam.

2 And so, what the user would do is they would
3 hit the "Let's get started", button. If you would go
4 ahead and move to the next slide. And then it just asks
5 you to fill out some information. So we take the
6 vessel's length, so they fill in the vessel's length.
7 They enter the number of crew that the vessel has on
8 board. (Go to the next slide.)

9 We use like, drop downs to get how far
10 offshore you are going to operate. And so we ask them
11 those questions. (Let's go to the next slide.)

12 Okay, so this is what, page ten. There is
13 more questions, is your vessel documented, does your
14 vessel have an installed marine toilet, if it does then
15 we need to make sure that you comply with MSD
16 regulations. Is the vessel constructed of metal. If
17 you are not metal then you need a radar reflector. So
18 each question, there is a reason why that question is
19 there.

20 And so they answer these questions. And they
21 hit the next button. And then they are presented with a
22 screen that says well this is what you entered for your
23 vessel. So you take one last chance to look through
24 here, to make sure that that is what you want. So we
25 have a fishing vessel that's 65ft long six people on

1 board, the vessel operates in Alaska, 20 to 50 miles
2 offshore, the vessel is documented. And so on, and so
3 it tells you about the vessel and what you entered.

4 Then when you hit the create checklist button
5 (Go ahead to the next one.) then you get your checklist
6 for your particular vessel. And it is divided into
7 different areas. So, we have an area called documents,
8 placards and plans. And so while you are up on the
9 bridge, you would use this to look at all of your
10 documents and placards and plans that you are required
11 to have on your particular vessel.

12 And it is scrolls up -- this won't because we
13 are just, we've just got some screen shots -- but it
14 scrolls up and you keep on going down. (And if you go
15 to the next slide.)

16 Then you come to the Bridge and Navigation
17 Equipment Section. And so normally the things that are
18 on the bridge are in this section. So for example you
19 can see that this vessel that I entered needed three
20 parachute flares, six handheld flares, three smoke
21 signals, and they have to have their navigation lights
22 for their operating area. And you will notice there is
23 a little info button to the right of all those things.

24 And so you can get more information by
25 touching on those. On the left side is your check box,

1 as you check things off, you can either do it by paper,
2 or you can do it on your smart phone, or whatever. And
3 so all those things are the things that you would need
4 for your bridge navigation equipment. (Next slide.)

5 Okay, now we have the lifesaving equipment.
6 So you can see, for example, this vessel would need an
7 immersion suit for everybody on board. A personal
8 flotation device on each one of those devices. An
9 inflatable life raft at least with a SOLAS (inaudible
10 word) pack. The three ring buoys and so on. It also
11 lists what firefighting equipment you need. All these
12 are the things that the dockside examiner would have
13 told you. But you know it before you even have them
14 out, so that you can be in compliance. (Next slide.)

15 And then this is the last box, so there is
16 five total boxes. And this is stuff that needs to be in
17 your engine room, and other remaining areas around the
18 vessel. So here, for example, you know, you can see you
19 need guards for exposed hazards, an anchor with chain,
20 and your marine sanitation device installed. (Now, let's
21 go to the next slide.)

22 Let's say, for example, you wanted to know
23 more about immersion suits or exposure suits and what
24 you should do about that. Then we give them additional
25 information.

1 So if you touch the information button, the
2 next line. Then a little pop-up come up. And it tells
3 you down, (If you hit the next slide.) down at the
4 bottom there, you will see that you use the checklist
5 her to examine that particular item. So it says you
6 have to have at least one of the immersion suits or
7 exposure suits on board. It needs to be Coast Guard
8 approved, it needs to be inspected annually for material
9 condition, and so on and so forth. So that gives you
10 all the particulars of what to look at on this
11 particular item. (Let's go to the next slide.)

12 Up at the top, you will see that there is
13 links to other documents. So any document anywhere,
14 that has anything to do with --

15 CDR MULLER: Okay, excuse me.

16 THE WITNESS: Sorry.

17 CDR MULLER: Just slow --

18 THE WITNESS: Slow down.

19 CDR MULLER: -- can you slow down.

20 THE WITNESS: Am I fast? Wow.

21 CDR MULLER: It's good stuff.

22 THE WITNESS: Thank you.

23 CDR MULLER: And for the record, we are on
24 page nineteen.

25 BY CDR MULLER:

1 A. Okay, so on the top are the links to any
2 document related to this particular item. So, for
3 example, it says here 46 C.F.R 28.110 Requirements. And
4 so if I was to click on that link then I would see that
5 regulation. So if you were to go to the next slide, if
6 I were to click on that link, you would see this.

7 And so, this is actually a screenshot of the
8 page from the Federal regulations that explains exactly
9 what the requirement is. Now, in my experience of my
10 years as a dockside examiner, as a marine inspector,
11 there is a lot of sea lawyers out there, any everybody
12 wants to know, well where did that Reg come from. So
13 you can actually show them that Reg if they would like
14 to see it. (Okay, we will go to the next slide.)

15 We also, in here, you will see that there is
16 NAVICS, there. I know we are not going to look at them.
17 But we have a Washington State University PFD study that
18 talk about using PFD's in the Pacific Northwest.

19 You'll see that we have a couple of videos.
20 For example we have a, one of our dockside examiners on
21 our YouTube channel. This takes you to that video that
22 shows you one of my dockside examiners in Portland,
23 examining an immersion suit, so you know what it is we
24 are looking for.

25 So those, that's the depth that this

1 particular job aide goes to, to help the fisherman
2 comply with the regulation, all the regulations and to
3 pass their exam on, hopefully on the first time. (Next
4 slide.)

5 Okay. So that's it for what we call the
6 checklist generator. I will just talk about two other
7 items really quick. In the regulations, this is a
8 really valuable section, in fact I use this almost every
9 day. And if you touch on the regulations link, you
10 will see down below there, that there are a bunch of
11 little folders there, and I can expand or collapse them
12 by just touching on the little plus sign.

13 And so, for example, (Let's go to the next
14 slide) let's say I pick alphabetical listing of topics.
15 And if I touched on that -- (next slide) -- then it
16 expands, and it shows me all the things in alphabetical
17 order that I can look up. For example, if I was
18 interested in bilge alarms, I could go down, and there's
19 a little folder there for bilge alarms. You could open
20 that up and any document related to bilge alarms would
21 be inside there, to explain what to do and how to
22 inspect that item, and what regulations are applicable
23 to that item.

24 Let me give you an example -- (We will go to
25 the next slide) -- and let's say it was, for example I

1 wanted to see the Coast Guard form that the dockside
2 examiners used. Then I could open that forms folder.
3 (Next slide.) And in there you will see CG5587,
4 Commercial Fishing Vessel Safety Examination Book. If I
5 wanted to see that book, I'd just hit the link -- (and
6 go to the next slide) -- and I could see what that
7 document looks like. So if anybody wanted to see it,
8 they could go look at it. So that's really how that
9 thing works.

10 And again, I'm -- I use this almost every day
11 and a lot of Coast Guard folks do that same thing.
12 Let's go back. So down below, you can see Headquarters
13 Safety Flyers. There is Headquarters Policy Letters,
14 there is NAVICS, there is also a folder on all the Coast
15 Guard regulations related to fishing vessels.

16 So for example, everybody has been listening
17 to us talk about 46 C.F.R Part 28, there's a folder in
18 there that has that topic. So again, you can see
19 whatever it is that you would like to look up in there.

20 (Next slide. Next slide.)

21 Okay, the last thing I'd like to share with
22 you, we heard a lot today about stability. So I did do
23 a stability training, it's a power -- or it is a flash
24 stability animation on how stability works. Now, we
25 can't animate it, because again we are taking

1 screenshots here. But, if you were to -- (Go to the
2 next slide) -- and you hit the launch stability 101, you
3 would get this little face page here, that just says
4 this is, you know, just the basics of what stability is
5 all about. And if this thing was actually working, you
6 would hear ocean waves, and you would hear some
7 seagulls, and a little boat would be moving up and down.
8 So you get the idea that this is animated. (Now, let's
9 go to the next slide.)

10 And I'll just give you some examples. So for
11 example, it gives you the idea of what stability is, or
12 the force of what gravity is. So gravity pushes down on
13 an object, like a beachball, or a boat whatever it might
14 be. (Go to the next slide.) And then, the same thing,
15 there is a force called bouancy that pushes up. So we
16 have center of gravity, and center of buoyancy. And
17 some of our folks here have been talking about those
18 particular things.

19 And so, if you were to go to the website and
20 watch this, you'd kind of figure out, hey, now I know
21 what these guys have been talking about. (Next slide.)

22 So, for example, they've been talking here
23 about the metacentric height, and so it is very simple,
24 it is actually easy to understand, this may look kind of
25 complex, but it is very easy to understand that there is

1 a metacenter, there's center of gravity, and there's a
2 center of buoyancy. All those forces determine the
3 stability of a vessel, and it is very easy to understand
4 that if you go through this slide presentation. (Next
5 slide.)

6 And so we move things around, and it shows you
7 what happens when the vessel heels over, and when it
8 comes back again. So this is an example of a vessel
9 that is being heeled over by let's say the wind. And
10 then what that looks like if it has good stability.

11 And, later on it also shows you what that would look
12 like with a vessel with bad stability. In other words,
13 it would heel over maybe not come back so fast. (Next
14 slide.)

15 It also gives some basics. For example, you
16 all were talking about reserve buoyancy, it talks about
17 what that is, it talks about freeboard, it talks about
18 raising and lowering the center of gravity. Again all
19 the, all the concepts that you all have been talking
20 about here today or throughout the last week and a half.
21 (Next slide.) That should be it, that's it. Okay.

22 So that is just an overview of the website,
23 thanks for the opportunity to show it, and hopefully we
24 can get some more folks go on there and use that
25 website.

1 Q. Okay, thank you.

2 A. Yes, sir.

3 Q. That was a really helpful tour of a very
4 impressive, and I believe a useful webpage, thank you.

5 A. Yes, sir.

6 CDR MULLER: I have no questions. Mr.
7 Gillette?

8 MR. GILLETTE: No follow-up questions.

9 CDR MULLER: Thank you. NTSB, Mr. Karr?

10 MR. KARR: I have none.

11 CDR MULLER: Thank you. Ms. Spivak?

12 MS. SPIVAK: No questions, thank you.

13 CDR MULLER: Okay. Mr. Hardin that completes
14 the questions, thank you again for your presentation.
15 Are there any elements, or facts, or issues that you
16 believe the Board should consider that has not otherwise
17 been discussed?

18 THE WITNESS/MR. HARDIN: I have been here for
19 the entire Board, almost the entire Board. And I think
20 you guys are doing a great job. I would like to echo
21 what Mr. Wilwert said. I hate being here with the
22 families that had to go through this, so I just want to
23 say I am sorry for them.

24 CDR MULLER: Thank you. So Mr. Hardin you are
25 now released as a witness at this Marine Board of

1 Investigation, thank you for your testimony and
2 cooperation.

3 If I later determine that this Board needs
4 additional information from you, I will contact you. If
5 you have any questions about this investigation, you can
6 contact the Marine Board Recorder LCDR Mendoza. Thank
7 you again.

8 THE WITNESS/MR. HARDIN: Thanks.

9 CDR MULLER: This concludes our witnesses for
10 today. We will recess until tomorrow morning and resume
11 at nine o'clock. Thank you and good evening.

12 (At 1540 off the record.)

13

14

15 **(The proceeding then concluded.)**

16

CERTIFICATION

This certificate is valid only for a transcript accompanied by my original required signature on this page.

I hereby certify that the proceedings in the matter of Marine Board Investigation of the F/V Destination, heard in the United States Coast Guard Thirteenth District, Seattle Washington, Tuesday August 15, 2017, were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers one to one hundred eighty-six constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 10th day of October, 2017.

Sally S. Gessner

Sally S. Gessner, Court Reporter