

UNITED STATES COAST GUARD

MARINE CASUALTY BOARD

ICO

Loss of MARY B II

HELD ON

13-17 MAY 2019

AT

NEWPORT, OREGON

PRESENT:

LEAD INVESTIGATING OFFICER (LIO):	CDR KAREN DENNY, USCG
ASSISTANT INVESTIGATING OFFICER (AIO):	LT THERESA BIGAY, USCG
TECHNICAL ADVISOR (TA):	LCDR MICHELLE FOSTER, USCG
GOVERNMENT COUNSEL (GC):	LT COLIN FOGARTY, USCG
RECORDER (REC):	LT LUKE WOODS, USCG
PARTY-IN-INTEREST COUNSEL (PIIC):	MR. CHRIS REILLY
PARTY IN INTEREST:	MS. MARY ANDERSON

Transcribed by:
Leighann Suurmeyer
Ad Hoc Reporting

INDEX

WITNESS (ES)	PAGES	DIRECT	CROSS	REDIRECT	RECROSS
Clinton R. Funderburg	1-46	10	39	43	45
Robert Schones	47-88	47	75	84	--
Heather Van Meter	89-121	89	112	115	118
		--	--	119	--
Tyree Wilde	122-156	122	--	--	--
CDR Brendan Harris, USCG	157-189	159	187	--	--
Laurel Kincl	190-230	194	227	--	--
BMC Jason McCommons, USCG	231-277	231	268	--	--
	672-706	--	672	684	703
		--	--	704	--
BM2 Kelsi Dozier, USCG	278-307	278	--	--	--
	741-773	741	764	769	772
		--	--	773	--
Ben White	308-316	308	314	315	--
Robert Brewster	317-331	317	328	--	--
Carl Bjornberg	332-353	336	352	353	--
Ryan Morgan	354-387	354	379	385	--
CWO Paul Ashley, USCG	388-414	388	410	411	--
Charles R. Busby	415-452	415	437	442	447
		--	--	447	--
Denise Porter	453-486	454	--	--	--
	581-590	581	586	587	--
Marilyn Fraser	487-508	487	500	--	--
Robert Jones/Kaylon Wells	509-525	509	522	524	--
Brian Bourgeois	526-564	527	553	560	--
Joseph Thompson	565-580	565	578	--	--
Merrick Haller	591-617	594	616	--	--

INDEX (cont'd)

WITNESS (ES)	PAGES	DIRECT	CROSS	REDIRECT	RECROSS
Daniel Hardin	618-671	618	670	--	--
Steven Kee	707-740	707	--	--	--
CWO Thomas Molloy, USCG	774-850	774	827	843	--
(recalled)	933-936	933	934	--	--
Scott Giard	851-911	854	901	909	--
LCDR Scott McGrew, USCG	912-932	912	927	931	--
Mary Anderson	937-1000	937	--	--	--
Jennifer Lincoln/Samantha Case	1001-1048	1001	--	--	--

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 13 May 2019

4 WITNESS: CLINT FUNDERBURG

5 [The hearing was called to order at 8:00 a.m., 13 May 2019.]

6 **CDR KAREN DENNY (LIO):** It is Monday, 8:00 a.m., May 13th, 2019,
7 and this hearing will come to order.

8 Good morning, ladies and gentlemen. My name is Karen--
9 Commander Karen Denny, United States Coast Guard, and I'm the
10 executive officer at Coast Guard Marine Safety Unit, Portland,
11 Oregon. I'm the lead investigating officer for the Thirteenth
12 Coast Guard District's formal investigation into the events
13 leading to the loss of the fishing vessel MARY B II and the loss
14 of three lives, and I am presiding officer over these
15 proceedings.

16 The Commander of the Thirteenth Coast Guard District, Rear
17 Admiral Throop, has convened this investigation under the
18 authority of Title 46, United States Code Section 6301, and Title
19 46, Code of Federal Regulations, Part 4, to investigate the
20 circumstances surrounding the sinking of the fishing vessel MARY
21 B II with the loss of three lives on January 8th, 2019 while
22 attempting to cross the Yaquina Bay Bar and enter the port of
23 Newport, Oregon during the hours of darkness.

1 We will conduct the investigation under the rules of Title
2 46, Code of Federal Regulations, Part 4.

3 Other than myself, the members of this formal investigation
4 include Lieutenant Theresa Bigay, assistant investigating
5 officer, and Lieutenant Commander Michelle Foster, technical
6 advisor. The legal counsel for this board is Lieutenant Colin
7 Fogarty. The recorder is Lieutenant Luke Woods.

8 Upon completion of the investigation, this formal
9 investigation will submit its reports of findings, conclusions
10 and recommendations to the Commander, Thirteenth Coast Guard
11 District.

12 I would like to request the cooperation of all persons
13 present to minimize any disruptive influence on the proceedings
14 in general and on the witnesses in particular. Witnesses are
15 appearing before the investigation to provide valuable
16 information that will assist this investigation. We request that
17 all members of the public be courteous to the witnesses and
18 respect their right to privacy. I ask that you silence all cell
19 phones at this time and please exit the hearing room to make or
20 receive phone calls. With the exception of one pool camera,
21 photography, including television cameras, will only be permitted
22 during this opening statement and during recess periods. The
23 members of the press are welcome, and an area has been set aside

1 for their use during these proceedings. The news media may
2 question witnesses concerning testimony they have given after I
3 have released them from these proceedings. I ask that any such
4 interviews be conclu--conducted outside of this room.

5 The investigation will determine, as closely as possible,
6 the factors that contributed to the--to the incident so that
7 proper recommendations for the prevention of similar casualties
8 may be made, whether there is evidence of any act of misconduct,
9 inattention to duty, negligence or willful violation of law on
10 the part of any licensed or certificated individual that may have
11 contributed to the casualty, and whether there is evidence that
12 any Coast Guard personnel or any representative or employee of
13 any other government agency or any other person caused or
14 contributed to the casualty.

15 This hearing will focus on the circumstances surrounding the
16 loss of the commercial fishing vessel MARY B II and the three
17 crew members. The hearing will explore the regulatory
18 requirements for a vessel such as the MARY B II, the material
19 condition of the MARY B II, human factors such as crew
20 experience, fatigue, impairment, decision making and bridge
21 resource management. We will examine the condition of the
22 waterway and the Coast Guard's activities related to the
23 accident, such as Aids to Navigation and regulated navigation

1 areas.

2 The Coast Guard has designated parties in interest in this
3 investigation. In Coast Guard marine casualty investigations, a
4 party in interest is an individual, organization or other entity
5 that, under existing evidence or because of his or her position,
6 may be responsible for or contributed to the casualty. The per--
7 the party in interest may also be an individual, organization or
8 other entity having a direct interest in the investigation and
9 demonstrating the potential for contributing significantly to the
10 completeness of the investigation or otherwise enhancing the
11 safety of life and property at sea through participation as a
12 party in interest. All parties in interest have the statutory
13 right to employ counsel to represent them, to cross-examine
14 witnesses, and to have witnesses called on their behalf.
15 Witnesses who are not designated as party in interest may be--may
16 be assisted by counsel for the purpose of advising them
17 concerning their rights; however, such counsel are not permitted
18 to examine or cross-examine other witnesses or otherwise
19 participate in this investigation.

20 I will now read the names of the parties in interest whom I
21 previously designated as a party in interest. I have designated
22 the MARY B II LLC, owner of the MARY B II, as a party in
23 interest. Mr. Chris Reilly is the legal counsel for MARY B II

1 LLC, and I ask that counsel announce their appearance on behalf
2 of their client. Mr. Reilly?

3 **MR. CHRIS REILLY (PIIC):** Thank you, Commander. Chris Reilly
4 from Nicoll, Black & Feig here on behalf of the fishing vessel
5 MARY B II LLC, party in interest.

6 **LIO:** Thank you. The formal investigation will place all
7 witnesses under oath. When testifying under oath, a witness is
8 subject to the federal laws and penalties for perjury and making
9 false statements under Title 18, United States Code Section 1001.
10 Penalties include a fine up to \$250,000 or imprisonment up to 5
11 years, or both.

12 The sources of information into which this investigation
13 will inquire are many and varied. Since the date of the casualty
14 the Coast Guard has conducted substantial evidence collection
15 activities, and some of that previously collected evidence will
16 be considered during these proceedings. The Coast Guard has
17 compiled a list of 62 exhibits of various types, and a list of
18 the exhibits, along with the title and type of exhibit, will be
19 posted publicly after being compiled at the conclusion of this
20 hearing.

21 Should any person have or believe that he or she has
22 information not brought forth but which might be of direct
23 significance, that person is urged to bring that information to

1 my attention by e-mailing accidentinfo@uscg.mil. During the
2 hearing you may also e-mail the investigation directly at
3 MARYBII.uscg@gmail.com. And this e-mail address will be
4 monitored continuously for any comments during the hearing. The
5 hearing will also be live-streamed on livestream.com/uscg
6 investigations for that stream.

7 The members of the Coast Guard investigation--members of the
8 Coast Guard investigation team will now take the oath. The
9 recorder, Lieutenant Woods, has previously been sworn in.

10 **LT WOODS (REC):** Do you--state your names [board members did as
11 directed] swear that you will faithfully perform all the duties
12 incumbent upon you as a member of this formal investigation and
13 that you will examine and inquire into the matter now before you
14 without partiality, so help you God?

15 [All board members affirmed.]

16 **LIO:** This concludes the opening statement. At this time I'd
17 like to ask for everyone present to stand for a moment of silence
18 in respect to those persons who have been lost at sea as a result
19 of this casualty.

20 [Moment of silence was observed.]

21 **LIO:** Thank you. Please be seated.

22 [All did as directed.]

23 **LIO:** We will now call our first witness of the--actually, belay

1 my last. We're going to do an overview presentation. Ladies and
2 gentlemen, the following is an overview of the background factual
3 investigation associated with the loss of the commercial
4 fishing--MARY B II--commercial fishing vessel MARY B II and the
5 vessel's crew at the entrance of the Yaquina Bay Bar in Oregon on
6 the night of January 8th, 2019. Advance the slide.

7 This is a photograph of the fishing vessel MARY B II before
8 it changed ownership. The previous name of the vessel was the
9 BESS CHET. Advance the slide.

10 The vessel--vessel particulars for the fishing vessel MARY B
11 II are above. The official number was 27604, and the vessel was
12 registered in the United States as a commercial fishing vessel,
13 displacement-hulled for nearcoastal fishery. The 23-gross-ton,
14 15-net-ton vessel was built in 1957. The principal dimensions of
15 the vessel were 41 feet, 7 inches in length with a beam or width
16 of 13.4 feet and a depth of 7.1 feet. The draft could vary due
17 to loading up of fuel, catch, water or other variables. The
18 vessel was of wood construction, while the top sides were
19 fiberglass over wood. The vessel was propelled by a single 32-
20 inch five-bladed propellor, and the engine was a single engine of
21 approximately 160 horsepower. The vessel had two fuel tanks,
22 each with a 200-gallon capacity. Next.

23 There were three persons aboard at the time of the accident:

1 the captain or operator and two crew persons. Next.

2 Postmortem toxicology tests were conducted and the results
3 were as follows: Captain Steve Biernacki, alcohol/ethanol 0.033
4 grams per deciliter with no acetone detected. There was
5 methamphetamine--methamphetamine detected at 0.17 milligrams per
6 liter--I'm sorry, amphetamine and methamphetamine at 0.50
7 milligrams per liter. Crew member James Lacey had neither
8 alcohol and ethanol or acetone detected, but cannabinoids were
9 detected. And for crew member Josh Porter, there was neither
10 alcohol and ethanol or acetone detected, nor did the toxi--
11 toxicological examination show any presence of controlled
12 substances--substances or other common pharmaceuticals. Next
13 slide.

14 The weather from the bar condition report was at 8:58 p.m.
15 Pacific Standard Time on January 8th, 2019--indicated that the
16 swells near the Yaquina Bay bar jetty tips were 12 to 14 feet
17 with occasional 16-foot swells, with visibility of 6 nautical
18 miles and winds east-southeast at 10 to 13 knots. The bar was
19 restricted to all recreational and uninspected passenger vessels.
20 Next slide.

21 These vessels pictured on the slide were operating offshore
22 from the entrance of the Yaquina Bay bar and returned to port
23 before the fishing vessel MARY B II, again in transit under the

1 Coast Guard escort. Next slide.

2 This slide contains examples of tools that the Coast Guard
3 uses to warn mariners about the unique conditions of the Yaquina
4 Bay bar. This includes signage, warning signals and other safety
5 information in printed form. Next slide.

6 This slide displays the Coast Guard's vessels and aircraft
7 that participated in the escort and eventual search and rescue
8 activities on the late afternoon and evening of January 8th,
9 2019. They include a 52-foot motor lifeboat called the VICTORY
10 and a 47-foot motor lifeboat with the hull number 47266, and a
11 Coast Guard helicopter designated as the HH65 **Dolphin**. Next
12 slide.

13 This is a portion of the nautical chart 18581 showing the
14 location of the accident, which is circled, and the location of
15 the waterway on an insert--on an inset map of the United States
16 in the lower left-hand corner of the slide. Next slide.

17 A fur--a further look at the portions of nautical chart
18 18581 showing the channel and jetties at Yaquina Bay **Bar** and the
19 approximate positions of the Coast Guard VICTORY and the Coast
20 Guard 47266, as well as its spotter, which is CG Mobile 1,
21 evaluating bar conditions and providing information to the Coast
22 Guard team. Advance the slide.

23 This slide shows the details of the location of the vessel

1 wreckage and photo of the right side--on the right side of the
2 slide showing the cabin and some decking from the vessel on the
3 beach the morning of January 9th, 2019. Next slide.

4 At this time--at this time we're going to make this exhibit,
5 Exhibit Coast Guard 001, available to the media and we're going
6 to put it up on the newsroom. And at this time we're going to
7 take a 5-minute recess. It is 0815, for the record, and we're
8 taking a 5-minute recess. Please be back at 8:20.

9 [The hearing recessed at 8:15 a.m., 13 May 2019.]

10 [The hearing was called to order at 8:20 a.m., 13 May 2019.]

11 **LIO:** It is 8:20 a.m. and we are going back on the record. We'll
12 go ahead and hear from our witness and we'll now hear testimony
13 from Mr. Clint Funderburg, the previous owner of the MARY B II.
14 Mr. Funderburg, please come forward and--to the witness table and
15 Lieutenant Woods will administer your oath and ask you some
16 preliminary questions.

17 **CLINTON R. FUNDERBURG was sworn and testified as follows:**

18 **DIRECT EXAMINATION**

19 **Questions by the recorder:**

20 Q. Please state and spell your full name.

21 A. Clinton Robert Funderburg, C-l-i-n-t-o-n, R-o-b-e-r-t,
22 F-u-n-d-e-r-b-u-r-g.

23 **LIO:** Mr. Funderburg, sorry, I know it's a little, like, awkward,

1 but your mic--I think it's right now set to maybe "push to talk".

2 So for the benefit of everybody else---

3 **WIT:** Okay.

4 **LIO:** Actually could we have somebody set it--help it so that

5 it's just a hot mic. Thank you.

6 Q. Please state your current employment and position.

7 A. Commercial fisherman, owner of fishing vessels.

8 Q. Can you state any education or training related to your
9 profession.

10 A. None.

11 Q. Do you have any professional licenses or certificates related
12 to your profession?

13 A. No.

14 **REC:** At this time Lieutenant Bigay will begin her line of
15 questioning.

16 **LT THERESA BIGAY (AIO):** Good morning, Mr. Funderburg. Thank you
17 for appearing today at this hearing. If you need to take a break
18 at any moment, please let me know. All of my questions are going
19 to be regarding the period of time before the accident unless I
20 specifically state otherwise. In front of you there is a laser
21 pointer in case you need to point at an exhibit to answer a
22 question today. If and when you do that, for the benefit of the
23 public, I would ask you to point at the screen directly behind

1 me. Right now I would like to follow up on some of the questions
2 that Lieutenant Woods asked.

3 **Questions by the assistant investigating officer:**

4 Q. How long have you been fishing in a commercial capacity?

5 A. Thirty-four years.

6 Q. Can you describe your experience operating commercial fishing
7 vessels in terms of how long and what type of fisheries?

8 A. Multiple fisheries all around the Pacific, north and south.

9 I'm from around here, started fishing here around age 12 and I've
10 fished my whole life. Yeah, extensive experience up and down the
11 West Coast and Pacific islands and all the countries around the
12 Pacific Rim.

13 Q. Does one of those fisheries include the Dungeness crab----

14 A. It does.

15 Q. How long have you worked out of the Yaquina Bay area in
16 Newport?

17 A. On and off for the 34 years.

18 Q. And you mentioned earlier you do not have a merchant's
19 mariner credential; is that correct?

20 A. Correct.

21 Q. Is that a requirement for the type of commercial fishing
22 vessel operations that you're involved with?

23 A. No, it is not.

1 Q. Have you ever held any other type of certification in terms
2 of a state license or anything like that?

3 A. No, I have not.

4 Q. You alluded to this, but I will ask you. Do you currently
5 own or operate any fishing vessels?

6 A. Yes, I do.

7 Q. What type of fishery?

8 A. One here is a Dungeness crab fishing vessel and another
9 vessel in San Diego long lining for tuna.

10 Q. The one here, you--you run it out of the Newport area?

11 A. Yes, I do.

12 Q. Mr. Funderburg, I would now like to discuss your association
13 with the MARY B II. The MARY B II, previously called the BESS
14 CHET, was owned by you, correct?

15 A. Correct.

16 Q. How long did you own the vessel for?

17 A. Two years, I believe.

18 Q. Was it purchased for a specific type of fishery?

19 A. Yes, to fish Dungeness crab.

20 Q. That's how it was employed for the duration of your
21 ownership?

22 A. Yes, and previous to my ownership. It has a long history as
23 a crab fishing vessel.

1 Q. All that time out of the Newport area?

2 A. The Oregon coast area, several ports.

3 Q. Did you have a chart plotter on board with an automatic
4 identification system or AIS tied to the plotter?

5 A. No. Chart plotter, yes, no AIS.

6 Q. Just to clarify, eventually you--you sold the vessel. During
7 the sale the vessel did not have a chart plotter that had AIS.

8 A. Correct.

9 Q. Did you have insurance on the vessel, sir?

10 A. Yes.

11 Q. Is that a requirement for the type of fishery that you were
12 doing?

13 A. I believe it is. We always carry it.

14 Q. Do you recall with which company you had the vessel insured?

15 A. Yes, John McKnight's insurance company, local insurance
16 broker.

17 Q. Sir, turning now to your operation of the vessel while under
18 your ownership, about how many times did you cross the Yaquina
19 Bay bar as the operator of the BESS CHET?

20 A. I would have to say probably close to, I don't know, 70, 80
21 times while I owned the vessel.

22 Q. Now, over the period you owned the BESS CHET, do you think
23 the vessel had sufficient power for the challenges of winter bar

1 conditions at the Yaquina Bay entrance bar?

2 A. Yes, under normal conditions for crossing the bar, yes, it
3 was powered accordingly.

4 Q. While operating the vessel under adverse weather conditions,
5 as you approached the jetties, what speed would you want to be
6 making as you're operating?

7 A. That's a hard question to answer. It would depend on the
8 conditions. They vary greatly when you're crossing the bar under
9 adverse conditions.

10 Q. Can you expand on that in terms of that variability?

11 A. When you're coming in under large swell conditions, you're
12 timing the waves and series of sets and so at times you may slack
13 off to almost an idle, 2 knots or something, waiting and jogging
14 around, and then when you have a chance to go, you would go
15 pretty much as fast as you usually can in between those series.
16 And at that point the vessel could do around 7, 7½ knots.

17 Q. Sir, the BESS CHET had concrete ballast. Can you briefly
18 explain why--and how this affects the vessel's stability?

19 A. It's a common practice in the older wood vessels. It puts
20 more weight down low, lowers your center of gravity.

21 Q. And that impacts stability in what way, sir?

22 A. Increases the stability.

23 Q. Along those same lines, can you describe what it was like to

1 operate that vessel in terms of stability and maneuverability of
2 the vessel.

3 A. It was a good sea boat, yeah. It was very stable. So--and
4 it has a long history of crab fishing and fishing fairly
5 aggressively for a vessel of its size, and a good history of
6 coming and going across conditions fit for that vessel. I always
7 felt very secure running the vessel.

8 Q. Thank you, sir. Could you please describe in general terms
9 the type of maintenance that the vessel required to remain
10 operationally ready while you owned it.

11 A. We've always performed all the general maintenance required
12 on machinery and on the vessel itself. We would do annual haul-
13 outs, inspect it for any damage or bad spots or anything in the
14 vessel, repairs needed, you know, new paint, check the shafts and
15 propellor, all that, on an annual basis.

16 Q. The BESS CHET while you owned it, the MARY B II, was a wood
17 hull fishing vessel built in the late 50s. Did you ever
18 experience any leaks?

19 A. At times it could seep a small amount of water, you know, as
20 a wood boat will as they dry up, until they get used and swell up
21 again from the water, but not an excessive amount.

22 Q. You mention not an excessive amount. Can--can you elaborate
23 on the frequency, then, just to paint a picture?

1 A. Wood boats typically leak a small amount, you know. I--I
2 couldn't put it in exact gallons per hour or anything, but
3 there's a small amount in a standard--you know, you have an
4 automatic bilge pump to pump that out as small leakage occurs.

5 Q. And you said that's typical of----

6 A. Yes.

7 Q. ----this type of vessel.

8 A. In my experience, yes.

9 Q. And in your experience what sort of preventive maintenance
10 did you have to undergo to manage these leaks?

11 A. During yearly haul-outs and inspections, you check all the
12 packing that's in between the wood and stuff, make sure it's all
13 in good shape. If any isn't, it's leaking around there
14 excessively, you pull it and repair it and---

15 Q. During those--those haul-outs, did you ever complete an
16 inspection that included the internal components looking
17 specifically for rot or decay?

18 A. Yes.

19 **AIO:** Lieutenant Woods, I would like to display Exhibit--Coast
20 Guard Exhibit 003, specifically page 2 of it.

21 Q. Mr. Funderburg, I'm going to turn your attention to this
22 exhibit. It's a--it's the second page of Yaquina Bay bar safety
23 handout. I'm going to ask you a question about it. I may need

1 to point to it.

2 **AIO:** Is there any possible way we can zoom into--area of the
3 buoy 3.

4 Q. Mr. Funderburg, are you familiar with buoy 3?

5 A. Yes, I am.

6 Q. Do you--were you--would you be able to locate it in this
7 image? Do you need me to point to it with a laser pointer?

8 A. Yeah, I can see it, know where it is.

9 Q. Using your laser pointer, would you mind pointing at the
10 screen right behind me.

11 **REC:** It's the red button on that contraption, sir.

12 **WIT:** Right around there.

13 **AIO:** Absolutely. Thank you, sir.

14 Q. Buoy 3--number 3 was not on station during the 2019 Dungeness
15 crab season. In your opinion, does not having buoy 3 on station
16 affect the safe navigation as a vessel prepares to enter the bar?

17 A. Yes, it is very advantageous to have it on location. It
18 helps you pinpoint your position relative to the bar as you get
19 closer.

20 Q. Is there anything else regarding buoy 3 that you feel is
21 important?

22 A. No.

23 Q. Sir, are you familiar with the shallower water area in front

1 of the Embarcadero in the Newport Harbor?

2 A. Yes, I am.

3 Q. Can you talk about what your concerns would be if you
4 suddenly grounded the vessel in the area of the--that area of
5 Newport Harbor, given the age of the vessel and the wood hull
6 construction.

7 A. It would--you would be concerned and want to inspect for any
8 new excessive leaks or change in the shape of the wood in the
9 hull afterwards, I would think.

10 Q. You say you would want to inspect.

11 A. Yes.

12 Q. Can you elaborate a little bit on that? Would you haul it
13 out or---

14 A. I would probably inspect from in--internally. You can access
15 most of the hull internally and monitor for any water leaks or
16 anything that are happening at that point, and if you seen [sic]
17 anything of that nature, you would haul out, in my opinion and
18 experience.

19 Q. Thank you, sir. Do you think--can you talk about any
20 possible damage to propellers or the rudders that such an
21 incident would cause.

22 A. It would depend on the nature of the grounding. Hard to
23 speculate.

1 Q. I'll follow up by asking could it affect or possibly damage?

2 A. Potentially, yes.

3 **AIO:** Lieutenant Woods, would you please display Coast Guard
4 Exhibit 005, page 1. If we could possibly zoom into that top
5 area. Appreciate that.

6 Q. Mr. Funderburg, there will be testimony that two of the crew
7 called a commercial diver on the accident date to arrange for a
8 dive because the crew said that they had a line, either the
9 propellor or the rudder. While you owned the vessel, did you
10 ever experience a line in the propellor?

11 A. Yes. It's common amongst crab fishing boats.

12 Q. And how did it affect the vessel operation in terms of its
13 maneuverability and propulsion?

14 A. In my experience with it, it did not affect it any. It was a
15 small amount of line. You know, we always cut it out because it
16 can damage other things, of course, as soon as we returned to
17 port----

18 Q. Uh-huh.

19 A. ----but myself, I never had one that disabled the vessel, but
20 it is possible. Depends on the amount of line that you wrap up
21 on the propellor.

22 Q. In your experience, would you attempt to come into Yaquina
23 Bay bar with deterioration--deteriorating bar conditions under

1 either daylight or darkness with a potential line in the running
2 gear?

3 A. Not if I felt it hampered the ability of the vessel in any
4 way.

5 Q. In that situation can you talk about what your concerns would
6 be.

7 A. Maneuverability or loss of speed or loss of propulsion all
8 together.

9 Q. During winter conditions like the MARY B II encountered on
10 the day of the accident, do you give any consideration to keeping
11 the water and fuel tanks full to reduce the effects of sloshing,
12 which is also called free surface effect?

13 A. Yes, we do, anytime we go to sea. In that vessel we, as a
14 general rule, kept the fuel tanks pressed and full at all times,
15 because that's also ballast and increases your stability. In the
16 crab tank we would have lower than half full, which is your more
17 stable position with it if there was very adverse conditions, and
18 not have the tank completely full.

19 Q. Sir, I'm going to ask a question specifically regarding
20 Dungeness crab fishing in your experience. If a vessel such as
21 the MARY B is returning to port on the third day of pulling pots,
22 would the vessel have crab pots on deck or only catch in the
23 holds?

1 A. Yes, only catch on board would be more common at that time of
2 year.

3 Q. Okay. And just for information, what would be the maximum
4 number of crab pots that you put on a vessel such as the MARY B
5 II?

6 A. That vessel with the crab tank and during fishing operations,
7 we would max out at about 40 pots that we were comfortable
8 moving.

9 Q. Does that--would that change if weather forecast included
10 strong winds or---

11 A. Oh, yes. We--we do not--if there's very adverse weather
12 conditions, we do not tend to put pots on deck.

13 Q. On average, how much does a crab pot weight and, if there's a
14 range, would you please elaborate.

15 A. On average, 130 pounds, but as the crab pots get older, some
16 of the metal can deteriorate and they can get down to as low as
17 70 pounds.

18 Q. Sir, we'll--one second.

19 **AIO:** Lieutenant Woods, would you--would you mind zooming out on
20 that exhibit. Thank you.

21 Q. Mr. Funderburg, can you describe the equipment associated
22 with the outriggers on each side of the vessel, and if you need
23 to, use the pointer--you can do that. And how is this equipment

1 used?

2 A. The outriggers that are on the vessel in the picture are not
3 used for crab fishing. They are used in the salmon fisheries and
4 the albacore tuna fisheries. We would not--personally, we never
5 had them on the vessel during crab season. We would take them
6 off to increase the stability of the vessel and create more
7 weight up higher.

8 Q. So for Dungeness crab specifically, the purpose is?

9 A. There's no purpose for Dungeness crab fishing.

10 Q. Sir, Coast Guard witnesses state that one of the outriggers
11 on the MARY B II was deployed as the vessel prepared to cross the
12 bar in 14-to-16-foot seas. Further testimony will indicate that
13 one of the stabilization devices, sometimes called the bird, was
14 out of the water. Is that typical?

15 A. Yes, that's when we normally take them off. It's problematic
16 to run the stability--the birds during crab season because
17 there's lot of pots and gear in the water and it's easy to bow
18 them. So--but it's not uncommon for some guys to attempt to run
19 their stability birds and--you know, during crab season. Some
20 guys do attempt to run them.

21 Q. Okay. And so to be clear, as a vessel is preparing to enter
22 the bar with one outrigger out or deployed, that would be
23 typical.

1 A. Not on my vessels. I--I have seen it before, but personally,
2 we've never operated that way.

3 Q. Can I ask why?

4 A. Like I said, I usually remove the outriggers for Dungeness
5 crab fishing.

6 Q. In your experience, what is the normal best practice on
7 outrigger position during transit into the bar and if that's just
8 not to have them at all?

9 A. Best is not to have them at all or to have them out. You
10 decrease stability when they are up in the rigging. It raises
11 the center of gravity.

12 Q. To clarify, both at the same time, you mean?

13 A. Yes.

14 Q. Sir, I would like now to shift focus to your eventual sale of
15 the BESS CHET. Can you talk about your decision to sell it?

16 A. We had made the decision to upgrade into a larger vessel.

17 Q. When did you list it for sale? Do you remember?

18 A. Last summer. I don't remember the exact date.

19 Q. Sir, who eventually purchased the BESS CHET from you?

20 A. Steve Biernacki approached me and arranged the--for me to
21 sell the vessel to him and his mother.

22 **AIO:** I would now ask Lieutenant Woods to please display Coast
23 Guard Exhibit 002.

1 Q. Mr. Funderburg, this is to--purchase agreement for the sale
2 of that vessel. I'm going to turn your attention to that
3 purchase agreement once we have it up. I'll give you time to
4 review it and we can scroll through it as you need. Just let me
5 know. Can you describe in very general terms how the BESS CHET
6 was sold in terms of what it included.

7 A. It was sold as an operating crab vessel. So it was sold with
8 all the gear included to do that fishery. So--and any gear
9 included the salmon or albacore troll also.

10 Q. So did that include any permits?

11 A. It did.

12 Q. Can you elaborate on that?

13 A. Yes, it included a Dungeness crab permit.

14 Q. I would now like to turn to page 3 of that exhibit. Sir, on
15 page 3 we see that Ms. Mary Anderson was the buyer. Did she
16 mention to you what the vessel would be used for?

17 A. I met with her at one time in San Diego and, yeah, I mean,
18 the conversations I had with her and Steve were that it would be
19 used for fishing Dungeness crab out of Newport. That was their
20 intention as far as I was--as far as I knew.

21 Q. And I think you already said it, but just to be clear, as you
22 understood it, who would be the operator of the vessel?

23 A. Steve Biernacki.

1 Q. Was any work done in terms of repair maintenance before the
2 sale specifically for the sale, in preparation for it?

3 A. Not specifically for the sale, but we were doing routine
4 maintenance. In case the vessel didn't sell we would continue to
5 fish it while it was for sale. So, yes, it was actually in the
6 shipyard at Toledo--at the Port of Toledo when they purchased the
7 vessel.

8 **AIO:** Lieutenant Woods, I would like you to display Coast Guard
9 Exhibit 022, please.

10 Q. Mr. Funderburg, this is the Port of Toledo boatyard invoice.
11 It's dated 17 October 19. It includes two pages. We can scroll.
12 If you need to, just let us know. Turning your attention to that
13 invoice, does that document capture the work that you were doing
14 at that shipyard that you mentioned?

15 A. Yes, it does.

16 Q. Can you briefly and in general terms provide just an overview
17 of what that work entailed.

18 A. Yes, we'd had a catastrophic failure of a generator on board
19 the power plant for electrical, and so we were replacing that
20 with a brand new unit, and everything associated with it we
21 replaced at the time, all piping, through-hulls, keel cooler for
22 it, all that stuff, and then we did routine maintenance while we
23 were to. So we did a small amount of wood work. We'd found a

1 couple things that we wanted addressed. And so we had the local
2 ship--right there address them, and then we returned the vessel
3 to the water.

4 Q. Thank you, sir. Mr. Funderburg, shifting focus now on the
5 time frame of the sale specifically, being a fishing vessel owner
6 and operator in this community, during your interactions with the
7 new vessel operator, Mr. Biernacki, during that time frame of the
8 sale, was there anything that, to you, seemed unusual about his
9 behavior or that stood out to you?

10 A. Noticed some erratic behavior at times, definitely, and I
11 sensed a lack of experience and respect for local West Coast
12 conditions in my talking with him during selling the boat to him.

13 Q. Can you elaborate on that, what you noted as not respect,
14 like you mentioned.

15 A. While we were going through the boat, I could sense he didn't
16 understand the local bars and the crossings, and so it concerned
17 me at the time. So I tried--attempted to talk to him and give
18 him some local experience and knowledge, but he seemed
19 unresponsive to accepting the information.

20 Q. Sir, to that point, from your conversations with Mr.
21 Biernacki, do you know how long he had been in the Newport area?

22 A. Very recently. It seemed to me he had probably never fished
23 out of Newport or maybe come and gone a very small amount out of

1 this area.

2 Q. Can you talk about what you told the new operator about the
3 vessel's characteristics and handling.

4 A. I don't know that we went over anything specific. You know,
5 I explained to him how I normally fished the boat and in what
6 manner--what things I did to increase the stability or manage the
7 stability of the vessel as far as keeping the fuel tanks full and
8 not filling the tank in very, very rough conditions and stuff.
9 So just the normal showing him the boat and my experiences with
10 the boat and how we handled the operation of it.

11 Q. Did you take Mr. Biernacki on a test ride on the vessel or
12 demonstrate the operational capabilities in that way?

13 A. I personally did not. My nephew was running the vessel at
14 the time for me. He had been captaining it for about a year.
15 And so he took Mr. Biernacki on a test drive down the river,
16 helped deliver the boat back to Newport and show him all the
17 operating systems.

18 Q. When you say down the river, is that---

19 A. From Toledo to Newport.

20 Q. Not offshore, then.

21 A. No, they did not go to sea.

22 Q. During your conversations about the capabilities of the
23 vessel, did you discuss entrance to the Yaquina Bay bar?

1 A. I attempted to, and that's some of the stuff that he was--he
2 wasn't that interested in talking about it, put it that way.

3 Q. Can you elaborate on how so? What made you feel like he
4 wasn't interested?

5 A. He basically just told me he knows what he's doing and he
6 wasn't--you know, he wasn't receptive to input or talking about.
7 He just over and over assured me he knows what he's doing and
8 he's very experienced.

9 Q. In the interest of not making assumptions, did he ask you
10 questions about how to operate the vessel in and out of the----

11 A. No, he did not.

12 Q. Sir, my final topic--and I appreciate your patience--were you
13 operating your vessel on January 8th of 2019?

14 A. I was not. I had a captain that works for me on the vessel
15 that particular day.

16 Q. On the vessel that you own.

17 A. The one I currently own, yes.

18 Q. Sir, what size, age and horsepower is that vessel?

19 A. My new vessel? It is--was constructed in 1997. It is a 54-
20 foot steel vessel.

21 Q. Can you--so you weren't operating that vessel.

22 A. No, I----

23 Q. But----

1 A. ----was not.

2 Q. ----do you recall when that vessel departed port that day?

3 A. My vessel?

4 Q. Uh-huh.

5 A. My vessel had already been at sea on that particular day and
6 had come in to offload and escape the weather. We knew there was
7 very adverse conditions coming that were going to come up fast
8 and be very rough. So we had come in to port to seek shelter.

9 Q. Do you remember around what time you came into port?

10 A. I believe it was early afternoon. We were actually towed in
11 by the Coast Guard. We had a steering failure that--just
12 offshore in the crab fishing grounds, and we elected to be towed
13 in because we were concerned about the weather coming up and
14 coming up fast and the conditions the bar would be in.

15 Q. Uh-huh. You mentioned the weather. How do you typically
16 check for the--to understand those parameters?

17 A. We follow several weather apps on our phones and we also have
18 the weather that's on the VHF and on the internet. We--we obtain
19 weather from pretty much as many sources as we can to get the
20 best idea of what the conditions are going to be that time of
21 year.

22 Q. If you recall, what did you understand the conditions to be
23 later that night?

1 A. They were going to be extremely adverse. Pretty much, as far
2 as I know, the majority if not all of the fleet was coming to
3 town to seek shelter on that particular day.

4 Q. As a vessel operator and owner, how often do you rely on
5 weather forecasts?

6 A. Constantly.

7 Q. Do you trust them and, and with that, I mean in your
8 experience how reliable are weather forecasts in this area?

9 A. As a general rule, they're very reliable that time of year,
10 and we try to put our trust in them, but we also err on the side
11 of caution.

12 Q. Sir, thinking back on the MARY B II now or the BESS CHET
13 while you owned it, would you have ever crossed the bar as the
14 operator of that vessel and under similar nighttime conditions--
15 crossing conditions as was experienced that night?

16 A. I was not there at the time, do not know the exact
17 conditions. I know I would not have been at sea that particular
18 day on that vessel to be in that position myself during the time
19 period I owned that vessel.

20 Q. You mean on that vessel specifically?

21 A. Yes.

22 Q. Why is that?

23 A. The size of the vessel and--and like I said, for the most

1 part, any vessel--our vessel is much larger and a better
2 seakeeping vessel that we have now just due to its size and
3 design, and we had come in because of the weather coming. During
4 crab season we--like I said, we try to err on the side of safety
5 with the weather. So the Yaquina Bay bar can be very dangerous.

6 Q. Understood. Thank you, sir. Have you ever--in--in keeping
7 with the theme of the weather conditions, have you ever requested
8 a bar report from the Coast Guard?

9 A. Yes.

10 Q. Can you talk a little bit about that?

11 A. It's not uncommon for many people that fish out of here to
12 request bar reports from the Coast Guard during that time of the
13 year. The Coast Guard was extremely proactive in the Dungeness
14 crab fishery early on and the safety of the local fishermen. So
15 we tend to work very closely with them during that time of year.
16 So it's, like I said, not uncommon to call for bar reports or
17 even seek an escort during extreme conditions if you get stuck in
18 a bad spot.

19 Q. Have you ever received a Coast Guard escort?

20 A. Yes.

21 Q. Can you talk about that a little bit?

22 A. Yeah, we've had them come out in conditions where we were
23 concerned--and usually the Coast Guard is more proactive and

1 concerned than we are and they usually volunteer an escort during
2 those conditions. And it can be several scenarios, but what's
3 common is they'll have a vessel waiting just inside of you and
4 another one escorting alongside or just behind you, helping call
5 the conditions and guide you in safely.

6 Q. As an experienced vessel operator in this port, do you have
7 any ideas on improving the safety of crossings at the Yaquina Bay
8 bar?

9 A. No.

10 Q. In your opinion, sir, is there ever a time when the Coast
11 Guard's closing of the Yaquina Bay bar should apply to all
12 vessels going out or in, including commercial vessels?

13 A. It's not my decision to make.

14 Q. Do you----

15 A. I mean, there's times I choose not to cross it. We make our
16 own decisions.

17 Q. Do you have an opinion on it?

18 A. No, not really.

19 Q. Mr. Funderburg, is there anything that you would like to tell
20 us that I might not have asked you about this tragedy or about
21 how to prevent similar accidents from happening in the future?

22 A. Nothing I can think of.

23 **AIO:** Mr. Funderburg, thank you so much for your testimony today.

1 I have no further questions. Commander Denny?

2 **LIO:** Thank you. Let me ask the members of the panel if they
3 have additional questions. Ms. Foster?

4 **LCDR MICHELLE FOSTER (TA):** Good morning, sir. Good morning,
5 sir. Can you hear me?

6 **WIT:** Yes.

7 **TA:** Technical difficulties.

8 **Questions by the technical advisor:**

9 Q. Sir, I have two follow-up questions. The first is relating
10 directly to something you had stated earlier. You said that the
11 BESS CHET, when you owned it, did not have AIS. Do any of your
12 other vessels that you currently own have AIS?

13 A. Yes, one does.

14 Q. The one operating down south or the one operating here in----

15 A. The one operating down south.

16 Q. Is there a reason for that?

17 A. Yes, we're in heavy, heavy ship traffic in the ports we go in
18 and out of with that vessel.

19 Q. Is that primarily the reason it's not used here or you
20 haven't used it here?

21 A. Yes. We're not required to use it here, and there's not a
22 lot of ship traffic or anything. It's mostly commercial fishing
23 vessel traffic.

1 Q. Thank you, sir. And one last question. You talked quite a
2 bit about the conditions that night, and you had made allusion to
3 the vessel, BESS CHET when you owned it, could handle normal
4 conditions and you said it was a really good sea vessel for the
5 conditions that it could handle. What max wind or sea state
6 would you be comfortable taking the BESS CHET out in?

7 A. You know, sea states can change a lot by currents and
8 different things, but as a general rule if it was blowing more
9 than 25 and more than a 10-foot sea, we would probably not go
10 fishing with that vessel. You know, it's just the size of the
11 vessel. It was a very stable, good seagoing boat--vessel, but
12 all boats have their limitations.

13 **TA:** Thank you, sir. No further questions, ma'am.

14 **LIO:** Thank you. I do have a few questions for you.

15 **Questions by the lead investigating officer:**

16 Q. You mentioned in your testimony about the BESS CHET and when
17 it was at Port of Toledo that there were some--some issues you
18 wanted to address.

19 A. Yes.

20 Q. And that you had those addressed. Could you expound those a
21 little bit?

22 A. We had damaged a--a rub rail, which is a sacrificial piece of
23 wood on the side of the boat that's used for bumping into docks

1 or pilings. It protects the wood of the vessel. And we had had
2 some damage to a rear section of that, about 6 foot of it, I
3 believe, somewhere around there, and so we had the shipyard
4 replace that and we had them just inspect the vessel for any
5 other bad spots they might find at the time.

6 Q. Was there a generator replacement, if I'm not mistaken----

7 A. Yes, there was. Yes.

8 Q. And can you explain why that generator was replaced?

9 A. It had had a mechanical failure, catastrophic mechanical
10 failure to it. So we elected to replace the whole generator and
11 all the associated stuff with it at the time.

12 Q. Was it a replacement in kind as in to make sure that there
13 was no added weight? Was it the same model?

14 A. Yes. Yes. Very similar. Maybe not the exact same model but
15 a very similar size and power of generator and weight.

16 Q. So after the generator replacement, which happened in
17 2018----

18 A. Uh-huh.

19 Q. ----you--you believe that the weight of the vessel and the
20 configuration of the vessel--so it wouldn't have changed its
21 center of gravity.

22 A. No, not--not--yeah, I don't believe anything we did would
23 have changed any--any amount of the ballast or stability of the

1 vessel.

2 Q. Okay, thank you. When the test ride happened with your
3 nephew, do you recall about what time of year that was, what
4 month?

5 A. It would have been late October or early November. I'm not
6 sure of the specific date at this time.

7 So jumping topics a little, but I held my questions to the end--
8 the date that your vessel was towed in, meaning January 8th, do
9 you remember about what time that was during the day?

10 A. It was midday that we were towed in, because we were
11 concerned on getting in before the tide changes and the weather
12 was to come up. So I---

13 Q. Like noon-ish or----

14 A. Yeah.

15 Q. ----2:00 or---

16 A. Yeah. Yeah, I believe it was around noon or 1:00, somewhere
17 right in that area.

18 Q. So as the owner of that vessel and not being on board, what
19 did communications look like with--like with you and your vessel
20 operator?

21 A. The captain called me, told me what was happening, that we
22 had lost steering, and we had merely blown a steering line. And
23 he attempted to repair it quick once. He made some headway. It

1 was failing again, and so we did not trust to attempt to cross
2 the bar with steering that could potentially have a failure
3 during the bar crossing. So we decided that our best course of
4 action would be just to call the Coast Guard and receive a tow
5 in.

6 Q. So you were actively engaged--even though you weren't on the
7 vessel, you were actively engaged in making that decision to have
8 the Coast Guard engage and do----

9 A. Yes.

10 **LIO:** Does any other--go ahead, Mr. Woods.

11 **Questions by the recorder:**

12 Q. Mr. Funderburg, if you were being escorted across the Yaquina
13 Bay bar by Coast Guard vessels and you had an obstruction in the
14 propellor or rudder, is that something you would want those Coast
15 Guard boats to know about?

16 A. Most definitely.

17 **REC:** No further questions.

18 **LIO:** Mr. Funderburg, thank you for your testimony and for
19 answering these questions. Just a second.

20 We have one more piece and it's--Mr. Reilly, do you have any
21 questions for the witness?

22 **PIIC:** I do. Can you hear me?

23 **LIO:** Oh, that's the--that's the other mic. Hold on.

1 **PIIC:** Can you hear me? All right.

2 //

3 **CROSS-EXAMINATION**

4 **Questions by the party-in-interest counsel:**

5 Q. Thanks for being here, sir. You specifically mentioned a--
6 some limitations based on your experience with BESS CHET with 25-
7 knot winds, 10-foot seas as sort of the outer limit of how you'd
8 cross the bar as far as weather conditions.

9 A. And that's--that's a hard call. Like I said, currents and a
10 lot of things can--there's a lot that affects the actual sea
11 state condition, but as a general rule, if we were watching the
12 weather and it looked like it was going to be 10 foot or bigger
13 and 25 knots or more, we would probably not go out. We would
14 maybe go look at it and take a look at things, but that was
15 towards the upper end of our operating conditions.

16 Q. Do you remember specifically mentioning those--those numbers
17 to either Mr. Biernacki or Mrs. Anderson?

18 A. No.

19 Q. With respect to the Coast Guard Exhibit 3, which is the
20 safety pamphlet that was displayed early in your testimony, have
21 you ever seen that document before?

22 A. Yes, I have.

23 Q. And where--where would you have seen that?

1 **LIO:** Can you pull that up, please.

2 **WIT:** It's passed around and it's hanging at, say, the boat
3 launches and around the harbor and it's posted in places.

4 Q. With respect to the hull of the BESS CHET, besides the
5 propellor shaft, what other through-hull openings were there on
6 that hull?

7 A. There was a through-hull to feed the crab circulation pump, a
8 2-inch line to circulate water to keep the crab alive and--and
9 then there was--the main engine was raw water-cooled. So there
10 would be a through-hull to cool the main engine, which was also
11 used as a deck hose. As far as I can remember that would be the
12 two through-hulls.

13 Q. When you're in the engine room would you have an ability to
14 visually inspect those--those potential openings or the
15 connection to the mouth?

16 A. Yes. Yes, they were easily accessible and had emergency
17 valves to close them.

18 Q. What about with the propellor shaft? Was--was there--there a
19 space from which you could visually see the seal--the condition
20 of the seals from inside?

21 A. No, you could not while the crab insert tank is in the
22 vessel.

23 Q. You had mentioned some experience or some knowledge of the

1 type of problems a line the screws could cause. Could aligning
2 the screws cause damage to a--the propellor shaft or the seals?

3 A. Potentially, yes, if there was a large amount or it locked up
4 the shaft.

5 Q. It could get down in there and--and cause some problems with
6 the seals?

7 A. Yes.

8 Q. With respect to the pilothouse, was the helm located midship?

9 A. No, the helm was forward and to the starboard side of the
10 wheelhouse.

11 Q. So it's on the starboard side. There's a--there's a door in
12 the aft part of the--the superstructure. Is that far to the
13 starboard side?

14 A. Yes. It's on the starboard side of the house, which is
15 common for crab fishing vessels.

16 Q. Because the person at the wheel has got to be able to look
17 out to see what's going on on deck?

18 A. Correct, yes.

19 Q. Was it a traditional wheel helm or was it a stick?

20 A. There was either/or. There was a--a jog lever or a
21 traditional wheel.

22 Q. The operator could select either one?

23 A. Correct.

1 Q. Is there an autopilot function?

2 A. Yes.

3 Q. If the autopilot was engaged and the operator was manually
4 operating the steering wheel, the--the helm, how would that
5 impact the autopilot?

6 A. At that point the autopilot is usually in standby mode and
7 then you can use your helm--your wheel helm.

8 Q. Does the autopilot operate in the background if the operator
9 is actively providing commands to the helm?

10 A. No, not if you're using the manual helm. It overrides
11 anything for the autopilot.

12 Q. Okay, it kind of turns off, waits to be activated again?

13 A. Yeah, it's in standby mode.

14 Q. Was the charting computer--was that on the port side of the
15 pilothouse?

16 A. Yes, it was, when I sold the vessel. I'm not sure of the
17 configuration after that.

18 Q. Understand. That was something that you had installed and
19 that's the position that you had put it in.

20 A. Yes.

21 Q. What type of radios were on board the vessel when you sold
22 it?

23 A. VHF and the aft deck hailer and stuff.

1 Q. Where's the VHF radio located with respect to the helm
2 position?

3 A. Within easy access to it, within hand--arm's reach.

4 Q. Was it in the ceiling or on----

5 A. It was on the ceiling.

6 Q. ----the console?

7 A. Ceiling.

8 Q. Left hand, right hand?

9 A. Left hand.

10 **PIIC:** Thank you, Commander. Thank you, sir. Appreciate your
11 time.

12 **LIO:** Thank you. We do have some follow-up questions.
13 Lieutenant Bigay?

14 **AIO:** Yes.

15 **REDIRECT EXAMINATION**

16 **Questions by the assistant investigating officer:**

17 Q. Mr. Funderburg, you just mentioned that you did not mention
18 the limitations of the vessel in terms of the sea capabilities to
19 Mr. Biernacki when you sold it. Given your previous testimony, I
20 just want to clarify and ask you, did you attempt to?

21 A. Yes, like I stated, I attempted to talk to him about local
22 conditions and stuff, because I was concerned about it after
23 talking to him a little bit during the sale of the boat, that he

1 may not have the knowledge or respect of the Yaquina Bay bar, but
2 as I'd stated, he was not very receptive or interested in having
3 those conversations. He just assured me he knew what he was
4 doing and had many years of experience.

5 **AIO:** Thank you.

6 **LIO:** I have two more questions.

7 **Questions by the investigating officer:**

8 Q. On January 8th, 2019, if the vessel you owned had no problems
9 with steering and you hadn't had to be towed out--towed back in,
10 what was your--or your--and your operator's plan with respect to
11 timing of coming back in?

12 A. We'd intended to be in on that midday tide. I believe
13 there's--I don't remember exactly, but there was a tide midday
14 that day and we had intended to be inside by that tide, before
15 the evening tide when the weather was supposed to come up.

16 Q. Okay, so that was a purposeful decision----

17 A. Yes.

18 Q. ----on timing?

19 A. Yes. We were concerned about the conditions coming that
20 evening.

21 Q. Do you know if, after the purchase of the BESS CHET and its
22 conversion to the MARY B II, if AIS was installed?

23 A. I--yeah, I have no knowledge of that.

1 Q. Do you recall if Captain Biernacki mentioned that--any plans
2 to install AIS?

3 A. Not that I can remember.

4 **LIO:** Thank you. Mr. Reilly?

5 **RECROSS-EXAMINATION**

6 **Questions by the party-in-interest counsel:**

7 Q. While you're up here, since you're so experienced and you'd
8 mentioned the--the impact of the current conditions on the
9 decision to--to enter, can you explain sort of generally--and
10 then there may be some follow-ups--what are the preferable
11 current conditions if you're on the outside and you're trying to
12 time an entrance into Yaquina Bay?

13 A. A slack tide is preferable to any tidal movement.

14 Q. What's the window on either side of slack or the--you want to
15 start at the beginning of slack or just before slack?

16 A. Yes, early on so you have time to adjust, if necessary.

17 Yeah.

18 Q. Between flood and ebb, is there a preference?

19 A. Between those two, yeah. Flood if you have to. Ebb is your
20 worst conditions.

21 Q. So when you were considering, with your vessel out there on
22 the morning of January 8th having some steering issues, you were
23 probably thinking about the particular current conditions and

1 what was going to be the optimal return?

2 A. Correct.

3 Q. So the--ultimately when the vessel was towed across, it was
4 probably somewhere around slack?

5 A. I--I'm not sure of that, what the conditions were when they
6 towed across, because our timing had changed due to the steering
7 malfunction that we'd experienced.

8 Q. Was it already on its way in at the time of the steering
9 malfunction?

10 A. Yes.

11 Q. It had already left the grounds and had concluded fishing?

12 A. Yes, they were transiting--the plan had been to come in on
13 that tide.

14 **PIIC:** Thank you, sir. Thank you, Commander. That's all I have.

15 **LIO:** Okay, thank you, Mr. Funderburg, for your testimony. You
16 are now released as a witness at this formal hearing. Thank you
17 for your testimony and cooperation. If I later determine that
18 this board needs additional information from you, I will contact
19 you through your counsel, if you get one, or will reach out
20 through Lieutenant Woods, who is investigation recorder. If you
21 have any questions about this investigation, you may contact
22 Lieutenant Woods. Thank you.

23 We'll go ahead and take a 5-minute recess. The time is

Under 46 U.S. Code§6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 9:17. Five-minute recess. We'll start back at 9:22.

2 [The hearing recessed at 9:18 a.m., 13 May 2019.]

U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
held in Newport, Oregon
on 13 May 2019

WITNESS: ROBERT SCHONES

[The hearing was called to order at 9:25 a.m., 13 May 2019.]

LIO: Okay, ladies and gentlemen, we'll go ahead and reconvene.
It's 9:24 a.m. And we'll now hear testimony from our next
witness, who is Mr. Robert Schones, a marine surveyor. Mr.
Schones, will you please come forward to the witness table and
Lieutenant Woods will administer your oath and ask you some
preliminary questions.

ROBERT SCHONES was sworn and testified as follows:

WIT: Good morning

LIO: Good morning, Mr. Schones.

DIRECT EXAMINATION

Questions by the recorder:

Q. Sir, please state and then spell your full name.

A. Robert Schones, S-c-h-o-n-e-s.

Q. Please state your current employment and position.

A. I am a local marine surveyor in the Newport area here.

Q. Please state any education or training related to your
profession.

A. I'll go with a background history. I basically grew up in a

1 fishing family, started fishing when I was 8 years old, bought my
2 first commercial fishing vessel in my early 20s, fished out of
3 the Newport area here for 20-plus years in the local fisheries,
4 up and down the West Coast, in and out of most all the ports on
5 the coast, with the exception of just a couple. I had an
6 extensive experience in crossing the Yaquina Bay bar. I think I
7 said I fished out of here for 20-plus years. Educational
8 background as far as certifications, no. I sold my last
9 commercial fishing vessel in 2000 and was approached by Mr. Tom
10 Curry, who was the local surveyor at the time. I was his
11 associate for 5 years, and approximately 5 years ago I took over
12 his business.

13 Q. And please state if you have any professional licenses or
14 certificates related to your profession.

15 A. No, I don't. I am not NAMS or SAMS accredited.

16 **REC:** At this time I will begin my primary line of questioning.
17 Mr. Schones, all my questions are related to the time frame prior
18 to the loss of the crew and fishing vessel MARY B II. If you'd
19 like to take a break, please us know. We will explore these
20 broad topic areas: general duties of a marine surveyor,
21 interaction with the MARY B II or the vessel crew before the
22 accident date, interaction with the vessel on--MARY B II post-
23 accident.

1 Q. Mr. Schones, just for the record, when you were talking just
2 now about your--the 20-plus years of fishing, was that--was that
3 primarily commercial fishing?

4 A. Yes, absolutely.

5 Q. Mr. Schones, can you tell us about the work you did involving
6 the fishing vessel MARY B II or BESS CHET prior to January 8th,
7 2019.

8 A. As a--as a surveyor, one of the things you're tasked to do is
9 the insurance company--if the vessel has hull and machinery
10 insurance--in the case of the MARY B II, as Mr. Funderburg
11 touched on, they had an equipment failure. That equipment
12 failure is covered by insurance assuming it's not caused by
13 normal wear and tear. In this case, they had the generator
14 failure. Engine lost oil pressure, seized up, and this basically
15 happened when they were taking the boat to the Toledo boatyard to
16 be hauled out. So I--I--I attended the vessel. It was indeed a
17 covered claim. We took the old generator out. We replaced it
18 with a brand new one of like kind, the only difference being--is
19 the tiers of pollution standards--as the older engine was a tier-
20 2, by law you have to upgrade to a tier-3. There's no difference
21 in size, very little difference in weight, maybe only--maybe even
22 less with newer alloys and stuff. I--I think the question that
23 you guys were touch--trying to touch on was was it affecting

1 stability and stuff. No, in my opinion, none. The engine was
2 removed. It was reinstalled. The new engine was purchased,
3 installed by Toledo boatyard. It's my job as a marine surveyor
4 to see that the vessel owner is made whole again, no better, no
5 worse, with like-kind equipment and that it's properly installed.
6 And I'm not an adjustor by any means. It's my job to oversee the
7 project.

8 Q. Mr. Schones, do you remember the date of this?

9 A. I do have my report on that claim. That loss took place on--
10 the initial failure took place on August 25th, and I attended the
11 vessel on August 30th, once again on September 14th after
12 installation and several times in between. I'm in and out of the
13 boatyard quite a bit. I always check, you know, the progress of
14 repairs.

15 Q. So the work of that project concluded on September 14th?

16 A. That I don't have the date on. I submitted--I usually don't
17 submit my reports to the insurance underwriters until after all
18 the invoices and stuff are in so I can put together a complete
19 package. That took place on 11/9. I don't--8/30 to 9/14, 2
20 weeks--I would say it was awfully close at that point. I mean,
21 of course they've got to purchase the generator. It's got to be
22 shipped. The shipyard--the boatyard has got to install it.
23 There was some other things that had to be installed at the same

1 time. This newer generator required a larger keel cooler, which
2 was ordered, paid for, installed by the shipyard. I do have
3 pictures of the vessel out of the water at that time. To answer
4 your question, I would say, yes, on or about September 15th is--
5 it could vary either way a few days. I'm not--I'm not sure. The
6 best indicator of that might be the invoice--the shipyard
7 invoice, when that was billed. That was billed on October 7th.
8 So that's quite a bit later. I don't have the date when the
9 actual installation was completed.

10 Q. Understood, sir. Just to talk a little bit more about the
11 general duties as a marine surveyor, would you say that the scope
12 of your work is limited to the effected equipment?

13 A. Yes. Well--yes. Yes, you--I mean, they had a generator
14 failure. You're--it can not only be the effected equipment but
15 what needs to be removed to physically make access--install, take
16 out the old generator and--and replace it, and in this case these
17 generators were relatively very small. It came right out through
18 the hatch without any major removal of other vessel components.

19 Q. And, sir, what was your overall opinion of the vessel's
20 condition?

21 A. I hadn't been involved with this vessel before. I had seen
22 it from a distance, never been aboard it. The--the vessel--I was
23 actually impressed with--with the vessel. I mean, it was in much

1 better shape than I had--what do I want to say--viewing the
2 vessel from a distance and I've seen it over a number of years,
3 it wasn't really a cosmetically pleasing vessel. So you would
4 think that, you know, it's a backyard-built type of builder or
5 something like that, but once I got aboard it, I was actually
6 impressed. I didn't go through the whole vessel. It was mostly
7 limited to the engine spaces, but I did notice the cabin and the
8 interior and they were quite nice. I mean, the vessel was nicely
9 maintained, although like I said, I did not do a survey on it and
10 I did not do a complete vessel inspection.

11 Q. How does a marine insurance company make sure that a vessel
12 is insurable?

13 A. Well, that's the other flip side of your duties. Every 3 to
14 5 years they'll request a survey and potentially even an out-of-
15 the-water survey. So as a surveyor, you--you attend the vessel.
16 You look at the overall condition. You're looking at the hull.
17 In the case of a wooden vessel, you're looking at--for rot and
18 decay, when was the vessel last refastened. You get into
19 listing the equipment, electronics, steering, all the different
20 components of the vessel, the overall condition of the vessel,
21 the wiring and the plumbing, the through-hulls. As a marine
22 surveyor, you're basically the go-between between the vessel
23 owner and underwriters to--they're asking your opinion, is this

1 vessel a good risk. We will point out any deficiencies that pop
2 up. Emphasis, of course, is on safety. Not only do we look at
3 what the Coast Guard looks at for their dockside inspection, we
4 look further than that. If--is the vessel functioning properly
5 and in an emergency situation is everything in place. Most
6 vessel owners go over and above what--minimum Coast Guard
7 requirements in the way of fire extinguishers. They'll have
8 excess on board--you know, more than is there. Personal recovery
9 devices--you can't have enough safety items, if that makes sense.

10 Q. Mr. Schones, I'm now going to display Coast Guard Exhibit
11 005, marine surveyor report for the BESS CHET, report of survey
12 2016. Mr. Schones, we're displaying Coast Guard Exhibit 005, and
13 I might add that you did not conduct this survey and we're using
14 this to illustrate a survey report. Is this similar to the
15 reports you fill out as part of your surveys?

16 A. Similar, yes, basically covering all the same components.
17 This survey was done by Al Gnann [ph], Associated Marine
18 Surveyors. He's a highly respected surveyor on the Oregon coast
19 here. He is now in his--probably approaching 80 years old. He
20 is retired. He has been doing surveys for a number of years that
21 are accepted by all the major underwriters, and he's very, very
22 good.

23 Q. There was some previous testimony about the vessel needing

1 caulking as it is wood construction and some caulking may have
2 been done. Were you aware of that caulking?

3 A. I was not, and as Clint stated, wooden boats--just the nature
4 of how they're built, they work in sea conditions, they're
5 caulked with--a lot of them with caulking stuff and they will
6 develop seeps. Of course in summertime weather they'll dry out.
7 When the first rains come, they decks will leak. They'll swell
8 up. Everything will tighten back up. It's not unusual at all
9 to--that's just regular routine maintenance.

10 Q. At any point did you ever inter--interact with Mr. Biernacki
11 or either of the crew members in such a way as to be able to
12 comment on Mr. Biernacki's experience with bar conditions in
13 Yaquina Bay or similar bars on the Oregon coast?

14 A. No, I didn't know Stephen or the other two crew members
15 personally. I--I had no interactions with them.

16 Q. It appears that the MARY B II had a 32-inch five-bladed
17 propellor and a horsepower of about 160. Is that typical for a
18 vessel similar to the MARY B II operating around the offshore
19 waters here in the Newport area?

20 A. Give me just a minute. Yeah, I--for that size of vessel,
21 that would be pretty typical. It wasn't underpowered by any
22 means.

23 Q. Mr. Schones, would you like to make any comments on your--on

1 your visits to the vessel that we may not have asked about?

2 A. Before or after the casualty?

3 Q. Before, sir.

4 A. Well, the--you know, like I said, I wasn't there in a
5 capacity to totally survey the vessel and inspect it, but like I
6 said before, the vessel appeared to be in very good overall
7 condition, you know, just glancing at it. I didn't see any
8 deficiencies. Looking at the out-of-water pictures, the bottom
9 looks tight. I mean, it--there's no reason to suspect hull
10 failure. Of course you can never predict an engine failure,
11 stuff like that. Nothing jumped out at me that was--that I--you
12 know, that would have come [sic] to mind where I would have said
13 to myself, "That needs to be addressed."

14 Q. I'd like to shift your attention to after the accident on the
15 night of January 8th. Please talk about how you learned of the
16 acc--the incident.

17 A. I was actually informed of the incident shortly after
18 daylight hours on the morning of the 9th. I had a very close
19 friend that works with the fire department, and he called me
20 before daylight and said, "Hey, do you realize we have a vessel
21 on the beach?" I said, "No, I haven't been alerted to that."
22 Typically what happens in that kind of situation is the insurance
23 agency will call me and you will be assigned a case. In this

1 case, I was alerted early. I typically just show up to see if
2 there's any assistance you can provide. I've done it on several
3 vessels over the years, just because--to see what you can do to
4 help.

5 Q. When you arrived at the beach, who was picking up the
6 miscellaneous parts of the vessel?

7 A. The Park Service had already--I probably got there by 8:00,
8 8:30 in the morning. By the time I got there, the Park Service
9 was already undertaking a beach cleanup and actually had quite a
10 few personnel on the beach, along with a couple of four-wheel-
11 drive ATVs collecting debris, just doing a beach cleanup. I did
12 drive down to the wreckage. By then the tide was changing.
13 There really wasn't access to it. So the--basically the tide
14 forced us off the beach. The Park Service--I got some pictures.
15 I think I gave them to you. They had already picked up some
16 debris, including the life raft, and had--they had a staging area
17 set up at Nye Beach turnaround. The first day the debris was
18 just stacked on the sidewalk. The second day they had actually
19 obtained 20-foot dumpsters and had put that debris in there. And
20 I have pictures of the debris that they had placed in there. And
21 that stuff was eventually delivered to the landfill.

22 Q. I'd now like to display Coast Guard Exhibit 004, which is a
23 map showing the area to the north entrance of the Yaquina Bay.

1 Mr. Schones, looking at Coast Guard Exhibit 004, which is a chart
2 of the area north of the entrance to Yaquina Bay Harbor, can you
3 use the laser pointer and point to the location you're referring
4 to where the vessel washed up. Please use this monitor to my
5 left.

6 A. The vessel would have washed up just north of the north jetty
7 on the sand spit right there [indicating], but debris was
8 scattered, bin boards, hatch covers--small amount of debris was
9 scattered all the way to Yaquina Head.

10 Q. I'm now going to display Coast Guard Exhibit 059. Did you
11 collect any items for the vessel owner?

12 A. I did. I had talked to Mary Anderson, the mother. She was
13 living in San Diego. She had family members coming from the East
14 Coast, stuff like that. I assume they were flying. I said,
15 "Look, I will try to get you some mementos off the boat." I was
16 able to recover the compass, a clock and a VHF radio. Now, that
17 said, the Park Service returned survival suits. The fire
18 department returned one life jacket, and local Coast Guard gave
19 me the vessel EPIRB, all which I returned to the mother.

20 Q. Were you ever asked to recover any parts of the vessel such
21 as the engine, the propellor, the rudder?

22 A. What you see in the pictures there, it appeared to me the
23 vessel snapped in half, and then the forward half sheared off the

1 deck line. There was no engines, no drive train, no fuel tanks.
2 Basically what you see in that picture right there is what was
3 there, and that deck is attached to--that wheelhouse is attached
4 to the forward deck and that's all that came ashore.

5 Q. Sir, as a marine surveyor, do you have an opinion as to why
6 the pilothouse remained somewhat intact but the hull of the
7 vessel was destroyed?

8 A. The--the forward deck--I can't recall how far it came back--
9 was aluminum-plated. That may have held it together. I don't
10 know if that aluminum deck came back to the aft side of the
11 wheelhouse or not. Clint might be able to expand on that.
12 Personally, given the sea conditions, I didn't expect to find the
13 wheelhouse there the next day. I figured it would break up and
14 be scatted on the beach, and it surprised me that it stayed
15 together as well as it did, being a wooden/fiberglass wheelhouse,
16 you know, subject to breakers twice a day.

17 Q. I'm now going to display Coast Guard Exhibit 040, which is a
18 photo of an emergency position indicating radio beacon, or EPIRB,
19 which was from the MARY B II. Looking at Coast Guard Exhibit
20 040, can you tell if that is the EPIRB you recovered and anything
21 to add about whether this was a new or older piece of gear.

22 A. This is a 406-megahertz EPIRB. It--I can't--I believe it's a
23 category 2, means that it has to be manually deployed. I don't

1 think it was a category 1, which automatically deploys. This is
2 a newer model, and it was in working condition. In fact, when
3 the Coast Guard gave it to me, I took it home, put it on my
4 garage bench, and my wife was having trouble with her battery in
5 her car, and if I hooked up the battery charger on her car, that
6 EPIRB would go off. I manually had to disable it to stop that,
7 and I did not want to return it to the family and her have
8 similar circumstances and not know how to deal with it. So what
9 I did is unscrewed the battery, cut a plastic washer and put in
10 there as an insulator so the battery could not make contact and
11 gave it to her.

12 Q. When you looked at the survival gear, which was the survival
13 suits, the emergency position indicating radio beacon and the
14 life raft, can you speak to the condition and overall quality of
15 that equipment.

16 A. It was--it was industry-standard equipment. I did not take
17 that close a look at the life raft. The emergency suits were
18 either of an Imperial brand or similar. They're industry-
19 standard and they appeared to be--you know, given that they went
20 through a wreckage, to be in serviceable condition. I don't--
21 they were inspected by the Coast Guard afterwards, you know,
22 visually. They weren't, you know, tested for leaks or anything.
23 I would expect that, you know, the survival suits, which I assume

1 were not being--well, which weren't being worn at the time and
2 were probably in bags--I'm not sure--could have been readily
3 accessible, you know, to survive a wreckage like that. I would
4 assume there could be some pinholes and stuff, but all the
5 zippers worked. I actually took them home, dried them out,
6 washed them out before returning them to the owners.

7 Q. Can you speak to the size of the chain and the anchor as to
8 the quality.

9 A. That's interesting because the anchor winch itself, it--it
10 had a--what do I want to say--free spool [ph] valve on it where
11 the anchor could be deployed, meaning that it didn't require
12 hydraulic power. The anchor was deployed. I think it was
13 deployed in the capsizing. The anchor winch and chain were more
14 than adequate for a vessel that size and in very good condition.
15 We actually wanted to save the anchor winch, but--and the chain
16 and stuff, but the tide was getting us during the removal of the
17 wreckage and we weren't able to.

18 Q. Sir, do you think that the anchor could have been deployed on
19 its own due to the capsizing or would it have--would it require
20 to be manually deployed?

21 A. This one had a free spool system on it where it--it more than
22 likely deployed during the capsizing. I can't imagine anybody
23 going up to the bow to operate the anchor winch while crossing

1 the bar. That would be not a good position.

2 Q. I'm now going to display slide two within--excuse me, slide
3 nine. The exposure suits, sometimes called survival suits, were
4 recovered. Do you know if any of the victims were found wearing
5 any of the vessel's exposure suits?

6 A. No, they--I understand they weren't, and typically in a
7 questionable bar crossing situation, they're cumbersome. The
8 Coast Guard, you know, will request that you will put on sur--
9 life jackets, which they did. This particular life jacket here
10 was returned to me by the fire department, and this would be the
11 life jacket that they took off of the captain when they removed
12 him from the vessel the following morning. I understand there--
13 the other two crew members were wearing life jackets. I don't
14 know that for a fact. They were not returned to me, and I don't
15 know their whereabouts.

16 Q. Mr. Schones, we've asked a lot of questions. Is there
17 anything you would like to add that has a direct bearing on this
18 investigation?

19 A. Actually I made--I made some notes from Clint's questioning
20 there. Bar conditions at the time, 12-to-14-foot with occasional
21 16-foot breaks. These are very questionable conditions to be
22 crossing a bar. Personally--and I've had made hundreds of bar
23 crossings--when you get over 10 feet, that's where you start

1 paying attention, and 12-to-14-foot with occasional 16-foot
2 breaks, these are the kind of conditions you want to approach
3 only at high water during daylight hours. Now, said that, the
4 question came up would you cross the bar under these conditions.
5 Well, yes and no. If you're out in the ocean and you have these
6 conditions and there are forecasts to deteriorate, as in maybe
7 you've got 20-knot winds with big swells, maybe it's forecast
8 that gale warnings are coming to 60-80-100-mile-an-hour winds.
9 You're going to do your very best to cross that bar even though
10 there's not optimum conditions.

11 The COMNAV autopilot, that autopilot has a stand--an off
12 setting, a standby setting, an automatic setting. If that
13 autopilot is in the automatic setting, your manual controls are
14 basically not usable. The autopilot will override any manual
15 input except on the autopilot keyboard itself. So it was always
16 a policy on the vessels that I drove, we never came across the
17 bar on autopilot. We always manually steered, because we could
18 correct the course faster than the autopilot could.

19 I'm not 100% sure what approach he made. I was--even though
20 you have an established buoy line in the channel, in my
21 experience crossing this bar, if you have a large westerly swell,
22 you can actually make your approach from the north side of the
23 buoy line, which puts the swell more on your stern instead of

1 quartering it, so you're not--you know, swell passes under and
2 you broach. You have a lot better steering capacity. When this
3 first happened, seeing where the accident happened, I assumed
4 that he came--that he came approaching from the north side. Of
5 course I didn't know whether he was fishing north of town or
6 south of town. He did make an approach from the south, which
7 is--it's the preferred direction to come in. You have the ranges
8 to work with. Under this circumstances here, the Coast Guard
9 policy that I've seen in this section of the coast, anyway,
10 anytime you have questionable conditions, you do not have to
11 request an escort; they are automatically there. They will
12 escort vessels across the bar as a matter of policy. You don't
13 have to request it. The Coast Guard here is first class, very
14 good, and we appreciate--I've crossed that bar a number of
15 times--even though sometimes the Coast Guard is an inconvenience,
16 you're glad they're there.

17 Rope in the wheel. More often than not, crab vessels on
18 this section of the coast get some rope in the wheel. Usually it
19 typically will not disable the vessel. If you get that rope in
20 the wheel tight enough, it could cause the engine to die. It
21 could cause the shaft to snap. I've seen times when the rope is
22 in the wheel so tight that it causes a lot of pull on the shaft
23 itself and you can have a reduction gear failure. I guess that's

1 a judgment call on whether or not you're going to cross the bar
2 with rope in the wheel. If it's a vibration and it's not
3 affecting forward motion of the vessel or your steering, then,
4 yeah. I mean, a local diver here would swim the docks and cut
5 the rope out of the wheel without even asking, throw it on your
6 deck and send you a bill. That was fine. Almost every trip you
7 have rope in the wheel. It's just part of doing business.

8 Ocean conditions. I don't know how long this vessel was at
9 sea, what the ocean conditions were when he left, nor what the
10 forecast was. Seeing that most of the vessels were already
11 returning--and I understand he was getting bait, getting ready to
12 leave--is a bad judgment call, but I--like I said, I don't know
13 how long he was out, if he was only out for a number of hours, if
14 he'd spent a day or so at sea. Those things I don't know.

15 I think you asked me--well, I'll just let you ask.

16 **REC:** Mr. Schones, at this time I have no further questions
17 unless you have something else that you would like to add.

18 **WIT:** Not really. My--my involvement with the MARY B was, you
19 know, very limited. I mean, it wasn't a lot of wreckage. There
20 was no pollution. It was--basically I was tasked with removing
21 the vessel from the beach, you know, for insurance purposes. I
22 also helped the mother get the remaining crab gear that was in
23 the ocean to the beach, facil--you know, facilitated the family

1 in whichever way I could, given the situation, knowing that they
2 were--what had happened and, you know, being from out of town,
3 helped them as much as--as much as I could.

4 **LIO:** At this time would any members of the board have any
5 additional questions?

6 [No response.]

7 **LIO:** I have some additional questions.

8 **WIT:** Uh-huh.

9 **Questions by the lead investigating officer:**

10 Q. You mentioned earlier in your testimony that you collected
11 some items from the vessel.

12 A. Yes.

13 Q. And you mentioned that you took a VHF radio----

14 A. Yes.

15 Q. ----to give to the vessel owner.

16 A. Uh-huh.

17 Q. Why did you choose the VHF radio?

18 A. It was--when I went into the wheelhouse, it was full of sand.

19 It was accessible. It was a small item that, if they had

20 traveled by airplane or something, it would be something that

21 would be something they could put on a shelf or in their living

22 room or something as a memory. There wasn't any real reason

23 other than, you know, the compass was small, the clock was easily

1 accessible, the VH [sic] radio, I just unscrewed it, disconnected
2 the wires. In hindsight, I probably should have not given that
3 to them right away. The Coast Guard actually said they had a
4 forensic team that could have looked at that radio and maybe
5 determined if it was on the correct channel, if it had been on or
6 off at the time of the casualty. The radio, when--and--and there
7 was two VHF's hanging there and it was just the easiest one--it
8 was accessible. The wheelhouse was full of sand. You had to
9 basically crawl into it.

10 Q. Do you recall what the setting was for the volume knob or the
11 power knob? Was it on or off, volume up or down?

12 A. You know, I can't even remember if they had knobs or they
13 were push-button. It was a newer DSC-style VHF with a liquid
14 crystal display screen, which was completely full of water.
15 There was no indication--it was just dead.

16 Q. Okay. So you mentioned that you have quite a bit of
17 commercial fishing vessel experience----

18 A. I do.

19 Q. ----as well. In your operating experience, have you ever
20 crossed the bar--the Yaquina Bay bar in environmental conditions
21 that were similar to the night of January 8th, 2019?

22 A. Absolutely or worse, and of course I'm on a larger vessel, 65
23 to 90 feet.

1 Q. So what are--so what are the things that you're considering
2 when you determine whether to cross that bar or not? What are
3 some of the variables that you consider?

4 A. Well, you will actually approach the bar and stop well off
5 shore and time the periods. Once you make a commitment to go,
6 you try not to stop. You go as fast as possible. You have a
7 person standing at the back door looking out, calling out sets,
8 you know, "Here comes a big one. Hey, this one's going to
9 break." If you get in that situation and you're going to break,
10 your forward momentum actually works against you because you will
11 start to surf on that wave and potentially broach. You will slow
12 the vessel down and sometimes even put it in reverse and stop
13 your forward momentum until that wave or two or three waves pass
14 you, and then you're good to go again. The crab fleet operates
15 in these weather windows. There's always boats coming and going,
16 and typically they will put out the results of their bar
17 crossing, especially if they had problems. They'll say,
18 "Hey..."--they'll tell the rest of the fleet, give them the bar
19 conditions, their actual crossing experiences, you know, the bar
20 was good, the bar was bad, we had no problems, or their opinion
21 of, "Hey, I wouldn't cross that thing, no way." There's times
22 when there's three or four rows of breakers there--20-foot
23 breakers three or four rows deep. It would be absolute suicide

1 to attempt to cross that. You just wait. You know, but like I
2 said before, if you've got deteriorating weather conditions and
3 you're--you know it's going to do nothing but get worse, then now
4 is your best chance. But you want to do that on a flood tide as
5 close to high water as you can, preferably during daylight hours.
6 You don't always have those choices, but that would be optimum.

7 Q. So if you had--in your experience, if you had the experience
8 of having a line in the wheel, you said that you might still
9 cross the bar----

10 A. Yes----

11 Q. ----and that it would depend.

12 A. ----if it's not causing any problems. Typically--well,
13 depending on how much line it is, it could reduce your propellor
14 flow and stuff, but it's--you know that's happening because
15 they're--you know, the boat is just adversely vibrating and, you
16 know, you know that you've got a problem. I mean----

17 Q. So is that something that, in your experience in that
18 situation, that you would communicate if there were Coast Guard
19 assets out?

20 A. I would think that would be relevant, yes, if you were
21 looking at potentially re--restricted or less maneuverability,
22 especially if it was entangled in the rudder, to affect your
23 steering capabilities.

1 Q. So a little bit broader question. What--what other things
2 would you, as an experienced commercial fisherman--what other
3 things would you communicate to Coast Guard assets that were
4 underway and there to escort you?

5 A. Well, you're obviously going to tell them how many people you
6 have on board. It wouldn't be a whole lot of communication
7 there. I mean, you know, obviously if you're under distress or
8 the vessel is under distress of some sort, you would want to
9 communicate that with them. You're going to tell them, like I
10 said, how many people are on board. It's really not a lot to
11 communicate there. I would be more concerned about making
12 preparations for the vessel to cross the bar, tying down anything
13 that's loose, making sure all your hatches are shut, getting rid
14 of any rope or anything, tie up lines and stuff, stuff that could
15 wash overboard, potentially foul your propellor, those kind of
16 things. I would be more interested in preparation versus--you
17 know, making preparations to cross the bar. We never crossed the
18 bar anytime with crew members in their bunks. That was policy
19 aboard our vessels. Everybody is awake. If we have an accident,
20 we don't want somebody getting out of the bunk----

21 Q. So along----

22 A. ----sleepy.

23 Q. ----along those lines----

1 A. Uh-huh.

2 Q. ----what are best practices when crossing the bar with
3 respect to vessel crew and their positions? You mentioned not in
4 the bunk. Where would they be?

5 A. No, I mean, that was just policy aboard--aboard my vessel.
6 Nobody----

7 Q. Right.

8 A. ----is in--sleeping or in a bunk. You are up, awake,
9 dressed. If you're going to cross a bar in adverse conditions,
10 you--you post a lookout. I said out the back door. The skipper-
11 -skipper, you assume, is facing forward. He can't see what's
12 coming. You're swinging--you're broaching from side to side as
13 the waves come under you. You're headed every which direction
14 but straight. So you will post somebody at the back door to call
15 out those sets to you.

16 Q. As a commercial fishing vessel--as a commercial fisherman,
17 did you--did you have your crew stay on deck or were they in the
18 pilothouse?

19 A. No, they were inside. They might--we might have the back
20 door open. There might be a guy standing there. If there was
21 not a window to look out, you could stand at the back door, you
22 know, and then shut it if need be.

23 LIO: Okay, thank you. Ms. Foster?

1 **Questions by the technical advisor:**

2 Q. Good morning, sir.

3 A. Good morning.

4 Q. Follow-on question about the autopilot.

5 A. Uh-huh.

6 Q. For the benefit of the public, some may not be familiar with
7 that piece of equipment. Is it possible to determine by looking
8 at it whether it was in auto or manual?

9 A. That particular autopilot had a rotary switch on it. I
10 wonder--I don't think I've got any pictures of that, but that
11 would be a very good question because that would be something,
12 you know, if wave action didn't move it or debris floating
13 around, it should have been--if he was manually steering, it
14 should have been in the standby mode, which----

15 Q. Sir, you don't happen to recall whether----

16 A. No, but I--I've got--I took a lot of photographs. I was
17 asked if I took photographs of electronics. I don't think I have
18 a picture of that autopilot, but that is a COMNAV 1001. It is a
19 very common pilot used in the industry. I don't believe I have a
20 picture of that, and I did not pay attention to where that rotary
21 switch was placed.

22 **TA:** Thank you, sir.

23 **LIO:** Go ahead, Lieutenant Bigay.

1 **AIO:** Thank you, Commander.

2 **Questions by the assistant investigating officer:**

3 Q. Mr. Schones, in regards to the lookout, you mentioned their
4 position looking out, calling out those waves----

5 A. Uh-huh.

6 Q. ----for the benefit of the operator.

7 A. Uh-huh.

8 Q. Is that happening while you're crossing the bar also in a
9 situation where you're having the Coast Guard escort you?

10 A. Yes. Yes, the--the--you want--the Coast Guard is also
11 talking to you, saying--but they're quite a ways behind you in
12 most cases, a hundred yards, maybe even 200 yards. I'm not sure
13 where they were at in this position. But at nighttime with a
14 limited visibility and stuff, you want somebody standing there
15 looking behind you saying, "This one looks okay. This one is
16 getting bigger," you know, "This one is likely to break," you
17 know, or along that line. You want firsthand information, where
18 the Coast Guard is further behind the vessel. They can give you
19 an update that those waves are coming, but you don't know how
20 they're going to respond when they get into the shallower water,
21 especially around--around the jetties. I don't know what the
22 tide was doing at the time he made his crossing. If it was
23 ebbing, those swells can stand up quite a bit steeper. I'm--I

1 mean, I just assumed you're going to want to make this crossing
2 as close to high water as you can or maybe even a little bit of
3 flood, but not on ebb. That's--that's a--not prudent seamanship.

4 **AIO:** Thank you, sir. Commander, do I have time for one more
5 follow-up?

6 **LIO:** You do. Go ahead.

7 **AIO:** Thank you, ma'am.

8 Q. Mr. Schones, in your opinion, is there ever a time when the
9 Coast Guard's closing of the Yaquina Bay bar should apply to all
10 vessels going out or in, including commercial vessels?

11 A. Yes, I--I've been in that situation. Of course it's on a
12 larger boat. We were in Crescent City, trying to get home,
13 stayed there for probably 10 days trying to get in between
14 storms. We finally left. We had a 26-hour journey. When we got
15 to the bar, the Coast Guard had closed it and rightly so. We
16 crossed the next morning, but we jogged around out there in 100-
17 knot winds and ended up crossing the next morning. There's no
18 way I would have crossed that bar. They didn't have to close it.
19 I had already made the decision I ain't crossing that thing. So,
20 yes, there is times when they close the bar where it needs to be
21 closed, but if they close the bar and the weather deteriorates
22 even further, given the vessel size, which is the worst? Do you
23 attempt to cross the bar and reach safe haven or do you stay out

1 in the ocean for maybe 2, 3 days and take a beating and maybe not
2 survive that? So it's a judgment call. Which is--as the
3 captain, which is the best at the given time, given the
4 circumstances? There is definitely times when the bar needs to
5 close.

6 **AIO:** Thank you, sir.

7 **WIT:** And hopefully it's when everybody's in the harbor.

8 **LIO:** Mr. Schones, I do have one more question.

9 **Questions by the lead investigating officer:**

10 Q. I'd like to circle back to your role in assisting with
11 salvage----

12 A. Uh-huh.

13 Q. ----of the remains of the MARY B II. Were you ever directed
14 to take any action by the vessel owner or a representative of the
15 vessel owner to seek--seek out or--or identify or locate the
16 remains of the wreckage of the MARY B II? Because you mentioned
17 that, you know, no--no engine, no drive train, no fuel tanks were
18 ever found. So were you ever directed to do so?

19 A. No. And I, to this day, don't know where that wreckage
20 settled. I mean, I expect over--expect that over time, that a
21 little bit--you know, as the hull continued to break apart,
22 pieces would continue to come up to shore. Haven't heard of any.
23 The vessel actually appeared to be snapped in half and then

1 sheared off and then a forward part of the deck was sheared off.

2 I don't--I don't know where the rest of the vessel ended up.

3 **LIO:** Thank you. Mr. Reilly?

4 **CROSS-EXAMINATION**

5 **Questions by the party-in-interest counsel:**

6 Q. For clarity's sake, is it fair to say you were hired by the
7 hull insurer, not the vessel owner?

8 A. Yes, the hull--yes, I was--I was--the insurance company.

9 Q. And your instructions were from the hull insurer, not the
10 vessel owner.

11 A. Correct.

12 Q. You used the term "safe haven". And just with respect to
13 what's shown up there, which looks like Coast Guard exhibit 4,
14 maybe you can tell us at what point when a vessel is crossing the
15 bar has it reached safe haven? How far inside the jetties does
16 it have to get before it's out of the hazardous area?

17 A. Well, well before buoy 7, where it turns there, you would be
18 considered safe. I--well, if you were to look at that, the
19 length of the jetties there, you can still be in trouble in a
20 southwesterly swell a third of the way inside the jetties.

21 **LIO:** Mr. Reilly, Mr. Schones, I think that Exhibit--Coast Guard
22 Exhibit 003, page 2, might be helpful as far as what's been
23 defined as like the right areas. Let's go ahead and pull that

1 up, please.

2 Sorry, please continue as we get this up. I apologize for
3 interrupting, but I figured this would be a little bit more
4 helpful.

5 **PIIC:** Yeah, that's helpful.

6 Q. Is the--sort of the safer area visible on this exhibit?

7 A. I would say--I believe that's a B up there. If you could get
8 to that B point in any given sea--sea conditions, you would be
9 safe and maybe even, in my opinion, half that distance between
10 the jetty tips and stuff. If the tide is ebbing hard and stuff,
11 there can be a real washboard effect the first 200 yards inside
12 the buoy, and in southwest sea conditions that's coming straight
13 down the jetties and the jetties aren't giving you any
14 protection, then it would--could be even further, but in my
15 experience, you're pretty safe once you get a couple hundred
16 yards inside.

17 Q. You had testified about staying outside the hazardous zones,
18 sort of observing the sequence of--of swells. In this case there
19 will be some testimony--there's a specific exhibit that has a--
20 sort of a lengthy discussion by the on-scene Coast Guard teams
21 about a sequence--what they called a lull----

22 A. Uh-huh.

23 Q. ----a small set and then a big set. They observed this over

1 a period of time. Is--is that the sort of sequence that--that
2 you would have been observing back when you were operating
3 vessels across the jetty?

4 A. Exactly. You want to----

5 Q. Cross the bar.

6 A. Yes. I mean, typically you're going to have a large series
7 come through and you'll have that lull. You need to know what
8 that lull is, see if you can make it from point A to point B in
9 that time frame. I don't know what the lull was here.

10 Q. That was my follow-up question. Does the--sort of the
11 sequence and the timing vary greatly--I mean, is it--is it
12 specific to that day and that time?

13 A. Yeah, it--not only--yes. I mean, even--even closer than
14 that, but--I mean, typically 14-to-16-foot breaks, there might be
15 a 5-minute lull, a 2-minute lull, maybe a 10-minute lull. So you
16 will approach the bar as close, as safely as possible. And when
17 the series go by, your guy at the back door says that, "Hey, it
18 looks good," you go full throttle. You don't want to spend any
19 more time on that bar than you have to, with the exception of if
20 you missed your timing. Now here comes a big set. You want to
21 slow down, let those waves pass you by. You don't want to surf
22 now. Does that make sense?

23 Q. Yes, thank you. With respect to the period of time in a

1 particular lull, if you're out there and you observe a lull of
2 say 5 or 6 minutes, how confident should you be as the vessel
3 operator that the next lull is going to be of similar duration?

4 A. Generally they won't--they won't change fast, but they can
5 increase or decrease as the storm front offshore moves further
6 away. The wave height will come down, wave period will spread
7 out. Degree of confidence--you hope you called it right. That's
8 all I can say. I mean, crossing this bar is no joke. It needs
9 to be respected, especially in situ--in these conditions. These
10 conditions here, very dangerous, especially in nighttime hours,
11 in my opinion.

12 Q. As the local--as one of the local surveyors, from time to
13 time you would be involved with assessing damage that may have
14 occurred during a bar crossing on fishing vessels?

15 A. Oh, yes. Yes, both crossing in and crossing out. This
16 particular crab season--the season opened, the price was settled,
17 the fleet decided to go in less than optimum conditions. It's
18 crossable for the bigger vessels, but even then they are--they
19 blew out windows, had issues. Bad judgment call on their point,
20 but--there's a saying: You may not be the first one to leave the
21 harbor, but you won't be third. So once it starts, it's a rat
22 race. There's people crossing the bar in vessels that should
23 probably not be crossing the bar, because of the pressure from

1 industry and--get your crab gear in the water.

2 Q. Follow up on your mention of broken--broken windows. Has--
3 assume those windows in the pilothouse?

4 A. Yes.

5 Q. How does a pilothouse window get broken during bar
6 conditions?

7 A. Typically it'd be on departure. You're going into the waves.
8 It's typically nighttime, but it doesn't have to be. A
9 particular vessel that lost its windows that night was 70-foot-
10 class, wheelhouse that's well off the water, safety glass windows
11 in aluminum frames. Sea conditions weren't such that you would
12 have expected to lose your windows, but it was just--he went over
13 one and under the other and green water just slapped them and
14 blew the windows out.

15 Q. So there's another vessel that lost windows on January 7th or
16 8th?

17 A. Yeah, I don't know--no, I think--I think it would have been
18 earlier. I don't know. When--whenever the gear-setting period
19 came.

20 Q. Let's turn to the--your testimony about the VHF radio.

21 A. Uh-huh.

22 Q. Did you dismount the radio, in other words, you had to turn
23 some screws to take that--dislodge that?

1 A. Yes, the typical knobs. It was still mounted in its holder
2 to the ceiling, right where Clint explained it to be, within easy
3 reach of the helm chair.

4 Q. Were the--the radio handsets in their stored or a dislodged
5 position, if you recall?

6 A. I think they were still in their holders.

7 Q. Did---

8 **REC:** Mr. Woods, can we turn to Exhibit 7, page 2.

9 Q. While he's going there, I wanted to follow up on the issue of
10 licenses and credentials for commercial fishermen. Given your
11 experience and knowledge about the local fishery, do you have any
12 idea how many of the local masters and crews have merchant
13 mariner credentials of any kind?

14 A. Be very few. That is one of the questions we ask when we
15 survey a vessel is the experience of the owner or master, whoever
16 is driving the vessel and--and if they do indeed have merchant
17 marine certification of any level. Most of them do not. Most of
18 them have, you know, the required first aid training, the safety
19 training. Most of the vessel owners here are very well
20 experienced with years and years. Of course there is a newer
21 incoming younger generation that typically follows the family
22 tradition that would have started out as crew members at a very
23 young age, but, yeah, to--to answer your question, I would say

1 it's less than probably 2 to 5 percent would carry say a 100-ton
2 master's certificate or something along that line.

3 Q. Okay, and there are credentials that are less onerous to
4 obtain than the 100-ton. There's deck hands and ordinary seaman
5 credentials, things like that.

6 A. Right. Very--very rarely do--do I find crew members with
7 that. In fact, we don't even ask that question. It would be
8 more along the lines of questioning towards the owner/operator or
9 operator of the vessel.

10 Q. With respect to your observations post-casualty while the
11 superstructure was on the beach, do you remember any broken
12 windows in the--the MARY B II----

13 A. The----

14 Q. ----superstructure?

15 A. The Mary B II, when I--when I first attended it, the forward
16 part of the wheelhouse had Lexan windows. They were intact. As
17 time went by, I did notice those windows--wave action had cracked
18 them, but they were--they were there. They hadn't--they weren't
19 blown out. They were cracked, but they were still in--in place.

20 Q. All right, so we're looking at page 2 of Exhibit 7 up there.
21 There's a cracked window in the left-hand side. Your
22 recollection is that occurred after the beaching?

23 A. That was well after the beaching, yes. That was--the--I

1 did--I did take note that the windows were intact when I
2 initially attended the vessel.

3 Q. There was a---

4 **PIIC:** Can you turn to page 4.

5 Q. There's a window on the starboard aft portion of the
6 superstructure----

7 A. Uh-huh.

8 Q. ----that appears to be in the same----

9 A. Okay, I see it--I see it there.

10 Q. Do you have a recollection of that being intact or missing on
11 your first inspection?

12 A. That one I can't recall. It looks like those might be
13 possibly rubber-framed windows. I don't--I don't--I can't see if
14 they're in aluminum frames or not. What you have on the side of
15 the wheelhouse, there's a Lexan window which is bolted in. It
16 doesn't--I don't see those bolt holes up top. So--I can't recall
17 if that window was there or not.

18 Q. Can you give us an estimate of the--the distance internal in
19 the--in the superstructure between the helm position and that
20 open door that's on the aft part of the superstructure.

21 A. Eight feet, possibly.

22 **PIIC:** Okay, thank you. Thank you, Commander.

23 **LIO:** Thank you. So for the benefit of the public, the--the

1 vessel that you were referring to that--that was a marine
2 casualty case as well earlier but it was not that night, it was
3 the night before.

4 **WIT:** Yeah. I would--I was also assigned that case. I would
5 have to look at the dates. So you're referring to the PATRIOT?
6 Yes, that would have been on the 7th.

7 **LIO:** Yes, sir.

8 **WIT:** Okay.

9 **LIO:** Also submit--sorry, go ahead.

10 **PIIC:** Can I follow up?

11 **LIO:** You may.

12 Q. Were the conditions--do you know what the conditions were on
13 the evening of the 7th? Were they worse or better?

14 A. I don't know for sure. I mean, obviously if you're blowing
15 windows out of a 70-foot boat, sea conditions aren't very good.
16 There was quite a few boats that exited the harbor prior to the
17 PATRIOT with no problems. The PATRIOT just got caught in the
18 wrong spot at the wrong time.

19 Q. Experienced master on the PATRIOT?

20 A. Very, but--and it was surprising to see what it did. I mean,
21 it's not like you take a break and it's white water. White water
22 has lost most of its energy, but it doesn't take a very big green
23 water slap to hit you to knock the windows out. Those windows

1 Q. Towed it.

2 A. And that would have been during the hours of darkness or did
3 they do that the next morning?

4 Q. I would have to get back to you on the detail of that----

5 A. Okay.

6 Q. ----but we--I--we do know that case. That was briefed to us.

7 A. Uh-huh, okay, yes.

8 Q. So do you recall the--you don't recall the timing?

9 A. Of the PATRIOT? I don't have that report with me.

10 Q. That's fine.

11 A. One of the first things we do when we have a situation like
12 this is we take down what we call a skipper's statement or
13 captain's statement and have the captain of the vessel fill out,
14 in his words, what happened. That gives us typically a timeline
15 and his--his description of what happened.

16 Q. Okay. I do have one more question for you for clarity,
17 because earlier in your testimony you mentioned that you would
18 want to slow down, like if--if the big waves were coming or you
19 missed the lull, you'd want to slow down.

20 A. Slow down, yes.

21 Q. Until you could get to another lull.

22 A. Uh-huh.

23 Q. But is that anywhere? If you're in the middle of your

1 approach or--from your experience crossing the Yaquina Bay bar,
2 would you--would there be areas where you do not want to stop?
3 A. Well, of course it would be--you don't want to--if you're
4 exiting the harbor, you don't--you want to spend as little time
5 on the bar as you can. So you're going at a pretty good clip.
6 But if you've got a wave coming at you that's building, building,
7 building, starting to fizz, maybe peak, looks like it may break
8 on you, you've got to question yourself, can I make it over that
9 wave or should I just stop and let it break and pass me? Ideally
10 you don't want it to break on you. You know, either break ahead
11 of you or behind you. So you will adjust your speed there, but
12 that's a complete judgment call exiting the harbor. Coming in,
13 of course during hours of darkness it's--it's hard, but you--like
14 I said, you post a lookout at the back door. If you have a set
15 coming, you're making the same decision. The guys says, "Hey, I
16 think this one is going to break," or, you know, build to the
17 point where it picks you up and you start surfing down it and if
18 it's not square on your stern, if it's **quartering** it, it's going
19 to broach you sideways. You want to avoid that. I mean, you're
20 better--there's--it's a judgment call, but there are certain
21 circumstances where you will slow down, sometimes even place the
22 vessel in reverse and stop your forward momentum.
23 Q. So if I'm hearing you right----

1 A. So that way it'll pass you.

2 Q. ----if I'm hearing you right, it's a very dynamic--the
3 seamanship is----

4 A. It's----

5 Q. ----very dynamic.

6 A. Yes.

7 Q. You don't just leave it in slow.

8 A. No, no, if--if the ocean conditions are good, you--you're
9 metal--pedal to the metal to get the hell out of there because
10 that's one of--it's where you don't want to be. Sooner--least
11 amount of time you can spend there, the better.

12 **LIO:** Okay, thank you.

13 **WIT:** All finished?

14 **LIO:** Just one second.

15 **WIT:** Okay.

16 **LIO:** Does anybody else have any questions from the panel? Mr.
17 Reilly?

18 **PIIC:** No, thank you.

19 **LIO:** Mr. Schones, thank you for your testimony. You are now
20 released as a witness from this formal hearing. Again, we
21 appreciate your cooperation. If I later determine that this
22 board needs additional information from you, I will contact you
23 through--through counsel, and if you have any questions about

1 this investigation, you may contact the investigation recorder,
2 Lieutenant Luke Woods.

3 **WIT:** Okay.

4 **LIO:** It is now 10:38. We are going to take a 10-minute recess.
5 Be back at 10:48.

6 [The hearing recessed at 10:39 a.m., 13 May 2019.]

7 [END OF PAGE]

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
held in Newport, Oregon
on 13 May 2019

WITNESS: HEATHER VAN METER

[The hearing was called to order at 10:50 a.m., 13 May 2019.]

LIO: Ladies and gentlemen, it is 10:49 and we're going to go ahead and get back on the record. If I could ask personnel to quiet down so that we can continue to get testimony.

We will now hear the testimony from Senior Trooper Heather Van Meter from Oregon State Police. Senior Trooper Van Meter, please come to the witness table and Lieutenant Woods will administer the oath and ask you some preliminary questions.

HEATHER VAN METER was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the recorder:

Q. Please state and spell your name.

A. My name is Heather Van Meter. Last is V-a-n M-e-t-e-r.

Q. State your current employment and position.

A. I am currently a senior trooper with the Oregon State Police. I'm assigned to our fish and wildlife division and our marine fisheries team.

Q. Please state any education or training related to your profession.

1 A. I do have my Oregon Peace Officer Certification. I do have a
2 degree in fish and wildlife management. I do hold a master Coast
3 Guard license for 50-ton near coastal operations.

4 **REC:** And at this time Lieutenant Bigay will begin her primary
5 line of questioning.

6 **LIO:** Ma'am, if you want to move the mic a little closer---

7 **AIO:** Good morning, Senior Trooper Van Meter. Thank you for
8 appearing at this hearing today. If you need to take a break at
9 any moment, please let me know. All of my questions will be
10 regarding the time frame before the accident unless I
11 specifically state otherwise. In front of ou there should be a
12 laser pointer in case you need it to--to point to an exhibit
13 during your answers to my questions. If you do that, I would
14 ask, for the benefit of the public, to please point in the
15 direction of the screen right behind me, please. And I would now
16 like to follow up on some questions that Lieutenant Woods asked.

17 **Questions by the assistant investigating officer:**

18 Q. So you're assigned to the Oregon State Police fish and
19 wildlife division. How long have you been doing that for?

20 A. Twelve years.

21 Q. And how long has that work been specific to the Newport area?

22 A. All--all 12 years.

23 Q. Can you elaborate on your background and the mission as it

1 relates to marine operations.

2 A. Currently I'm assigned to our marine fisheries team. We
3 have--my whole 12 years, I've worked with the fisheries, but the
4 last 4 or 5 has been specifically with our commercial fisheries
5 out of Newport, and that would be the enforcement of all the
6 commercial fleet as well as the recreational boats but primarily
7 commercial. So we--we have a pretty big interaction with not
8 only the fishermen, the fleet, but also the fish dealers, the
9 buyers and the markets as well.

10 Q. Thank you. Are you trained to make determinations on an
11 individual's impairment due to fatigue, drug use or alcohol use?

12 A. Yes, ma'am.

13 Q. Is there a certification or a re-certification that's needed
14 for that training?

15 A. Initially when we go through our police officer
16 certification, we do under--undergo training on alcohol
17 impairment for road--roadway driving. I also go through training
18 on boats as well, meaning recreational craft for what we call
19 BUIs, boating under the influence. And every so many years you
20 do go through re-certification for that as well. So on an annual
21 basis we're re-certified with field sobriety testing and things
22 of that nature.

23 Q. Do you remember when your last re-certification was?

1 A. January of this--well, probably February of this past year.

2 So it was after this particular date of this incident. Prior to
3 that I don't remember.

4 Q. But you stated it's yearly?

5 A. Yeah, annually, yes.

6 Q. On a typical day how do your duties relate to fishing vessels
7 in Newport and specifically to Dungeness crab fishery?

8 A. During the Dungeness crab fisheries, on a daily basis, all
9 day long, sometimes all night long, depending on the case, but we
10 will involved in--I'm on the bayfront all the time. So I'm
11 always talking to the fisherman before the season, how everybody
12 is doing, how the gear is going. Any major concerns or issues
13 for the season, we have that dialogue prior to the season. We
14 also do inspections of gear prior to the season if the--the boat
15 wants that done. When the season starts, we do hold inspections,
16 which we are checking the holds to make sure there aren't any
17 crab in there before the start of the season. We will also
18 monitor the fleet offshore once the gear is set. We'll monitor
19 where the gear is placed, that it's not in a closed area. Is the
20 gear marked properly? Pretty much the whole--that whole process
21 offshore as well. We'll pull gear with our--our vessel as well,
22 if we need to. Additionally, after the start of the season,
23 we'll check offloads. So we check licenses for the fishermen,

1 the captain. We check to make sure that the crab are the right
2 size. And then we also check the dealers as well to make sure
3 that they're weighing and recording the catch as well. So pretty
4 much from start to finish we're there for that process.

5 Q. Understood. Thank you. Specific to the inspections of
6 fishing gear that you mentioned, can you elaborate on what that
7 entails?

8 A. Gear is required to be marked with quite a few different
9 things. So we'll check buoy tags to make sure that those are
10 marked accurately. We check pots. Pots have to have tags that
11 identify the vessel. There's also--we call it bio, which is a
12 piece of cotton that's on the crab pots as well. So we'll
13 actually check that to make sure that the gear is within
14 specifications.

15 Q. And in terms of the licenses that you mentioned, can you
16 elaborate the requirements for that or what you check for.

17 A. Yes, we'll check to make sure that the boat does have a
18 Dungeness crab permit, which usually is not an issue. The--the
19 boat itself has to be commercially licensed, and all members of
20 the crew either need an individual commercial fishing license or
21 something that we call a John Doe or a crew member license. So
22 everyone participating has to have--have some type of licensing
23 through Oregon Department of Fish and Wildlife.

1 Q. Now, in terms of Dungeness crab fishing industry, can you
2 explain how the state determines how fishing vessels can go out
3 or at what time they can go and fish for crab. In other words,
4 can vessels go out and fish commercially for crab anytime they
5 want?

6 A. There's a set season, and that season always fluctuates based
7 on--lately it's--it's been based on toxins in the crab. So the
8 season is--has been delayed for the last several years based on
9 that toxin. Once the toxin levels in the crab are--are at levels
10 that Oregon and the Department of Health feel are safe for the
11 public, then they'll open the season. Normally they'll give the
12 fleet so many days notice. There's--there's a lot of
13 specifications on how much notice they have to give them and
14 different things like that, which I don't have in front of me,
15 but they'll let them know ahead of time. They'll give them a
16 start date. Seventy-two hours prior to the actual start of the
17 season, the crew--the fleet can set gear. So traditionally it's
18 at 8:00 in the morning 3 days prior to the season start. The
19 season will start and then after that the fleet is free to roam
20 about the ocean until either there's a domoic acid or a toxin
21 closure or the end of the season, which is generally in the
22 middle of August.

23 **AIO:** Okay, thank you for that. To aid you in--in that answer

1 and for the benefit of the public, I would like Lieutenant Woods
2 to display Coast Guard Exhibit 020. And this is a Department of
3 Fish and Wildlife letter to Oregon ocean commercial Dungeness
4 crab permit holders and interested persons. If we could please
5 zoom into--perfect, thank you.

6 Q. Senior Trooper Van Meter, turning your attention now to Coast
7 Guard Exhibit 020, is this document the one used to inform
8 commercial fishing vessel operators and others in the industry
9 when they can go out and fish?

10 A. Yes, they'll mail that letter out to the crab permit holder,
11 which isn't always the same as the operator. They also post that
12 information online. And that is exactly what they send out to--
13 to the industry.

14 Q. This letter mentions the area north of Cape Arago to--to the
15 Oregon/Washington border. Does that include the Newport area?

16 A. Yes, it does.

17 Q. Taking a look at this letter and also based on your knowledge
18 of the industry, when were vessels such as the MARY B II able to
19 go out and start fishing for Dungeness crab this year when it
20 opened?

21 A. It would have been at 9:00 on January 4th--is when they were
22 allowed to pull the gear. They would have set prior to that.

23 Q. Is there a term for this style of fishery?

1 A. I'm sure there is, but I am not exactly sure.

2 Q. Rephrase that. Have you heard a term called "derby fishing",
3 and do you know what that means?

4 A. Yes, I've heard of derby. We traditionally refer to that as
5 our halibut season. It's just a 10-hour opener. So that's more
6 of the derby fishing than this. It's more of a longer season.
7 So I wouldn't necessarily have thought to call this a derby, per
8 se.

9 Q. You alluded to this, but just for clarity, based on the
10 letter, when were able--when were vessels able to start pulling
11 gear?

12 A. They were able to start pulling the gear on January 4--
13 January 4th at 9:00 a.m.

14 Q. Page 1 of that letter, the page that we're looking at, makes
15 reference to a fair start provision. Can you explain what that
16 is?

17 A. For all--for all the vessels south of the lines--so the line
18 at that point was Cape Arago. And any fishermen that decided to
19 fish north of that line, which would have been from Arago up to
20 the Washington border--once south of Cape Arago opened, anyone
21 that participated in a crab fishery north of that line, they're
22 not able to go down south of that line and start fishing as well.
23 So it gives the--the fishermen an opportunity to decide to wait

1 for their area to open, to not have all the rest of the fleet
2 then turn and then come down. So it's pretty much like it says;
3 it's a fair start, if I explained it adequately for you.

4 Q. No--yeah, that's--thank you. You mentioned a delay that in
5 the recent years has been happening and it's related to toxins.
6 Just to be clear, was that delay something that was experienced
7 during this season?

8 A. Yes.

9 Q. Based on your experience, do those delays impact commercial
10 pressure on vessel operators to get out there?

11 A. Yes.

12 Q. Can you expand on that?

13 A. The fishermen are crabbing to make money. So the later in
14 the season, they're losing money. There's also some concern with
15 the holiday seasons. People want crab for New Year's and
16 Christmas. So if the fleet can't get out and fish, you know, for
17 crab during that time, that could affect the price of the crab
18 and the demand for crab. So that was a concern this year for the
19 fleet, for sure, because they were missing out on the Christmas
20 market.

21 Q. For the benefit of the public, had there not been a delay
22 in--normally, without the toxins issue----

23 A. The--the----

1 Q. ----what's the time frame for the opener? Sorry.

2 A. That's okay. We haven't opened for such a long time, I want
3 to say it's December 1 is when it can normally open, but there is
4 another issue as well. There's--there's meat--they--the crab
5 have to be full. So if the testing shows that the crab don't
6 have enough meat inside of them, that will also delay the season
7 as well. So this year there were a couple of things that--the
8 domoic acid as well as some of the meat was causing issues up and
9 down the coast as well.

10 Q. Understood. Were there any other considerations that came to
11 weigh in terms of the decision to delay this year?

12 A. Not on the state level, not--not with that particular area.

13 Q. This document and--I believe it's there on that first page
14 but, if not, we can scroll through that document as you need, but
15 this document makes reference to crab hold inspections. Can you
16 talk about what those entail.

17 A. So prior to being able to fish or pull the gear the--the
18 boats are required to get what's called a hold inspection. And
19 what that is is we--state police will go down or ODFW--Oregon
20 Department of Fish and Wildlife--will go down and will look into
21 the holds of the vessels to make sure that they don't have any
22 crab prior to the start of the season. And because they can set
23 their gear 3 days beforehand, you know, there could be some

1 individuals that want to pull early or cheat. So that's--it's
2 making sure that no one has crab prior to the start of the
3 season.

4 Q. So is there a specific time frame where you want to conduct
5 those----

6 A. Yes.

7 Q. ----hold inspections?

8 A. Yes, primarily over the last several years I've done it, it's
9 always started at noon on the day prior. So it's usually a
10 little over 12 hours prior to the start of the season is when we
11 start those hold inspections.

12 Q. Just for clarity, keeping in mind the start times on that
13 letter for this season, would you be able to tell us what that
14 time frame was?

15 A. So the gear setting would have started at 8:00 on January 1,
16 like it says, and then 9:00 a.m. January 4th would be when they
17 would be allowed to pull their gear. Our hold inspections, they
18 might vary from port to port, but at Newport they would have
19 started at noon on January 3rd.

20 Q. On the 3rd.

21 A. Uh-huh.

22 **AIO:** Lieutenant Woods, would you please display Coast Guard
23 Exhibit 017.

1 Q. In the meantime, Senior Trooper Van Meter, to your knowledge,
2 did the MARY B II have a hold inspection?

3 A. Yes, it did.

4 Q. Turning your attention now to Coast Guard Exhibit 017, is
5 this the form used to document said hold inspections?

6 A. Yes.

7 Q. Specifically for MARY B II?

8 A. Yes.

9 Q. Do you know who conducted that inspection?

10 A. Yes, it would be Oregon State Police, Lieutenant Brian
11 Howell.

12 Q. Obviously you did not conduct that inspection; he did. But
13 is this how the vessel is assigned the maximum number of pots?

14 A. It's not assigned through this particular form, but when the
15 fishermen apply for permits, either for a two, three or five
16 hundred pot permit--so the MARY B II would have already had a
17 permit assigned. We just ask what that permit is to list on the
18 form. So he would have had that prior to the hold inspection.

19 Q. Understood. And that number for the MARY B II, per that
20 document, was what?

21 A. Three hundred pots.

22 Q. Thank you. I would like now to shift my focus to your
23 interactions with the MARY B II and the vessel's crew. Can you

1 elaborate on any interaction that you had with the operator of
2 the MARY B II, Mr. Biernacki, on the dates prior to the accident.

3 A. On the date of the hold inspections I was at the port of
4 Newport and I didn't know who it was at the time, but it would
5 have been the operator, Mr. Biernacki. He had approached myself
6 and Lieutenant Howell, explaining--it was later in the day, too--
7 it was--it was pretty late in the afternoon--and had mentioned
8 that he hadn't had a hold inspection and needed one. So
9 Lieutenant Howell went to take care of that hold inspection, and
10 I went to another vessel. So that was the first time that I had
11 come in contact with them.

12 Q. So that was the same day, on the 3rd of January?

13 A. It would have been the 3rd in the late afternoon.

14 Q. Did you have any other interactions with the operator or the
15 crew members aboard the MARY B II after that?

16 A. I did. It would--I believe it was on the 7th of January. It
17 was a Monday, and the--the boats were offloading crab. So I'm
18 running from boat to boat to boat and dealer to dealer to check
19 licenses, to check catch, and I had arrived at--we call it the
20 port docks. That's the public pier--the public hoist where a lot
21 of our live buyers or our mobile buyers will buy crab, and I was
22 at a particular hoist that was operated by a dealer called
23 Seawater Seafoods, and I--I had noticed a boat that was there. I

1 didn't recognize the MARY B II because it had changed names from
2 what it was before, but Mr. Biernacki was actually standing by
3 the hoist. I asked him his name. He gave me his name, of
4 course. Just--just small talk about how crabbing was going, you
5 know, what I was there to look at. He had mentioned that he had
6 crew member licenses, which are considered--we call them John
7 Does, and those licenses--you buy a license and they're generic
8 for anybody. You could have anybody on deck as long as you have
9 one of those licenses per--per crew member. So unless they have
10 a problem or unless there's an issue, if the boat has crew member
11 licenses, I don't ID or find names of the crew members. I just
12 go with it. So I noticed there were--there were folks down on
13 the deck, but I didn't--didn't find out whose names they were.
14 The only name that I did get was Mr. Biernacki because he was the
15 captain of the boat. And I was there maybe 10 minutes or so on
16 that particular boat, making sure they had the licenses. Their
17 crab were fine at the time. I didn't notice any issues. Crab
18 are required to be a certain size. So all the crab that I'd seen
19 looked--looked a good size. And then other boats were coming at
20 the dealer next door. So I went next door as well. So I was
21 running around quite a--quite a few different places.

22 Q. You mentioned you only really interacted with the operator.

23 So did you know the crew members--the other crew members on board

1 the vessel at that time?

2 A. At that time, no.

3 Q. And on that day you did not interact with them in the sense
4 of talking or---

5 A. I did not. Everybody was down on the--on the boat getting--
6 you know, helping with the offload, and I--I try not to bother
7 them unless I have to.

8 Q. You mentioned they were offloading crab.

9 A. Yes.

10 Q. Would you be able to describe, to the extent that you can,
11 the physical condition of at least, Mr. Biernacki, who is someone
12 who you interacted with the most, as it relates to any issues in
13 terms of injuries, range of motion in arms and legs---

14 A. I didn't notice any injuries or anything like that. I do
15 recall that--that--I'd never met him before, but to me there was
16 some type of--he was either really, really tired--you know, when
17 you say impairment, impairment can mean anything. It can be
18 tired, it can be, you know, induced by chemicals. So I--I wasn't
19 sure, but he looked very tired. Fishermen are pretty tired after
20 that first week. So it's not uncommon for me to see tired
21 individuals. I didn't--he wasn't driving a boat. He was
22 standing on the dock. So, you know, at that point, if there was
23 impairment, sitting on the dock, that's not a crime. So--but I

1 did remember he was--he was pretty tired and--and he--he was a
2 little less perky, I should say, than he was several days prior
3 to that when we did the hold inspections.

4 Q. Understood. You had mentioned impairment and you talked
5 about possibility of being tired or--or of fatigue. At that
6 time, in your interactions with Mr. Biernacki, did you attribute
7 that perceived impairment to be due to fatigue or some other
8 reasons?

9 A. You know, I didn't know. I see fishermen at all stages.
10 Prior to the season everybody is pretty--pretty--pretty awake and
11 perky, but as the season goes on, you can see folks get tired, a
12 lot of different things. So I wasn't--I wasn't able to say why--
13 what impairment he could have had at that time.

14 Q. Based on your observations, did you do anything else or
15 follow up in terms of that observation that you had made?

16 A. I did not.

17 Q. Was anyone else present at that time?

18 A. The--the employees from Seawater Seafood would have been--
19 been around that general area, their offloaders.

20 Q. Regarding your interaction there, although short, did you
21 make a mental note or actually follow through on notifying marine
22 official--officers or some federal officers regarding your
23 interaction and--regarding the MARY B II, if--if they were to

1 encounter that vessel while underway?

2 A. No, because I didn't know he was going anywhere. At the time
3 it was just a dockside check. The boat was tied up. It wasn't
4 going anywhere. So I wouldn't have thought to do that.

5 Q. Do marine patrol officers conduct boardings on commercial
6 fishing vessels in the harbor if there's appropriate cause or are
7 those boardings mostly held offshore?

8 A. For us, state police will board them offshore, in the bay,
9 dockside. It just depends on if we observe a violation or--or we
10 need to make a check.

11 Q. On that day, when you were--on the 7th, you said you were
12 running around talking to fishermen, checking licenses. On that
13 day or after that day, after the accident date on the 8th, did
14 anyone ever approach you with concerns about any impairment that
15 they allegedly observed?

16 A. Yes.

17 Q. Who approached you?

18 A. I had talked to the owner of Seawater Seafood. His name is
19 Brett Hamrick [ph], and he had mentioned that that evening--I
20 believe it was that evening. I don't recall--prior to the
21 incident he had had contact with Mr. Biernacki and he felt that
22 he had seen some impairment--again, this is just what he had told
23 me--and that he was concerned that the boat was going to go back

1 out and fish, because the weather was supposed to turn really
2 bad. So he had told me that he had made mention to Mr. Biernacki
3 that he didn't think that it was a good idea for a boat of that
4 size to--to go back out and if he had known about--had checked
5 the weather conditions.

6 Q. Did that individual mention anything else?

7 A. That is all that I recall.

8 Q. There was no mention of what the operator's answer to him was
9 when he made that comment?

10 A. I don't recall what that was, no.

11 Q. Did you have any additional interaction with the vessel or
12 anyone connected to the vessel after the accident?

13 A. Not that was on there this year. I'm familiar with the
14 previous owner and different things like that but nobody--oh, I
15 did. His--Mr. Biernacki's mom had contacted me regarding the
16 gear. The gear was still, of course, fishing. So I worked with
17 Mr. Schones to try to facilitate how the gear was going to get
18 out of--you know, out of the ocean and stack out. So I did speak
19 to her about that.

20 Q. Similar question, additional interaction with the MARY B or
21 anyone connected to it but leading up to the accident. You
22 mentioned the two events or interactions. Any--anything else?

23 A. No.

1 Q. When did you learn of the accident?

2 A. It was probably about 2:00 or 3:00 in the morning. So it was
3 well after it had happened. I'd received a text message. I
4 wasn't on duty that evening. So I didn't respond to it, but I
5 heard through the text--a work text message that a vessel had
6 gone down.

7 Q. So immediately after, you didn't--you weren't involved in the
8 response to the accident. Did that change or were you ever
9 involved, I should say?

10 A. I wasn't involved in the accident itself or the investigation
11 of the accident. That--by that point it had already been taken
12 care of by other personnel. I really picked up my involvement
13 when it came to the gear and to making sure that everything was
14 handled in regard to the removal of the pots and where that was
15 going to go.

16 Q. Now, since the date of the accident--I know you mentioned
17 the--one individual, but since the date of the accident, have you
18 received other relevant information about the operation of the
19 vessel or any crew members which may be related to the--to the
20 accident?

21 A. The only other individual that approached me was a fisherman
22 named Ryan Morgan. He had--unbeknownst to me, he had Mr.
23 Biernacki as a crew member--I don't know if he was a crew

1 member--I think he was a captain, actually, on one of his--his
2 vessels. Mr. Morgan owns three boats in Newport, and I interact
3 with Mr. Morgan on a daily basis. And he had mentioned some
4 concerns with Mr. Biernacki's operation of his vessel the year
5 prior and had let him go, and I referred to--you know, to him--if
6 he had any information, to contact the Coast Guard, you know,
7 maybe some historic operation or, you know, experiences that he
8 had had with--with Mr. Biernacki operating his vessels. That was
9 pretty much the end of it.

10 Q. Finally, do you have any thoughts or observations that
11 directly relate to the loss of the MARY B II and its crew?

12 A. I do not.

13 **AIO:** Senior Trooper Van Meter, thank you for your testimony
14 today. I have no further questions. Commander Denny?

15 **LIO:** Thank you. Does any member of the--I have some questions.

16 **Questions by the lead investigating officer:**

17 Q. So I want to talk about the hold inspection a little bit. I
18 know that you guys have quite a few boats that you have to look
19 at, look at their holds to make sure that, you know, people are
20 above board and everybody has a fair start, a fair chance to
21 acquire crab. What is the scope of the hold inspection when you
22 do go on board? What is the scope of that?

23 A. We just look at the holding areas. We're just making sure

1 that there are no crab inside, whatever their--their tanks or
2 their holding--holding areas. That's all we look for that day.

3 Q. Okay. So it's a very--very narrow-scope inspection----

4 A. Yes.

5 Q. ----and there's--okay. And so if the hold isn't in there at
6 all--because sometimes they're removable, if I'm correct--then
7 that's--is that the extent of it----

8 A. Yes.

9 Q. ----or do you look into the space where the hold would go?

10 A. Yes.

11 Q. For clarification for me, if the hold itself, like the
12 actual--the actual tank wasn't in the vessel, do you look in the
13 space where that hold would go?

14 A. We would at least look in the space and verify that their
15 tank wasn't there, yes.

16 Q. Okay, thank you, I appreciate that. You mentioned that on
17 the 7th of January the interaction with Captain Biernacki was
18 about 10 minutes and that you checked licenses. What in your
19 mind, if anything, stuck out, aside from being tired--when you
20 say tired, what physical attributes made you believe that--that
21 he was tired or overly tired?

22 A. I wasn't sure what--what the impairment was, but he did have
23 very tired, bloodshot eyes. He was a little distracted when I

1 was talking to him. He had some slurred speech. And his
2 movements were--were pretty slow and sluggish. Those were the
3 things that I remember.

4 Q. And did you--do you recall having observed the MARY B II
5 transit into the port docks that day?

6 A. No, I had not.

7 Q. Do you recall how--perhaps how long they had been there
8 before you interacted with them?

9 A. I had no idea. I had shown up. The boat was there and they
10 were in mid-offload. And then I moved on.

11 Q. Okay. And you mentioned that there were other persons in the
12 vicinity when you had the interaction with Captain Biernacki.

13 A. Uh-huh.

14 Q. Do you recall having any conversations with any of those
15 employees about that interaction?

16 A. There was one offloader--and I'm horrible at names. She's
17 there all the time, and both her and I looked at each other and
18 said, "Wow, he's--he's--he's not really with it, is he, today?"
19 And we both, you know, chuckled about that and then that was it.

20 Q. You--you mentioned that you did have interaction with Ms.
21 Anderson, the--the managing owner of--of the MARY B II. Were you
22 speaking to her as Mr. Biernacki's mom or as the--the vessel
23 managing owner to reacquire those pots?

1 A. Both. I knew she was the owner of the vessel and she also--
2 she was his--his mother as well.

3 Q. Thank you. Have all the pots been recovered since then and,
4 if not, is that--are--how is that happening? Like how is that
5 process happening?

6 A. I'm--I--last time I checked, almost all the pots had been
7 retrieved. We haven't gotten official notice, but last I
8 checked, they were pretty much all retrieved. Initially it was--
9 there was some confusion as to who--who would get the gear. And
10 it was difficult for her to navigate, being on the East Coast--
11 get the gear. So initially it was--we have a derelict gear
12 allowance. Boats can get 25 pots per trip. So initially the
13 fleet was bringing in, you know, anything between, you know, 1 to
14 25 pots and was stacking them out. Eventually another individual
15 on a boat had--had gotten a waiver from ODFW to go ahead and
16 retrieve the rest of the gear. So after, I'd say, probably at
17 least half the gear had been retrieved--his name is Traven Lutz
18 [ph]--he had received a waiver to pull all of that gear. So he
19 probably finished up maybe the last half of the gear, I'm not
20 sure. He was able to get more than 25. He could pull
21 everything. So we kind of had--had a lot of different dynamics
22 in retrieving that gear.

23 Q. About how long a time period are we talking about for that?

1 A. Boy, it was at least--at least a month or longer for all the
2 gear to get in, but I--I couldn't say for sure when the last
3 pieces of gear came in.

4 **LIO:** Okay, thank you. Mr. Reilly?

5 **CROSS-EXAMINATION**

6 **Questions by the party-in-interest counsel:**

7 Q. Senior Trooper, thanks for being here. Cumulatively, do you
8 know how many pots were retrieved, approximately?

9 A. Over 250. That's all that I would be able to--to say.

10 Q. Your interaction with Mr. Biernacki around January 7th at the
11 unloading dock, that's kind of a transient dock where vessels
12 come in, offload and then they--they depart for either their own
13 dock or somewhere else, right?

14 A. Yes.

15 Q. Fair to say at the time you would expect that within a short
16 amount of time, Captain--Mr. Biernacki would be moving that
17 vessel somewhere else?

18 A. I didn't know who--who would. There's a lot of different
19 people. Sometimes captains have what they call a bay captain. I
20 wasn't sure who was going to operate or move the vessel or how
21 long it would be there.

22 Q. When you were interacting with him, approximately how far
23 away from him were you, at the closest?

1 A. Oh gosh, I--I wasn't too close. Probably the closest was
2 maybe 5 feet or so, 5 or 6--between 5 or 6 feet.

3 Q. Okay, so that's--you weren't having a, like, face-to-face----

4 A. No.

5 Q. ----conversation.

6 A. I did not, no.

7 Q. You mentioned a number of things that you described that led
8 you to conclude there was some level of impairment. Was there
9 anything you left off the list that, you know, led you to that
10 conclusion?

11 A. He just looked really--I like I said, really tired.
12 Fishermen really get worn out through the season, and he looked
13 like he'd been out for a long time fishing.

14 Q. Prior to talking to Mrs. Anderson about the--the pot
15 retrieval, you hadn't had any contact with her?

16 A. No.

17 Q. Do you know the Oregon State Patrol policy regarding
18 notifying next of kin of a death? What's the standard SOP for
19 that?

20 A. Boy, I'd have to pull up our policy on that. I don't do that
21 very often, but I do know that normally someone from our agency
22 will--will do whatever they can to try to get a hold of next of
23 kin and make that--make that notification. Sometimes we'll work

1 with outside agencies to do that, you know, whoever--whoever is
2 available to make that, but that is attempted, you know, as soon
3 as possible.

4 Q. With respect to your communication with Mr. Biernacki, did
5 you notice if he had--could you see his teeth--visibly see his
6 teeth during that interaction?

7 A. I--if I did, I wouldn't have noticed anything out of the
8 ordinary or anything. Nothing comes to mind. I'm sure he had
9 them, but I didn't--don't recall anything different----

10 Q. Some people wear dentures. So---

11 A. Well---

12 Q. I'm not sure he had them, but I thought you might have a
13 recollection.

14 A. I don't recall whether he had his dentures in or--or not. So
15 nothing I can recall.

16 **PIIC:** Senior Trooper, thank you very much for your testimony.
17 Ma'am, that's all I have.

18 **LIO:** Thank you. There are a few follow-up questions from the
19 panel. Lieutenant Bigay?

20 **TA:** Good morning.

21 **LIO:** Lieutenant Bigay?

22 **AIO:** By no means.

23 **LIO:** Okay, Lieutenant Foster--or Lieutenant Commander Foster?

REDIRECT EXAMINATION

Questions by the technical advisor:

Q. Good morning, ma'am. I have a few questions about the number of pots. So we see on display that the vessel was allowed up to 300 pots. You estimated--and I understand it's an estimation--that approximately 250 pots have been accounted for. In your experience, does that mean that the other 50 pots are still out there, that they could have been on the MARY B II as it was transiting in or are you aware of any repairs being done on pots that we would be able to account for the other 50 pots?

A. I'm not sure. Just because--just because he had 300 pots doesn't mean he deployed 300 pots. I would say--it--I don't know how many he had deployed. Again, I'm just trying to guess how many came in, and I think there were still some in the port that hadn't been deployed. So there were some potentially that weren't out there. Traditionally during that time of the season, there aren't a lot of--a lot of pots coming back in. Folks may be taking pots back out, but anytime they're coming in, most often that time of the year the deck is pretty empty except for maybe one or two if they're in need of repairs. I would assume there weren't any crab pots on that night, but I'm not positive.

Q. One follow-up to that. You had said that all these pots are marked with certain identifiers that would be tied back to the

1 vessel they belong to. How many pots washed ashore or have any
2 pots come ashore that were not previously accounted for?

3 A. I wouldn't know. They don't have to let us know about that.
4 So it's not uncommon for things to wash up on shore. A lot of
5 times the fleet will find gear and they work it out amongst
6 themselves. They have a gear pile. So I don't necessarily
7 police the gear retrieval this time of year unless there's a
8 problem anyone mentioned.

9 **Questions by the assistant investigating officer:**

10 Q. Senior Trooper Van Meter, thank you for your patience. I
11 have one--two follow-up questions, if I may. You mentioned how
12 tired fishermen can be. So when you noticed that, it didn't seem
13 unusual, given their operations, and also in your testimony you
14 discussed some operational pressures that fishermen deal with.
15 In your professional opinion, how do these factors affect the
16 safety of Dungeness crab fishing operations?

17 A. The fleet will push themselves in the weather. They'll push
18 themselves whether they've not slept for days and days.
19 Especially with the late start of the season, captains and crew
20 don't get any money for working on gear. They don't get any
21 money unless they bring crab in. So they're going to push
22 themselves. They're not going to sleep. They're going to, you
23 know, not have great meals. They're going to push the weather

1 because they--they need to make a living and they have families.
2 So, yes, I think they put a lot of pressure on themselves to get
3 out.

4 Q. In your experience, do you know of any measures that
5 fishermen in the fleet take to mitigate the hazards that those
6 pressures present in terms of safety?

7 A. You know, that would be something that you'd have to talk to
8 the fleet about. I wouldn't be able to speak for each--each
9 individual and how they mitigate those factors.

10 **AIO:** Thank you.

11 **Questions by the lead investigating officer:**

12 Q. So almost a follow-up to that question, the opposite, in your
13 experience being here and policing the fleet, have you noticed,
14 trend-wise, that--ways that some fishermen may enhance their
15 ability to stay awake to try and meet those commercial pressures
16 to be out there for long periods of time, get that catch and come
17 back in?

18 A. I think everyone has a Rock Star when I--when I stop by,
19 which is, you know, an energy drink. I see a lot of those, a lot
20 of coffee, a lot of different things like that. So I would say
21 Rock Stars and coffees are probably high on the list.

22 Q. When you assess potential impairment, I--I believe that you
23 use all of your senses, right, like sight, smell, hearing to

1 interact with a person to make an assessment of their impairment
2 or not? Do you recall smelling anything when you interacted with
3 Captain Biernacki?

4 A. No, I did not, nothing.

5 Q. Did, at any point during or after that interaction with Mr.
6 Biernacki--did it ever cross your mind that perhaps the
7 impairment was anything other than being just tired, that perhaps
8 there was either alcohol or drugs contributing to that?

9 A. It wasn't until after I had talked to witnesses who had
10 talked to him after that--that that was something that came up.
11 At the time, I--like I said, I see fishermen all the time and
12 they're all tired, especially that time of the year. So there
13 was nothing beyond that initial until after I--I spoke to some
14 folks--that interaction with him that evening before he left
15 again.

16 **LIO:** Thank you very much. Appreciate it. Mr. Reilly?

17 **RECROSS-EXAMINATION**

18 **Questions by the party-in-interest counsel:**

19 Q. Just wanted to talk about the--the fishery just for a second,
20 just to make sure I understand and the record is clear. You had
21 stated earlier the fishery is open through August?

22 A. Yes.

23 Q. Is there a cap on the sort of cumulative amount of Dungeness

1 crab that's allowed to be caught starting at January 8?

2 A. No, they can catch as many as they can--they can--they can
3 catch. We don't have trip limits until June. Starting in June
4 then they're held to only 1200 pounds a week.

5 Q. So I just--just want to make sure in my--my own mind that I
6 understand what the--what the urgency is in January, given that
7 the--the fishery is open for awhile. Is it the crab are easier
8 to catch at that point in time? Is it just the--the rushing to
9 get as much as they can for their vessel under the permit? Are
10 crab harder to catch later in the season? What's the--the
11 urgency there in January?

12 A. I'm not--I'm not a crab fisherman, but from my conversations
13 with the crew, you're going to catch a lot more crab at the
14 beginning of the season. So the amount of crab per pot
15 drastically goes down as the season goes along.

16 **PIIC:** Thank you very much.

17 **LIO:** Lieutenant Fogarty, government counsel, has a question.

18 **REDIRECT EXAMINATION**

19 **Questions by the government counsel:**

20 Q. Good morning, Senior Trooper. As a law enforcement officer,
21 are you familiar with the impacts of amphetamines?

22 A. Yes.

23 Q. Can you briefly describe for the record the highs and lows,

1 if you will, of methamphetamine?

2 A. So I will preface with saying I'm a fish and wildlife
3 trooper. So my expertise are fish, but I have run in contact
4 with folks that have been under the influence of meth. It's
5 pretty typical--say typical--they're--talk really fast, they're
6 itching, they have sores, they're just moving all over the place
7 and they're just--they're just hard to hold down. So that's--
8 that's my experience with it, anyway.

9 Q. And did you witness any of that on the day that you saw
10 Captain Biernacki or any of the other crew members?

11 A. I did not.

12 **LT COLIN FOGARTY (GC):** Thank you, Senior Trooper.

13 **LIO:** Does anybody have any other questions?

14 [No response.]

15 **LIO:** Senior Trooper Van Meter, you're now released as a witness
16 at this formal hearing. Thank you for your testimony and
17 cooperation. If I later determine that this board needs
18 additional information from you, I will contact you through your
19 counsel and our counsel. If you have any questions about this
20 investigation, you may contact the investigation recorder,
21 Lieutenant Luke Woods. Thank you for your time.

22 Before going off the record, I do want to make one note for
23 the record. In Mr. Schones' previous testimony, we talked a

1 little bit about the fishing vessel PATRIOT that had a marine
2 casualty with the windows on January 7th. A correction to the
3 record, the vessel was, in fact, escorted in, not towed in. I
4 got clarification. So I was mistaken. You were correct. Thank
5 you, sir, for that.

6 It is currently 11:39. We do not have any scheduled
7 testimony until 1:00 p.m. So we will go ahead and go off record
8 and convene at 1:00 p.m. Thank you.

9 [The hearing recessed at 11:40 a.m., 13 May 2019.]

10 **[END OF PAGE]**

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II

2 held in Newport, Oregon

3 on 13 May 2019

4 WITNESS: TYREE WILDE

5 [The hearing was called to order at 12:59 p.m., 13 May 2019.]

6 **LIO:** Good afternoon. The time is 12:59 and we're going to
7 reconvene this public hearing. The public is--the public is
8 reminded that should any person have--believe that they have
9 information that has not come forward or not been brought forward
10 which might be of direct significance to this investigation, that
11 person is urged to bring that information to my attention by e-
12 mailing accidentinfo@uscg.mil or you can also--during the hearing
13 you can e-mail the investigation directly at MARYBII--and that's
14 the Roman numeral II--.uscg@gmail.com, and that e-mail address is
15 being monitored.

16 We will now hear testimony from our next witness, and that
17 is Mr. Wilde from NOAA. Mr. Wilde, would you please come forward
18 to the witness table and Lieutenant Woods will administer your
19 oath and ask you some preliminary questions.

20 **TYREE WILDE was sworn and testified as follows:**

21 **DIRECT EXAMINATION**

22 **Questions by the recorder:**

23 Q. Please state your full name and spell your last.

1 A. My name is Tyree Wilde. Last name spelling, W-i-l-d-e.

2 Q. Please state your current employment and position.

3 A. I work for the National Weather Service, which is an agency
4 of the National Oceanic and Atmospheric Administration or NOAA.
5 I work out of the Portland office. I'm the warning coordination
6 meteorologist.

7 Q. Please state any education or training related to your
8 profession.

9 A. I hold a master's of science degree in meteorology as well as
10 a bachelor of science degree in meteorology and various training
11 courses throughout my career.

12 Q. And do you have any professional licenses or certificates
13 related to your profession?

14 A. No licenses, per se, but we certainly have certificates.
15 We're certified to do forecasting and those type of things. More
16 of an internal certification, be certified to work certain desks
17 and stuff.

18 **REC:** At this time Lieutenant Commander Foster will begin her
19 preliminary line of questioning.

20 **TA:** Good afternoon, Mr. Wilde. Thank you for appearing here
21 today at this hearing. I would like to follow up on some
22 questions that Lieutenant Woods asked you; however, before that,
23 in front of you there should be a laser pointer. In the event

1 you need to point at an exhibit to answer a question today, would
2 you please, for the benefit of the public, illuminate the display
3 here behind me. Great, thank you.

4 **LIO:** AS a note of administration, Mr. Wilde is working off of
5 notes. The Coast Guard acquired a copy of those notes, and those
6 will be introduced into the record as Exhibit Coast Guard 063. A
7 copy of those notes have been provided to the party in interest.

8 **Questions by the technical advisor:**

9 Q. How many persons work in your office?

10 A. Let me think about that for just a minute. I think we have
11 about 28 people.

12 Q. And what areas of forecasting is your office responsible for?

13 A. So our area of responsibility is basically southwest
14 Washington and northwest Oregon. So we--our jurisdiction goes
15 from Lane County in northwest Oregon northward to Cowlitz County,
16 to include Cowlitz County, westward over to the Long Beach
17 peninsula, which is Pacific County, and our domain is from
18 basically the crest of the Cascades to 60 miles offshore into the
19 marine waters. Same jurisdiction from basically Lane County all
20 the way up to the Long Beach peninsula.

21 Q. Were any weather forecasting operations of your office
22 impacted by the lapse of government appropriations that was in
23 effect during the time leading up to the 8th of January 2019

1 incident and on the incident date?

2 A. The short answer is no. Most of our employees were deemed
3 accepted employees, which is basically essential employees. So
4 we were--all operational folks were continuing to come to work
5 and doing our day-to-day function. The only exception there was
6 our administrative assistant, who was an interim--interim
7 accepted. So she was brought in to duty as--as needed. So--but
8 the rest of us were--all operations did their day-to-day duties
9 just as--just as we were before the shutdown.

10 Q. Thank you. So of the approximately 28, most of the 28 were
11 still there in the office each day?

12 A. Correct.

13 Q. Thank you.

14 A. Well, actually we work rotating shift work. So certainly we
15 don't have 28 there on any given day, but we work 24/7. So the
16 bulk of our work force works rotating shift work. So, you know,
17 take, for instance, night shift, only two people are there
18 and----

19 Q. Understand.

20 A. ----on weekends and stuff, too.

21 Q. Please describe the tools that the National Weather Service
22 uses to formulate marine weather forecasts for the area offshore
23 of Newport, Oregon.

1 A. Okay, we have a variety of tools. I'll start with the
2 observational network, if you will. So this is platforms, if you
3 will, that are collecting data. We call them observations.
4 Those consist of a network of buoys--weather buoys that are
5 sitting in the ocean. We certainly have satellite data that--we
6 call it remote sensing of the ocean. Let's see, we have--on
7 board the satellites they have various sensors that we can kind
8 of detect what's going on on--on the--on the ocean. We also have
9 near--near--near shore meteorological observations at certain
10 airports and ceratin sites. We also have a suite of what we call
11 numerical weather models. They're basically mathematical models
12 that provide an outlook of what the current situation of the
13 atmosphere is and, you know, basically gives a forecast all the
14 way up to 7 days. We kind of use that as our guide for
15 forecasting. We also have a network of observations that kind of
16 come in besides our buoys. Those can be sometimes ship obs--ship
17 observations, ships transiting the area. Sometimes on land those
18 are, you know--we call them near-shore--you know, along the
19 immediate coastline, those could be our volunteer weather
20 spotters, airport data, sometimes just even the public--just
21 observations--important weather parameters that reach certain
22 thresholds.

23 **TA:** Lieutenant Woods, please display Coast Guard Exhibit 27,

1 page number 5.

2 Q. Mr. Wilde, for your benefit and for the public's benefit,
3 Exhibit 27, page 5, is the National Weather Service forecast for
4 coastal waters from Cascade Head to Florence, Oregon, 10 to 60
5 nautical miles, from the date of January 8th, 2019. Briefly
6 would you please talk about the type of forecasts that are
7 available for mariners working off the coast--off the coastal
8 waters of Oregon.

9 A. Okay, so--could you repeat the question again?

10 Q. Yes, sir.

11 A. Just the latter part of it.

12 Q. In general terms, because I do intend to ask you more
13 specifically--in general terms I'm asking for the type of
14 forecasts for mariners working in these waters around Newport,
15 Oregon.

16 A. Okay, so basically it's what we call our coastal waters
17 forecast. So we--it's the same jurisdiction I spoke of before.
18 We kind of break our marine zones into--our coastal area into
19 four zones, basically the coastline out to 10 nautical miles and
20 then from 10 nautical miles out to 60 nautical miles. Beyond 60
21 nautical miles there are forecasts still available. They're from
22 our Ocean Prediction Center, which comes out of NOAA's National
23 Weather Service facility in Washington, D.C. So, furthermore, we

1 break those zones into north/south boundaries, basically from
2 Cape Showalter down to Cascade Head and Cascade Head to Florence.
3 Then we have the 10-nautical-mile break and then the 60-nautical-
4 mile break. So sometimes those conditions are different in those
5 specific zones. Sometimes the weather conditions are the same,
6 but this coastal waters forecast is produced at least two times a
7 day, roughly 9:00 a.m.--I'm sorry, 3:00 a.m. and 3:00 p.m., and
8 then at--it can be issued up to four times a day, basically 9:00
9 a.m. and 9:00 p.m. if conditions warrant. They can also be
10 amended at any time during the day. For instance, if conditions
11 worsen, then we're typically forecasting--or gets better than we
12 are typically forecasting--we call that an amendment. So they
13 can be amended more times than that. As a minimum, they're
14 issued at least two times a day.

15 Q. Turning your attention to the exhibit on the screen, is this
16 an example of the kind of weather forecast provided by your
17 office?

18 A. Yes, it is.

19 Q. How is that weather information disseminated to the public?

20 A. It's disseminated by various means. We have a pretty robust
21 communication network that we can get this information out. I'm
22 going to start with inland. We have this NOAA weather wire.
23 It's one mechanism that this gets disseminated to a variety of

1 users. A family of services is another dissemination method. We
2 can get that out to a lot of our media partners. We also
3 broadcast information over NOAA weather radio. We have a pretty
4 extensive network of NOAA weather radio transmitters, ten of them
5 in our area of responsibility. That information gets
6 disseminated that way. We also have web delivery services. All
7 this information gets posted to our web page. Users can come in
8 and access that web page and pull it back any time of the day.
9 Then, of course, some of our warning services. We have different
10 types of subscription services to get warning information out.
11 Some of those--we provide that free to some public service
12 agencies, but those are widely available, some of them for free
13 and some of them are for small fees with commercial weather
14 providers. I'm trying to think--let's see what else we have.
15 Those are the ones that come off the top of my head right now.
16 Q. Yes, sir. Can you expand just a--briefly about how the
17 weather radio--what frequencies those are transmitted--the
18 information is transmitted.

19 A. Sure. The National Weather Service is licensed to broadcast
20 weather information over NOAA weather radio seven frequencies.
21 They start at 162.400 megahertz and they increment every .25
22 megahertz up to 162.550 megahertz. So there are seven channels,
23 162.4, 162.425, 162.450, et cetera, up to 162.550. And so that

1 footprint, the weather radio broadcast, is anywhere from, you
2 know, 40-to-100-nautical-mile range, depending on, you know, the
3 atmosphere conditions and whatnot. Our nearest weather radio
4 transmitter to this location is right here in Newport. We also
5 have a transmitter at Florence. We actually broadcast out of
6 Yaquina Head.

7 Q. Are you aware of any blind spots sometimes referred to as
8 skip with respect to radio frequencies?

9 A. There are blind spots in our NOAA weather radio transmission
10 coverage, usually blocked by terrain in a few locations. It's--
11 that's why we put in as many transmitters as we have to kind of
12 minimize the blind spots. Our goal a few years ago was to make
13 NOAA weather radio coverage available to about 95% of the popu--
14 the populace. So there are a few blind spots. It's typically
15 blocked by terrain.

16 Q. Thank you. To the best of your knowledge, were there any
17 obstacles that were encountered to disseminating the specific
18 forecast for the time frame leading up to the 8th of January
19 2019, asking specifically if you know of any outages for the
20 website or if any of the radio broadcasting equipment was
21 malfunctioning?

22 A. To my knowledge, everything was functioning properly.

23 Q. Okay, moving a little bit into bar conditions, we heard

1 earlier testimony regarding wave heights and breaking surf in the
2 Yaquina Bay area. Are these extreme conditions unique to this
3 area?

4 A. No, every one of the river bars along the Oregon and
5 Washington coast have similar type of conditions. Probably the
6 most famous one is the Columbia River bar, which we actually put
7 out specific forecasts for the Columbia River bar and we put out
8 what we call advisories for the Columbia River bar when the
9 conditions reach a certain threshold. I can go into those
10 thresholds if you want, but that's the only bar, if you will,
11 that we produce that type of forecast for. But the other bars,
12 the Tillamook Bay bar, the Yaquina bar has very similar
13 conditions. The volume of water coming out of the Columbia River
14 bar is much greater. So that probably has, in my opinion, worse
15 conditions on the Columbia River bar to these other bars, not to
16 say that these other bars don't have very serious breaking wave
17 conditions.

18 Q. To the best of your knowledge, are the bar and surf
19 conditions experienced in the other areas of the United States,
20 like California, similar, greater than or less than the Pacific
21 Northwest?

22 A. I believe the Humboldt Bay bar is very similar. Grays Harbor
23 bar in Wash--Humboldt Bay bar in--off Eureka, California is very

1 similar, probably very similar to the Yaquina bar. Grays Harbor
2 bar in western Washington is also very similar, but I would say
3 the Columbia River bar is certainly the worst on the West Coast.
4 In fact, I've heard from my interactions with mariners it's one
5 of the worst in the world. That's the Columbia River. It's
6 different than Yaquina--the Yaquina Bay Bar--certainly serious
7 and treacherous conditions certain time of the month--certain
8 conditions on that bar as well.

9 Q. What about other areas of the United States, for example, the
10 southern coast or the East Coast?

11 A. To my knowledge, they don't have the same type of conditions
12 as--bar conditions that we have here on the West Coast, not
13 nearly as serious as--conditions.

14 Q. To give us a scope of the potential dangers of the Pacific
15 Northwest bar areas, can you describe the worst surf conditions
16 you have prepared a forecast for in terms of wave heights and
17 surf conditions.

18 A. I believe the worst wave heights that we--that I've observed
19 in my career here in the Pacific Northwest is--this is buoy
20 reports--out in the open ocean is 48-foot seas. That happened in
21 a big storm in December of 2007. As far as bar conditions, I'm
22 trying to relate back a little bit, but we've certainly seen--
23 this is the Columbia River bar. This is where we have

1 observations for and we produce a forecast for--certainly
2 breaking waves on the order of 28 feet.

3 Q. And you had noted the one in 2007 was the result of a
4 particular storm. In general are the storms, either the winter
5 or the summer, the reason for these extreme wave heights?

6 A. It's a couple things. Certainly the storms. Typically the
7 worst conditions happen in--during the winter months when we get
8 these strong low-pressure systems that move up along the Pacific
9 Northwest coast. It also has to do with the volume of water
10 coming out of the river--out of the rivers, and it's also
11 directly related to the ebb currents. So the ebb current is
12 basically river to sea. A flood current is, you know, sea to
13 river. So it--the standing waves certainly occur fairly
14 frequently in the wintertime when we have a large storm and--and
15 a strong ebb current. It creates--that's--that's the--basically
16 the--the scenario where it creates these treacherous bar
17 conditions.

18 Q. All right, and in general can you estimate the frequency of
19 those winter storms?

20 A. Well, during the winter months it depends a little bit, but I
21 would--I have seen in my career as freq--these storms as
22 frequently as every 24 to 30 hours if you get into a really
23 active weather pattern where the jet stream or the storm track is

1 kind of right over our latitudes. I would say that's more the
2 exception. I would say probably the--during the course of the
3 winter we might see a--a storm system, frontal system maybe two
4 to three times a week.

5 Q. And how long do those storms usually last? Is it a multi-day
6 storm or does it----

7 A. Two to three hours.

8 Q. ----kind of blow through quickly?

9 A. Usually the frontal--frontal system will--will move through a
10 particular area, usually from west to east or some type of south
11 to north component--southwesterly to northeasterly component--
12 move across a particular area in a matter of hours, a handful of
13 hours, 6 to 8 hours, something like that. Then it'll certainly
14 move on. There are exceptions to that. Sometimes the frontal
15 systems will stall, and that can certainly occur and it happens a
16 few times a year, too.

17 **TA:** Lieutenant Woods, please exh--please display Exhibit 58,
18 page 3.

19 Q. Mr. Wilde, for the benefit of the public, I am displaying a
20 photo of NOAA buoy 46097 in detail. Please take a moment to
21 familiarize yourself with this photo.

22 **TA:** Mr.--Lieutenant Woods, if you would zoom in on the sensors
23 on the buoy, please. Lieutenant Woods, please shift to the same

1 exhibit, page 1.

2 Q. Mr. Wilde, when we're--when our computer catches up to us,
3 it's going to be the full--a normal page for this buoy. It'll
4 show you the predictions and I'm going to ask you in more detail
5 about----

6 A. Okay.

7 Q. ----the kind of information this collects. While we have
8 this photo, Mr. Wilde, can you please talk about the type of
9 sensors that these buoys have on board and how they communicate
10 to your office.

11 A. Yeah, so, you know, I'm certainly not familiar with every
12 particular sensor on there, but the--they have a wind instrument
13 on there. That's what those little--those little propellor-type
14 things are, those anemometers. They record wind direction and
15 wind speed. There's a primary and a backup for that. These
16 buoys also measure wave heights--significant wave heights.
17 That's basically the average top third of the waves that it sees.
18 There's instruments on there that have--that measures water
19 temperature and air temperature as well. I would say for
20 meteorological forecasting to produce our marine forecast, we are
21 most interested in the sea conditions or the wave height and the
22 wind information, because that's directly related to the types of
23 marine forecast we provide.

1 Q. Thank you. And how do these buoys communicate that
2 information to your office?

3 A. So this--this buoy--it's all done by satellite
4 communications, and we have--NOAA has a national--National Data
5 Buoy Center, which is in Mississippi. I think it's in the
6 Stennis space center in Mississippi. So they're--that agency is
7 responsible for the maintenance and--of all the--all the buoys in
8 both oceans. And then once that informations get to the National
9 Data Buoy Center, it also is routed through our
10 telecommunications gateway in Washington, D.C., the National
11 Weather Service telecommunications gateway, and then that's
12 transferred from there out to the various weather offices to
13 include northern Oregon.

14 Q. So the next exhibit I was hoping would come up would--would
15 lend us this information, but to your knowledge, are there
16 multiple weather buoys off of the Oregon coast?

17 A. There are. There's--there's at least three. I'm sorry,
18 there's at least three in our area of responsibility. There's
19 another one down south just off of Cape Blanco as well.

20 Q. Thank you. And to the best of your knowledge, were all the
21 marine weather buoys functioning as designed leading up to the
22 night of the 8th of January of 2019?

23 A. I know the ones--the two off of the Oregon co--the northwest

1 Oregon coast, the buoy--what we call 46050, which is 20 miles off
2 of the coast of Newport at Stonewall Banks, that was operating
3 properly. Buoy 29 off the Columbia River bar was operating
4 properly, to my knowledge. We have another one, buoy 89, which
5 is about 60 miles off the Tillamook coast--off the coast of
6 Tillamook, was operating properly. I don't recall if buoy 15 off
7 of the Cape Blanco coast was operating properly. I'd have to go
8 back and look at the history of that. I'm unfamiliar--I know
9 it's had some--little bit of outages this winter. So I'm not
10 positive about the operational capability of that one on January
11 8th.

12 Q. Thank you. I'd like to shift to Exhibit 27, page 5. And
13 this--I will remind you, if you need to use your laser pointer--
14 this, for the benefit of the public, is National Weather Service
15 marine forecast for coastal waters from Cascade Head to Florence,
16 Oregon from 10 nautical miles to 60 nautical miles, dated the 8th
17 of January 2019. Would you take a moment to familiarize yourself
18 with the bottom portion of this document.

19 A. I'm familiar with this.

20 Q. Can you briefly explain what a small craft advisory is and
21 how it impacts mariners.

22 A. Sure, we have different criteria for what we call our marine
23 weather warnings and advisories. So the first level of that is

1 what we call a small craft advisory. This can be for strong
2 winds or this can be for certain types of sea conditions or, in
3 the case of the Columbia River bar, rough bar conditions. So for
4 winds--well, small craft advisory for winds in this--in the
5 Pacific Northwest, that threshold is 21 knots to 33 knots,
6 inclusive. Those could be sustained winds or frequent gusts.
7 Also for small craft advisory for hazardous seas or what we call
8 small craft advisories for seas, the sea--the wave height is in
9 excess of 10 feet or greater. And for our rough Columbia Bar,
10 the small craft advisories are basically for wave heights 10 feet
11 or greater or can be 7 feet or greater if we have breakers on the
12 bar. That's kind of the thresholds for small craft. So it can
13 be winds, it can be seas. The wind threshold is 21 to 33 knots.
14 Seas are greater than 10 feet. There are some exceptions on the
15 Columbia River bar. It can go down as low as 7 with breakers.
16 And then I can--the next level of our marine warnings are gale
17 warnings, strictly wind. Threshold for there is winds of 34 to
18 47 knots, sustained or frequent knots [sic]. Beyond that we get
19 into storm force warnings. That's basically 48 knots to 63
20 knots.

21 Q. Why does your organization break up those certain thresholds?
22 Why--why those wave heights and why those winds?

23 A. Yeah, this is--this has been done for many, many years in our

1 agency. It's basically probably been some work with--working
2 with the Coast Guard, working with various fishermen's groups.
3 When sea conditions get to these thresholds, for instance, this
4 small craft, then it's a notification to people going out onto
5 the waters or the coastal waters that you need to exercise some
6 caution because we have some weather conditions that could--could
7 create some--some--some potential problems if--for navigating
8 safely or safe operation of your boat. Certainly once you get
9 into the gale warnings, storm warnings, those conditions just
10 wor--worsen.

11 Q. Mr. Wilde, would you take a moment to familiarize yourself
12 with the verbiage on this forecast, beginning at the bottom with
13 the word "tonight". I will ask Lieutenant Woods to advance the
14 slide to slide 6 when you give him the signal and allow you to
15 read the rest of the forecast for Tuesday evening. Please let me
16 know when you are finished familiarizing yourself with this
17 section before I continue with questions.

18 A. Yes, I'm familiar with that. So this--this particular
19 segment here is for--from Cascade Head to Florence, Oregon from
20 10 nautical miles out to 60 nautical miles. We call that our
21 outer waters forecast.

22 TA: Yes, sir. Please advise--please advance to slide 6. For
23 the benefit of the public, this is a--not a two-part message. It

1 was just a continuation of the screen capture. So Mr. Wilde is
2 now reading the rest of the forecast from that evening.

3 Q. Does the Coast Guard or any other state or federal agency
4 provide weather operations specific to bar conditions?

5 A. Yes. We rely pretty heavily upon the U.S. Coast Guard with
6 our bar conditions. In fact, we've--we've got a nice program
7 we've generated that is available on our web page that has the
8 bar conditions for every bar in Washington and Oregon as well as
9 a little bit of camera imagery. So how I understand the process
10 works is let's just say the Coast Guard station goes out and
11 transits a particular bar. Let's call it the Yaquina bar or you
12 can call it the Columbia River bar. They report whatever those
13 observations were. That gets--that information gets sent to us
14 folks at the National Weather Service, and we include that into a
15 web page that we have. We call it the--I forget the exact name--
16 point to our web page--but it has the actual bar conditions for
17 all the river bars up and down the Oregon and Washington coast,
18 as well as some camera imagery.

19 Q. Yes, sir.

20 A. So, yeah, we are in----

21 Q. And we do----

22 A. ----partnership with the Coast Guard in getting that
23 information. And, quite honestly, that information gets--gets

1 sent to us in our office and, quite honestly, we use that
2 information in our weather--in our marine weather forecasting----

3 Q. Excellent.

4 A. ----especially for the Columbia River bar.

5 Q. And I do have some questions at a later date----

6 A. Okay.

7 Q. ----with an exhibit to clarify a little bit more on that.

8 A. Okay. May I make one clarification on this----

9 Q. Yes, sir.

10 A. ----slide? So I think it may be worth emphasizing here is
11 our "today" and "tonight" periods are basically 6:00 a.m. to 6:00
12 p.m.

13 Q. Thank you. With respect to the Coast Guard and other
14 entities informing that information, how does your office ensure
15 that these forecasts are accurate, as in do you have a feedback
16 mechanism if the Coast Guard supplies X amount of conditions, you
17 will--does--does some entity in your office go back and say, yes,
18 these were actually the observed conditions or it meets with our
19 forecast tools. Is there any kind of feedback loop?

20 A. For the--you're talking about the observations themselves,
21 right?

22 Q. Yes, sir.

23 A. Yeah. Yeah, so we actually try to do verification of, for

1 instance, our forecast was--we typically try to do these
2 verifications for--for our warning thresholds, gale warnings,
3 storm warnings, things of that nature. So, you know, if our
4 forecast was for gale conditions, say 40 knots, we'd go back
5 through it and the buoy data was 30 knots. Then that would be a
6 miss on our part, you know. Say, 40 knots or 45 knots, then,
7 yeah, then we would verify that it's a good forecast. So that
8 process does take place.

9 Q. Excellent. Does the National Weather Service provide
10 training to federal, state or local organizations that provide
11 bar condition reports to your office?

12 A. Can you repeat the question, please.

13 Q. Does your office provide training to federal, state or local
14 organizations that provide bar report conditions to your office?

15 A. I would say maybe--well, the answer to that is a little bit
16 of yes and no. I would say not directly. We do have a position
17 in the National Weather Service called the port meteorological
18 officer. There's one in--one in Seattle, one in the Oakland
19 area. I think the one in Seattle is actually vacant right now,
20 but they actually make visits to the Coast Guard stations
21 throughout the year, provide some training, provide help with
22 some of their instrumentation, things of that nature. So there's
23 that type of training going on. Throughout the year we attend

1 meetings with various fishermen groups and commercial operators,
2 sometimes visit the Coast Guard. So in--in those visits we
3 provide some training on our weather forecasting capability, what
4 type of data is available to them, how do you get that
5 information, those type of things. So I would say they're--I
6 would say they're not regularly scheduled, like every 3 months,
7 but it's as--as meetings and situations arise or opportunities
8 arise to go out and visit these--these locations. We do do that,
9 and it's usually taking advantage of all of us being in a--some
10 type of meeting together. So I think a good example is twice a
11 year we meet with the Columbia River Fishing Association,
12 Crabbing Association, as well as the towboat operators that
13 operate the barges up and down the West Coast. Sometimes the
14 Coast Guard is at those meetings. We make tel--teleconference
15 capability for those. Those meetings are typically held in
16 Astoria. We have teleconference capabilities for the fishing
17 group at Newport to participate in those. A lot of those
18 meetings talk about regulatory-type stuff, "Let's try to keep the
19 crab pots out of the tow lanes," things of that nature, but the
20 National Weather Service usually gives some type of marine
21 weather training and updates at those type of meetings. So
22 that's an example of some of the types of training we do.
23 Q. Referring to the--the exhibit that's displayed on the screen,

1 can you talk to the accuracy of this forecast in terms of actual
2 weather for the late afternoon leading into the late evening from
3 the 8th of January 2019?

4 A. Yes, I think that was very accurate, actually. So in this
5 particular case, you can kind of see we had small craft
6 advisories out. This is for the--what we call the outer waters,
7 up until about 4:00 p.m. So I'm going to backtrack a little bit.
8 We were expecting a storm system to come in that particular day,
9 on Tuesday night and Wednesday with rapidly deteriorating weather
10 conditions, sea conditions coming up quite rapidly, and wind
11 conditions increasing quite rapidly--quite rapidly. So we
12 definitely had small craft winds all throughout the evening. It
13 looks like we went to gale-force winds at about 4:00 the next
14 morning near the accident site, and the seas really ramped up,
15 you know, well--well in excess of 10 feet and they peaked out at
16 about 17 feet--close to 17 feet to the time of the accident.
17 They actually maximized at about 20 feet about midnight that
18 night. So I think that forecast was very accurate. Small craft
19 advisories out until late afternoon and then we were
20 transitioning to a gale warning, which is a higher threshold of
21 basically higher winds and the more chaotic sea conditions. So I
22 think this was a very accurate forecast.

23 **TA:** Thank you. Please display Exhibit 58, page 2.

1 Q. Mr. Wilde, for the benefit of the public, I am displaying the
2 Yaquina Bay bar camera image along with verbiage associated with
3 the image. This image was displayed on the National Weather
4 Service website. While we're pulling that up, Mr. Wilde, are you
5 familiar with the term "bar report"?

6 A. Yes, I am.

7 Q. Would you ex--expand upon that?

8 A. So this is something we look very forward to at our office of
9 the Coast Guard--we're really anxious to see the bar report
10 coming out of Cape Disappointment--the Coast Guard station at
11 Cape Disappointment, because we knew they just made a transit
12 across the Columbia River bar, close to it, and radioed back what
13 the--basically the bar conditions were. So we kind of use that
14 as our check, if you will, our verification of, hey, how's our
15 forecast for the Columbia River bar going. And we basically move
16 our--our forecast in one direction or the other based upon that--
17 that bar report. So that's very critical. And like I said
18 earlier, the Coast Guard provides those type of bar reports for
19 the other bars, too, and we integrate it into this web page. So
20 we look at this several times a day to get an idea of what the
21 conditions are up and down the river bars and our area of
22 responsibility.

23 Q. Thank you. I'll refer you to specifically to the graphic.

1 Do you see where it says "status and restrictions"?

2 A. Yes.

3 Q. Would you please talk to the comments that are filling in
4 "status and restrictions".

5 A. Well, this is something the Coast Guard put--puts in. You
6 know, we're certainly more interested in the information below
7 there about, hey, what are the--what are the sea conditions, what
8 are the wave conditions in the actual bar, in the main channel of
9 the bar, or next to the jetties. No restrictions, basically, to
10 our knowledge, that means, you know, no restrictions to any type
11 of vessel. Sometimes we see restricted to some type of vessel, a
12 certain length of vessel, I believe, and sometimes this is the
13 bar--we see bar closure restrictions on there, which is all done
14 by the U.S. Coast Guard. Again, we're most interested--the
15 National Weather Service, we're most interested in the sea--the
16 sea conditions and any type of wind conditions we can get,
17 especially in a main channel.

18 Q. Looking at this page, this is obviously the web camera image
19 looking at the seaward entrance. Do--are you aware if this
20 camera provides continuous video allowing a viewer to see actual
21 condition at the moment of viewing or is there a periodic
22 interval?

23 A. My knowledge of this camera is the camera imagery is

1 available during daylight hours. Certainly the imagery is
2 available at night, but there's no illumination or anything like
3 that. So there's nothing to see much at night. As long as the
4 camera is operating--this camera is not operated by the National
5 Weather Service. So we're at the mercy of whoever operates this
6 camera, but to my knowledge, it's--we can look in here on any
7 kind of given day and it's usually up-to-date imagery. There has
8 been occasions when the camera has gone offline or the
9 information has gone offline. It's usually the result of some
10 type of data dissemination issue.

11 Q. Are you aware of who maintains this--the imagery?

12 A. I be--I'm--I couldn't say for sure, quite honestly. I
13 believe it's the Coast Guard, but I'm not completely sure.

14 Q. Thank you. Switching briefly to the weather forecast, you
15 earlier mentioned, can anyone--how can anyone listen to the
16 weather forecast, specifically asking about AM commercial radios
17 or do you need any special equipment to tune into and listen to
18 those frequencies?

19 A. Okay, so--so if you want to listen to the--to the weather
20 forecast, the best vehicle for that is over NOAA weather radio.
21 So you would need a receiver. Typically we call them weather
22 radio receivers, something to be able to pick up those
23 frequencies I mentioned. So you can get your information over

1 NOAA weather radio that--that particular way. Some automobiles
2 also have--you can pick up that frequency. There's only two that
3 I--I know of that--and also I think we relay this information to
4 the U.S. Coast Guard, you know, our weather forecasts. To my
5 knowledge, they have the capability to relay--relay the
6 information over their frequencies, too, on some type of
7 recording or even a--or even a phone recording, too. And that's
8 another way we can get the information in our office, too. I
9 failed to mention before, but you can also dial into some type of
10 telephone number, a phone tree, and also get this--this weather
11 information via telephone. So if you want to listen to it, I
12 think the short answer is NOAA weather radio or some type of
13 weather radio receiver, phone by calling the number at our
14 office, or maybe listening to a broadcast out of the Coast Guard
15 station, which would contain the wea--the latest weather
16 information and any warnings or advisories that are in effect.

17 Q. How is the public made aware of the various ways to listen to
18 the marine forecast?

19 A. Through various education efforts. You know, all that is
20 available through our web delivery services, but it's also part
21 of our outreach and education efforts of multiple ways you can
22 kind of receive weather information. We do public forecasts--I
23 mean public education. We take advantage of doing this type of

1 education almost every type of meeting we have with some type of
2 customer group or even--even the public, you know, attend--
3 attending public meetings and take advantage of--of trying to
4 relay this type of information, this type of education.

5 **TA:** Lieutenant Woods, please display Exhibit 18, page 2, Yaquina
6 Bay bar restrictions.

7 Q. Mr. Wilde, I am displaying a compilation of these bar reports
8 we talked about earlier from the day of the 8th of January 2019.
9 When it comes up, I will ask you to identify the line beginning
10 at time stamp 1644, which should be----

11 A. Could you zoom in, please.

12 Q. It should be at the top entry of the page.

13 **TA:** So for the benefit of the public, we're having some
14 technical difficulty--difficulties with our computers. So we're
15 going to run the paper copy to Mr. Wilde.

16 **WIT:** Okay. I think I can see it there now.

17 **TA:** Oh----

18 **WIT:** Yeah, I got it.

19 **TA:** ----so close.

20 Q. Mr. Wilde, can you please familiarize yourself with the
21 verbiage next to the time stamp 1644. When you're ready, would
22 you please read aloud from that time stamp.

23 A. Okay, so on the left-hand--the time stamp 18319 at 1644, on

1 the left of there it says "all recreational/UPV". So to my
2 understanding, this is some U.S. Coast Guard language that's
3 basically either--I don't know if this a restriction--let me read
4 the right-hand side here a little bit. Yeah, so it would be
5 restricted to recreational and unin--uninspected commercial
6 passenger vehicles--vessels, I'm sorry. So, again, a restriction
7 by the U.S. Coast Guard to--to all recreational and uninspected
8 commercial passenger vehicles [sic] in this particular case at
9 buoy 7. There's some information on what the sea conditions are,
10 the jetty tips and also the main channel itself, 4--4-to-6-foot-
11 long ocean swells, winds east at 10 to 15 knots. So there's a--
12 there's a--some level of restriction on that particular entry.

13 Q. Yes, sir. What information might a mariner glean from that
14 information?

15 A. Well, there would be really great information to--to have
16 here about--on this particular--I think this is for the Yaquina
17 bar.

18 Q. Yes, sir.

19 A. So it would be what are the sea conditions expected in the
20 main channel. That would be, in this particular case, 4-to-6-
21 foot-long ocean swells, what the sea conditions are, the jetty
22 tips. There's some chop with the ebb. What the visibility would
23 be, 5 nautical miles. Then certainly if you want to call this a

1 notice to mariners, there is a restriction on this particular bar
2 at this point in time.

3 Q. What is the significance of the predicted tides and the tidal
4 currents, and how do those tides affect the conditions
5 specifically in Yaquina Bay?

6 A. Okay, so, you know, certainly--well, certainly we were having
7 some--if I recall correctly, we were having some pretty higher
8 tides that particular time of the month because we'd just had a
9 new moon 2 days before. So that's typically a time of your high
10 tides. And then what's not available here--I don't see, anyway--
11 is the--the current velocity. So if there was an ebb current--go
12 look and see what the current velocity was--if there was an ebb
13 current, that would be--if you were transiting at the time of the
14 ebb current, that's some of your worst sea conditions--can occur
15 as the ebb current kind of goes out and you're met with the--you
16 know, the ocean waves, the swell coming in from the open ocean--
17 is going to basically create some type of a standing wave across
18 these bars.

19 Q. And you mentioned earlier that the verbiage reads "the bar is
20 currently restricted to all recreation and uninspected commercial
21 passenger vessels at buoy 7". Are you--do you know who is
22 responsible for restricted the bar and closing the bar?

23 A. Yes, to my knowledge that's done by the U.S. Coast Guard.

1 Q. And do you know what parameters they base those restrictions
2 or closures on?

3 A. I do not.

4 **TA:** Lieutenant Woods, please display this exhibit, page 1.

5 Q. Mr. Wilde, I'd like to direct your attention toward the time
6 stamp entry 2058. And I'd like you to read the section that
7 talks about--starts at "jetty tips" and goes through "buoy 7",
8 please.

9 A. Just scroll----

10 **TA:** Negative. Go down. It's----

11 **WIT:** 2058?

12 **TA:** Yes, please.

13 **WIT:** Okay, so entry there is--this is, you know, basically some
14 entry for the jetty tips of main channel, 12-to-14-foot swells
15 with occasionally 16-foot breaks. So the waves are breaking.
16 Visibility of 6 nautical miles. The winds are out of the east-
17 southeast at 10 to 13 knots, and the bar is currently restricted
18 to recreational and uninspected commercial passenger vessels at
19 buoy number 7. So that tells me, you know, from our previous
20 entry, sea conditions are worsening. Certainly this--as we had
21 in our forecast, the--in the forecast, the seas are rising, and
22 the winds is also kind of picking up. So that tells me the
23 weather conditions are deteriorating--weather and sea conditions.

1 Q. Although the forecast is for 12-to-14-foot waves with
2 occasional 16, could the actual conditions on scene exceed 14-to-
3 16-foot waves?

4 A. Well, this--to my knowledge, this is a--not a forecast. This
5 is an observation.

6 Q. That's right.

7 A. And this particular--in this particular case. So there's a
8 little bit of distinction there. But, yes, you know, right now
9 at the latest observation--and typically these are--to my
10 knowledge, these are made by U.S. Coast Guard personnel going out
11 and making some type of transit, out there making their best
12 judgment on what these conditions are. And so could the
13 conditions be worse? I think that's certainly possible, given
14 the nature of the weather that was occurring that night.
15 Approaching frontal system, waves are going to come up, the winds
16 are going to increase. So these conditions could certainly
17 possibly be worse, if not at this point in time, shortly
18 thereafter.

19 Q. Why is there no update on this restriction after the time
20 stamp 2058 until the next morning at 0757 on the 9th of January?

21 A. You know, I--I'm not probably the right person to answer that
22 question. To my knowledge, working with our Coast Guard
23 partners, these observations are--are, again, done by U.S. Coast

1 Guard personnel actually making a transit out either across or
2 near the bar and putting this type of information--this type of
3 observation available--into this mechanism so we can post this on
4 our web page.

5 **TA:** Lieutenant Woods, please display Exhibit 49, page 4.

6 Q. Mr. Wilde, this will be a graphic representing the moonrise
7 and moonset data for the evening of the 8th of January 2019. On
8 the evening of the 8th of January 2019, the moon was a waxing
9 crescent and represented 6% illumination. Given this
10 information, can you explain how this amount of moonlight might
11 illuminate this area at night.

12 A. Well, it looks like from--from here, we certainly had a new
13 moon on the--on January 6th. So that's basically the moon is not
14 visible. So by the 8th the moon was starting to wax. So we
15 basically have just a little bit of a crescent shine. So I think
16 there would be virtually no lunar illumination out on the waters
17 that particular night. That little sliver of crescent might give
18 a little bit but little--little to no illumination--not much
19 moonlight.

20 Q. With the absence of any other lighting in the area, would
21 this amount of moonlight be enough to illuminate objects in the
22 water such as jetties or waves?

23 A. I could not answer that, quite honestly.

1 Q. So in closing, I'd like to ask--give you the opportunity to
2 share any insight you might have on this incident or offer any
3 other suggestions in improving weather forecasting and whether
4 there is any technology that you're aware of under development
5 that could be used to enhance the forecast of dangerous
6 conditions.

7 A. Well, first of all, I--I would think on the part of our
8 organization, you know, our--our hearts and prayers go out to the
9 victims of this--this accident, certainly a tragic accident.
10 We're so sorry for any type of loss of life that occurs in this
11 environment.

12 As far as improvements, you know, the National Weather
13 Service is constantly trying to improve our capabilities through
14 improved--new and improved or more observational networks,
15 through our modeling efforts. We certainly have an effort
16 underway now to kind of--if you want to call it modernize or use
17 state-of-the-art wave prediction models. That work is underway,
18 and we--we are very optimistic about seeing very fruitful outcome
19 of that information to help us improve our capability to--to
20 continue to improve our weather forecasts and our marine weather
21 forecasts. I think there's--there's good--good hope in the--on
22 the--on the horizon with these efforts.

23 **TA:** Thank you. Nothing further, ma'am.

1 **LIO:** Thank you. Does any other member of the investigation
2 panel have any questions?

3 [No response.]

4 **LIO:** Mr. Reilly?

5 **PIIC:** No questions. Thank you very much.

6 **LIO:** Mr. Wilde, you are now released as a witness from this
7 formal hearing. Thank you for your testimony and cooperation.
8 If I later determine that this board needs additional information
9 from you, I will contact you through your agency. If you have
10 any questions about this investigation, you may contact our
11 investigation recorder, Lieutenant Luke Woods. Thank you.

12 For the record, it is 1:50 p.m. We'll go ahead and take a
13 15--actually, I'm sorry, a 10-minute break. So we will reconvene
14 at 2:00 p.m. Thank you.

15 [The hearing recessed at 1:51 p.m., 13 May 2019.]

16 **[END OF PAGE]**

17

18

19

20

21

22

23

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 13 May 2019

4 WITNESS: CDR BRENDAN HARRIS, USCG

5 [The hearing was called to order at 2:00 p.m., 13 May 2019.]

6 **LIO:** It is--it is 1--no, it's now 2:00 p.m. and we're going to
7 go ahead and reconvene the hearing. We'll now hear testimony
8 from Commander Harris from--Brendan Harris from District 13
9 Waterways Management. Mr. Harris--Commander Harris is already at
10 the witness table. So, Lieutenant Woods, please administer the
11 oath and ask preliminary questions.

12 **COMMANDER BRENDAN HARRIS, U.S. Coast Guard, was sworn and**
13 **testified as follows:**

14 **LIO:** Commander Harris, you have Coast Guard counsel with you.

15 **WIT:** Yes, ma'am.

16 **LIO:** Commander League, can you please, for the record, introduce
17 yourself.

18 **LCDR Jan League:** Yes, ma'am, my name is Lieutenant Commander Jan
19 League. I'm a detailed staff attorney to the PACAREA legal
20 command.

21 **LIO:** Thank you. All of my questions are related to the time
22 frame prior to the loss of the crew and the fishing vessel MARY B
23 II/BESS CHET, unless otherwise noted. Commander, we're going

1 to--we're going to discuss these broad topic areas for today's
2 testimony, the roles and responsibilities of the Waterways
3 Management Division at District 13, status of Aids to Navigation
4 in Yaquina Bay and discussion on tools to evaluate effectiveness
5 of those Aids to Navigation and ways in which the Coast Guard
6 provides tools for mariners on the Yaquina Bay bar and in Newport
7 Harbor, with a focus on the approach.

8 **WIT:** Ma'am.

9 **LIO:** So, Commander, good afternoon and--and thank you for
10 appearing today at this hearing. You have provided this
11 investigation team a presentation to assist you with your
12 testimony, and it has been marked as Coast Guard Exhibit 052. We
13 have also sent you relevant exhibits to examine beforehand so
14 that you could effectively answer our questions. The discussion
15 on some waterways functions such as regulated navigation areas
16 will be discussed later in the week. Even though this
17 questioning is related to the MARY B II casualty, unless I state
18 otherwise, it's for all vessels that come in and out of the
19 Yaquina Bay waterway. In the public interest, please minimize
20 any use of acronyms during the testimony.

21 **WIT:** Yes, ma'am.

22 **LIO:** If you need to take a break at any time, please let me know
23 and, at this point, I'd like to follow up on some of the

1 questions that Lieutenant Woods asked you at the beginning of
2 your appearance.

3 **DIRECT EXAMINATION**

4 **Questions by the lead investigating officer:**

5 Q. How many years have you been assigned to waterways and Aids
6 to Navigation-related to assignments?

7 A. Six years.

8 Q. And what were those?

9 A. I was the executive officer on a heavy-lift oceangoing buoy
10 tender in Hawaii for 2 years and then I was the commanding
11 officer on that ship for 2 years and a follow-on year in
12 Charleston, South Carolina on another heavy-lift buoy tender, and
13 I spent the last year at the District 13 waterways office.

14 Q. Okay. Can you explain, please, the role and responsibilities
15 of a waterways management division at district.

16 **LIO:** And, Lieutenant Woods, if you could please pull up Exhibit
17 052. You can use that to assist in that discussion. I may ask
18 you questions during the presentation and/or wait until after you
19 finish presenting.

20 **WIT:** Okay. So as stated, I'm Commander Brendan Harris, the
21 waterways management branch chief at District 13. I am in charge
22 of a staff of 13 Coast Guard members, seven civilians, six
23 active-duty, who manage the waterways throughout District 13,

1 which includes Montana, Idaho, Washington and Oregon. There are
2 23 federally navigated waterways in that region with
3 approximately 1800 Aids-to-Navigation and 700 bridges that go
4 over the waterways that we are responsible to manage. We also
5 oversee the operations of seven Coast Guard units, four Aids-to-
6 Navigation teams on Kennewick, Puget Sound, Coos Bay and Astoria,
7 as well as three cutters, the BLUEBELL out of Portland, the
8 CUTTER ELM out of Astoria and the CUTTER HENRY BLAKE out of
9 Everett, Washington. Next slide, please.

10 So the waterways mission is to ensure that we are analyzing
11 and responding as appropriate to all applicable waterways so that
12 they are navigable for both the recreational and commercial
13 users, to utilizes--utilize the resources that we have at our
14 disposal to maintain the Aids-to-Navigation as well as bridge
15 permitting processes throughout the district. Next slide,
16 please.

17 We are tasked by this through the Code of Federal
18 Regulations, Chapter 33, Section 62, which tasks us to maintain
19 federal Aids-to-Navigation as well as private aids to navigation
20 and aids to navigation that are maintained by other
21 organizations. And it's our responsibility to ensure that the
22 aid availability rate, which is how often an aid is on station a
23 certain percent of the time, that that meets federally mandated

1 levels, and if not, we have to determine what is causing that and
2 how to better utilize our resources to do that. And also we are
3 tasked to analyze the waterways on a regular basis, receive
4 feedback from mariners to determine if there need to be any
5 adjustments, whether that's caused by the environment, a ship in
6 the waterway or a determination that the current Aids-to-
7 Navigation system is not adequate. Next slide, please.

8 This is a quick look at the entrance channel to Yaquina, and
9 so the green circles on the slide show where the maintained Aids-
10 to-Navigations are. So those are the federally maintained Aids-
11 to-Navigations. If you're working out to in, you have the
12 Yaquina Bay approach buoy Y, which is our safe water mark, which
13 is visible for the mariners to give them an idea of where they
14 are in the water and that they can go to that and they'll have
15 safe water around them before they make their transit either in
16 or out or as they're going up the coast. We also have Yaquina
17 Bay entrance buoy 1, and the way we set up our Aids-to-Navigation
18 is so that they should be visible from the previous aid behind
19 it. So we make a determination this far out on the waterway, we
20 want to place an Aids-to-Navigation so that the mariners know
21 where they should start their transit inbound, and then we want
22 the next Aids-to-Navigation visible to them from their
23 perspective on the water to ensure that they can see where

1 they're supposed to be transiting to maintain safe passage. The
2 next buoy is Yaquina Bay entrance buoy 3. This is a seasonal
3 Aids-to-Navigation. So this Aids-to-Navigation is supposed to be
4 on station from the 1st of May every year through the 1st of
5 October, and it's maintained by the COAST GUARD CUTTER ELM out of
6 Astoria, and so right now I would say it should be on station.
7 The next Aids-to-Navigation on the chart is Yaquina Bay south
8 jetty light 4, which is about 200 yards off the tip of the south
9 jetty, and it is currently watching properly. There is also a--a
10 sound signal at the end of the jetty to ensure the mariners in
11 low visibility conditions where they can't see that far off of
12 their bow are--can be aware of where they are navigationally.

13 **LIO:** Commander---

14 **WIT:** That's a sound signal--yes, ma'am?

15 **LIO:** Can you use your laser pointer--it should be on the
16 table----

17 **WIT:** Sure.

18 **LIO:** ----to point that out.

19 **WIT:** Okay, so the----

20 **LIO:** So if you could point to buoy--the Y buoy, the entrance
21 buoy and then--very quickly--and just go through them--where
22 you're at.

23 **WIT:** So the Y buoy is out here [indicating] at the very edge of

1 the corner of the chart. The entrance buoy 1 is moving eastbound
2 towards the channel. Entrance buoy 3 is off of the north jetty.
3 Your light signal--the jetty light 4 is here [indicating], 200
4 yards from the tip of the south jetty. And there is a fog
5 signal, a sound signal right here [indicating] that is also a
6 seasonal Aids-to-Navigation. So that is established from 1 May
7 to 1 October as well and sounds for 2 seconds every 15 seconds
8 continuously, to ensure that the mariners are aware in conditions
9 of low visibility. You then have lighted buoy 7 up here
10 [indicating] within the jetties, and then there is a range--so a
11 range is designed for the mariners to have a line to track on as
12 they're navigating inbound on a transit to know how far left or
13 right of the preferred track that they're on. So this should
14 have been visible to any mariners in our outbound into Yaquina
15 Bay. Next slide, please.

16 So this slide depicts the condition of the Aids-to-
17 Navigation as of 08 January. So as you can see, the red star
18 here [indicating] on the Y buoy depicts that that buoy was
19 actually missing. So the buoy went missing as of December 12th,
20 and it was broadcast through a broadcast notice to mariners to
21 ensure that all mariners were aware of its absence from the
22 region. There is an automated--automatic identification system
23 electronic navigation aid on that spot as well. So if the

1 vessels transiting in and out have what we call AIS capability,
2 they would still look at their chart and have that electronic aid
3 depicted on their chart at all times. The next buoy, entrance
4 buoy 1, was on station and watching properly. The entrance buoy
5 number 3, while it was seasonally disestablished, it did sink on
6 station. On the 14th of August it was reported missing, and NOAA
7 actually did soundings of the region and they came back with a
8 very clear picture of the buoy sitting on the bottom of the
9 channel. So that buoy is currently sunk on station right in that
10 spot. The light 4--jetty light 4 was found to be watching
11 properly and--as well as buoy 7 and the fore and aft range boards
12 and lights for the entrance transit. And that completes the
13 prepared presentation, ma'am.

14 Q. So I do have some questions about that slide.

15 A. Okay.

16 Q. So backing up a step or two, does your division maintain
17 historical records for each Aids-to-Navigation?

18 A. Yes, ma'am, we have what we call an Aids-to-Navigation folder
19 for each aid that we maintain.

20 Q. Can you please describe what I would find in an Aids-to-
21 Navigation folder.

22 A. So it's going to have the complete history of all
23 administrative actions on that Aids-to-Navigation. It's going to

1 include--should be pictures from each time it was serviced by a
2 unit. It should talk to the reason for establishment of that
3 Aids-to-Navigation and include every time it was serviced in its
4 life. It should include messages, message traffic on any time a
5 discrepancy or anything else associated--so such as an accident
6 occurs, we're required to do an Aids-to-Navigation verification
7 in and around the area of the accident. So if that occurred
8 around an Aids-to-Navigation, that should be included in that aid
9 folder so that we have the historical perspective to draw back
10 on.

11 Q. So was the status of the Aids-to-Navigation in this waterway
12 in compliance with Coast Guard policies and directives?

13 A. It was in compliance. The fact that we had discrepant aids--
14 we have discrepant aids throughout the district. We utilize our
15 resources as best we can to ensure that we get those corrected as
16 quickly as we can. The stated aid availability rate that we're
17 seeking to achieve is 97.5%. The time that we want an aid to be
18 minimal--the minimum status for the characteristics to be
19 watching properly at all times. So, yes, they were in compliance
20 with federal standards.

21 Q. Okay, thank you. So I think I need some clarification on the
22 status of buoy number 3. And on this slide it has it as
23 seasonally decommissioned. You mentioned that that is a--it's an

1 Aids-to-Navigation that is commissioned 1 May and decommissioned
2 in the winter.

3 A. 1 October, yes.

4 Q. 1 October. And you also mentioned that there--that it was
5 reported missing and that--I believe you said November was when
6 it was found.

7 A. Yes, so the NOAA vessel was able to do sounding in November,
8 yes.

9 Q. So if the--I'd like---

10 **LIO:** Lieutenant Woods, could you please pull up Exhibit--Coast
11 Guard Exhibit 061. So if you could please go to page 2. These
12 are Coast Guard messages with respect to what Commander Harris is
13 talking about. If you could just zoom in, please, on the--and
14 scroll down. Paragraph 1. For the benefit of the public, this
15 is the message communication that Commander Harris was talking
16 about.

17 Q. Commander, is this the message traffic that reported----

18 A. Yes, ma'am----

19 Q. ----buoy number 3----

20 A. ----this message was sent out by the CUTTER FIR to document
21 the update from the NOAA vessel.

22 **LIO:** Lieutenant Woods, please scroll down to page 1--I'm sorry,
23 scroll up to page 1. Zoom in, please.

1 Q. Okay, so this is--what is this message?

2 A. So this message states that NOAA scanned the ocean floor and
3 that they found the mooring. So a configuration for a floating
4 Aids-to-Navigation is a mooring, which is usually a heavy
5 concrete sinker, so in this case a 36,000-pound sinker on the
6 ocean floor that keeps the Aids-to-Navigation in place. Attached
7 to the sinker is a chain. So in this case we had 180 feet of--in
8 7/8-diameter steel chain attached from the mooring to the buoy,
9 which was an 8-foot diameter by 26-foot in length Aids-to-
10 Navigation. So the NOAA scan showed very clearly--you can see
11 the mooring, that 36,000-pound concrete sinker sitting on the
12 ocean floor with the buoy off to the west, laying on its side.

13 Q. Thank you very much. So for clarification, if it's still
14 there, is the framing seasonally decommissioned--is it seasonally
15 decommissioned?

16 A. So it would have been decommissioned as of 1 October. So
17 it's no longer a discrepant Aids-to-Navigation since we didn't
18 expect it to be on scene and watching properly at that time.

19 Q. So is there a reason that it is a seasonal aid?

20 A. Yes. So the history of this aid going back to 1963 is that
21 it is very difficult to keep it on station during the winter
22 months. So the--the wave action in that area is extremely strong
23 and it causes the aid to go either off station, missing or sink

1 rather regularly. So we've determined that we don't have the
2 resources to maintain that Aids-to-Navigation from the October
3 1st to May 1st time frame.

4 Q. I understand. Does the Coast Guard have a buoy model or has
5 the Coast Guard, to your knowledge, contemplated other designs
6 for a buoy that might hold up better in an environment with
7 strong current and large seas similar to the Yaquina Bay bar?

8 A. So there are fast-water buoys, but they are smaller-size
9 buoys. So the characteristic of a buoy that you're putting out
10 in the ocean in that spot needs to be a certain size in order for
11 the mariners to be able to see it. If it's not a certain size
12 and with the size of the swell that goes through the area, it's
13 more a hazard to navigation than it is an aid to navigation. So
14 it would be a detriment to the mariner who is actually trying to
15 transit the area. So most of the fast-water buoys are a smaller
16 size that we really couldn't use at this location. We do have
17 some--what they are are called ice buoys, which have a different
18 configuration on the bottom. So we've had some discussions on
19 whether or not it would be an option to put on there. So that's
20 something we can potentially look at. I haven't heard of ice
21 buoys being used in an offshore environment and heard whether or
22 not that was an adequate response--an adequate aid to navigation.
23 So that's something we're considering right now, but I don't

1 believe at this point it's been tried within the organization.

2 Q. Thank you. Do you know if other waterways in this Coast
3 Guard district have the--a similar problem with their Aids-to-
4 Navigation?

5 A. Yes, we have other aids that are on bars that are seasonal,
6 especially a lot of the jetty lights--like the sound signal on
7 the jetty is also seasonal for Yaquina. So the wave action over
8 those jetties is also extremely strong and knocks down our lights
9 and our sound signals rather frequently. So we've done the risk
10 analysis and resource analysis to determine how and when we can
11 maintain those aids.

12 Q. By that standard, then, is buoy 3 less important or more
13 important or the same level of importance than the Yaquina Bay
14 entrance buoy, YB buoy I think it's called sometimes?

15 A. Yes, ma'am. I would say they're the same level of importance
16 but just the specific location of the 3 buoy being directly on
17 that bar, the wave action there is considerably greater than what
18 you have at the Y buoy. So it makes it that much more difficult
19 to maintain. And we did attempt--we have--so from 1964 to 1973
20 it was a continuous year-round buoy. There were 19 discrepancies
21 on it over a 9-year period, which is a significant number. So
22 for our buoys we usually service them on an either 12, 24 or 36-
23 month basis. So our expectation is that, at the very least,

1 we'll be able to leave a buoy alone for a year--a calendar year,
2 and it should be able to maintain station. So in the event that
3 that is increased threefold on what we would normally see, that
4 becomes a resource constraint that we don't have adequate
5 capability of maintaining. So we did try--in 1994 it was
6 attempted to make it a continuous buoy as well. It went
7 discrepant twice within a 6-month period, and they quickly made
8 it a seasonal buoy once again. And in 2006 they tried once more
9 with a slightly different configuration, and we got new advanced
10 lighting systems that we were able to put on buoys. So the hope
11 was that that might solve some of those issues, but it when went
12 discrepant three times in a 9-month period. So we quickly put it
13 back to seasonal.

14 Q. Okay. So I'm going to shift gears a little bit to--to the--
15 to the entrance buoy, the YB buoy.

16 **LIO:** Can we, Lieutenant Woods, please put up 052 again, slide 5.

17 Q. So while that's coming back up, you mentioned that that buoy
18 is missing. How long has that--has that buoy been missing?

19 A. So we got the report that the YB buoy went missing on
20 December 12th.

21 Q. December 12th of 2018?

22 A. 2018, yes.

23 Q. Gotcha. So are there Coast Guard policies about how quickly

1 an Aids-to-Navigation has to be reestablished for buoys similar
2 to the YB buoy?

3 A. So each buoy is getting an aid **criticality** [ph] 1, 2 or 3.
4 And that **criticality** then gets you a certain response time to
5 take action. That action doesn't necessarily mean that you're
6 correcting the discrepancy. It means whether you go on scene and
7 verify or you make a determination of how long it's going to be
8 before you're able to act on it because there is other
9 constraints that might keep you from correcting the discrepancy.
10 So the--for the YB buoy, that discrepancy response time should
11 have been 24 hours. We should have had a message out about the
12 status and our plan for that buoy within 24 hours.

13 Q. And did the Coast Guard do that?

14 A. Yes, we did, ma'am.

15 Q. What was the plan of action?

16 A. So right now we are in a difficult spot when it comes to
17 heavy-lift oceangoing sea buoy tenders. So the vessels that are
18 capable of servicing that Aids-to-Navigation, the Coast Guard
19 fleet of 225-foot buoy tenders is going through midlife
20 maintenance. So District 13 has one 225-foot buoy tender, the
21 COAST GUARD CUTTER ELM, stationed in Astoria. She is currently
22 in Baltimore, Maryland getting refurbished and has been there for
23 16 months now. So we have been without a--that heavy-lift

1 capability for almost a year at this point. So we don't have an
2 asset that is capable of dragging for and recovering the aid that
3 is on the ocean floor or reestablishing a new aid in that
4 position. We did put out a request to our commands, so Pacific
5 Area--Coast Guard Pacific Area. We requested if there were any
6 other heavy-lift buoy tenders in the region or in the Coast Guard
7 that could come and support us in that mission, and we got a
8 negative response because District 17 in Alaska is also having
9 resource struggles, as well as District 11 in California. Their
10 buoy tender was going in for a dry dock availability shortly
11 after we got that request. So the buoy went discrepant on
12 December 12th, and we put out the message requesting support on
13 December 14th. At this point the response is no support
14 available. So our plan is to wait until the CUTTER ELM comes
15 back, but we're going to continue checking in with Pacific Area
16 to determine if there is a resource availability at any point to
17 rectify that situation.

18 Q. Thank you very much. Earlier in your presentation you
19 mentioned AIS. Can you very briefly explain that and what that
20 means with respect to Yaquina Bay. You mentioned that the YB
21 buoy has a virtual aid. So could you explain that a little bit.

22 A. Yeah, so the automatic identification system is initially
23 established for vessel tracking. So a lot of the larger vessels

1 will have an AIS transmitter that puts out their position so that
2 other vessel traffic is aware and they can arrange passing
3 arrangements and avoid maritime incidents. So the Coast Guard
4 has translated that into our Aids-to-Navigation system using the
5 same technology. There is a transmitter at Station Yaquina Bay
6 that transmates--transmits the position of certain Aids-to-
7 Navigation. So that transmitter is limited to, I believe,
8 pushing out four signals. So we have an AIS signal on the Y buoy
9 and I believe there is one on the ranges as well. So those
10 electronic aids to navigation are designed to show up on the
11 mariners' charts. Even in the event that Aids-to-Navigation
12 might not be on scene or we can make a determination such as for
13 the 3 buoy, maybe it is a seasonal aid and that we can't maintain
14 the on-station buoy hole there year round, we can keep an AIS
15 signal on that location year round to better utilize our
16 resources and give the mariners a better picture to navigate off
17 of.

18 Q. Commander, are all vessels that come in and out of Yaquina
19 Bay furnished with the equipment necessary to receive or read AIS
20 information, to your knowledge?

21 A. No. So from my understanding, vessels 65 feet and greater in
22 length are required to carry AIS. Vessels less than 65 feet can
23 choose to if they want to invest in the technology, but they are

1 not required to carry that.

2 Q. So if a vessel doesn't have AIS, how can a mariner know about
3 those buoys?

4 A. So we--so the broadcast notice to mariners is a transmission
5 that is sent out. So when the Y buoy went discrepant or was no
6 longer on station, the Coast Guard broadcast a message letting
7 mariners know. So they can listen on VHF channel 16 and they'll
8 be made aware of the current status in that harbor that could be
9 a hazard to navigation, a change in the status of an Aids-to-
10 Navigation. It could be a log floating down the river. So we
11 have that immediate response. Then we also have the local notice
12 to the mariners, which is released weekly on Wednesdays through a
13 PDF on the Coast Guard's navigation center website that has your
14 full rundown of all aid status for District 13. So we are
15 dependent on mariners being aware of where the resources are for
16 them to ensure awareness of the current status and that they
17 check regularly to--for updates.

18 Q. Okay. Shifting your attention to lighted beacon number 4,
19 can you speak in depth about this Aids-to-Navigation,
20 specifically what color--what color lights, height, the range--
21 charted range of visibility.

22 A. Sure. So lighted aid 4 is--all of this is available in the
23 light list, which is maintained by the navigation center. So

1 lighted--south jetty light 4 is 17-feet tall. It's a flashing
2 red light every 2½ seconds, and the range--it's supposed to be
3 visible for a range of 4 miles.

4 Q. Is--is--is red like the standard color for ranges?

5 A. For--so red is the standard cover--color for Aids-to-
6 Navigation on the right-hand side of an inbound traffic lane. So
7 you'll find when you're navigating that green is going to be on
8 your left-hand side inbound and red is going to be on your right-
9 hand side. Ranges are oftentimes white to differentiate between
10 your left and right or port and starboard.

11 Q. Okay, I understand. Excellent. So is--on the chart there
12 does not appear to be a light-like number 4 in the north jetty.
13 In the past has the Coast Guard ever maintained a light in that
14 position?

15 A. Yeah, so we have 13 jetties up and down the Pacific Northwest
16 in Washington and Oregon. Of those 13, nine have--are lit
17 jetties, and all nine only have one jetty lit [sic]. In the past
18 the light for Yaquina Bay was on the north jetty until 1979. In
19 1979 the aid was destroyed by a strong storm that came through,
20 both the actual aid and the concrete base that the aid was placed
21 on. And it was determined at that time that the jetty was in
22 such a state that we could not rebuild the light on the north
23 jetty. So we chose to shift it to the south. So since 1981 the

1 light has been on the south jetty, and even if we wanted to put
2 one on the north jetty right now, it's been determined that the
3 jetty is in a state of disrepair that wouldn't allow for us to be
4 able to maintain it.

5 Q. So it's not feasible at this time for the Coast Guard to
6 reestablish that light----

7 A. Yes, ma'am.

8 Q. ----because it's not stable, and that--and that came from
9 what agency?

10 A. So the agency that's responsible for maintaining the jetties
11 is the Army Corps of Engineers. So the Coast Guard makes a
12 determination on whether or not we can build and maintain a
13 structure on them in coordination with the Army Corps, but the
14 Army Corps is the agency that's actually responsible for
15 maintaining the jetties and the state that they're in.

16 Q. Thank you. So you mentioned the range lights, and we've
17 talked a little bit about the ranges. The--there's a--a forward
18 and a rear range light, and you mentioned in your presentation
19 that those were used for the mariner to navigate in on. So you
20 mentioned that the standard color for range lights is white.
21 What is the color for Yaquina Bay's ranges?

22 A. So Yaquina Bay's ranges are--the rear range is red and the
23 front range is also red. It might be dependent on what are the

1 background colors in a specific harbor. So if you're choosing
2 something other than white, you're going to make a determination
3 based on the total setup of that waterway. So if we had made it
4 a white range, is it just going to blend in to the background and
5 not be visible to the mariners? So I'm not fully aware of the
6 decision that went into choosing the colors for the entrance
7 range in Yaquina, but we want to ensure that the lights
8 differentiate themselves from the background lights so that
9 they're clearly visible to the mariner as they navigate the
10 waterway.

11 Q. Okay. Can you--can--can you see the color red as far as you
12 can see the color white when it comes to Aids-to-Navigation?

13 A. So we do a calculation. I'm not sure. So the lights that we
14 have, we can set the luminosity on them, the strength of that
15 signal. I don't know if it varies by color, but we do a
16 calculation for every aid and for every light that we display, to
17 say what range should this light be visible out to. So I don't
18 know if white or red would make a--I'd have to go back and check
19 on that, if that's part of our calculation--in it or not, but we
20 set the luminosity on that light to meet a certain requirement
21 where we've determined we want the mariner to be able to see to
22 safely navigate out to this range.

23 Q. Okay. Commander, we've--we've talked about almost all of the

1 physical and virtual Aids-to-Navigation used in the approach to
2 entering the waterway. You also mentioned in your presentation
3 that--that waterways management does a--it regularly assesses the
4 waterway. When's the last time that this waterways Aids-to-
5 Navigation configuration was evaluated?

6 A. So the official report that we use is called a WAMS [ph], a
7 waterways assessment. So the last official WAMS completed on
8 Yaquina was 1996. So it's been awhile since an official one has
9 been done. The organizational policy is that we try to get a
10 WAMS done every 5 years on each waterway. So we are extremely
11 delinquent in getting Yaquina done, and it's something that's on
12 our to-do list. The way we have managed it with the resource
13 constraints that we have is we maintain a very close relationship
14 with the waterways users, with the Coast Guard units that are in
15 regions and with the harbor safety committees that work to
16 support the mariners in their areas to ensure that we stay linked
17 in and hopefully we're hearing about issues within a waterway
18 outside of doing official WAMS process. We can be very
19 responsive and we have something called a mini-WAMS that we can
20 do, which is concentrated on a specific area. So we're not going
21 to look at the whole waterway and do a more extensive review of
22 the waterway, but if they let us know that there's an aid or two
23 or a specific origin in the waterway that they have concerns

1 over, we'll come in and analyze it in a more abbreviated manner,
2 and we can adjust accordingly. So we did one of those in 2006.
3 That's when they changed the 3 buoy to a year-round aid. That
4 was based off a mariner request to have a year-round aid. So we
5 made that attempt. We made changes to the aid to try to get it
6 to stay on station. And then after a trial period, it was
7 determined that we weren't going to be able to make it work. So
8 we had to shift it back. So to answer your question, the
9 waterways assessments are supposed to be every 5 years.

10 Yaquina's last official full waterways assessment was 1996.

11 Q. Okay. Commander Harris, please explain how channel depth is
12 maintained for a channel like Yaquina Bay and, more specifically
13 also, how that topic--as far as the Coast Guard interaction
14 between the agency that maintains channel depth.

15 A. Yes, ma'am. So the--the channels are--and the dredging of
16 the channels to maintain their current depth is managed by the
17 Army Corps of Engineers, along with the jetties. The Army Corps
18 regularly does soundings of the channels to verify what the
19 current depth is, and then they utilize those soundings to
20 determine if they are going to--whether it's--they have their own
21 vessels that are--have dredging capabilities, whether they can
22 get those vessels on scene to manage the dredging or whether they
23 have to contract out for commercial support to complete that

1 dredging. So Yaquina Bay has advertised controlling depths for
2 the different regions of the waterway, and the Army Corps is
3 responsible to conduct soundings to verify whether the waterway
4 actually meets those depths. And then in the event that they
5 don't meet the controlling depths throughout the channel, it's
6 their responsibility to get a dredge on scene and dredge to the
7 advertised controlling depth.

8 **LIO:** Okay. Lieutenant Woods, can you please bring up Coast
9 Guard Exhibit 028. It's an Army Corps of Engineers depth chart.
10 So for the benefit of the public, this is what one product looks
11 like that we get from the Army Corps of Engineers. If you could
12 zoom in, please on the entrance of the Yaquina Bay bar. Little
13 more.

14 Q. So if there's a problem with the channel with respect to
15 shoaling, how would the Coast Guard learn about it and what would
16 the Coast Guard do?

17 A. We'd learn about it in several different ways. First off, if
18 there are groundings in an area, so if vessels are grounding in
19 spots that are supposed to be--have greater depth than what they
20 actually have. The Army Corps of Engineers will let us know if,
21 during their sounding process, they determine that the--the
22 depths in the channel have decreased. It's their responsibility
23 to contact us as the Coast Guard to update charts--actually NOAA

1 is the one who updates the charts, but they contact us as the
2 managers of the waterways. They're also responsible to work with
3 the local waterways users to keep them aware of what the current
4 depths are so that they can manage their vessel traffic. So in
5 this instance, when you see that their controlling depth in some
6 spots is up to 8 feet shallower than what it's supposed to be,
7 that'll impact the mariners of deep-draft vessels, their ability
8 to get in and out, and they're going to have to time their
9 transit based on the tides and currents to effectively manage
10 that scenario or it might make it so that certain classes of
11 vessels can't transit the area because the controlling depth
12 isn't met.

13 Q. How frequently does your office talk to the Army Corps of
14 Engineers with respect to dredging and more specifically to
15 dredging in Yaquina Bay bar or the Yaquina Bay waterway?

16 A. So we have an annual meeting that takes place each winter
17 where--so we--our focus for those meetings is impact to Coast
18 Guard assets and the Coast Guard's ability to execute our
19 missions of search and rescue and inspections. So can the
20 station vessels get out and do what they need? If their location
21 falls within a federal--federally managed waterway, does it need
22 to be sounded and dredged by the Army Corps? So we do that every
23 year in the January/February time frame, and that's throughout

1 Washington and Oregon. We--we don't prioritize which waterway we
2 want them to work on, but we give them the list and we give them
3 the verbiage on why it's important that certain dredge work gets
4 done in certain areas. So we're--our focus is on Coast Guard
5 response capabilities, and the Army Corps coordinates with the
6 local waterways users and commercial waterways users to talk
7 about impacts and talk about where they can utilize their
8 resources effectively to support the mariners.

9 Q. Okay, Commander, does the Army Corps of Engineers dredge or
10 assess the depth or condition of waters outside the navigable
11 channel? For example, north--the north--the--excuse me, the
12 beach just north of the north jetty.

13 A. I'm not aware. I'd have to go back and ask them. So they
14 are required to maintain the federally navigable channel, which
15 is highlighted by lines on the chart. I am not sure if they
16 utilize their resources to sound additional areas or not.

17 Q. Sir, do you know who conducts periodic soundings of the water
18 depth in those areas?

19 A. I am not.

20 **LIO:** Lieutenant Woods, please post Coast Guard Exhibit 004 and
21 zoom in on the north beach and jetty tip.

22 Q. And, Commander, for your visibility, I think you have a
23 binder--an exhibit binder.

1 A. Yes, ma'am.

2 Q. If you can turn to that, 004.

3 A. 004?

4 Q. So--so are wrecks and hazards a function of waterways
5 management?

6 A. To ensure that they are charted appropriately, yes. So we--
7 we maintain awareness--if we have awareness of wrecks in the
8 area--and we ensure that NOAA is informed so that they can update
9 a chart.

10 Q. So stepping back a second, can you just explain, for the
11 benefit of the public, what wrecks and hazards can be. What are
12 some examples?

13 A. So a wreck could be any time a vessel has sunk in an area and
14 they've been unable to recover that vessel. And a hazard could
15 be anything from a rock to any permanent geography in the area
16 that could impact transit of a vessel.

17 Q. Is the Coast Guard responsible for locating and marking the
18 wreckage of any wreck?

19 A. We're responsible for distributing visibility on that but not
20 necessarily for locating--and if it's a wreck that impacts a
21 navigable waterway, then, yes, we would ensure that it was marked
22 appropriately to ensure visibility for the mariners, to give that
23 area wide berth to navigate safely.

1 Q. If a vessel sinks, whose responsibility is it to find the
2 vessel after the sinking?

3 A. I think it's going to be a coordinated--I'm not specifically
4 sure--I know that for a previous fishing vessel that sunk, NOAA
5 utilized their vessels to help locate that asset, but it's--
6 beyond that, I don't know, ma'am.

7 Q. Do you know, as a side note, has the Coast Guard attempted to
8 locate or mark the remains of the MARY B II or has the wreckage
9 of the MARY B II been located?

10 A. From what I've heard, the wreckage was located and removed.

11 Q. Do you have any details with respect to that? Are you
12 speaking of the debris that washed up on the beach or any
13 other---

14 A. Yeah, just the debris that was washed up on the beach. I
15 haven't heard anything beyond that, ma'am. I have not heard of
16 any other hazards to navigation related to the MARY B II that
17 impact the waterway.

18 Q. And, again, how is information about marked wrecks and
19 hazards communicated to mariners?

20 A. So we would do a broadcast notice to mariners that would--can
21 be accessed either online or through marine broadcasts on channel
22 16. And then once the broadcast notice to mariners was canceled,
23 we would highlight it in the local notice to mariners where the

1 NOAA charting service can pull that information and add it to a
2 chart.

3 Q. Based on this casualty, has the Coast Guard conducted an
4 analysis of this waterway?

5 A. We have not yet. We have one scheduled to commence the 1st
6 of August.

7 Q. Is there a requirement after an accident or a casualty, like
8 a Coast Guard policy about evaluating the effectiveness of the
9 Aids-to-Navigation in a waterway after an accident occurs?

10 A. There is not policy. There is the 5-year policy to analyze.
11 There is policy that we need to verify the Aids-to-Navigation in
12 the area to make a determination on whether that was a
13 contributing factor to the incident.

14 **LIO:** At this time I have no further questions. Do any members
15 of the investigation panel have a question? Lieutenant Bigay?

16 **Questions by the assistant investigating officer:**

17 Q. Commander, I have two follow-up questions, if that's okay.
18 Commander Harris, first of all, a question, earlier in your
19 testimony you mentioned that a mariner had made a request to
20 bring one of the buoys back on station. Can you explain that
21 process in terms of how can a mariner communicate concerns
22 regarding Aids-to-Navigation to your office?

23 A. So there are several different ways. So a lot of times it

1 comes through the units that are on scene, so in this case, the
2 station that is located in Yaquina Bay. A mariner would approach
3 the station and let them know and have a discussion about the
4 configuration of the Aids-to-Navigation in the area, and then the
5 station would pass that information along to our office and pass
6 the contact information along to the mariner so that we can call
7 and have that conversation. There is also--they can reach out to
8 us through the local notice to mariners website. It's a publicly
9 available website for--not web but e-mail address to mariners so
10 they can e-mail us directly and we'll take a look at it. And
11 then they can also call a Coast Guard command center--would be
12 able to take that report and pass it along to us as well.

13 Q. Thank you, sir. My second question, did the lapse in
14 appropriations affect Aids-to-Navigation operations and waterway
15 management activity?

16 A. So I do have seven civilians in my office. Six of those
17 civilians were furloughed during the lapse in appropriations. So
18 for a 5-week period we were short about half of our staff. So
19 that definitely impacted what material we were able to cover down
20 on to some extent. It also impacted our Aids-to-Navigation
21 response. So our units regularly go out and service the Aids-to-
22 Navigation to ensure that they're watching properly, and the
23 directive during the lapse of appropriation was that standard

1 servicing of Aids-to-Navigation was to be stopped and we were
2 only to send the units out in the event of an Aids-to-Navigation
3 discrepancy to correct that discrepancy.

4 **LIO:** Mr. Reilly?

5 **CROSS-EXAMINATION**

6 **Questions by the party-in-interest counsel:**

7 Q. Good afternoon, Commander.

8 A. Good afternoon, sir.

9 Q. In the last decade has the Yaquina Bay harbor safety
10 community communicated with the Coast Guard regarding any desired
11 changes to Aids-to-Navigation in the harbor or outside the
12 harbor?

13 A. I am unaware of any requested changes in the last decade.

14 Q. In preparation for this board hearing, were you given--was
15 the board given an opportunity to interview you?

16 A. I was available to be interviewed. I--I spoke to Commander
17 Denny briefly on the phone but no official interview.

18 Q. Were you represented by counsel during the interview by
19 Commander Denny?

20 A. No, I was not.

21 **LIO:** So for the record, we did not have an official interview.
22 It was an administrative phone call to tell him the list of broad
23 topics.

1 Q. Other than what this board has been asked to do and--and are
2 then apparently involved--waterways management--are you aware of
3 any other assessment by any Coast Guard office regarding an
4 evaluation of whether Aids-to-Navigation in any way were a
5 contributing factor to the casualty on January 8th, 2019?

6 A. I'm unaware of any--anything besides what this investigative
7 body has been doing to look into this incident.

8 Q. You described the AIS transmitter at the station, which can
9 create an image on AIS receivers for up to four Aids-to-
10 Navigation. And I may have missed it. I--one of them was the
11 entrance--the YB buoy. You've got the two ranges. Was there a
12 fourth one that's--was used?

13 A. No, I don't think the fourth slot is filled at this time. So
14 right now it's limited to the AIS aids that were in place. So
15 actually looking at the chart right now, light four was also an
16 AIS aid. So the YB buoy as well as light four.

17 **PIIC:** Thank you, Commander. Thanks. That's all I have.

18 **LIO:** Commander Harris, thank you again for your testimony.
19 You're now released as a witness from this formal hearing. We
20 appreciate your cooperation. If I later determine that this
21 board needs additional information from you, I will contact you
22 through your counsel. If you have any questions about this
23 investigation, you may contact the investigation recorder,

1 Lieutenant Luke Woods. Thank you.

2 **WIT:** Thank you, ma'am.

3 **LIO:** For the record, it is 2:54 p.m. Commander Harris was our
4 last witness scheduled for today. So we will go ahead and close
5 the record for today and reconvene tomorrow morning at 8:00--8:00
6 a.m. in the morning in the same space. Thank you.

7 [The hearing recessed at 2:55 p.m., 13 May 2019.]

8 **[END OF PAGE]**

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 14 May 2019

4 WITNESS: LAUREL KINCL

5 [The hearing was called to order at 8:00 a.m., 14 May 2019.]

6 **LIO:** So good morning. This hearing will come to order. Today
7 is Tuesday, May 14, 2019, and the time is 8:00 a.m. We are
8 continuing this public hearing at Newport City Hall, Newport,
9 Oregon.

10 Good morning, ladies and gentlemen. I am Commander Karen
11 Denny, United States Coast Guard, and the executive officer of
12 Marine Safety Unit Portland, Oregon. I am the lead investigating
13 officer for the Thirteenth Coast Guard District's formal
14 investigation into the events leading to the loss of the fishing
15 vessel MARY B II and the loss of three lives. I'm the presiding
16 officer over these proceedings.

17 The Commander for the Thirteenth Coast Guard District, Rear
18 Admiral Throop, has convened this investigation under the
19 authority of Title 46, United States Code Section 6301, and Title
20 46, Code of Federal Regulations, Part 4, to investigate the
21 circumstances surrounding the sinking of the commercial fishing
22 vessel MARY B II with the loss of three lives on January 8th,
23 2019 while attempting to cross the Yaquina Bay bar and enter the

1 port of Newport, Oregon during the hours of darkness.

2 I am conducting this investigation under the rules of Title
3 46, CFR, Part 4.

4 This investigation will determine, as closely as possible,
5 the factors that contributed to the incident so that proper
6 recommen--recommendations for the prevention of similar
7 casualties may be made, whether there is evidence that any act of
8 misconduct, inattention to duty, negligence or willful violation
9 of law on the part of any licensed or certificated person
10 contributed to the casualty, and whether there is evidence that
11 any Coast Guard personnel or any representative or employee of
12 any other government agency or any other person caused or
13 contributed to the casualty.

14 I have previously determined that the following organization
15 was a party in interest and has been designated as such: MARY B
16 II LLC, operating--excuse me, managing owner of the MARY B II,
17 and the legal counsel for the MARY B II LLC is Mr. Chris Reilly.

18 **PIIC:** Good morning. Chris Reilly--good morning. Chris Reilly
19 from Nicoll, Black & Feig here on behalf of fishing vessel MARY B
20 II LLC. Just to be clear, Mrs. Anderson is the managing member.

21 **LIO:** Thank you. These parties have a direct interest in the
22 investigation and have demonstrated the potential for
23 contributing significantly to the completeness of the

1 investigation or otherwise enhancing the safety of life and
2 property at sea through participation as a party in interest.

3 All parties in interest have a statutory right to employ
4 counsel to represent them, to cross-examine witnesses, and to
5 have witnesses called on their behalf.

6 I will examine all witnesses at this formal hearing under
7 the--under oath or affirmation, and witnesses will be subject to
8 federal laws and penalties governing their official--false
9 official statements. Witnesses who are not parties in interest
10 may be advised by their counsel concerning their rights; however,
11 such counsel may not examine or cross-examine other witnesses or
12 otherwise participate.

13 These proceedings are open to the public and to the media.
14 I ask for the cooperation of all persons present to minimize any
15 disruptive influence on the proceedings in general and on the
16 witnesses in particular. Please turn your cell phones or other
17 electronic devices off or to silent or vibrate mode. Please do
18 not enter or depart the hearing room except during periods or
19 recess--of recess. Flash photography will be permitted during
20 this opening statement and during recess periods.

21 The members of the press are of course welcome and there's
22 an area set aside in the back of the room for these proceedings.
23 The news media may question witnesses concerning the testimony

1 that they have given after they have been--I have released them
2 from these proceedings. I ask that these interviews be conducted
3 outside of this room.

4 Since the date of the casualty, the Coast Guard has
5 conducted substantial evidence collection activities and some of
6 that previously collected evidence will be considered during this
7 hearing.

8 Should any person have or believe that he or she has
9 information not brought forth that might be of direct
10 significance, that person is urged to bring that information to
11 my attention by e-mailing accidentinfo@uscg.mil and, during the
12 hearing, MARYBII--that's Roman numeral II--@--.uscg@gmail.com.
13 Again, that's MARYBII--the Roman numeral II--.uscg@gmail.com.
14 Thank you.

15 We are going to take a short recess in preparation for our
16 first witness. So we'll go ahead and take a--a 10-minute recess.
17 The time is 8:05 a.m. We will get back on the record at 8:15.
18 Thank you.

19 [The hearing recessed at 8:06 a.m., 14 May 2019.]

20 [The hearing was called to order at 8:13 a.m., 14 May 2019.]

21 **LIO:** Okay, it is 8:13 and we are reconvening this public
22 hearing. We will hear our first testimony for today, and that is
23 going to be from Dr. Laurel Kincl, who is from Oregon State

1 University. Lieutenant Woods will now administer your oath and
2 ask you some preliminary questions.

3 **LAUREL KINCL was sworn and testified as follows:**

4 **DIRECT EXAMINATION**

5 **Questions by the recorder:**

6 Q. Please state your full name and spell your last.

7 A. My name is Laurel Kincl--can you hear me? Is that on?

8 **LIO:** It's----

9 **WIT:** Oh.

10 **LIO:** ----there you go.

11 **WIT:** Okay, great. Sorry about that. My name is Laurel Kincl.

12 My first name is L-a-u-r-e-l, last name is Kincl, K-i-n-c-l.

13 Q. Please state your current employment and position.

14 A. I'm an associate professor of environmental and occupational
15 health at Oregon State University.

16 **LIO:** Ma'am, I apologize. I think it's just--maybe it's me, but
17 would you mind speak up just a little bit, please.

18 **WIT:** Yes, I can. Is this better?

19 **LIO:** You can adjust the mic, too, as well, if that's easier.

20 **WIT:** Is that better?

21 **LIO:** Yes, a little bit. Thank you.

22 **WIT:** Okay.

23 Q. Please state any education or training related to your

1 profession.

2 A. I have a master's degree in industrial hygiene, a Ph.D. in
3 occupational safety and ergonomics, and I'm a certified safety
4 professional.

5 **REC:** At this time Lieutenant Bigay will begin her primary lines
6 of questioning.

7 **AIO:** Good morning, Dr. Kincl.

8 **WIT:** Good morning.

9 **AIO:** I'm Lieutenant Theresa Bigay. Thank you for appearing
10 today at this hearing. If you need to take a break at any time,
11 please let me know. In front of you there's a laser pointer for
12 you to use during your testimony. If and when you do that,
13 please, for the benefit of the public, I would like you to point
14 to the screen directly behind me.

15 **WIT:** Okay.

16 **AIO:** You are an associate with Oregon State University's College
17 of Public Health and Human Sciences, and you've provided a
18 presentation on your commercial fishing safety research at OSU.

19 **WIT:** Yes.

20 **AIO:** We will go over that as part of your testimony here today.
21 I would just like to state that, associated with that
22 presentation, you provided some additional documents, and we will
23 be able to pull those as part of exhibits. Just let me know if

1 and when you need to show those as part of your presentation.

2 **WIT:** Okay.

3 **AIO:** Associated with your slides, I'll be providing some
4 questions. So please just look at me while you're also
5 presenting so--so that way I can ask my questions and--and you
6 have the opportunity to answer.

7 **WIT:** Okay.

8 **AIO:** I will now ask Lieutenant Woods to please display Coast
9 Guard Exhibit 056.

10 **WIT:** Okay, first off, I'm sorry I have to be here. My
11 condolences are for the families and community members. I know
12 this is very difficult.

13 My research at Oregon State University is not just done by
14 myself. I was the principal investigator, meaning I led the
15 study that was with the Dungeness crab fleet but looking at non-
16 fatal injuries and injury prevention in this fleet. It was a
17 collaboration with an epidemiologist, Victor. I have a staff of
18 students and research assistants, but also this is in
19 collaboration with both Oregon and Washington Sea Grants. In
20 particular, Kaety Jacobson from the very beginning of this
21 project helped inform how we did this, and this was also done
22 with our federal partner at the National Institute for
23 Occupational Safety and Health in the western states office,

1 which I believe will be presenting later in this hearing.

2 So we began this--I began personally just to explain where I
3 come from this. I've been doing research in occupational health
4 and safety for more than 20 years when I began my master's
5 program in 1995. I've always been very worker-focused and for
6 the worker protection, and that's why when I began this project,
7 I did seek the extension agents who had familiarity with the
8 commercial fishing families and communities to help inform this
9 from that perspective. I completed research in other industries:
10 the construction industry, the airline industry and healthcare
11 industries. So it's not only my experience in commercial fishing
12 safety that helps inform this process. You can advance the
13 slide.

14 So today I'm going to--I think I've already given a little
15 bit of my background, but I'll specifically speak just briefly
16 kind of to my larger research program in commercial fishing
17 safety research not only with the Dungeness crab fleet but then
18 also talk about the specific project that was done here, which we
19 call the Fishermen Led Injury Prevention Program. As I
20 mentioned, it was done in partnership with researchers in the
21 College of Public Health but also Sea Grant and then we also used
22 an approach where we used community researchers. And I'll
23 explain that as we go forward. I'll talk about our reported non-

1 fatal injuries to this fleet, also the perceptions of the
2 fishermen that we collected through focus groups, our survey of
3 fishermen asking them about their injuries in the past year,
4 their safety opinions and their perceptions of what they thought
5 kept them safe and what causes injury. We'll talk about how we
6 disseminated these results and then tried to solicit ideas for
7 injury prevention and what we did end up exploring. Then I'll
8 have one slide of concluding remarks. Advance, please.

9 So at Oregon State University--I started my career there in
10 2011. When I first arrived there, I worked with Devin Lucas, who
11 works now at the National Institute for Occupational Safety and
12 Health. So that's when I first began looking at commercial
13 fishing safety specifically, and this was with two fleets in
14 Alaska, trawlers and long-liners. And so that was really my--
15 when I began understanding and learning more about the commercial
16 fishing industry. We then were able to get small projects
17 locally here in Oregon and Washington to begin looking at the
18 non-fatal injuries to try to understand kind of the burden of
19 that on this industry. With that, I began the project which is
20 highlighted here, the injury prevention in the West Coast
21 Dungeness crab fleet. That was--ended up being a 4-year project
22 which we just completed last year and that I'll be primarily
23 talking about today. Even though that has ended, we're

1 continuing to work, looking--another Ph.D. student of mine
2 continued looking at seafood processors and did a small study
3 here in Oregon but focused her research in the seafood processors
4 in Alaska, and then also we continue to have a project that we're
5 in the middle of that is trying to still improve the safety
6 surveillance regionally but hopefully that can be scalable to be
7 national, and that's in collaboration with the National Institute
8 for Occupational Safety and Health. Also I'll talk, as I go
9 forward, even our project with the Dungeness crab fleet has led
10 to further funding to help with some of the resources that we did
11 develop and work on to help disseminate that more broadly. You
12 can advance.

13 I have to give a disclaimer. This was funded by the
14 National Institute for Occupational Safety and Health, but any
15 findings and conclusions that I give in this presentation are not
16 formally disseminated by CDC or NIOSH and cannot be constructed
17 to represent the agency for determination or policy. You can
18 advance.

19 So now getting into specifically this project, our aim was
20 to engage fishermen in research to understand the high-risk
21 tasks, safety perceptions and injury prevention opportunities.
22 And, again, the focus on this was non-fatal injuries. So I will
23 not discuss anything regarding fatalities. So we basically did

1 three steps. Our first step was to analyze the non-fatal
2 injuries that were reported to the U.S. Coast Guard. This has
3 not been done and is a manual process. So that was our very
4 first task. Then we developed a survey to survey fishermen
5 directly to collect further information. And then we developed
6 these injury prevention strategies.

7 **Questions by the assistant investigating officer:**

8 Q. Dr. Kincl, one--

9 A. Yes?

10 Q. --going back to that slide, you mentioned your focus on non-
11 fatal injuries--

12 A. Correct.

13 Q. --of course. Can you describe the significance of studying
14 non-fatal injuries and whether or not there's a link to improved
15 safety when we're talking about fatal injuries.

16 A. I cannot say specifically that there is a direct link;
17 however, I do believe in--non-fatal injuries can cause
18 significant disability, affect the quality of the work or the
19 production of work and obviously has an impact. If somebody has
20 a fractured arm or a hurt back, it definitely impairs their
21 ability to do work. So that's why we felt non-fatal injuries
22 were important. I do think that in disseminating information and
23 increasing awareness to many of the ways that potentially could

1 prevent a non-fatal injury may also lead to improvement in
2 general safety and just the safety awareness. Some people may
3 call that a safety culture or something, but if it raises the
4 awareness and the idea that you can improve the risk of injuries,
5 it can be more global, but I don't know that there's a direct
6 link.

7 **AIO:** Thank you.

8 **WIT:** So I mentioned that with this project, when we designed it
9 from--before collecting any information or any--any data, we
10 really wanted to be able to distribute our information and
11 collect information from across the entire region and not do
12 anything that was just local. I am located in Corvallis, which
13 is in--the closest location is Newport. So the easiest thing
14 would have been to just do this in Newport; however, we felt,
15 understanding the commercial fishing industry, that there's a
16 wide variety of people and a wide variety of perceptions and a
17 wide--every fisherman is different. And so we wanted to make
18 sure we kind of gathered the more global perceptions. So we
19 intentionally designed this--and it's impossible, being one
20 person, to be in many places. And so we also felt like having a
21 community approach would enable us to have honest conversations
22 and be able to--to talk more and engage more with the commercial
23 fishing industry. So with our Sea Grants we developed this

1 process of looking in local ports to hire people as community
2 researchers that then could help inform our project. We met with
3 these community researchers before we collected any data. We met
4 with them annually and we also--to review where we were in the
5 project and the next steps forward, to--to get their input. And
6 then we also had them help us collect some of the information in
7 the focus groups and in the surveys that fishermen--as well as
8 disseminate and develop ideas. A lot of them came from them and
9 their experiences. A lot of these community researchers were
10 fishermen's wives in various ports--were very knowledgeable and
11 often brought a lot to this project and how to move forward. So
12 the map there just displays kind of all the ports where we had a
13 presence and the ability to--to engage fishermen. Advance.

14 The first that I can talk about is published research. So
15 all this is--is publicly available. The first product that we
16 presented from this project was data that we were able to get in
17 collaboration with NIOSH. NIOSH has a memorandum of
18 understanding with the Coast Guard and has the ability to review
19 incident data. So we were able to have our NIOSH colleagues
20 abstract information about incidents that was de-identified. So
21 we don't know the names of individuals but can understand the
22 circumstances around--around the--the injuries. With our
23 partners at NIOSH--Samantha Case works at NIOSH and is the

1 director of the commercial fishing safety research now. She
2 helped us tabulate all of the information that was specific
3 related to the West Coast Dungeness crab fleet in this time range
4 from 2002 to 2014. So we were able to describe the injuries and
5 fatalities, and I believe Sam will be here later to really talk
6 about the fatalities. Advance.

7 So in that time period there were only 45 non-fatal
8 injuries. And when I say only, this is a very low rate of
9 injuries. We were not surprised by this, but in--in a basically
10 12-year period, 45 injuries is not very much. The--as you can
11 see, the number of injuries was really focused with the deck
12 hands. You can see by the position there on the left-hand side,
13 88% of the injuries that were reported to the Coast Guard were
14 reported to deck hands. The most common injury was a fracture.
15 That was over 40%, followed by hypothermia that was related to
16 injuries of falling overboard, and then amputations and cuts were
17 also recorded. You can advance.

18 Q. Before---

19 A. Yes?

20 Q. Dr. Kincl, in your experience, in your research in this
21 field, can you talk a little bit about the hazards of Dungeness
22 crab fishery in the Pacific.

23 A. Yeah, and if you can just advance to the next slide, maybe

1 that's a good one to talk about it. I think specifically with
2 injuries to deck hands, obviously the majority of their job
3 description is hauling and setting pots, among other things, but
4 that is really where they harvest the crab. And so hauling a pot
5 that can weigh a lot over the side and--and harvesting the crab,
6 I think, is the major--it's what they do the most. So that's
7 where they're mostly working. So, of course, that's probably
8 where the injuries are happening. And so I do think--81% of
9 the--the injuries reported were related to gear on the deck. I
10 do think in the Dungeness crab fleet--this is, I think, just
11 common knowledge, that the season is during the winter months.
12 They fish close to shore. That's near shore. Although the ports
13 specifically in Oregon are--near mouths of rivers with the bars,
14 having to cross the bar to get to the fishing grounds and the--
15 and the way the fishery operates, the management of it is that
16 once the season is open, they can fish as much as they want. I
17 think you can advance.

18 So the next slide I'll talk about, after we gathered all of
19 the information on the reported injuries, we organized focus
20 groups in the various ports to talk with fishermen about the
21 reported injuries and then to ask them kind of their perceptions
22 and what they thought they would want to learn about non-fatal
23 injuries and if--if there was a way that we could collect more

1 information, what information would they want to collect, so i.e.
2 we wanted to do a survey. So what--what would fishermen want to
3 know? So this publication summarizes what--the conversations
4 that we had with fishermen, and--and it helped us inform our
5 survey. So we directly took the input from the fishermen to help
6 design this survey, which I will present the results from the
7 survey as well.

8 Q. In your study, Dr. Kincl, and if you're going to cover it,
9 forgive me for cutting in, but as there--did you find a
10 correlation between the injuries and the areas where they
11 happened, be it open ocean, harbors, entrance bars, or the
12 weather conditions?

13 A. No, we were not able to discern that, especially from the
14 Coast Guard data. We asked general questions in our survey about
15 what the vessel was doing at the time, like in transit and such,
16 but we don't know any details regarding that.

17 So this table--sorry, it's kind of dense, but what you'll
18 see--maybe I can use the pointer to help. Here on the left
19 side--this side--when we did focus groups, you--we use a method
20 we call a qualitative analysis, where you review--everything was
21 transcribed of what all the participants said. And then you look
22 at frequency counts of--and develop themes as to what, in
23 general, people are talking about. We did have focus groups--I

1 think--I don't remember the exact number. I would have to look
2 at the publication which I provided, but it was more than one.
3 So it wasn't just one conversation. It was multiple
4 conversations with a total, I think, of 19 fishermen. So the
5 frequency just gives you a sense of--and that's the number there
6 that's to the right of all of these general themes. And there
7 could be perhaps better names for these things, but these were
8 the general categories that we developed. So we were showing
9 them the Coast Guard data. So there was a lot of reflections
10 about--kind of in general about what that injury data was saying.
11 We--a lot of them, when they were doing these reflections, kind
12 of talked about their injury risk. They talked about the--how--
13 about reporting injuries. They also--there was a lot of
14 conversations about the culture of work and about the hazards
15 that are present. Then what we did ask specifically, what do
16 they do to--to stay safe and--and what are safety provisions. So
17 this frequency kind of is the number of counts in those
18 conversations that it--that it came up. To the right these are
19 basically also kind of sub-codes of this, more specific
20 information about in that category, and the frequencies, again,
21 are shown on the right there, about--and general conversations
22 that were had around those. In the actual publication we do
23 include examples of quotes for these as well, but in general the

1 reflections of the injury data--as I mentioned, there were only
2 45 injuries. One of the most common thing with fishermen when we
3 started the focus groups was that they don't want any regulation,
4 there's no need for regulation. They kept saying that they
5 thought they were a high-risk industry but that the data was
6 showing there's such a low number of injuries, so maybe they
7 really aren't that--that risky. So that's that code there. A
8 lot of them did say that--that it can be low-risk, that--because
9 there's a low number of injuries that were reported, that--that
10 there aren't very many risks, but that was--they did recognize,
11 though, that it is a very dangerous industry but that they can do
12 things that make it low-risk, I think, that they can practice--
13 fish.

14 The culture of work, they talked about the attitude, that a
15 lot of fishermen have a cavalier attitude, but--they know it's
16 high-risk, but they're very passionate about their--their--the
17 ability to fish. They do think that--they don't think that
18 injuries--specifically we were talking about non-fatal injuries--
19 are that important. Like they thought that non-fatal injuries
20 don't impact them very much. There was mention of--that
21 overexertion and exhaustion--that--that it is very labor-
22 intensive and--and they fish long hours, but there was also this
23 recognition that in--as we were talking with them about what can

1 be done to improve, they did talk about how the commercial
2 fishing has evolved over the years and their careers with
3 navigation and other provisions, and Coast Guard provisions were
4 also mentioned about life protection gear and such.

5 When talking about the hazards, the most common thing was
6 weather. I think this is because the Dungeness crab fishery is
7 in the winter season. They also cited high participation in the
8 fishery, that just so many people are fishing because of the
9 money, that--that that--that creates hazards. So they did
10 mention in safety provisions some of the conversations about the
11 transit, as we mentioned, crossing bars. They said that raising
12 awareness of risk is important and promoting a safety culture and
13 that training and supervision of new crew was of utmost
14 importance for safety.

15 Q. Dr. Kincl, based on your research, do you believe the numbers
16 reported as a--in terms of the numbers of injuries are an
17 accurate accounting?

18 A. I--I will state what we state about all occupations, that is,
19 not only commercial fishing. Injury surveillance is very
20 challenging, and there's no way of knowing actually how much
21 underreporting there is because it's not collected. So you don't
22 know what is not reported. So it's very challenging, but in
23 general, in all occupations, in all industries, it is thought

1 that--because even workplaces that aren't marine that are--have
2 requirements from OSHA to report injuries--and there's also
3 documentation of potential underreporting there. So in general
4 we don't it represents the true burden of--of the non-fatal
5 injuries, but we do think that it is a good start to
6 understanding them. And what we found--that was our interest in
7 collecting what we call primary data, which is collecting the
8 survey, to see if there were different pattern of injuries. We
9 really didn't see that. We still saw the same pattern. So I
10 think--so I think it's still helpful even if there's potential
11 underreporting, but we can't say with any definite--defined, you
12 know, amount of how much underreporting there is because it's not
13 reported.

14 Q. Understood. Thank you for that. On that slide there's a--
15 you--you talked about the no need for regulation under the most
16 frequent codes.

17 A. Uh-huh.

18 Q. In your opinion, does that "no need for regulation" code
19 response reflect a negative look-back between underreporting
20 practices and safety perspectives?

21 A. I don't think I can tell you that. I don't know.

22 **AIO:** Thank you.

23 **WIT:** You can advance. So as I mentioned, also in these focus

1 groups, in talking to fishermen, we wanted to understand what
2 they wanted to learn about, and it was very helpful because one
3 of the things we did learn in those focus groups is that there
4 were a lot of safety provisions and ways that fishermen do keep
5 safe. So we really wanted to ask broadly what they do to keep
6 safe. But this outlines kind of all of the things that we asked.
7 We asked about their fishing history, their demographics, their
8 safety attitudes, their injury risk and safety opinions, and then
9 we did ask specifically about their injuries in the past year and
10 some of the details about that. You can advance the slide.

11 So we were able to collect this before the 2015/16 crab
12 season, and we did this again in ports. We did it in the gear
13 yards and docks before the season started, when they were
14 prepping the gear. Again, we distributed with our community
15 researchers, trying to hit all the ports and get the opportunity
16 for participation broadly. So you can see the map on the right
17 is the states, Washington, Oregon and California. You can see
18 that we were able to get a nice distribution with slightly more
19 collected in Oregon but also a significant amount in California
20 and Washington. The commercial fishermen obviously were who we
21 collected it in. They were 98% male. The age was 39. Plus or
22 minus is just a standard deviation. So out of all the people we
23 asked, essentially 39 was the average age, but people were as

1 young--in their 20s but also older. So it just kind of gives you
2 the range that we were in. Also we were able in the surveys not
3 only to distribute it across the states, we were also--I think,
4 collected from not only owners but also you can see there was a
5 large number of deck hands since they were preparing their gear.
6 So we were able to also do that. When we asked their crew
7 position, we asked in the past year what their most common
8 position was, and I think it is not uncommon you can be an owner
9 and a captain or, if you're the captain, you sometimes do deck
10 hand depending on the size of the vessel and--and the number of
11 crew. So--so that's why the numbers--you know, some answered
12 more than--than one there. We collected these in person, as I
13 mentioned. We had our community researchers. I myself, some of
14 my study team members, went out to the gear yards and asked--it
15 is voluntary, and it was--it was confidential. So--or anonymous,
16 sorry--anonymous, meaning that we didn't collect their name or
17 vessel name or anything like that. And we assisted if somebody--
18 you know, they were prepping gear and we had the survey and
19 they're like, "Oh, I'll do that, but you fill it in," we would--
20 we would help them fill in the survey if they needed assistance.

21 So the box here just kind of gives an overall kind of rate
22 that we found. So approximately out of the 426 surveys that we
23 got, about one in five reported that they had an injury in the

1 previous 12 months. Our definition of an injury was different
2 than the Coast Guard. The Coast Guard has a specific definition
3 for reporting injuries, and so ours was just anything that, you
4 know, affected you doing work. So we were trying to get like the
5 whole range of--of injuries. So the criteria was different. Can
6 you advance, please.

7 So we did, though--a lot of the feedback we got from
8 fishermen, they were like, "Yeah, we get cuts all the time, and--
9 and things like those--those don't impact our work." And so we
10 did also have a question asking if that particular injury limited
11 them. And so our definition of limiting was that it actually
12 changed the way they did work or stopped them from working, so
13 that we could determine kind of that severity threshold of when--
14 when something actually impacted their ability to do work. And
15 so in the past year, out of those 426, we had 68 injuries
16 reported in the past year that were defined, self-reported, as
17 limiting. And, again, as I mentioned, it's kind of similar to
18 the results we had in the reported injuries, deck hands had the
19 highest percentage of injuries. A large percent were sprains and
20 strains that were reported, and a large portion of those were
21 related to handling, hauling or setting crab pots. You can
22 advance the slide, please.

23 One of the other things we were interested in was how they

1 treated the injuries. And so this distribution--these are for
2 all the injuries, not just the limiting injuries. So you can see
3 some of them said that they did nothing for it. So these were
4 really the minor--I gave examples of what they said the treatment
5 was, just push through it or walked it off. Some reported almost
6 equally that they did at least require first aid. So some of the
7 examples were wrap in black tape or ice pack on the boat--were
8 examples of the first aid. So you can see a large portion of
9 those that they reported in the past year, the Coast Guard
10 criteria is that it would have to have more than first aid--like
11 an injury would require more than first aid. So you can see a
12 lot that we reported--so we're looking kind of at a different
13 pool of injuries than the survey data. But some of them did seek
14 clinical care once they returned on the vessel, and then some
15 also reported being med-evac'd. So there is a portion that would
16 be probably in the Coast Guard requirements for reporting.
17 Related to this, when we--when we saw that the large number do
18 require first aid, one of the things that was raised to our
19 attention from fishermen was that the first aid classes--it is a
20 Coast Guard requirement to have first aid, but they thought that
21 the community classes, like the Red Cross first aid, may not be
22 applicable to their work situation at sea. So that is one of
23 the--the things that we have been working on is to--to develop

1 that, to point that out. You can advance.

2 So, again, just to show you--I apologize if this looks
3 researchy, but I just wanted to show you there was a distribution
4 between the people: owners, captains and deck hands. These are
5 kind of our total numbers of--of people who responded. So you
6 can see the age here, the average was 51 for owners, 42 for
7 captains and 32 for deck hands, which you can imagine essentially
8 they're by decade in there. The younger people are the deck
9 hands. The years fishing, also you can--as you can imagine, the
10 owners have more experience years of fishing. The captains and
11 the deck hands have less. Some of them have no--they were just
12 brand new that season, just starting out, helping prepping gear.
13 We also asked about years crabbing. So you can see the
14 distribution between the owners, captains and deck hands, and
15 then you can see also the percents of the injuries that were
16 reported, how many were in each of those. So, again, the
17 majority were in deck hands, but some of them were with the
18 captains. You can advance the slide.

19 Q. Dr. Kincl----

20 A. Yes?

21 Q. ----one of your previous slides mentioned training and
22 supervision as one of the factors affecting safety.

23 A. Correct.

1 Q. Do you know what percentage of--in terms of training and--and
2 safety--that slide talks about ages. Do you know if there's a
3 percentage of fishermen--what the percentage of fishermen is--in
4 the industry that are under 18 years of age?

5 A. I do not know that. I should state perhaps at this point all
6 of the data that we collect, because this is funded by the
7 National Institute of Occupational Safety and Health, by law we--
8 unless we specifically request and get approval from human
9 subjects, all of our participants are 18 years and older. So if
10 somebody was younger than that, we did not ask them to
11 participate or fill in any surveys.

12 Q. One additional question. So in your experience working in--
13 in the industry and working to address safety, do you know of any
14 age requirement or experience requirements or assessment of
15 knowledge or capabilities that exists to mitigate hazards from
16 maybe adolescents or folks under 18 that are not as experienced
17 being part of the crew?

18 A. I--are you talking about the commercial fishing industry
19 specifically or general in occupational---

20 Q. Specific to this industry.

21 A. Specific to this industry and this region, I am not aware of
22 any testing or programs for--they call them greenhorns, the
23 younger people getting into the industry. I do work

1 internationally in commercial fishing safety, and there are some
2 countries and even some regions that I believe are developing
3 essentially apprenticeship programs to bring younger people into
4 the industry and do have training programs, but typically that is
5 in areas where they have unionized commercial fishermen or
6 harvesters, as they call them, for example, in Newfoundland and
7 Labrador and Denmark. But I understood in the United States--but
8 I'm--I don't know details of them, but there are programs
9 starting for that.

10 Q. Thank you. You mentioned you're working other industries.
11 You mentioned construction and airline. Do you know of any
12 measures--requirements for assessment of knowledge or
13 capabilities in terms of younger workers in those industries?

14 A. I do know--I'm--I should say I'm also on the board in Oregon
15 of Oregon Young Employee Safety Coalition. So I've done a lot of
16 work around young worker health and safety, and there isn't any
17 requirements; however, there are a lot of resources to try to
18 improve awareness of just worker rights as well as health and--
19 basic health and safety awareness in young workers. So, for
20 example, in Oregon--Oregon OSHA there is a young employee safety
21 awareness training that is online provided by Oregon OSHA that I
22 helped develop and disseminate. And the National Institute for
23 Occupational Safety and Health has curriculum that goes into high

1 school called Talking Safety that I also helped to disseminate in
2 Oregon--into Oregon high schools to increase awareness. Again,
3 there are worker rights, what are hazards, what are questions to
4 ask. Also as part of our product, one of our resources that we
5 can share, like--since this did come up at--you know, maybe
6 younger people entering commercial fishing may not know what to
7 ask for or what to look for in a captain or a vessel. So we did
8 develop a resource sheet based on interviewing captain and crew
9 for new fishermen, just to explain to them what are commercial
10 fishing duties, but it's--it's just a one-pager. It's not like a
11 training program. Again, it's just seeking to increase
12 awareness.

13 **AIO:** Thank you.

14 **WIT:** So one of the other things from the survey that I
15 mentioned, we were interested in safety opinions of the
16 fishermen. So we asked them these six questions, and the six
17 questions essentially--we asked them on a scale of 0 to 100.
18 They could mark anywhere along the line. And then we kind of
19 measured it. So the higher the number, kind of the more they
20 agreed with the statement or they thought a lot about it. We
21 also looked at--between those who had reported an injury--so
22 that's this column--versus those who had never reported an
23 injury. So in these two lines that are not shaded, the lines

1 here, it was not significantly different between the injured and
2 the non-injured. They were pretty much similar. So you see the
3 first statement, "It's important to reduce the risk of accidents
4 and injuries." So across the board fishermen rated that quite
5 high, that they agreed it was very important to reduce the risk.
6 And that was not different. Also when we asked about how much
7 they worry about injury, getting injured while fishing, both of
8 them reported kind of a low level of worry. And it was
9 interesting when we talked with our community researchers and
10 fishermen themselves, they said, "Of course if we worried about
11 it, we wouldn't go fishing." So of course it would be low in
12 general. They worry, I'm sure, in certain situations. The--the
13 ones that are shaded were different. And in the case of this
14 one, "I use safety equipment and procedures that are beyond what
15 is required," you can see the people that were non-injured tended
16 to rate that much higher than those that were injured. When we
17 asked what are your chances of being injured, again, the injured
18 thought that they had a higher chance, probably because they
19 experienced an injury. As an individual--we asked as an
20 individual and as a crew, how much can you do to avoid injury.
21 And those that were non-injured seemed to rate that slightly
22 higher, that they felt like--that there was something that they
23 could do to avoid injury. You can advance.

1 So the last one I'll talk about is kind of--as I mentioned,
2 we learned from the fishermen when we did the focus groups--we
3 felt it was very important to ask open-ended questions about what
4 do you think causes injury. Again, we were focused on non-fatal
5 injuries. But then also ask about what keeps you safe, what are
6 you doing that we could share broadly about staying safe, and so
7 this is also in a publication that can be accessed. You can
8 advance.

9 So I'm just showing you kind of the top-ten list. Again,
10 these were open-ended questions. They were text questions. So
11 we took--again, with our community researchers, tried to make a
12 category for them to in general organize them. So these are the
13 top ten categories that were the perceived factors that keep them
14 safe. So awareness was brought up a lot, situational awareness
15 but also just awareness of the vessel. Good and maintained--
16 well-maintained fishing gear, vessel, best marine practices, the
17 crew, the skipper, self-care, experience, physicality, drills,
18 communication--good communication amongst the crew, and drug and
19 alcohol-free were the top-ten list. You can advance.

20 Q. Dr. Kincl----

21 A. Yes?

22 Q. ----excuse me. So awareness--you mentioned it as--from your
23 answer, it seemed like in the context of being aware of your

1 surroundings and the capabilities of the vessel.

2 A. Uh-huh.

3 Q. Is--is there a link--is awareness tied to fatigue at all?

4 A. We can't say. Again, these were open-ended questions, and a
5 lot of them said awareness. Like just being aware of your
6 surroundings is a very common answer. So I can't say whether, in
7 the fishermen's mind, they were also thinking that was related to
8 that.

9 **AIO:** Thank you.

10 **WIT:** The next slide, please. So, again, we asked them an open-
11 ended question the same way, kind of the opposite of what keeps
12 them safe. Then we asked them what causes injuries, and so these
13 were the top-ten list. The heavy workload, poor mental focus,
14 inexperience, weather, unsafe vessel and gear, unsafe attitudes,
15 drug/alcohol. Bad luck came up a lot. Rushing and lack of
16 safety and training procedures.

17 Q. So obviously we see some common themes here from--that appear
18 here that were in the previous slide as well. I----

19 A. Yes.

20 Q. ----want to ask about the drug and alcohol versus the
21 previous slide. One of the safety things was drug and alcohol-
22 free. These are open-ended survey questions like you mentioned.
23 Can you expand a little bit on the context of those answers,

1 what--what did they mean by drug and alcohol-free and then the
2 causes of injuries being drug and alcohol?

3 A. I mean, I can't--it's--other than what you just described,
4 that they obviously--it rose to the top as one of the most common
5 ones, that if you can have a drug and alcohol-free crew--but then
6 also on the flip side of what causes injuries--I mean, it was
7 probably literally written as that "drugs, alcohol". So I cannot
8 expand on that.

9 Q. Understood. In your studies and as a safety professional,
10 are--are you aware of any measures taken by fishermen to mitigate
11 drug and alcohol being a cause of injury?

12 A. I can't say broadly. Anecdotally, in conversations with
13 fishermen I do know that there are vessels that, in their crew
14 agreements, they include statements and they do think that that
15 is important. I think many fishermen realize that the crew is
16 the most important, but they go about different ways of verifying
17 that, and I don't know the details of that, other than that. It
18 did come up in conversations, that it's important to them and
19 they have it in their crew agreements and formally talk about it,
20 but I don't know anything about drug testing programs or
21 anything. That's not in my--wasn't in our research.

22 Q. Understood. Just one follow-up on the crew agreement. Is
23 that a requirement or is this something that vessel operators and

1 owners do with their crews as a proactive measure?

2 A. This is my understanding. It did come up, as I mentioned,
3 that--when we interviewed crew and captains, the captains said
4 that a crew agreement was important for them to--to make sure the
5 crew--so they talked about what went into a crew agreement. So
6 we did develop a resource talking about crew agreements and good
7 things that should be in one, pulling from other people who have
8 done this. So this isn't anything new but just kind of collating
9 it all together and promoting it. And as I understand, it is a
10 Coast Guard requirement and--but I don't know details of that.
11 But I also understand from insurers, if the vessel is insured,
12 that some of the insurers require crew agreements as well. So---
13 **WIT:** So after we collected the survey, we did develop a kind of
14 poster-size results and disseminated this in ports. We also
15 mailed it to all vessel license owners--Dungeness crab license
16 owners and asked for any ideas--like this is--this is what you
17 told us. You know, what--what injury prevention ideas do you
18 have? And we worked with our Sea Grants to try to collate
19 various ideas that were collected. So basically this poster
20 shares some of the information I've already shared in this
21 presentation. Advance, please.

22 So this is just a summary of the ideas that we explored. As
23 I mentioned, a good crew kept coming up, but we didn't know what

1 that was. So we did conduct what we call key informant
2 interviews, and we interviewed--and, again, this wasn't done just
3 in one port. We did this--we had our community researchers in
4 their ports identify five captains and five crew and interview
5 them to what they thought made a good crew. And so we developed
6 this into, as I mentioned, a resource page for new fishermen,
7 talking about what the crew duties are and what they should ask a
8 captain, what they should look for in a vessel and what safety
9 resources should be on a vessel. We also developed this idea of
10 how to develop a good crew agreement and what the benefits of a
11 crew agreement are. We also, as I mentioned, identified that one
12 of the needs from the commercial fishermen was a first aid and
13 safety training and drills. Obviously the Coast Guard conducts
14 drill-conducting courses and such. So we weren't looking for
15 that, but we were looking at the first aid training and was
16 there--in the first aid training, sharing some of the data that
17 we got, some of the specific incidents, using them as actual
18 hands-on activities and examples and scenarios. So learning
19 first aid would be talking about the things that you do on a
20 vessel. So we did develop this, and it's a Coast Guard-approved,
21 now, training and we've received additional funds internally at
22 Oregon State to disseminate this and fill it to capacity in
23 commercial fishing communities, identifying instructors--local

1 instructors to help deliver this. So we've done two in Oregon
2 this year and we'll do another one in Newport in the fall for
3 commercial fishermen. So that's ongoing. Related to this was
4 the idea of what should be in a first aid kit. So we also have a
5 resource guide about how to build a good first aid kit to be
6 ready for those first aid incidents.

7 We also had three ideas. These came from the fishermen.
8 The idea of having a banger bar to help with unloading pots and
9 anti-slip mats on the deck securing the block so that the block
10 doesn't collapse. So these came--so we did--just some basic
11 information--actually in a Facebook poll of asking fishermen what
12 worked or what didn't work around those. All of our resources
13 are publicly available. We developed a website,
14 FLIPPresources.org, so all these can be downloaded and used.

15 Q. Thank you, Dr. Kincl. I have a question about the slide, but
16 before that, were commercial pressure or fatigue listed as
17 contributing factors to accidents when--when--in your research
18 with--with the surveys at all?

19 A. I would have to look back at the data specifically, but I
20 don't believe it was directly--when we asked, we, I don't think,
21 included were you--it's very complicated, fatigue, because it's
22 either mental or physical or sleep deprivation. So it's quite
23 challenging, and in a quick survey it's very hard to collect. So

1 we really weren't able to collect that.

2 Q. I see the ideas that some fishermen that participated in the
3 survey provided. Did respondents have any suggestions for safety
4 measures that could prevent weather-related injuries?

5 A. Not specifically, other than in our focus groups many
6 fishermen did say--actually in the Coast Guard data, when you
7 look at the injuries, whether they were related to weather, they
8 were like, "Well, of course they're not related to weather
9 because we wouldn't go out when the weather is bad," but, again,
10 that could have been the fishermen we were talking with. Those
11 owners said if it's a bad day, I won't go out fishing. Seems to
12 be the common sentiment for preventing weather-related--but,
13 again, that is just a small sample of fishermen saying that.

14 Q. Understood. Thank you. Same question in terms of drug and
15 alcohol. So did respondents have any suggestions for safety
16 measures that could prevent drug and alcohol-related injuries?

17 A. None of those came up in the injury prevention, I guess. I
18 know--I mean, I am--and I--and I should just state that I think
19 in all occupational settings, it's a public health crisis, the
20 drug use. In occupational health and safety in general, there's
21 lots of conversations about the role of work and injuries and
22 pain management and--and the role of drug and alcohol abuse in
23 the workplace. So it's not only the commercial fishing industry.

1 It's many industries are struggling with this, and I don't know
2 directly from our work--there wasn't anything that arose other
3 than providing resources, and my colleagues at Sea Grant were
4 trying to identify ways of helping with NARCAN training, but--but
5 it's really complicated. So I think that's ongoing, trying to
6 figure out---

7 Q. Understood. So you mentioned other industries in terms of
8 the drug and alcohol systemic issues, as you mentioned. Are you
9 aware of industries having a mandatory drug and alcohol testing?

10 A. I believe it depends on actual employer policies. I don't
11 think it is legal across like a whole industry. For instance, in
12 the construction industry I do know there are some contractors
13 that require it, but I don't think it's across the board.

14 **AIO:** Thank you.

15 **WIT:** So I've presented all the information from our study. It
16 was really helpful for me to have so much participation from
17 fishermen. I believe they shared very positive comments for
18 wanting to improve safety and ideas for improving safety. I
19 believe that improvements for the hauling and handling of pots
20 for non--are needed for reducing non-fatal injuries. And any
21 approach that is for improvement, any proper evaluation and--to
22 be adopted and for the improvement to actually work, the engaged
23 approach and having fishermen involved is key.

1 up description or characterizations of how somebody on helm watch
2 might become injured?

3 A. I would have to look back at it. This question came up--and
4 this is now 4 years ago when we looked at it. So I'd have to
5 look. And I do believe it had--I can't recall off the top of my
6 head. Sorry.

7 Q. And would that--would that information maybe be inside the
8 published work that you produced?

9 A. Yeah. We may not have specifically said that, but it should
10 be in--those instances may have been--but I cannot be clear--they
11 may have been related to the fall overboard, but I'm not sure.

12 Q. Okay. With respect to the--the survey that you conducted of
13 400 fishermen or industry personnel, did you consider the extent
14 to which that would be statistically significant with respect to
15 all West Coast fishermen? In other words, do you have an idea of
16 the total number of potential people who could meet the
17 requirements of the survey, and do you feel your--your survey
18 results were significant in that--by comparing those two numbers?

19 A. We talk about scientifically is getting generalizability by
20 getting enough of a sample size that you can do that. It's very
21 challenging in the commercial fishing industry to get what we
22 call a denominator, to know like the actual number of employers.
23 The only published work that I'm aware of in the Dungeness crab

1 fleet--and that is included in our publications when we cite what
2 the population is--was about 3,000 Dungeness crab fishermen. And
3 so we're assuming it's around that, but at any given year, you
4 know, you don't know how many fishermen there are. So, again, we
5 did this approach to try to distribute our samples so that we
6 weren't just collecting in one and saying this represents
7 everyone. We do qualify this that it is only these 426 and--
8 these fishermen. So as far as significance, I don't think you
9 can ever--you know, there was no testing to see that it's
10 significant. So we don't use that language. But it is, I do
11 think, a generalizable at least look into what some of the
12 perceptions of fishermen are. And, again, these are self-
13 reported and so you also have to qualify that, because fishermen
14 can tell you whatever they want. And then--but then we also--but
15 I do see value in hearing the voice of fishermen and hearing what
16 they have to say about their work.

17 **PIIC:** Thank you very much for being here, Doctor. That's all I
18 have, Commander.

19 **LIO:** Thank you, Mr. Reilly. Dr. Kincl, you are now released as
20 a witness from this formal hearing. Thank you for your testimony
21 and cooperation. If I later determine that this board needs
22 additional information from you, I will contact you through your
23 agency. If you have any questions for this investigation, you

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 16 May 2019

4 WITNESS: BMC JASON McCOMMONS, USCG (resumed)

5 [The hearing was called to order at 10:45 a.m., 16 May 2019.]

6 **LIO:** Ladies and gentlemen, it's 10:44 and we're going to go
7 ahead and reconvene this public hearing. Please be seated.
8 We're now going to hear testimony from our next witness. This is
9 Chief Boatswain's Mate Jason McCommons, who is being recalled
10 from previous testimony. BMC McCommons, please come forward to
11 the witness table. Chief, as a reminder, you are still under
12 oath from previous testimony. So please have a seat.

13 **WIT:** Yes, ma'am.

14 **CHIEF BOATSWAIN'S MATE JASON McCOMMONS, U.S. Coast Guard, was**
15 **previously sworn and testified further as follows:**

16 **LIO:** When we broke our testimony a few days ago, Mr. Reilly was
17 in--questioning. So, sir, you may continue your questioning.

18 **PIIC:** Thank you, Commander.

19 **CROSS-EXAMINATION (RESUMED)**

20 **Questions by the party-in-interest counsel:**

21 Q. Chief, thanks so much for coming back.

22 A. Good morning.

23 Q. In this hearing, we've heard from several persons who

1 testified about their observations regarding the pre-casualty
2 behavior of Mr. Biernacki. Has anybody described those
3 observations to you?

4 A. No.

5 Q. In general, if the station receives real-time information
6 about the impairment of a person actively operating a vessel in
7 Yaquina Bay, is the station empowered to launch a ready boat to
8 investigate?

9 A. Yes, sir.

10 Q. Has something like that happened in your experience at small-
11 boat stations where you receive real-time information, sort of
12 first-person observations about the impaired capacity of a vessel
13 operator?

14 A. Yes, sir.

15 Q. 14 U.S. Code 89 empowers the Coast Guard to board a vessel to
16 ensure compliance with all applicable laws.

17 A. Correct.

18 Q. And it is illegal to operate a vessel while impaired. Fair
19 to say?

20 A. Yes.

21 Q. And your crews are trained--your boarding officers are
22 trained to recognize signs of impairment?

23 A. Yes, sir.

1 Q. The bait dock in Yaquina Bay, is that one place or are there
2 multiple bait docks?

3 A. I would say the whole port dock area is the main dock.

4 Q. The board received some compelling testimony yesterday
5 regarding the reported observation of Mr. Biernacki in a clearly
6 impaired state the morning of January 8th. Had your station or
7 the sector received a phone call maybe 5:00 or 6:00 a.m. in the
8 morning regarding a report that the operator of the MARY B
9 leaving the bait dock was acting strangely and likely under the
10 influence of drugs and was heading out to go fishing, what, if
11 any, steps would the station or the sector take?

12 A. Are you asking me if I was aware that that happened?

13 Q. No, it didn't happen. I'm saying if--if it had happened, if
14 the Coast Guard had received such a call that a commercial
15 fishing vessel operator was acting strangely and clearly under
16 the influence of drugs, what, if any, steps would have been
17 appropriate for the station to take?

18 A. Well, if the vessel was underway, we would respond
19 immediately.

20 Q. And you have the capability at the station to literally
21 respond pretty quickly.

22 A. Yes.

23 Q. Fair to say a timely call from a witness with information

1 about impairment is a lot more valuable to the Coast Guard than a
2 report 5 months later at a board hearing about an observation of
3 impairment?

4 A. I would--I would assume so.

5 Q. If your crew had boarded the MARY B that morning and observed
6 the operator was impaired, what, if any, steps would be
7 appropriate for the boarding crew to take?

8 A. Well, it--at any time we board a vessel and we--and we think
9 that there's reasonable suspicion of some type of intoxication,
10 we will return them back to port and/or the dock. We typically
11 call Oregon State Police, Lincoln County sheriff or the local
12 Newport PD to assist.

13 Q. But you would be empowered to--to at least temporarily
14 terminate the tra--transit of that vessel until more information
15 was gathered regarding the impairment?

16 A. Absolutely.

17 Q. And the type of informa--intervention, the boarding and
18 potential termination of that vessel, those were all available
19 under current authorities that the Coast Guard already has.

20 A. Any time that we--the Coast Guard station is going to
21 terminate a commercial vessel, there's thresholds associated with
22 that, and so we would have to vet those all the way.

23 Q. Sure, but you--in the meantime, you--the vessel wouldn't be

1 operating and--and continuing on its voyage. Would that be fair
2 to say?

3 A. If we suspected intoxication, that's correct.

4 Q. Now, we've been provided an instruction from the station
5 regarding vessel escorts. Are you familiar with that
6 instruction?

7 A. Yes, sir.

8 Q. And as I understand, this instruction was finalized and dated
9 January 22nd, 2019. Does that sound correct?

10 A. Yes, sir, it is.

11 Q. And the instruction has some specific guidance--internal
12 guidance for the Coast Guard here at Yaquina Bay regarding a
13 variety of issues that have to do with weather and--and vessel
14 transits. One of them is the topic of vessel escorts. Is that
15 correct?

16 A. That's included in the instruction, yes, sir.

17 Q. And the guidance that is in that document dated January 22nd,
18 is that the type of information and the type of guidance that was
19 being trained on at the station prior to January 22nd?

20 A. Yes, absolutely. If I can expand on that---

21 Q. Please.

22 A. I've been at the--the small-boat station here at Newport for
23 10 years in total, and we have always practiced what's in that

1 instruction as best practices. We've always conducted vessel
2 escorts in that manner that's in the instruction. The reason
3 that the date is showing January 22nd is we were actively in the
4 process of writing that instruction during the holidays and we
5 didn't finish it 'til the middle of January.

6 Q. Thanks, Chief. With respect to that instruction, it's very
7 detailed. I'm wondering if it has been sort of boiled down into
8 a checklist on board the vessels--available to the vessels. And
9 specifically I'm--I'm asking if there's a vessel escort checklist
10 that's available on board the Coast Guard vessels for reference
11 that incorporates this sort of more detailed information that's
12 in the instruction.

13 A. We don't currently have a checklist to operate off of that
14 are on the boats. That's all known with the coxswains and the
15 operators on the boat, and it's going to--that's going to be
16 vetted from both assets that are underway, from the mobile-1
17 that's on the hill, to the tower, to the commander representative
18 that could be back at the station. So there's--there's many
19 different layers to make sure that we're in line with asking the
20 appropriate questions and making sure that we fully understand
21 the situation when we're doing escorts.

22 Q. I see you've brought some demonstrative equipment with you.
23 Can you tell us what you brought?

1 A. We have a chart, it looks like up here, for the local area
2 and then some charting tools just in case you're going to ask me
3 some distances.

4 Q. We'll get into that in a second. On board the 52 and 47
5 you've got surface radars?

6 A. Yes, sir.

7 Q. And those surface radars are typically turned on when you're
8 conducting vessel escorts and operations in and out of the
9 jetties?

10 A. Yes, sir.

11 Q. Are those the type of radars that are equipped with the
12 capability of flagging a vessel and receiving information back
13 regarding the vessel's course and speed?

14 A. Yeah--the capability is there, yes.

15 Q. Is that capability something that's normally used maybe in
16 heavy-weather operations when there's a lot of things going on?

17 A. Not--not typically, no.

18 Q. Some testimony--well, maybe it was in the--the record
19 regarding the radio communications on channel 121 where was a
20 discussion of being sort of belted in and ready to go for heavy-
21 weather operations. Can you describe what--what that means in
22 the context of the 52 and 47, what--what it looks like inside
23 those deckhouses where the people doing the operations are

1 strapped in or however they're oriented?

2 A. Yes, sir, so anytime we're operating in heavy weather
3 conditions and circumstances like this, we communicate amongst
4 each other to make sure that we all have our proper protective
5 equipment on, such as belts, helmets, and everyone is belted in
6 and clipped in and the helmets are on properly. That--that's
7 just a form of communication that lets the other boat or lets
8 mobile-1 or the station know that we're prepared in line with
9 Coast Guard policy for heavy-weather operations. As far as the
10 orientation goes, most everybody is going to be up on the open
11 bridge, exposed to the environment. No one is going to be inside
12 the deckhouse. Everyone is outside with 360-degree views.

13 Q. And when they're strapped or belted in, does that mean
14 they're sitting down and they've got--they're--they're, in a
15 sense, affixed to a seat that helps protect them from being
16 thrown over?

17 A. No, sir, we're all standing.

18 Q. Okay, so there's a lanyard or something like that ties them--
19 I'm not sure what the belt refers to, then.

20 A. Yeah, so with the exception of the--on the 47-foot motor
21 lifeboats the coxswain is seated and has a seatbelt on and also a
22 heavy-weather belt. The belt is clipped in 90 degrees, one on
23 this side and one on that side. And on the VICTORY, there are no

1 seats. Everyone is standing and everyone is clipped into D-rings
2 that are welded on the boat, which will prevent you from falling
3 overboard.

4 Q. Do those belts also assist the people in carrying out their--
5 their performance, whether it's lookout or helms--helmsman during
6 heavy-weather vessel movements? They keep--they assist in
7 lateral movement protection?

8 A. Yeah, they basically--if you lose your footing, the belt is
9 going to catch you, so hopefully you don't fall down and injure
10 yourself and you stay in a stationary position.

11 Q. From time to time do the course of your duties take you on
12 board commercial fishing vessels, 50, 60, 40-foot vessels?

13 A. Yes, at times. Typically not in sea conditions we're like
14 that, we're not on board, sir.

15 Q. During those times when you are on board fishing vessels, are
16 many of those vessels equipped with similar sort of protective
17 equipment that would assist the people who are on the bridge
18 operating the vessel during heavy weather?

19 A. From my experience, I've never seen a commercial boat have
20 those types of capabilities. Of course it's--if they wanted to,
21 I'm sure that they could, but I've never seen that.

22 Q. When we left off the last testimony, we were--I was trying to
23 get an understanding of the distances between sort of the--the

1 waiting area outside the hazardous condition to the area inside
2 the jetty where it was less hazardous. I wanted to understand
3 that distance and I wanted to consider the question of a vessel
4 at the speed of 5 knots or 7 knots, how long it would take them
5 to maneuver that--to make that distance. Would you be able to--
6 to assist in that with the use of the--the chart?

7 A. Yes, sir. I--I went back and actually looked up and did the
8 work. So in relation to the distances we discussed that--it's
9 approximately 1800 yards from buoy number 1 to the jetty tips. A
10 vessel going approximately 10 knots is--is going to be inside the
11 jetty tips within about 5 to 5½ minutes in a--in a perfect
12 scenario at 10 knots.

13 Q. Okay. So 5--5 knots, be twice that long.

14 A. Five knots would be roughly about 11 minutes, between 10 and
15 12 minutes at 5 knots. And that's not factoring current or wind
16 or anything associated like that.

17 Q. Yeah, that's just speed made good.

18 A. Yes.

19 Q. Not necessarily what your engine is turning for. It's how
20 you're actually traveling.

21 A. Yes, sir.

22 Q. I think there was testimony and perhaps you can elaborate on
23 this, just getting inside the jetty tips, not necessarily out of

1 the hazard area, the safer area is further inside the jetty tips,
2 some distance beyond that.

3 A. That's correct. From my experience, you're not safely across
4 the Yaquina Bay bar until you're--in those types of conditions
5 until you're inside of lighted aid number 4, east of aid number
6 4.

7 Q. That's several hundred yards inside the tips? It's an
8 estimate.

9 A. It's approximately 200 yards inside the south jetty tip is
10 where number 4 is.

11 Q. I think we established the virtual location of buoy 3 is
12 about halfway between the end of the north jetty and where buoy 1
13 is, approximately.

14 A. Yes, sir, that's accurate.

15 Q. If the period of the lull on January 8th was approximately 5
16 minutes, is it fair to say a vessel doing around 5 knots, maybe
17 even a little faster, would not make the distance from buoy 1 to
18 the jetty tips during that lull?

19 A. There are so many other factors associated with that, as we
20 discussed, but--but typically speaking, a vessel traveling at a
21 slower rate will not be able to make it inside the jetty tips
22 until the next series or set comes through, from my experience.

23 Q. They're going to have to withstand at least one set--a small

1 set and a big set, at least one cycle of the really bad
2 conditions on their way in from buoy 1.

3 A. Possibly.

4 **PIIC:** One moment, Commander.

5 Q. Are you aware of any communications from any person to the
6 Coast Guard prior to January 8th, 2019 warning the Coast Guard
7 that Mr. Biernacki was impaired, was using drugs, was operating a
8 vessel under the influence of alcohol?

9 A. No, I'm not. I'd never heard of the vessel name before that
10 night.

11 Q. And since this investigation started, has--have you been made
12 aware of any notification to the Coast Guard that occurred prior
13 to January 8th about those apparent observations that the people
14 have testified to here?

15 A. I am not, no.

16 **PIIC:** Thank you, Commander.

17 **LIO:** Lieutenant Commander Foster?

18 **TA:** Good afternoon, Chief--good morning, Chief. Lieutenant
19 Woods, please display Coast Guard Exhibit 003, page 2. Chief,
20 I'm going to be putting this graphic up for the general
21 edification of the public. You should have a laser pointer in
22 front of you. If at any time to better illustrate your point--if
23 at any time to better illustrate your point, I'd like you to use

1 that laser pointer and, as before, use the display that's behind
2 me.

3 **REDIRECT EXAMINATION**

4 **Questions by the technical advisor:**

5 Q. In your experience when entering the Yaquina Bay bar in
6 breaking surf conditions, where will a current, specifically the
7 Davidson Current, begin to affect your vessel? And if he needs
8 to zoom in, let me know.

9 A. If you want to zoom in a little bit, that'd be great for the
10 public to see. Mainly between that buoy--that's okay right
11 there. So from my experience, when we're talking about the
12 along-shore current or the Davidson Current, you're going to
13 interact in the general area from inside of buoy 3 to the--within
14 the jetty tips. It's going to run typically--on the night like
15 in January, it's going to run from the south to the north in a
16 northerly direction and it's going to be crossing right through
17 the main channel. And it varies. It can shift one way or the
18 other, but typically you're going to see all that action right
19 inside of number 3 and by the jetty tips. And what that current
20 does is it--as it comes up, at some point it's going to interact
21 with the south jetty and then that current is going to hit the
22 south jetty and it's going to run westward. It's going to run
23 out to sea westward until it gets clear of the jetties. Then

1 it's going to continue north. So we've--in previous SAR cases,
2 we've dropped a life ring when things like this have happened--
3 dropped a life ring in this general area, which is--I'm pointing
4 on the south side of the south jetty. And that life ring has
5 been swept out to sea and then shot to the north.

6 Q. Is there an average approximation of how--the velocity of
7 that current?

8 A. I couldn't begin to speculate on how fast it runs.

9 Q. Is it affected by either a slack tide, flood tide or ebb
10 tide?

11 A. I'm--I'm sure it varies based off of the tidal conditions in
12 the river.

13 Q. For clarity, if you were conducting an escort and you were
14 behind a vessel off of quarters, as you previously testified,
15 what indications might you have that that vessel has--the vessel
16 you're escorting has become affected by that current?

17 A. Well, I've escorted personally--I wasn't underway that night,
18 but I've escorted many vessels across the Yaquina Bay bar during
19 my period. A lot of the time I'm going to sit off their quarter,
20 as we discussed, and typically the minute you get inside of buoy
21 number 3, you start to see the effects of wind and current,
22 because as you approach the jetty tip, they're going to typically
23 want to get naturally set to the north based off of the factors

1 that we discussed. So it's imperative that I do everything I can
2 when I'm behind the vessel to knock down a wave, absorb the
3 energy of that wave in trying to displace that wave, because
4 that's the direction where the wave is going to come from to
5 impact the fishing vessel. I've personally taken a 20-foot break
6 50 yards, 100 yards off of a fishing vessel's stern to--to
7 basically displace the wave to allow them to continue their
8 transit in.

9 Q. When you say you've taken a break, am I understanding you
10 correctly that you have allowed a 20-foot breaking wave to crash
11 on your vessel to disrupt it from hitting a commercial fishing
12 vessel?

13 A. That's correct, on the--specifically on the 52 VICTORY.

14 Q. In general--and let me know if this depends on the escort--if
15 a vessel is being escorted into port, which quarter do you sit
16 off of?

17 A. Well, that's going to be on a case-by-case basis depending on
18 the swell pattern and swell direction, wind. It varies.

19 Q. I'm just curious if you take into account when they enter
20 that current, which side you believe they're going to be set to?

21 A. Yeah, so what I would say is typically I'm going to sit off
22 their port quarter, which would put me more northerly, because I
23 know, based off of the danger areas that we discussed earlier,

1 that the main bulk of the energy is going to affect them off of
2 their port quarter. So I'm going to sit just a little bit to the
3 north of where they're at. I'm going to communicate with the
4 fishing vessel and let them know over--I don't expect a response,
5 necessarily, when you're in those situations. In the most
6 important time of the escort, a lot of the time the communication
7 between me and the fishing vessel is somewhat--I don't want to
8 say nonexistent, but I don't--I let them know what's coming and
9 how far it is and how big it is, but I don't expect a response.

10 Q. And why is that?

11 A. Because they're busy. They're driving, they're piloting,
12 they're navigating, they're communicating amongst themselves, I
13 would assume. I don't expect them to grab a radio and then reply
14 back to me, because they have other things that they're doing.
15 I'll talk to them after we get inside.

16 Q. Chief, are you familiar with the term "crabbing angle"?

17 A. Crab like crabbing a boat?

18 Q. Crabbing angle, yeah.

19 A. Well, I know what crabbing is.

20 Q. Okay. Once a vessel or both vessels enter that current, what
21 actions may need to be taken for the vessel to realign with
22 center channel?

23 A. So if--if you have current and you're fighting current,

1 meaning--when I say fighting, it's coming on your bow in some
2 fashion. So if--if the current is pushing on your starboard bow,
3 it's going to crab your vessel to port. If the current is--and
4 vice-versa. If you need to combat those conditions, you need to
5 adjust your course appropriately to make the course good over
6 ground to fight those elements. If you don't make that
7 correction, you're going to continue crabbing in whatever
8 direction that the current is pushing you.

9 **LIO:** How can you correct for that? With speed or rudder angle
10 only or both?

11 **WIT:** Both. You can do both. You can do one or the other.
12 Really, the important piece is the rudder angle. You have to
13 turn against it, and if you applied more power, that's only going
14 to help you.

15 Q. We've heard multiple testimonies, including yourself, about
16 how dark that evening was. If a person had a limited amount of
17 time, say 5 to 7 minutes, to realize that they were far north and
18 they were in that current, would they be visually able to
19 ascertain where they were in the channel in time to correct that?

20 A. I don't know. It would be difficult, especially at the sea
21 state. Anytime you go down in the trough, you lose visibility.
22 Every time you come up you get a peak at where you're at, and to
23 be able to make a course adjustment--and really that's--that's

1 part of our communication is, you know, continue to the north or
2 continue to the south, whatever the case may be, to provide the
3 mariner as much time to move in that direction.

4 Q. Chief, I'd like to turn your attention to earlier testimony
5 about escorts in general. If a vessel requests an escort, is--
6 are Coast Guard assets required to provide that escort?

7 A. If--a lot of the time, from my experience, the commercial
8 fleet isn't going to directly come out and say, "Hey, can you
9 come out here and--we need an escort." Right? What it--in real
10 time, what it really looks like is, "Hey, Coast Guard, what's the
11 current bar conditions doing?" and "because we're looking at
12 coming in". That--that, for me, is the telltale sign that we're
13 going to launch boats to get out there and be proactive so we're
14 not reactive.

15 Q. Roger, I understand. But are you required by policy or by
16 regulation to provide a Coast Guard escort?

17 A. We typically do that, yes.

18 Q. Are Coast Guard escorts considered normal station operations
19 or are they considered part of search and rescue?

20 A. We classify them as search and rescue.

21 Q. If a vessel requests an escort, under what circumstances may
22 the Coast Guard not be able to or unwilling to provide an escort,
23 if requested?

1 A. Well, if they ask is, we want to find out what their
2 intentions are. If their intentions are--our recommendation is
3 that the bar is too big or breaking consistently, then they may--
4 we may not get underway because they're not coming in. If
5 they're committed to coming in, we're going to--we'll get
6 underway.

7 Q. Please help me understand the parameters of "too big".

8 A. Seas that--20-foot range, extend beyond the limitations of
9 some of our assets at time, consistently breaking, there's no
10 lulls, there's no windows to--to cross. That's a major factor.

11 Q. Did the MARY B II specifically request an escort from Station
12 Yaquina Bay that evening?

13 A. I--I don't remember because I was--I was at home and--when
14 they called me. So I'd have to defer that. I'm not sure. I
15 know we did a bunch of investigative work, but I wasn't at the
16 station then.

17 Q. Is the Coast Guard permitted to make specific navigational
18 advice to mariners?

19 A. We do not give navigational advice to mariners.

20 Q. By policy or regulation?

21 A. Correct.

22 Q. When a vessel is being escorted, what information can Coast
23 Guard personnel pass to the mariner?

1 A. We typically let them know if their course--the current
2 course that they're on is--is good or not good, if their speed is
3 good or slow or fast, but we don't tell them to steer compass
4 courses.

5 **LIO:** So--I apologize for breaking in, but--so if a mariner is
6 going too slow to safely navigate, is it within written policy to
7 tell them to speed up?

8 **WIT:** Well, we're--we're naturally going to tell them to speed
9 up. It's--I believe in our instruction it talks about slow
10 speed, but we're--we're going to communicate that with the--with
11 the vessel.

12 Q. You previously testified that there are certain critical
13 times during a bar escort that you will maybe talk less to--or
14 expect the mariner not to communicate as much because you're
15 trying to let them focus. In the event that a mariner is not
16 going fast enough, would that--would you take that into account
17 or--help me understand--help me understand that.

18 A. Every situation is different. So I--I would want to know if
19 they're not making--maybe it's the current, maybe it's the wind.
20 I don't know. I want to--like, "Hey, sir, is everything okay?
21 You slowed down." I know that the VICTORY started backing at
22 some point, right? So the--the real question is why. I don't
23 know. It would make me want to gather some more information.

1 Q. Do you know how much----

2 LIO: What if the vessel operator told you that he needed to
3 focus?

4 WIT: Then I would just back off.

5 LIO: Thank you.

6 Q. So you alluded to this, but I'd like to get a little more
7 specific information. In your experience, when the weather is
8 rough, do commercial fishing vessels request bar reports and, if
9 so, how often?

10 A. Yeah, the commercial fleet--we typically have a great working
11 relationship with the commercial fleet. They communicate with
12 us. They ask us what the bar is doing. They tell us how long
13 they're going to be until they get to the bar. They ask what the
14 last bar report was. And then we typically respond like, "Well,
15 we'll go get underway and we'll provide you the accurate bar
16 report." As long as we have ample time to get out there and beat
17 them to it, we'll do everything we can to paint them the best
18 possible picture of what the bar is currently doing. It's
19 ultimately their decision on if they are going to cross or not.

20 Q. Do you let the mariners know that?

21 A. Do I let them know what?

22 Q. Does the Coast Guard provide mariners with the information
23 that, although the Coast Guard is there, they are under no

1 obligation to cross the bar?

2 A. Yes, from my experience, we do.

3 Q. How do you communicate that to the mariner?

4 A. If I'm going to communicate that, I'm going to say, "Sir,
5 just because we're out here gives you no obligation that you need
6 to come in across. All I ask is that you communicate your
7 intentions to me so we can plan accordingly."

8 Q. On the evening of the 8th of January 2019 are you able to
9 speak to whether that communication was given to the MARY B II?

10 A. I wasn't at the station. I don't know.

11 Q. Thank you. With respect to what the captains normally pass
12 for their intentions, can you give us an example of what
13 information might be passed to the Coast Guard from those
14 captains? You said their intentions.

15 A. Yeah, typically they're going to communicate that they're
16 going to wait a little longer, let some more water get on the
17 bar, meaning as the flood comes in they're going to--we're going
18 to poke up here--this is all, you know, common or slang, if you
19 will, "We're going to poke up and push up here and check it out a
20 little bit. We'll get back to you. We're going to turn around,
21 we're going to go back out to the entrance buoy or buoy number 1.
22 We're going to wait longer," or, "I'm going to give it another
23 half hour and then I'm going to look at it again." All these

1 things are--you know, they're communicating with us, we
2 communicate with them and then at some point they're going to
3 say, "Okay, it's looking like we're going to give it a shot.
4 Here we come." And then there's other times when they just start
5 steaming towards the bar and we call them on the radio and we
6 say, "Sir, are you currently inbound at this time?" and they'll
7 say, "Roger, roger."

8 Q. Once they begin that inbound run, is there a point of no
9 return where it's more advisable to continue across the bar
10 instead of turning around?

11 A. I would say the minute you start getting inside of buoy 3
12 area, you're pretty much committed--or just inside of 3, you're
13 pretty much committed. It's very difficult to turn around in
14 conditions like that.

15 Q. Because of danger of what?

16 A. Danger of getting hit by a wave, getting--the current is all
17 funneled down right at the jetty tips. So now you're dealing
18 with current or wind. So the minute you're inside there, it's
19 quite difficult to--to turn back around.

20 Q. Does station personnel have the authority to prevent
21 recreational vessels from attempting to cross the Yaquina Bay
22 bar?

23 A. Yes.

1 Q. What actions can station personnel take to prevent this
2 action?

3 A. Well, we have our bar broadcasts. We have our radio
4 transmissions. We have the bar lights that we mentioned on
5 Tuesday, the hazard signs, and we can even set--get a boat
6 underway and sit on the bar to--to contact any recreational boats
7 that are trying to cross.

8 Q. Would you point on the chart where the vessel would sit in
9 order to provide that warning.

10 A. Well, we--we can sit anywhere. We can sit at buoy number 7.
11 We can sit right at the jetty tips. We can sit anywhere from the
12 bridge up to the jetty tips.

13 Q. In the event someone--a recreational vessel does cross, what
14 actions are you authorized to take?

15 A. If a recreational does cross the restricted bar, we'll launch
16 an asset immediately to make contact with them, and if they're
17 offshore, a lot of the times we're going to contact them, get on
18 scene, assess the condition, make sure they have their
19 lifejackets on, verify their position, what their intentions--
20 they're doing, and then we may just keep them offshore until the
21 conditions subside and monitor them constantly and then come up
22 with a plan to get them safely back inside the bar.

23 Q. Does station personnel have the authority to prevent a

1 commercial fishing vessel captain from attempting to cross the
2 Yaquina Bay bar?

3 A. We--we do not unless it's under a captain-of-the-port
4 authority.

5 Q. Solely talking about station personnel.

6 A. We do not.

7 Q. In the event that you feel the conditions require you to
8 close the bar, can you help us understand who has to approve that
9 closure and the time of--the time it takes to get the bar closed.

10 A. So from my experience, if we're looking at closing the
11 Yaquina Bay bar, the--the duty personnel will communicate that
12 with myself or our commanding officer, and we'll have a
13 conversation. We'll assess risk. We'll look for vessels that
14 are offshore or any potential people or vessels that are--or
15 mariners that might be still out to sea. We're going to do
16 some--try to do some long-term planning and really--and really
17 plan for a closure ahead of time. What that looks like is we're
18 then going to communicate that to Coast Guard Sector North Bend,
19 that we're requesting a captain-of-the-port order be placed on
20 the Yaquina Bay bar based off of these conditions and why.
21 Sector North Bend is going to communicate that to Sector Columbia
22 River, and who--who has the captain-of-the-port authority. And
23 then that will then be funneled back down with the final approval

1 to us. I've seen it happen within 10 minutes, and I've seen it
2 take upwards of an hour.

3 Q. In the meantime, the vessels that you referenced that are
4 still offshore, do you make call-outs to them? Do you hail them
5 on the radio? Do you make any attempts to let them know you
6 intend to close the bar?

7 A. Absolutely.

8 Q. And how--what means do you usually do that?

9 A. Our best way is to identify the vessel and then reach them on
10 channel 16 VHF.

11 Q. Is that normally successful? Do most mariners monitor 16?

12 A. Yes.

13 Q. Are they required to?

14 A. Yes.

15 Q. Chief, I have a last couple of questions just based on your
16 personal experiences. Approximately how many bar escorts has the
17 station completed while you were underway with them?

18 A. Over 10 years?

19 Q. Approximately.

20 A. Hundreds.

21 Q. Do you conduct a bar escort the same way each time and, if
22 not, why or why not?

23 A. I would say, yes, we typically have one boat inside or at the

1 jetty tips and one vessel off their stern. There are some other
2 times where--more so in the summer season, where people that are
3 not familiar with the Newport bar, where we'll send out a 47 and
4 we'll lead the way, but that's mainly because they're not
5 necessarily familiar or it's their first time into Newport. So
6 we--we can supplement that in a different fashion, but I would
7 say 90% of the time we have two boats, especially in heavy
8 weather conditions. We'll conduct two-boat escorts, as we've
9 already talked about.

10 Q. To the best of your knowledge, did the MARY--did the escort
11 of the MARY B II deviate from written guidance and training on
12 how to do bar escorts?

13 A. No, not at all.

14 Q. Based on your experience and to the best of your knowledge,
15 did the escort of the MARY B II deviate from your previous 10
16 years' experience of doing bar escorts?

17 A. No, I would have done it the same way if I was out there.

18 **TA:** No further questions, Commander.

19 **LIO:** Chief, I have a few questions.

20 **Questions by the lead investigating officer:**

21 Q. You've been here a long time, right, 10 years. So do you
22 believe, based on your professional opinion, that we need channel
23 buoy number 3 for the safety of operations?

1 A. For me, the buoy 3 is--is nice to have. I know that the
2 commercial fleet doesn't necessarily like it in the wintertime
3 because they like to--to operate in certain ways with the swell
4 pattern in order to--to operate the bar, but I like buoy 3 there
5 just because it's a visual reference.

6 Q. Same question as far as do you--do you think that we need a
7 light for the north jetty, based on your professional opinion,
8 for safety of operation?

9 A. No. Would it be nice? Sure. But do I think we need one?
10 Probably not.

11 Q. How often does Station Yaquina Bay receive information about
12 the impairment of a fishing vessel operator?

13 A. Slim. Not--not all--not--not too often.

14 Q. How many reports are you aware of in the past 12 months?

15 A. Maybe--maybe one.

16 Q. We've spoken about the Davidson Current, which is a
17 powerful--powerful current that runs along the shoreline and
18 flows south to north during the winter months. Are fishermen in
19 the Pacific Northwest generally acquainted with this current?

20 A. I would say yes.

21 Q. How about professional mariners?

22 A. Professional mariners? I would say yes. Your first
23 question, was it---

1 Q. Commercial fishermen.

2 A. Yeah, I would say that they're familiar with along-shore
3 current.

4 Q. How about recreational boaters?

5 A. Probably not so much.

6 Q. During a vessel escort of the fishing vessel--of a fishing
7 vessel, how many times have you advised a fishing vessel about
8 the Davidson Current?

9 A. I would say--I would say often. You know, you're--the
10 communication--"You're getting set to the north. Know you might
11 need to come--adjust your course to the south, come to
12 starboard," things like that. It's--it's happened before.

13 Q. Do you know of any other ways that a mariner can find out
14 that information, for example, any pamphlets or--or other sources
15 of information?

16 A. I don't want to speculate, but I'm sure there--not off the
17 top of my head, but I'm sure that there are.

18 Q. Have you ever heard about "Know Before You Go: Washington
19 and Oregon Bar Conditions"----

20 A. Yes.

21 Q. ----that document?

22 A. Yes, ma'am.

23 **LIO:** Lieutenant Woods, would you actually bring up Exhibit--

1 Coast Guard 062, which is labeled "U.S. Coast Guard Guidance for
2 Mariners: Hazardous Bar and Web Page Capture". If you could
3 please zoom in on--zoom the highlighted parts.

4 Q. Chief, could you please--could you please take a look and
5 just read the highlighted part in the second paragraph. Sorry,
6 do we need to zoom it a little bit more?

7 A. No, I'm okay. Just the second paragraph?

8 Q. For now.

9 A. [Complied.]

10 Q. Can you actually, for the benefit of the public, read it out
11 loud.

12 A. Yes. Sorry.

13 "The U.S. Coast Guard National Water
14 Service..."

15 Q. Sorry--go ahead.

16 A. "...have teamed up to provide the most up-
17 to-date forecast information and sea
18 condition, observations for coastal bar
19 conditions along the Oregon and Washington
20 coast. Each port provides a local area
21 radio broadcast on 1610 AM that gives the
22 current observed weather conditions and any
23 restrictions that may be in place."

1 Q. Chief, could you please read the next highlighted portion.

2 A. "The Coast Guard and NOAA provide this
3 information to assist mariners in making
4 sound decisions for navigating safely, but
5 the safe navigation is the responsibility of
6 the vessel operator."

7 **LIO:** Lieutenant Woods, could you please go to page 2.

8 Q. Chief, would you please read the highlighted part at the top,
9 under "coast bars".

10 A. "Even on calm days, a swift ebb tide may
11 create a bar condition that is too rough for
12 small craft, any vessels under 65 feet."

13 **LIO:** And lastly, if we could go to--to the section for the
14 Yaquina Bay bar, which is page 12 of this document.

15 Q. Chief, would you please read that.

16 A. Just the highlighted portion?

17 Q. Yes, please.

18 A. "For the north jetty specifically, stay well
19 clear of the end of the north jetty, since
20 there is a danger of shoal water, breakers
21 at the extreme end. Remain in the channel
22 outbound until you have passed Yaquina bay
23 entrance. Approach lighted whistle buoy,

1 the YB buoy. This applies to entering the
2 river as well, and mariners should
3 anticipate a north to south beach current
4 during the summer months and a south to
5 north current during the winter months."

6 **LIO:** Thanks, Chief. For the record, this board highlighted
7 sections that were just displayed and read by Chief McCommons.

8 Q. So this is a source document that you were aware of that's
9 available to mariners to better understand the conditions in your
10 operating area; is that correct?

11 A. Yes, ma'am.

12 Q. So this would be considered knowledge that local fishermen
13 would have and that mariners would be expected to find for the
14 safety of their vessel.

15 A. I would assume so, yes.

16 **LIO:** Thank you. Mr. Reilly?

17 **RECROSS-EXAMINATION**

18 Questions by the party-in-interest counsel:

19 Q. Chief, you responded to a question about the frequency of
20 reports about impaired fishing vessel operators. Let me ask, in
21 your--the last year of--are you aware of any time the Coast Guard
22 ignored a report of an impaired fishing vessel operator located
23 pretty close to the station?

1 A. Commercial, no. The one I referenced was a recreational boat
2 from within the last year.

3 Q. And so my question was just to inquire. The Coast Guard
4 doesn't ignore reports when it receives it. Fair to say?

5 A. No, we're going to do our due diligence to investigate it.

6 **PIIC:** All right. Thanks again for your testimony, Chief, and
7 thanks a lot for doing the--the homework so we didn't have to
8 open that stuff up. Thanks so much. Thanks, Commander.

9 **LIO:** Thank you. Lieutenant Bigay?

10 **AIO:** Yes, ma'am.

11 **REDIRECT EXAMINATION**

12 **Questions by the assistant investigating officer:**

13 Q. Good morning, Chief. Earlier we mentioned and discussed an
14 instruction regarding station's preparation for escorts. Would
15 it be fair to say that there are variables when you're dealing
16 with specific situations that arise that you're not going to be--
17 you're not going to be able to capture within that instruction?

18 A. I would say everything is so dynamic and unless you've been
19 on the bar in those types of situations, there's--you can't break
20 out a piece of paper and follow something.

21 Q. With this in mind, if you were unable to make contact with a
22 vessel via radio, how does that impact your ability to prepare
23 for an escort?

1 A. There's a lot of unknowns. I don't know about--I don't know
2 how many people there are, don't know the status of the vessel.
3 I don't know what their normal cruising speed is. There's a lot
4 that I don't know that I want to know.

5 Q. So you're saying--so you're saying that would affect your
6 ability to prepare for that escort?

7 A. Yes.

8 Q. Chief, same question but in terms of the identification of a
9 vessel. If--we've heard from previous testimony that the MARY B
10 II, while the Coast Guard was preparing for the escort, was
11 identified through AIS as the BESS CHET, which was the name it
12 was under while under previous ownership. How would that affect
13 your preparation for an escort?

14 A. With the uncertainty as to the name of the vessel?

15 Q. Yes.

16 A. Well, I would think maybe there's more than one vessel. I--
17 then it creates some type of confusion as to who I'm actually
18 looking for. So until I can get on scene with a vessel and
19 physically see the name on their hull, I won't know who they
20 actually are. And then do I need to be looking for another boat?
21 And you alluded to the BESS CHET. So that's the boat I would be
22 looking for.

23 Q. Understand. Earlier while you were answering a question, you

1 mentioned--you said that fishermen are not going to, I quote,
2 "come out and ask for an escort". And I was wondering, in your
3 experience at this station in this area, if you know why that is.
4 A. I don't want to speculate as to why, but they're going to
5 say--if our response is, "Sir," or, "Ma'am, are you requesting
6 Coast Guard assistance?" and then they just come back and they
7 say, "Well, it'd sure be nice if you were out here," to me that's
8 a yes.

9 **AIO:** Thank you, Chief.

10 **LIO:** Chief McCommons, you are now released as a witness from
11 this formal hearing. Thank you for your testimony and
12 cooperation. If I later determine that this board needs
13 additional information from you, I will contact you through your
14 counsel. If you have any questions about this investigation, you
15 may contact the investigation recorder, Lieutenant Luke Woods.
16 Thank you.

17 It is now 11:42 and we don't have any scheduled witnesses
18 for the rest of this morning. So we are going to convene for
19 lunch a little early. We'll resume at--I'd like to stick to
20 actually an hour and maybe we can resume at 12:45. So we'll go
21 ahead and resume at 12:45.

22 [The hearing recessed at 11:43 a.m., 16 May 2019.]

23 //

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II

2 held in Newport, Oregon

3 on 14 May 2019

4 WITNESS: BMC JASON McCOMMONS, USCG

5 [The hearing was called to order at 9:23 a.m., 14 May 2019.]

6 **LIO:** It is now 9:22 and we are reconvening this public hearing.

7 The lead--the lead--excuse me--excuse me, we will now hear

8 testimony from our next witness, who is Chief Boatswain's Mate

9 McCommons, the executive petty officer from Station Yaquina Bay.

10 Chief McCommons, please come forward to the witness table.

11 Lieutenant Woods, will administer your oath and ask you some

12 preliminary questions.

13 **CHIEF BOATSWAIN'S MATE JASON McCOMMONS, U.S. Coast Guard, was**

14 **sworn and testified as follows:**

15 **DIRECT EXAMINATION**

16 **Questions by the recorder:**

17 Q. Please state your name--your full name and then spell your

18 last.

19 A. My full name is Jason McCommons, M-c-C-o-m-m-o-n-s.

20 **REC:** Counsel, can you please state and spell your last name.

21 **LCDR LEAGUE:** My name is Jan League, last name spelling

22 L-e-a-g-u-e.

23 Q. Chief McCommons, please state your current employment and

1 position.

2 A. I'm currently the executive petty officer of Coast Guard
3 Station Yaquina Bay.

4 Q. Please state any education or training related to your
5 profession.

6 A. I've been to numerous supplemental "C" schools. I've been to
7 coxswain courses. I've been to heavy weather courses on the
8 Columbia River. I've been an instructor on the Columbia River,
9 operating lifeboats for 16 years.

10 Q. And do you have any professional licenses or certificates
11 related to your profession?

12 A. Not currently, no.

13 **REC:** At this time Lieutenant Commander Foster will begin her
14 primary lines of questioning.

15 **TA:** Good morning, Chief. Thank you----

16 **WIT:** Good morning.

17 **TA:** ----for appearing here today. For the benefit of the
18 public, we will both refrain from using Coast Guard acronyms,
19 with the exception of the acronym SAR, which, for the public, is
20 search and rescue. We will use this term during testimony. At
21 any time during your testimony you will find a laser pointer. In
22 the event that you feel it necessary to highlight certain areas
23 of an exhibit, I'll ask that you highlight the screen behind me.

1 Do you have your laser pointer?

2 **WIT:** I do.

3 **TA:** Roger. Lieutenant Woods, please display Exhibit 003, page
4 2, which is the Yaquina Bay danger areas.

5 **Questions by the technical advisor:**

6 Q. Chief, while we're calling that up, what types of vessels
7 does Station Yaquina Bay operate?

8 A. We operate a small recreational boat, 29-feet long, mainly
9 inside the harbors, and on flat, calm days we can go out in the
10 ocean. We have two 47-foot aluminum-hulled lifeboats, and we
11 have one 52-foot special purpose craft named the VICTORY.

12 Q. And why does Station Yaquina Bay have those specific types of
13 vessels assigned?

14 A. Station Yaquina Bay is one of 20 other surf units that all
15 have 47-foot lifeboats for heavy weather conditions and then
16 specifically Newport has the 52-foot lifeboat VICTORY for deep-
17 water bars on the Oregon coast.

18 Q. Using your laser pointer and using the graphic displayed
19 behind me, can you speak about any dangerous or hazardous areas
20 in the area of responsibility for Station Yaquina Bay?

21 A. All the areas on the standard pamphlet that are highlighted
22 in pink are danger areas along--inside the--inside the jetty
23 under section A here, there's a lot of finger jetties that stick

1 out and exposed rocks depending on the tide. That's a hazardous
2 or dangerous area for us. Moving into B, along the north jetty
3 on the inside section is exposed rocks. We tend to stay away
4 from the area to the north once you're inside the jetty tips.
5 Moving down to the area of C here, outside the bar and to the
6 south you can see--if you--can you zoom in a little bit?

7 Q. We can. Just----

8 A. Is that possible?

9 Q. We can. Just a moment.

10 **TA:** Lieutenant Woods, can you scroll to C.

11 **WIT:** If you could go down to C. There we go. The area of C is
12 the south reef of Yaquina Bay entrance, and the south reef
13 extends just outside the channel and then it's--kind of slopes
14 down to the south-southwest, and it's highlighted on the chart in
15 blue water or blue. It's tough to see through the pink
16 background, but the shallow--it shoals up to about 15 feet. It's
17 all rock under there. And during large wave periods and
18 significant swell patterns that are typically out of the
19 northwest, the south reef is a hazardous area because it produces
20 large breakers. And moving to the north, under section D--and to
21 the north is probably one of the most dangerous areas of Yaquina
22 Bay, and the reason is, as you can see on the pamphlet, right at
23 the north jetty tip is rock and it extends all the way up to the

1 lighthouse and it's significantly more shallow than to the south.
2 You reach depths of 8 and 9 and 7 feet at times. There's
3 multiple shipwrecks over the years, and probably the one area
4 that we consistently stay away from would be the north jetty tip.

5 Q. Thank you, Chief. We've heard previous testimony about the
6 bar. Can you please illustrate or highlight for us where the bar
7 is and talk about what it is in terms of potentially challenging
8 waterway feature.

9 A. So the regulated navigation area or the bar is from the
10 bridge out to the entrance buoy, a mile to the north and a mile
11 to the south. It's a regulated area that we, as the Coast Guard,
12 have the authority to restrict to different lengths. We have the
13 authority to close the entire bar entirely----

14 Q. Chief----

15 A. ----at times.

16 Q. Chief, we will--you and I will get into that--those specifics
17 in just a minute. So that will work.

18 A. Okay.

19 Q. Thank you. Final overall question about this general area.
20 Are the weather conditions that you alluded to before, the heavy
21 seas, are those more severe during a certain time of the year or
22 is it equal the entire time of the year?

23 A. I would say during the winter months, from October to even

1 this time of year, we can get late storms, but typically speaking
2 it's through October to May--would be the more significant
3 weather patterns.

4 **TA:** Thank you, Chief. Lieutenant Woods, please display Exhibit
5 55, slide 1.

6 Q. Chief, for the benefit of the public, this slide will be a
7 photo of the tower at Station Yaquina Bay. So, Chief, we will
8 later hear testimony regarding the evening of the 8th of January
9 2019. This testimony will reference several watch-standing
10 positions, including the tower watch, mobile-1, officer of the
11 day and coxswain. For the benefit of the public, I would like
12 you to briefly describe these watch-standing positions and their
13 duties, and what I'll do is I'll name each one and if you'll just
14 give me a brief description, in particular, if these positions
15 are manned 24/7. I'd like to start with officer of the day.

16 A. The officer of the day's primary duties is the direct
17 representative of our commanding officer and/or myself. Their
18 responsibilities include the day-to-day operations in line with
19 the plan of the day or the plan of the week. They are to field
20 phone calls, answer questions to the general public that
21 typically our watch-standers may not be able to answer correctly.
22 Their subject knowledge or their base knowledge is significantly
23 higher than most of the other crew members, and it's a--there's

1 not--we have half a dozen, six or eight officer-of-the-days at
2 the station that they rotate through.

3 Q. And that position is 24/7?

4 A. Yes.

5 Q. They don't--they don't go off line at night, so to speak?

6 A. No, ma'am.

7 Q. They're there at the station the whole time.

8 A. 24/7.

9 Q. Roger. How about the tower watch? Can you explain the
10 function of the tower watch?

11 A. So we man our tower at any time that there's a restriction on
12 the bar and even during periods of significant boating traffic or
13 elevated levels of boating traffic we have a watch-stander that's
14 in the tower. The tower produces 360-degree visibility views
15 that extend seaward to the south based off of available
16 visibility with cloud cover and rain and so on and so forth, but
17 you can see well offshore in excess of 10 miles. You can see to
18 the north well past the Yaquina Head Lighthouse, which is
19 approximately 4 to 5 miles to the north, and you can see
20 significantly to the south, on a good day, in excess of 10 miles
21 as well. Their primary duties are to account for boating
22 traffic, contact commercial fishing vessels during significant--
23 specifically during crab season and for periods of heightened

1 boating, we typically log them or keep track of them just in case
2 an emergency may come up. And then we also in the summertime
3 monitor the recreational traffic from the tower.

4 Q. Thank you, Chief. What about mobile-1?

5 A. The function of mobile-1 is our government vehicle. Our
6 government vehicle is typically--we drive up to what's known
7 locally as Chicken Point or the hill. It's--it's a good
8 overlook. It provides a good vantage point. Same functions as
9 the tower watch-stander would have but not as good visibility to
10 the north. There are other areas that we can drive to and get
11 the same function of the tower, but typically speaking, the
12 mobile-1 would be yet another asset of ours that we can stage up
13 on the hill for communication for visibility, and typically the
14 mobile-1 is another officer-of-the-day type, to where they're not
15 necessarily--they're a higher level than a watch-stander.

16 Q. Understand. And it sounds like mobile-1 is an ad hoc entity.
17 It's not manned 24/7?

18 A. It's manned as needed.

19 Q. Roger. What about the communications room watch-stander?

20 A. Communications watch-stander is manned, for the most part,
21 from sunrise to approximately, at times, 2200--2000 to 2200 based
22 on the situation. In the evenings we pass our--our radio control
23 or oversight to Sector North Bend and then the tower watch-

1 stander will sleep on board but not necessarily in the room.
2 Their primary duties are to monitor the radio channels, channel
3 16, which is international hailing and distress channel, channel
4 22A or Coast Guard to non-Coast Guard communications, and we
5 monitor our local--our Coast Guard-used 121 secured radio
6 network.

7 Q. And a little bit later I'll ask you more specific questions
8 about the qualification differences in coxswain levels, but for
9 right now can you give me a brief overview of what a coxswain
10 does?

11 A. A coxswain's responsibility is--is the safe operation,
12 navigation and conduct of their boat and their crew. They're
13 overall responsible for the boat, the entirety, and the crew
14 associated with them. They operate any of the boats that I
15 mentioned previously, and their knowledge in understanding of the
16 local area, the danger areas, the hazard areas, Coast Guard
17 policy in regards to fire fighting and salvage, they're expected
18 to know all that before we certify them as a coxswain.

19 Q. Thank you, Chief. Are there any watch-standing positions
20 you'd like to highlight that I have not asked you about?

21 A. Not that I can think of.

22 Q. When there is a forecast for adverse weather conditions, does
23 the station change their staffing, such as calling in extra crew

1 to man a second vessel?

2 A. We always have the ability to man two boat crews, two full
3 boat crews, a watch-stander, a tower watch-stander. We always
4 have that--that availability. As the weather forecasts change or
5 increase and specifically during the crabbing season, we staff
6 the staff 24/7 with two fully certified boat crews with--with
7 surfmen on board based off the weather, the vessel traffic. We
8 always have that availability.

9 Q. What tools or sensors does the station have to anticipate
10 weather conditions? For example, does the station have radar?

11 A. We do not have a radar, no.

12 Q. Okay. Do you have any radar on board that is not owned by
13 the Coast Guard?

14 A. We have a radar on top of the tower that is--was recently put
15 in the last few years, owned by Oregon State University.

16 Q. Does the station have the availability to view that radar
17 video at any time?

18 A. Yes, we do.

19 Q. Turning our attention to the evening of the 8th of January
20 2019 and the readiness of the Coast Guard station, were all of
21 the assets, boats, equipment and vehicles ready and available to
22 handle the bar escort and the resulting search-and-rescue
23 mission?

1 A. Yes, they were.

2 Q. Were all the crew for these activities in position to perform
3 their duties?

4 A. Yes, they were.

5 Q. Can you talk about how your station ensures that personnel
6 are ready for this arduous mission in terms of being physically
7 fit, medically ready? Looking for a watch rotation, Chief.

8 A. Okay. We--we man our station--our duty crews work a 48-hour
9 period, 2 days on, 2 days off, and then every other weekend they
10 work a 72-hour weekend. While they're on duty, they're
11 available. If they're not on the unit, they have to be back
12 within less than 15 minutes. And what else did you want?

13 Q. I think that--that accurately----

14 A. Okay.

15 Q. ----captures--just trying to confirm for the benefit of the
16 public what rotation and how often the watch-standers are on duty
17 versus off duty. So while on duty, how does the station make
18 sure that fatigue does not negatively affect crew performance?

19 A. We constantly pay attention to crew fatigue, especially
20 during heightened times of operations. Crab season we're very
21 attentative [sic] to crew fatigue. At times we may minimize our
22 training and/or not conduct training based off of anticipation
23 caseload. In the summer time we're--we're very attentive to the

1 long hours that we could face, and in the wintertime,
2 specifically with the crab season, we're very attentative [sic]
3 to the crew's rest, well-being, mental state, not only personally
4 but professionally, that could impact or effect their performance
5 on the job.

6 Q. Great.

7 A. And with that I'll add one more thing in regards to
8 seasickness. Everyone is prone to seasickness, and that plays a
9 huge factor for us. And so we monitor that very closely and
10 supplement accordingly.

11 Q. Were any additional--additional personnel called back to the
12 station on the evening of the 8th of January due to the MARY B II
13 case?

14 A. I was. Other than that, I think everybody was at the
15 station.

16 Q. Did the lapse in government appropriations that was in effect
17 8 January 2019 have any effect on your station's readiness?

18 A. Not at all.

19 **TA:** Lieutenant Woods, please display Exhibit 58, page 2.

20 Q. Chief, for the benefit of the public, I am displaying Yaquina
21 Bay bar camera image along with verbiage associated with that
22 image. This image was displayed on a National Weather Service
23 website. So while we pull that up, Chief, I'll ask, does the

1 station use a bar camera?

2 A. The image that we see up on the screen here--is not right
3 now--but the image that we see is located on the tower.

4 Q. What purpose does the Coast Guard use this camera for?

5 A. We can use this camera--we can't really zoom in, necessarily,
6 but we can move the camera. If we have a disabled vessel that's
7 within that regulated navigation area, farther up inside the
8 jetty tips, we can move the camera to get eyes, real time or--or
9 somewhat real-time eyes on or be able to see what's going on
10 specifically to the north and up the river.

11 Q. Can you expand upon real time or close to real time?

12 A. I would say that for the most part the image that's typically
13 shown on the web page is current or accurate; however, there are
14 some times that the conditions are delayed, like--is this a
15 real--is this a screenshot?

16 Q. This is a screenshot.

17 A. Yeah, I was going to say, that's not---

18 Q. This is a representative sample.

19 A. Sounds good.

20 Q. How does the Coast Guard characterize adverse weather
21 conditions? In other words, can you define conditions when the
22 Coast Guard refers to heavy weather and surf?

23 A. Well, specifically anytime the sea conditions exceed 8 feet

1 and/or even 30 knots of wind, we consider those heavy weather
2 conditions. And what I mean by that, you don't have to
3 either/or--you can have either/or; you don't have to have both.
4 In the summertime we get 30-knot winds, which is considered heavy
5 weather conditions.

6 Q. And surf conditions?

7 A. Surf conditions are breaking waves that exceed 8-foot. Any
8 type of breaking wave would be surf and in excess of 20, 30 feet.

9 Q. How often, in your experience, does Yaquina Bay experience
10 breaking bar or surf conditions? Doesn't have to be a specific
11 number, Chief. I'm looking--how about in a 30-day period, would
12 you estimate?

13 A. In the--in the wintertime----

14 Q. Yes.

15 A. ----for October to----

16 Q. Yes, Chief.

17 A. ----May? We can have periods where it's consistent, breaking
18 seas consistently for a week at times, depending on the weather
19 patterns, and then we can get periods where it's not necessarily
20 breaking for a week. That's a hard question to answer, but very
21 often I would say during those winter months.

22 Q. How many people are assigned--how many active-duty are
23 assigned to Station Yaquina Bay?

1 A. We have just over 50 people assigned to Newport station.

2 Q. And how many of these people have specialized training
3 allowing them to operate in heavy weather or surf conditions?

4 A. Approximately a dozen heavy weather or surfman coxswains that
5 we have.

6 Q. I will ask you now to explain the different levels of
7 certifications between basic, heavy weather and surf coxswain.

8 A. So the basic coxswain is the--the member that--it's their
9 first boat-driving certification at the most basic level. When I
10 say that, seas less than 10 feet or 8 feet and winds that do not
11 exceed 30 knots. That's the basic coxswain. Then when those
12 thresholds are--are met in excess of 8 to 10 feet, we have a
13 heavy weather certification. And they can operate the boat in
14 seas in excess of 20 feet and winds that reach 50 knots--
15 sustained 50-knot winds. And then above that certification of
16 the heavy weather coxswain is a surfman. The surfman can operate
17 the boat in breaking seas and at the limitations of the boat in
18 seas of--30-foot seas, 50-to-60-knot sustained winds and--and
19 operate in beach surf or bar surf that's breaking.

20 Q. You referenced a relatively few number versus the total
21 number of station personnel. How long does it take to obtain the
22 certification of heavy weather and surfman?

23 A. Typically speaking, I would say after you earn your basic

1 coxswain certification, in order to become heavy weather
2 coxswain, you're looking at, you know, 1 to 2 years based off of
3 your performance or your abilities, and then after that, to earn
4 the certification of surfman, it can--it can take in excess of 6
5 to 8 years.

6 Q. Do you believe you have adequate people assigned to Station
7 Yaquina Bay to staff the vessels and allow for sufficient time
8 off to rest?

9 A. Absolutely.

10 Q. I'm going to turn your attention now to bar reports and how
11 you train for reporting on the bar conditions. So let's assume
12 that I was a newly reported member to Station Yaquina Bay. How
13 would you describe and then what kind of training would I expect
14 as far as learning how to identify wave heights, dangerous
15 conditions, things like that?

16 A. Well, the first thing I would do is I'd take you out and we'd
17 go across the bar and then we'd sit--we'd sit out there just
18 offshore on the main channel between the green buoys and I'd ask
19 you how big do you think the sea state is. Then you would give
20 me a number and I would say, "No, probably not." And so over
21 time, based off of the freeboard, which is the area of the boat
22 that's out of the water to the deck--is--based off of the height
23 in those--the vessels that we have will give you a good idea of

1 how high the sea state is. We can use the buoys. We use the
2 buoys as a reference as well, do--and what I mean by that is do
3 the buoys disappear when this--the swell pattern passes through
4 them? If the buoys are disappearing, then you're probably
5 looking at a 15-to-16-foot swell. If the swell pattern is the
6 height of eye when you're on board the--in the coxswain or on the
7 open bridge of the 47, your eye level is 14 feet off the water.
8 So we use these types of tools to help educate and train as to--
9 as to what the wave height is, and then over time you get a
10 general idea based off of your experience and your training what
11 the sea state is.

12 Q. Thank you, Chief. Short of in-person and very personalized
13 training, are there any manuals that I would be able to read and
14 familiarize myself with respect to that kind of training?

15 A. With respect to wave height and recognition?

16 Q. Yes, or--or operations in the surf.

17 A. Well, the Coast Guard has the heavy weather addendum manual,
18 which provides a lot of terminology in regards to heavy weather
19 and what the terms mean. You have the boat crew seamanship
20 manual, which is a vast overarching seamanship manual that also
21 incorporates weather and terminology and what the crest of the
22 wave is with the lull, with the series, with the--the fetch--the
23 definition of fetch and how wind interacts with the water. You

1 could go on and on about--and very in depth as to what creates
2 waves and how big they can get and all that kind of stuff.

3 Q. Would you characterize training for Coast Guard personnel at
4 stations to be weather-heavy?

5 A. Yes, absolutely, especially in our environment.

6 Q. So let's turn specifically to reporting bar conditions. How
7 does station personnel observe conditions of the bar?

8 A. Well, we can observe bar conditions via mobile-1. We can
9 observe bar conditions from the tower. Those are not as ideal
10 just because there is a distance from the overlook to--you know,
11 there's nothing better than getting a boat underway. So the best
12 way to do that is to get a boat underway and go sit at the jetty
13 tips and/or just offshore to evaluate the bar conditions.

14 Q. How often does station personnel observe these bar conditions
15 while underway?

16 A. At a minimum, we do it 30 minutes before sunrise every single
17 day and then we do it at sunset every evening and throughout the
18 day, every 3 hours. In periods of reduced visibility or we can't
19 see the conditions from the overlook, then we'll get a boat
20 underway specifically to go evaluate bar conditions.

21 Q. Is this information made available to the public?

22 A. It is, on the--via the NOAA website and we broadcast the bar
23 conditions over channel 16 and channel 22A, at a minimum, every 3

1 hours.

2 **TA:** Lieutenant Woods, please display Exhibit 3, page 1.

3 Q. Chief, continuing the infor--the ways that that information
4 that the station personnel observe is made to the public, I'd
5 like to call the public's attention to---

6 **TA:** Can you zoom in on the left side of that.

7 Q. This is the Yaquina Bay bar hazards handout that we
8 previously saw the hazard areas for Yaquina Bay. Can you
9 identify some of the markings on this pamphlet and what they
10 mean, how it's--how dangers are communicated to the public.

11 A. Yes, ma'am. Any--anytime there's a bar restriction enforced
12 or in place, we have rough bar lights that are located just
13 beneath the Coast Guard station on the beach, and they flash.
14 There's a rough bar sign as illustrated on this handout, and they
15 flash to alert your attention to--to rough bar conditions. The
16 other exhibit--here I'll use my fancy laser pointer--with the
17 warning, the yellow and blue sign, that's located over at South
18 Beach Marina, and that's typically for the recreational boating
19 traffic, and it's placed right where you would have to drive
20 through to launch your--your pleasure craft or your small boat.
21 You can't miss it. It's pretty much right in your face. The
22 other thing, the last thing I'll mention in regards to the
23 notification, under the Coast Guard station, along with this

1 rough bar is we have an LED reader board that displays what our
2 current bar conditions are--I'm sorry, not the conditions
3 themselves but what the current restriction is, and that's an
4 LED--I think it's 8 feet by 10 feet, roughly.

5 Q. If the Yaquina Bay area is about to experience deteriorating
6 bar conditions, how is that information communicated to the
7 public?

8 A. We--based off of our--the forecast and the tide cycles, we
9 have the availability to put out deteriorating bar broadcasts,
10 and we typically do that via channel 16 and 22A over the radio to
11 broadcast to any mariners that might be out in the ocean that are
12 either looking at coming back or maybe not thinking of coming
13 back. We want to broadcast that the bar conditions are
14 escalating and/or deteriorating. And we want to make everybody
15 as aware as possible.

16 **TA:** Lieutenant Woods, please display Exhibit 26, page 3. And
17 can you make that a little bit bigger. Thank you.

18 Q. Chief, I'll ask you to return to your initial line--your
19 testimony about the regulated navigation area. Is what you see
20 on the screen the area of the RNA for Yaquina Bay?

21 A. Yes, ma'am.

22 Q. What responsibilities does your station have as it relates to
23 the regulated navigation area?

1 A. Well, we--anytime there's a heightened sea state or we deem
2 the bar hazardous, we typically will enforce people from going
3 outside the jetty tips. And there's times where we can enforce
4 the regulated navigation area. It's--this line right here
5 [indicating] is the bridge. We don't always typically enforce
6 the restriction at the bridge just simply because we want to
7 afford the public any opportunity they can to fish. So we do
8 have the--we can set the restriction either at the jetty tips or
9 green buoy number 7, which is located right there [indicating].
10 As far as to the north and south, that's one of the primary
11 duties of the tower watch-stander that I mentioned. If we see
12 vessels that are coming in from the north and the south that
13 appear to be under what the current restriction may be, we
14 contact them via the radio. We do everything we can to figure
15 out who they are and what they're doing, what their intentions
16 are, and that goes from seaward to the south to the north,
17 anywhere outside this red box.

18 Q. Within this area, can the Coast Guard give orders to waterway
19 users that must be followed under penalty of law?

20 A. Yes.

21 Q. Do these orders apply to all vessels uniformly?

22 A. They can. Typically commercial vessels can come and go as
23 they--as they need for their liveli--livelihood.

1 Q. Knowing what you do about the accident that we're--for the
2 MARY B II, do you think restrictions should apply to vessels of
3 all size regardless of intended use?

4 A. Can you say that again?

5 Q. Regardless--regardless--given what you know about the night
6 the--given what you know about what happened to the MARY B II on
7 the night of January 8th, 2019, do you believe that those
8 restrictions should apply to all vessels, regardless of size and
9 regardless of intended use, such as recreational or commercial?

10 A. I don't think so.

11 **TA:** Lieutenant Woods, please display Exhibit 18, page 2.

12 Q. Chief, for the benefit of the public, this will be a bar
13 restriction log that contains weather and bar restrictions for
14 the time period surrounding the accident time and date. For the
15 benefit of the public, I'd like to go in depth about bar
16 restriction and closure policies. What policies or regulations
17 allow a station commanding officer to impose restrictions on the
18 Yaquina Bay bar?

19 A. Well, all the coastal bar entrances up and down the Oregon
20 and Washington coasts are under the--the captain of the port,
21 which is located in Columbia River. Those are then delegated--
22 that authority is then delegated down to each officer in charge,
23 commanding officer or executive officer at each small-boat

1 station.

2 Q. Please take a moment and familiarize yourself with time stamp
3 1551.

4 **TA:** Lieutenant Woods, would you zoom into 1551.

5 Q. Chief, let me know when you've had a chance to look at it.

6 Do those restrictions apply to both inbound and outbound vessels?

7 A. Yes, they do.

8 Q. What factors go into the decision of restricting the bar?

9 A. What the current conditions are that are reported by the
10 coxswain, the--the state of the tide cycle, whether the--the
11 current is coming in or going out. Those are factors that we--
12 and then also the wind--what the current wind is doing.

13 Q. What are the factors that go into deciding the length of
14 vessel which will be restricted?

15 A. The--the standard lengths are in line--a lot of the time in
16 line with--with carriage requirements for different size vessels.
17 So we typically try to stick to those lengths, and what I mean by
18 that is we see a 16-foot and then 20-foot or 26 or 30-foot.
19 Those are typically general lengths that fall in line with
20 carriage requirements.

21 Q. Can you expand upon what you mean by carriage requirements?

22 A. So certain vessels of certain size are required to carry
23 certain equipment, some more than others. The equipment is

1 typically lifesaving equipment or the bigger boats have toilets
2 and overboard discharge. So we--we typically will inspect all
3 that stuff; therefore, they have to be in line with those
4 requirements.

5 Q. Do you give any warnings or cautions to mariners--you as the
6 station--that the safety of the vessel crossing the bar is their
7 responsibility and what actions they can take regarding their
8 choice to cross the bar?

9 A. We do, yes.

10 Q. Can you--I think I address that a little bit later. So put a
11 pin in that. Are you familiar with the phrase "bar crossing
12 plan"?

13 A. I am, yes.

14 Q. How does this apply to bar restrictions?

15 A. Well, anytime there's a restriction on the bar, the
16 owner/operator is responsible to enforce or come up with their
17 own bar crossing plan, and what that typically involves is
18 lifejackets, whether you're in or out of the deckhouse, what
19 their plan is such as maybe people not sleeping, which--whatever
20 their plan is, they need--they're supposed to follow what their
21 plan is.

22 Q. Does the Coast Guard assess the adequacy of a particular
23 vessel's bar crossing plan?

1 A. Yes, they do.

2 Q. Does the Coast Guard take steps to identify mariners who are
3 new to the Yaquina bar area and inform them of the dangerous
4 conditions?

5 A. Specifically for the Newport station?

6 Q. I'm asking you specifically because you're stationed here and
7 you have familiarity with this area?

8 A. We typically see throughout the year people that come from
9 all over the area--what I mean by that is California and
10 Washington--come up for different types of fisheries, and there
11 are typically sometimes some boats that are out of the area, but
12 we--we don't necessarily--they're professional mariners. We
13 don't typically point them or make recommendations as to--to
14 the--the bar itself. If we see something that's out of the
15 ordinary, then we'll--we'll speak up and we'll say, "Hey, just--
16 just so you know, pay attention to this," but typically not.

17 Q. Are station personnel ever approached and asked about
18 dangerous conditions in this area?

19 A. I would imagine we are at times, yes.

20 Q. Finishing with the--the section you just read, why isn't
21 current included in this information?

22 A. It says "ebb chop".

23 Q. Okay.

1 A. So----

2 Q. And that's the most illustrative it gets?

3 A. Say that again.

4 Q. That's--you don't go with a speed or something like that?

5 A. No, we don't have any way to--to typically measure the--the
6 velocity of what the current is doing.

7 Q. Roger. Please turn your attention to time stamp 1644 and
8 please read aloud the information contained in the entry
9 beginning with the word "jetty tips".

10 A. "At 1644 jetties have 4-to-6-foot ebb chop.
11 Main channel, 4-to-6-foot long ocean swell.
12 Winds out of the east, 10 to 15 knots.
13 Visibility 5 nautical miles. Bar is
14 currently restricted to all recreational and
15 uninspected commercial passenger vessels at
16 buoy number 7."

17 Q. What information might a mariner glean from that? Like
18 what's the purpose of putting that out to the public?

19 A. Well, the--I would--well, the purpose is for awareness,
20 mainly, and to--to let the general public know what the current
21 weather conditions are at that time and what our current
22 restriction is.

23 **TA:** Lieutenant Woods, please display the same exhibit, page 1.

1 Q. Chief, I'd like you to identify the time stamp 2058. Similar
2 to what I just asked you, when you've had a chance to familiarize
3 yourself, please read that entry beginning with the word "jetty
4 tips".

5 A. "Jetty tips and main channel, 12-to-14-foot
6 swells with occasion 16-foot breaks.
7 Visibility 6 nautical miles. Winds are out
8 of the east-southeast at 10 to 13 knots.
9 The bar is currently restricted to all
10 recreational and uninspected commercial
11 passenger vessels at buoy number 7."

12 Q. Thank you, Chief. Compared to the information you read at
13 time stamp 1644, the seas appear to have grown from 4 to 6 feet
14 to 12 to 14 with occasional breaks. Can you explain what this
15 would mean to a mariner?

16 A. I would imagine that we've been putting out a deteriorating
17 bar broadcast during this period of time, even though it may not
18 be captured, necessarily, right here, but based off of the
19 weather forecast that day, we knew--we knew a storm was coming
20 in. And most likely we set that restriction early enough to
21 maybe help prevent other people from going out that maybe fall
22 under those guidelines and then comparatively between--what's
23 that, about a 4-hour period, roughly, plus or minus--the sea

1 state grew quickly, substantially, in excess of 14-16-foot.

2 Q. Did you see any response when you started to--and by that I
3 mean were there mariners on the vessel that chose to come back at
4 that time based on deteriorating bar conditions and the
5 broadcast?

6 A. I would say that--I would say probably. They don't--they
7 don't typically, like, call us and say, "Hey, I heard your bar
8 report and so we're going to come back." I don't know. What I
9 will say is from my experience over the last 16 years on the
10 Oregon coast is with the technology that we have available, the
11 commercial fleets specifically, they're professional mariners
12 and--and they pay attention to stuff and they know when the
13 weather is going to come in. They can feel it offshore, and
14 they--they're responsible and they--they come in accordingly.

15 Q. Why is there no update on this restriction or this bar
16 condition from 2058 until the next morning at 0757 on the 9th of
17 January?

18 A. Typically you're going to see a large time gap or stamp in
19 between because in the wintertime it gets dark at, what, 3:00 in
20 the afternoon, 4:30, and so that's, what, 9:00--9:00 at night,
21 roughly, and chances are that's our last-light bar condition or
22 conditions at last light. And then the next bar report will be
23 at first light the next morning. So that's why you see the

1 difference in time.

2 Q. Why don't your crews get underway once it's past last light
3 to update this restri--this observation?

4 A. Part of it is fatigue management. We can't be up all night
5 long. We have to sleep at some point.

6 Q. If a vessel is coming across the bar at 0115 and the
7 conditions were something similar to this effect, how would a
8 mariner be able to reach out to station watch-standers and
9 request bar conditions, and I ask in the spirit of someone coming
10 from a different state or someone that the watch--tower watch-
11 stander has annotated that they are still out but maybe someone
12 who's coming up the coast and has decided it's getting too rough
13 for them?

14 A. Yeah, this--this happens every year, every winter. Like I
15 had mentioned before, in the evening time our watch-stander
16 secures our watch room. That doesn't mean that the Coast Guard
17 is not paying attention to the radios. So a mariner could call
18 the U.S. Coast Guard, they could call any specific station, but
19 most likely Sector--excuse me--North Bend or Columbia River will
20 answer that radio call and they have the availability to pass the
21 unit's last-light bar conditions.

22 Q. In the event that that--that mariner decided that it was
23 safer to come in that night, would the station get underway to

1 assist them with an escort?

2 A. The--if a vessel is calling the Coast Guard in the middle of
3 the night to ask what the weather conditions are doing and the--
4 Sector North Bend will relay and call us in the middle of the
5 night, and the person that answers that phone is typically the
6 officer of the day. And they're going to say, "Hey, we have a
7 vessel that's contacted us requesting our bar conditions. Do you
8 want to get up and speak to them directly on the radio?" A lot
9 of the time what happens is our people will--will get up, they'll
10 go to our watch room and they'll jump on the radio and talk to
11 that mariner directly, try and get as much amplifying information
12 in line with what their duties are that I mentioned earlier, and
13 then we'll most likely--we'd get underway.

14 Q. Chief, are you familiar with the term "bar escort"?

15 A. Yes, ma'am.

16 Q. I'd like you to walk us through some general policies or
17 procedures surrounding how to perform a bar escort.

18 A. Well, any--anytime a commercial vessel--well, any vessel, for
19 that matter, is asking for assistance, then we'll go out. We'll
20 get a boat underway or two boats underway and make contact with
21 them and--and--and facilitate a bar crossing plan with them and
22 then we'll follow them in, basically, is the short of it.

23 Q. Okay.

1 A. I can expand if you want me to. I just don't know how long
2 you want me to rant about it.

3 **LIO:** It's not a rant; it's all good stuff.

4 Q. Chief, we appreciate you letting us know the specific
5 policies and procedures surrounding this, based on your 16 years
6 of experience. When a vessel is being escorted, what information
7 would the Coast Guard normally pass to the mariner?

8 A. Well, we're going to--first off, we want to know how many
9 people you have on board. Another--some good information is, you
10 know, how long you've been underway, what their fatigue level is,
11 what their experience level may be with the Newport bar, if we
12 don't recognize the vessel, if they're not local and we deal with
13 them all the time. We always will make sure that they have their
14 lifejackets and/or emergency suits readily available and
15 reinforce that the safe operation and navigation of their vessel
16 is their responsibility. We are required to do that every time.

17 Q. What kind of information do vessel captains normally pass
18 back to you and, for an example, if a vessel had some trouble
19 making full power or had a line in the rudder or propellor, would
20 you expect them to pass that to the Coast Guard prior to crossing
21 the bar?

22 A. Yes. We--we always ask if you have full range of steering,
23 do you have any limitations, any casualties that we need to be

1 aware of before you cross, and typically they'll--they'll come
2 back and they'll either say yes or no.

3 Q. Do you make--do you, the Coast Guard station, make
4 recommendations on transit speed while entering the bar?

5 A. We don't make recommendations. We just ask them what's your
6 typical cruising speed.

7 Q. Is there written guidance on how to conduct bar escorts?

8 A. We have a--because of the nature of the dynamics of every
9 entrance up and down the Oregon and Washington coasts, we have an
10 in-house instruction that basically illustrates the best
11 practices and principles of how--based over time and experience,
12 how to conduct the--escort a vessel across the bar.

13 Q. Can at times the bar be so rough that the Coast Guard motor
14 lifeboats can't go out?

15 A. Yes.

16 Q. What are those limitations, and how--and are they hard and
17 fast or can there be a waiver?

18 A. Well, when--when sea conditions are breaking in excess of 25
19 to 30 feet--and what I mean by that is there's periods across the
20 entrance of either the Yaquina Bay bar or its just white wall--
21 white water--solid white water constantly, no real break in
22 between, then the Coast Guard typically won't cross. However,
23 there have been times where--when a mariner was in distress that

1 we have cross the Yaquina Bay bar in sea conditions of excess of
2 30-foot breakers to get out into the ocean to make transit to an
3 area for a disabled vessel or search and rescue of some sort.
4 And the only way to do that is we have to get a waiver--right--an
5 operational commander--there's phone calls that are made at
6 various different levels throughout Sector North Bend and even up
7 to District 13, which is in Seattle, Washington, when conditions
8 exceed the limitations of the 52-foot VICTORY.

9 Q. In conditions like that, does a vessel attempting to cross
10 the bar once it's restricted or closed put the Coast Guard crews
11 in danger?

12 A. Yes.

13 Q. When conditions exceed the limitations of the 52-foot motor
14 lifeboat, could Coast Guard crews be injured or killed attempting
15 to rescue another vessel?

16 A. Absolutely.

17 Q. Chief, I'd like to conclude with asking you some questions
18 about the Mark-127 illumination flares. On the evening of the
19 8th of January 2019, the moon was waxing crescent and 6% of it
20 was visible.

21 **TA:** Lieutenant Woods, please display Exhibit 49, page 4.

22 Q. Chief, given this information, can you explain how this
23 amount of moonlight may illuminate an area at night.

1 A. Waxing crescent, you said, number 8 where the arrow is?

2 Q. Yes, Chief.

3 A. Pretty dark.

4 Q. With the absence of any other lighting in the area, would
5 this amount of moonlight have been enough to illuminate objects
6 in the water such as jetties or be able to accurately judge wave--
7 wave heights?

8 A. Not at all, in my opinion.

9 Q. Throughout the Coast Guard record of the night's activities,
10 there is mention of using bright parachute flares to illuminate
11 this situation. Can you talk about the use of those flares and
12 please describe burn duration and height.

13 A. The--the illumination flare that we use is a white parachute
14 flare. It shoots--in a perfect environment, it'll shoot 650 to
15 700 feet in the air. Once the illumination--it's like a
16 firework. Right? So once it pops open, the bright illumination
17 flare will burn for approximately 36 seconds as it descends
18 slowly with the parachute attached. It provides excellent
19 visibility, excellent lighting if used properly, for visibility
20 in conditions like it was that night.

21 Q. In general, how many of these Mark-127 illumination flares
22 are on a Coast Guard vessel?

23 A. We--on every boat we carry a minimum of six and sometimes we

1 carry 12--in excess of 12 apiece.

2 Q. Do you recall on the evening of the 8th of January whether
3 the--all of the Coast Guard vessels had these flares on board?

4 A. They did, yes.

5 Q. And were they used that evening?

6 A. Absolutely.

7 Q. Did they have enough on hand?

8 A. Yes. That night I think they used close to 20 of them. I've
9 never seen--on a SAR case I've never seen use of 20 illumination
10 flares. Typically we'll use six--five, six, half a dozen. Based
11 off of what was going on and the visibility, the need to use them
12 constantly--when you're using flares at that rate, you're
13 providing a constant illumination of a certain area, because once
14 that flare burns out, you have--you're back to pure darkness. So
15 the goal is to provide constant illumination.

16 Q. For a case like that evening, could there be better
17 technology used to illuminate the dangerous conditions that were
18 encountered?

19 A. Technology is crazy. Sure--I don't know.

20 Q. Would--my final question, Chief, is do you have any
21 recommendations or would you like to make any recommendations
22 which may increase safety for commercial fishing vessels crossing
23 the Yaquina Bay bar?

1 A. In what capacity?

2 Q. Based on your experience, any technology, practices, anything
3 that might help us increase safety crossing the bar.

4 A. I think--I think you're going to talk about ATON--have you
5 already talked about ATON at some point? My----

6 **LIO:** We did.

7 **WIT:** Okay, so like the buoy number 3 is the seasonal buoy. It's
8 notoriously--breaks free because of the sea state. I'm not an
9 ATON expert. My realm is not ATON; it's heavy weather. But it
10 would be nice to be able to have the buoy number 3 a year-round
11 buoy. It would--it would provide just one more facet when
12 you're--when you're coming in or going out as to--to help orient
13 yourself. Other than that, the--you know, the--the illumination
14 flares, they work great, they really do. They're a phosphorous
15 flare. They're--they're old. What technology is out there, I--I
16 don't know. It would--it would be cool to be have something a
17 little more modern in that aspect, but that's just my opinion.
18 For the most part, they do what we need them to do.

19 **TA:** Thank you, Chief. Commander, no further questions.

20 **LIO:** Mr. Woods?

21 **Questions by the recorder:**

22 Q. Chief, a follow-up question. It's a two-part question.

23 Regarding vessel escorts, is there a speed of a commercial vessel

1 that could be considered too slow and, if given that information,
2 what actions could the Coast Guard take?

3 A. Well, I would say from my experience, a typical speed of a
4 commercial boat is between 6 to 10 knots depending on what they
5 typically do. And throughout--in the early stages of the bar
6 escort, we're going to ask them, you know, "Sir, what's your
7 normal cruising speed?" or, "What--how fast can you make--like
8 make?" you know. "You pour the coals to her, what's your top--
9 what's the best speed we're going to get?" They're going to
10 provide that information. They know their vessel better than
11 what we do. But if I--if I hear a speed of less than 5 knots, it
12 makes me a little wary just because I know that you're not going
13 to be able to outrun the sets of waves that are coming through or
14 time them. At some point you will get caught by the next series
15 or the next set of waves. So I would say that 5-knot threshold
16 for myself would be something that I would pay--I'd be
17 hypervigilant to somebody telling me that.

18 **REC:** Thank you.

19 **LIO:** Any other questions from the board?

20 **AIO:** I have one quick question, Commander.

21 **Questions by the assistant investigating officer:**

22 Q. Chief McCommons, in regards to escorts, are we talking about
23 escorting vessels in from offshore--into port?

1 A. Yes, ma'am.

2 Q. Is there ever a time where you escort boats out to sea?

3 A. Well, the only time we'll be on the bar--during the crab
4 openers. Every year that I've been--I've been at Newport for 10
5 years total. Every year when the crab fishery kicks off and the
6 crab fleet moves, the station boats are out there in support of
7 their crossing. And the last 2 years, it's been in the middle of
8 the night in sea conditions of 20-foot on the bar and it's dark
9 and there's a whole line of crab boats going out. Some of them
10 take breakers across as they go out. Some get damaged. They all
11 talk to each other and they communicate well with each other, but
12 that's mainly the only time that we will be sitting on the bar.
13 We're not escorting them across. We're sitting there in support
14 of the commercial fleet.

15 **AIO:** Thank you.

16 **LIO:** Mr. Reilly?

17 **CROSS-EXAMINATION**

18 **Questions by the party-in-interest counsel:**

19 Q. Thanks, Chief. Thanks for your service and thanks for the
20 expertise you bring here. I'd like to ask some questions. We'll
21 start with that.

22 A. Sure.

23 **PIIC:** Maybe we can bring up--is it the NOAA chart number 3?

1 Number 4, thanks.

2 Q. If we could, maybe we can work in yards. Do you know at
3 the--the mouth to the jetty, what the approximately width of the
4 channel is?

5 A. I could measure it on the chart.

6 Q. How would you go about doing that? Maybe in the upper right-
7 hand corner there's a little scale thing there. Is it inset in
8 the smaller inset chart?

9 A. Oh boy. Are you talking between the jetty tips or the actual
10 channel?

11 Q. The--the--the jetty tips are wider than the actual channel.
12 Fair to say?

13 A. Yes.

14 Q. And so maybe we'll--can you start with the jetty tips? It'll
15 be a bigger number than the actual channel.

16 A. The jetty tips are approximately 300 feet wide.

17 Q. Three hundred feet?

18 A. I'm sorry, yards.

19 Q. And so the channel is somewhat less than that, some--maybe
20 two thirds, 75% of that?

21 A. I--that's probably an accurate statement.

22 Q. Can you estimate the distance between the end of the north
23 jetty to buoy 1?

1 A. It's hard to--to provide an accurate distance even on this--I
2 would actually need a bigger chart.

3 Q. Okay.

4 A. Do we have a bigger chart here?

5 **LIO:** So actually, for the record, Coast Guard Exhibit 006, the
6 details and warnings on this particular chart, 18581, has an
7 estimated distance from buoy 3 to the north jetty tip, which is
8 approximately 0.9 nautical miles, if that's helpful.

9 **PIIC:** Thank you, Commander.

10 Q. All right, if buoy 3--if it were there, is--is .9 nautical
11 miles. Is buoy 1 about twice as far?

12 A. According to this exhibit, this is in reference--from buoy 1
13 to the jetty tips is approximately .9 nautical miles.

14 Q. Okay, so that's from buoy--buoy 1, okay.

15 A. Correct.

16 Q. Great. So that--in a matter of yards, that's 1800 yards?

17 A. Yes, sir.

18 Q. So 1 nautical mile is 2,000 yards.

19 A. Yes, sir.

20 Q. So if a vessel was going 1 knot from buoy 1 to the north
21 jetty tip, it would--let's see, 1 knot, you would go a thousand
22 yards per--2,000 yards per hour?

23 A. I'd say that's close.

1 Q. Okay, 2 knots, 4,000 yards per hour?

2 A. You're making me do math now.

3 Q. I'm sorry. You know, I'm the lawyer here. You're the--
4 you're the operator. I'm hoping you can set me straight if--I'm
5 just trying--because you mentioned the 5 knots as something in
6 your head where you're concerned about the--the distances, how
7 far they can go between sets. So I'm just trying to get a feel
8 for, you know, if somebody is going 7 knots, that's--would be
9 14,000 yards per hour.

10 A. Correct, roughly.

11 Q. Right. And in a 5-minute--say a 5-minute window when we're--
12 when we're talking about distances, that's one twelfth of an
13 hour.

14 A. Uh-huh.

15 Q. So if--if at 7 knots they're doing 14,000 yards per hour, one
16 twelfth of that would be just around 1166 yards. That sound
17 about right, one twelfth of 14,000?

18 **LIO:** Mr. Reilly, I'm sorry, what are we--like, what are we
19 trying to get at?

20 **PIIC:** I'm trying to understand the relationship between the 5
21 knots and the distance that would be covered during that 5 knots.
22 Okay?

23 **WIT:** I would say the best way for me to calculate that to be

1 accurate would--to actually have the tools available to me, a
2 plotter, compass, a paper chart, a calculator. That would be the
3 most accurate, sir.

4 Q. Understand and appreciate that. Let's--let's just talk from
5 your experience with the--where is the location, from your
6 experience, that--that vessels in the conditions that existed on
7 January 8th--where commercial vessels coming in would sort of set
8 up and sort of observe before they start their--their run into
9 the channel. Where is that location--approximate location on the
10 chart?

11 A. That's typically at buoy 1.

12 Q. Okay, so it's--it's about 1800 yards from the mouth of the--
13 the jetty.

14 A. Yes, sir.

15 Q. And we had heard some testimony earlier--and tell me what you
16 think about this. We had asked about the--sort of how far inside
17 the jetty a vessel would have to go before they're sort of able
18 to feel they're out of the hazardous area, out of the--the real
19 danger area associated with the bar conditions? In your
20 experience, how far is that inside the mouth of the jetty?

21 A. Well, sir, it's a very dynamic--based off of the current
22 weather conditions, the swell direction, the winds. All those
23 factors come into play, but to answer your question, I would say

1 from my experience, you're not safely across this bar in
2 hazardous conditions until you're probably every bit of a hundred
3 yards inside of aid number 4, which is right here [indicating] on
4 the south jetty.

5 Q. We heard some testimony that that's several hundred--that aid
6 4 is several hundred yards from the opening of the jetty.

7 A. Yeah. Again, I'd have to measure it on a chart. I don't
8 know the distance.

9 Q. You mentioned a best practices document that provided policy
10 guidance to Coast Guard crews regarding vessel escorts.

11 A. Yes, sir, it's a unit-specific instruction that we have.

12 Q. Okay, so the--Yaquina Bay has this specific instruction on
13 that specific topic.

14 A. Yes, sir.

15 Q. As part of the heavy weather and surf and training, the crews
16 are provided training on the substance of the substance of that
17 policy.

18 A. Yes, sir.

19 Q. You had mentioned that your crews are trained to always ask
20 regarding any limitations that the vessel coming in would--would
21 have, whether steering or speed. Can you state what the purpose
22 of such--such a communication to the vessel being escorted is.

23 A. Yes, sir. Any--anytime I make contact with a--a commercial

1 vessel or--or any vessel, for that matter, that I'm going to be
2 escorting across the bar, I want to get as much information about
3 that boat as I can. I expect the owner or the operator of the
4 vessel to engage with me in those conversations. If--if they
5 have any type of steering, hydraulic leak, that brings a sense
6 of--of what can go wrong that you inherently ask yourself, and we
7 try to plan for if--if this were to happen based off of this
8 problem that they're having with their equipment, what would be
9 the ramifications, and--and if that happened, what's the impact--
10 what can go wrong and--and how significant would that be to their
11 transit in and how are we going to respond.

12 Q. Sounds like that's an important piece of information, as a--
13 the escorting officer, you want to know, Chief.

14 A. Absolutely, yes, sir.

15 Q. You testified that the Coast Guard assesses the adequacy of a
16 bar crossing plan, and if you see something out of the ordinary,
17 you inquire about it?

18 A. In what--in what realm?

19 Q. Well, that's what I was--I was going to ask. I was just
20 writing down what you said. What would be something you--that
21 would be sort of out of the ordinary that you're observing about
22 a vessel being escorted that would cause you to maybe inquire
23 further?

1 A. Well, if they have their--if people are out on the back deck
2 freely, if they're--if they're up on the bow, if they're--if
3 they're not in a location where there typically would be--more
4 exposed to the elements, I'm going to--I'm going to mention that.
5 If they're--if they're not--if-- If--if they have any type of
6 steering, hydraulic leak, that brings a sense of--of what can go
7 wrong that you inherently ask yourself. So--and a lot of the
8 time maybe--maybe that's their plan. Right? But if that's your
9 plan, you need to let me know about that so I don't need to
10 overreact and think that you're in a bad spot.

11 Q. With respect to the observation of the hull line, if the
12 vessel is sitting unusually low in the water, based on your
13 experience in that type of vessel, is that something you'd
14 inquire about?

15 A. Absolutely.

16 Q. In your experience, if a vessel is sitting low in the water,
17 how might that impact your operational capabilities?

18 A. Their stability is significantly affected. The vessel
19 becomes less stable.

20 Q. You had briefly talked about the fatigue standards for the
21 Coast Guard crews. Are there specific hour restrictions
22 associated with the operational day for a boat crew member?

23 A. Yes, there are.

1 Q. Can you tell us what those hour restrictions are or do they
2 depend on different circumstances?

3 A. They--they mainly depend on sea state and weather conditions.

4 Q. A heavier sea state would require a more frequent change-out
5 of crews?

6 A. Possibly. Not always. The--the--just because the threshold
7 has been met doesn't necessarily mean that we return, but there
8 are specific guidelines on recovery time after you've met those
9 thresholds.

10 Q. There's a detailed radio log in this case that's Exhibit 8.
11 We don't really have to look at it. I just want to ask--there
12 are two channels specifically mentioned, channel 22 and a channel
13 121. Channel 22 is a--is a working channel that you--you often
14 communicate with civilians on?

15 A. Channel 22, yes, sir.

16 Q. What is channel 121? Is that also VHF FM channel that you
17 might communicate with civilians on?

18 A. No, it's not. It's an inter-Coast Guard working channel.

19 Q. So when we're looking at Exhibit 8 and we're looking at the--
20 the communications that are on 121, is it fair to say that the--
21 those communications would not be apparent or listened to by any
22 of the vessels that were under escort that night?

23 A. No, they would not be on that channel.

1 Q. With respect to equipment on the 47-footer and the 52-
2 footer--

3 **LIO:** Mr. Reilly--sorry. Can we--can we recess in place for 1
4 minute. I have a question I need to ask you. Would you mind
5 approaching?

6 [The hearing recessed at 10:41 a.m., 14 May 2019.]

7 [The hearing was called to order at 10:42 a.m., 14 May 2019.]

8 **LIO:** Okay, we're--we're back on the record. So for the benefit
9 of those present and watching on **Livestream**, the discussion that
10 we had is we're a little bit over on time. Based on the number
11 of questions that we still had, I think what we're going to do is
12 we're going to take a quick 10-minute recess and, Chief
13 McCommons, we're going to hold you as a witness and we're going
14 to reconvene your testimony at a little bit later date.

15 **WIT:** Sounds good.

16 **LIO:** So for the record, it is 10:42. We are going to take a 10-
17 minute break and we'll come back at 10:52.

18 [The hearing recessed at 10:43 a.m., 14 May 2019.]

19 **[END OF PAGE]**

20

21

22

23

U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
held in Newport, Oregon
on 14 May 2019

WITNESS: BM2 KELSI DOZIER, USCG

[The hearing was called to order at 10:55 a.m., 14 May 2019.]

LIO: It is now 10:54 and we are reconvening this public hearing. We have in the interim placed BMC McCommons on a hold where he will finish his testimony at a later date. We are now going to hear testimony from our next witness, which is Second Class Boatswain's Mate Kelsi Dozier. BM2 Dozier, please come to--come forward to the witness stable and Lieutenant Woods will administer your oath and ask you some preliminary questions.

BOATSWAIN'S MATE SECOND CLASS KELSI DOZIER, U.S. Coast Guard, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the recorder:

Q. Please state your full name and spell your last.

A. Kelsi Dozier, D-o-z-i-e-r.

REC: Would counsel please state your name and spell your last.

LCDR LEAGUE: Jan League. Last name spelling, L-e-a-g-u-e.

Q. Please state your current employment and position.

A. I'm a BM2 at Station Yaquina Bay.

Q. Can you state any education or training related to your

1 profession.

2 A. I have been a certified heavy weather coxswain since January
3 of 2017 and am pursuing being a surfman at Station Yaquina Bay.

4 Q. Do you have any professional licenses or certificates related
5 to your profession?

6 A. No, sir.

7 **REC:** At this time Lieutenant Bigay will being her primary lines
8 of questioning.

9 **AIO:** Good morning, Petty Officer Dozier. Thank you for
10 appearing at this hearing today. If you need to take a break at
11 any moment, please let me know.

12 **WIT:** Thank you, ma'am.

13 **AIO:** Please refrain from using Coast Guard acronyms with the
14 exception of SAR, which we know to mean search and rescue. In
15 front of you there should be a laser pointer. Do you have it?

16 **WIT:** Yes, ma'am.

17 Q. In case you need to point at an exhibit during an answer to--
18 to a question, I would ask you to please, for the benefit of the
19 public, point in the direction of the screen right behind me.

20 **WIT:** Yes, ma'am.

21 **AIO:** Now, Petty Officer Dozier, today I would like to discuss
22 the following topics: your duties as OOD or officer of the day
23 at Station Yaquina Bay, the scope of those duties leading up to

1 the escort of the MARY B II, and your recollection of the events
2 as a crew member on board the motor lifeboat 47266 on that night.
3 As someone who was on scene that day, we know that your testimony
4 here is very important, and I'm going to allow you to tell that
5 story and what you recall from that night, but know that I may
6 briefly interject with points of clarification or to show an
7 exhibit that may better help you to illustrate a point when
8 you're answering something.

9 **Questions by the assistant investigating officer:**

10 Q. How long have you been stationed at Yaquina Bay?

11 A. Approximately 2 years, ma'am.

12 Q. What type of qualifications do you currently hold to perform
13 specific missions at the station?

14 A. I am a 29 coxswain, a 47 heavy weather coxswain and an OOD,
15 which is an officer of the day, a fisheries boarding--a fisheries
16 boarding officer and working on 52-foot motor lifeboat VICTORY
17 for coxswain.

18 Q. Okay. When you say 47, you're referring to the--that
19 specific boat?

20 A. Yes, ma'am.

21 Q. The motor lifeboat and then 52, the VICTORY.

22 A. I'm working towards that certification.

23 Q. What type of training is required to be an officer of the day

1 at the station?

2 Q. As far as for the tasks that are completed, it's more hands-
3 on and it's station-dependent because it's--you're a direct
4 representative of the commanding officer at that unit. So
5 there's a lot of station-specific things that come with that
6 certification.

7 Q. Petty Officer Dozier, we're just going to try to raise the
8 volume on your mic. Let's test it out with this next question.
9 How long have you been qualified to perform that function at
10 station?

11 A. Approximately a year and a half.

12 Q. On the day of the incident, January 8th, did you have any
13 qualifications to operate any of the type of vessels at the
14 station?

15 A. Depending on the time of the day, yes. As you guys saw, the
16 bar fills very quickly in a short amount of time. So earlier in
17 the day, yes. In the evening and during the time of the
18 incident, then, no, the bar would have been breaking. At that
19 point a certified surfman was on board.

20 Q. Understood. So you--for those conditions specific to that
21 night, once the weather--once the sea conditions shifted, then
22 you were no longer qualified for those conditions?

23 A. Yes, ma'am.

1 Q. Okay. Can you just briefly go over what the duties, just in
2 general, of the officer of the day at Station Yaquina Bay entail.
3 Just in general.

4 A. The officer of the day is the one that kind of orchestrates
5 the--the operations at the station on a daily basis as far as
6 training evolutions, cases, personnel things. We're kind of--
7 we're kind of the midrange person between the crew and the
8 command. So we pass a lot of information to the command so that
9 it all gets properly disseminated.

10 Q. And later in that day on January 8th, while you were the
11 officer of the day, the sea conditions at the bar changed. Can
12 you elaborate on that a little bit?

13 A. Can you rephrase the question?

14 Q. Yes. While you were the officer of the day on January 8th--
15 and you even alluded to this earlier--the sea conditions at the
16 bar changed. Can you explain why?

17 A. A storm front coming in that we had known about. So it was 4
18 to 6 earlier in that afternoon, and I recall having--starting to
19 put out a deteriorating bar broadcast, which notifies mariners in
20 the area that the bar conditions are going to be getting worse
21 and that they're--the seas were building during that night.

22 Q. And that's something that you, as the officer of the day, are
23 in charge of doing?

1 A. Yes, ma'am.

2 Q. That day, leading up to that night, there were a number of
3 vessels that station personnel at the time were keeping track of
4 that were offshore and had not come back to port yet. Briefly
5 explain how you keep track of vessels that are out there that
6 might need Coast Guard assistance to come back into port.

7 A. We have the tower watch-stander that has eyes on the ocean
8 all the time and they can see a lot of the boats that are
9 offshore. We have AIS, which is vessel tracking that we can
10 also--we can pull up AIS and, if they're broadcasting on that,
11 then we're able to see them and how many boats are out. We're
12 not really able to get a full picture of exactly how many boats
13 are out all of the time, if they're not transmitting AIS or
14 they're too far offshore that our tower can't see them. Then we
15 also have sector that can give us a snapshot of a different
16 application, which would be off tide, that we can get other
17 information from as well, but we're constantly monitoring how
18 many boats are out and, in worse conditions, making sure that
19 they--they do have a safe transit across.

20 Q. Now, just a few points of clarification from your answer.
21 When you say AIS, you mean automatic identification system.

22 A. Yes, ma'am.

23 Q. And that you're able to observe how? Is that like--does

1 that--how do you--how do you use that tool to be able to see what
2 vessels are out there?

3 A. There's applications on phones for it--Marine Tracker. So
4 you can just open it up and it shows you the vessels that are
5 out. It's not--it's not real time. A lot of times it says, you
6 know, the last transmission was 15 minutes or 30 minutes prior,
7 but it gives you an idea of where the boats are and how many are
8 out.

9 Q. Does that depend on whether or not the vessel has that
10 equipment?

11 A. Yes, ma'am.

12 Q. So you talked a little bit about how you formulate that
13 information as to how many vessels are out there. How do you go
14 about assessing their intentions of whether or not they're going
15 to come in?

16 A. A lot of them are on their way out. In worse bar conditions
17 they'll hail the tower, the station, and say how many people they
18 have on board and how long of a trip that they're--they're
19 planning on having, whether they're coming back or not. We
20 don't--we don't keep track, though, of their planned trips and
21 when--like exactly when they're returning. That would be
22 considered a float plan. We don't take float plans for
23 commercial vessels.

1 Q. Can you describe how mariners that are offshore or maybe
2 mariners that are in port intending to go out to the Pacific
3 learn about the bar conditions and any restrictions or closures
4 at the time?

5 A. Any mariners or commercial mariners? Are you just speaking
6 bar crossing information?

7 Q. Yes. Let's say commercial.

8 A. Okay. There's the bar sign that's at the base of the hill at
9 the station. It's on the north side--northeast side of the
10 bridge. That has lights on it that are flashing for hazardous
11 bar. There's also lights at the South Beach Marina. There's the
12 NOAA website that has our bar reports and also the page--page you
13 guys pulled up--the bar report, and they can also call the
14 station or hail us on channel 16 or 22 to get an updated bar
15 report.

16 Q. Taking us back to that--that day on the 8th of January, as
17 the conditions changed--the bar--from your officer of the day
18 perspective, how did personnel at station address those bar
19 conditions in terms of any reports or what their actions were?

20 A. In what context, ma'am?

21 Q. Let me backtrack a little bit. AS the conditions at the bar
22 changed, like we established, you were the officer of the day,
23 correct?

1 A. Yes, ma'am.

2 Q. Did you have to address those conditions at any point and
3 begin working on that assessment that you made as to whether
4 vessels need assistance to come in?

5 A. We go through weather conditions in the morning as a crew.
6 The whole crew knows the--the weather, the tides, the plan for
7 the day. If I recall correctly, we actually didn't have underway
8 evolutions that day as a crew because we were anticipating the--
9 the amount of boating traffic in the evening and that night,
10 because we knew that there was a storm front coming in. So--does
11 that answer your question?

12 Q. Yes, thank you. Could you personally--okay, so before I ask
13 this question. You were at the station for 2 years, correct?

14 A. Yes, ma'am.

15 Q. So that includes two winters?

16 A. Yes, ma'am.

17 Q. Okay. Could you personally rank how rough the conditions
18 were at the bar that night? And by that, I mean was it a typical
19 bad night during winter or was this singularly unique in how very
20 rough it was? Can you classify it for the record?

21 A. In my experience over the last two winters, I would--I--in my
22 opinion, I think that's a normal--as far as storm fronts when
23 they come through, that's a pretty typical bar to see.

1 Q. Just to clarify on my previous question, you mentioned you're
2 responsible to put out that bar report as--as officer of the day.

3 A. The watch-stander is.

4 Q. Okay. What actions, if any, do you take as officer of the
5 day to prepare for incoming weather or changing weather
6 conditions as was happening that day?

7 A. Can you rephrase that, ma'am?

8 Q. AS the officer of the day, in your performance of your
9 duties, what actions, if any, do you take to prepare for weather
10 conditions if they're going to get rougher?

11 A. Just making sure that the crew is rested and they're--that
12 we're prepared to utilize them. In case something does come up,
13 we have a fully rested crew, having two boat crews at the station
14 so that we are able to launch both boats in case of--in case of
15 something happening as well.

16 Q. Thank you. At some point that day, a decision was made to
17 escort a few of the fishing vessels that were still out there; is
18 that correct?

19 A. Yes, ma'am.

20 **AIO:** Lieutenant Woods, could you please display Coast Guard
21 Exhibit 004. Petty Officer Dozier, this might help you answer my
22 next question. Feel free to use your pointer--laser pointer. If
23 we could zoom in a little bit. One more, if possible.

1 Q. Petty Officer Dozier, can you walk me through how that
2 preparation to--to undergo those escorts takes place and discuss
3 specifically whether there's different teams at station that are
4 sent out to specific locations for lookout or assistance or
5 communications.

6 A. So for a bar escort or a standby, the comms room is going to
7 be manned, which is the watch-stander. The tower watch is
8 manned. There's typically somebody in the truck or the van
9 that's up on the hill in that lighthouse parking lot, as kind of
10 an overlook.

11 Q. Are you able to use your pointer? Is that something that's
12 picture in the chart displayed behind me?

13 A. So up here [indicating], the lighthouse, the parking lot
14 that's right in front of that is going to be where there's other
15 members that have a radio that they're able to watch--kind of
16 overlook over the entire evolution. One boat goes outbound
17 across the bar and will go out to buoy number 1, and the other
18 boat typically stays inside of the bar.

19 Q. For the benefit of the public, could I ask you to point to
20 those locations, those two locations that you mentioned.

21 A. So buoy number 1 is right there [indicating], and inside of
22 the bar, the other lifeboat will stay inside of the tips around
23 number 4 or a little bit ahead of that.

1 Q. Thank you. And you mentioned there is a watch-stander with a
2 vehicle that sets up on that parking lot that you highlighted
3 previously. Is that what's referred to as mobile-1?

4 A. Yes, ma'am.

5 Q. From what you remember from that day, can you talk about--can
6 you talk about what you know about the Coast Guard escort of the
7 vessel the LAST STRAW?

8 A. Can I take just one second? Sorry, I was looking over the
9 logs.

10 Q. Take your time.

11 A. The LAST STRAW and, I believe, fishing vessel STAR SHADOW had
12 came [sic] in earlier that night, and I was up on the hill at
13 that parking lot below the lighthouse. And the 47 and the 52 had
14 went [sic] out. The STAR SHADOW came inbound and then the LAST
15 STRAW came inbound a little bit after them, and we escorted them
16 in. And they both made it in safely and that's--those two,
17 besides the mast out on the horizon, were the last boats that we
18 had visual of.

19 Q. Okay. After that--those escorts and the last one, which was
20 the LAST STRAW, how were you made aware that there was another
21 vessel offshore?

22 A. It was the mast light. From sitting up on the hill, you can
23 see. Southwest there was another--another boat on the horizon

1 that we were--that we had--began to hail to try to get a hold of
2 them, to see what their intentions were. Because of the building
3 bar--the impending wave height, we wanted to get a hold of them
4 to--just to verify their intention, to see what--if they were
5 going to stay out overnight or if they were going to come in.

6 **AIO:** Lieutenant Woods, would you please display Exhibit 038,
7 slide 2.

8 Q. Petty Officer Dozier, turning your attention to this slide,
9 which shows communications between different Station Yaquina Bay
10 personnel attempting to hail the--what they thought of at the
11 time to be the vessel the BESS CHET. Can you talk about how you
12 were able to establish contact with the vessel that was offshore?

13 A. After multiple failed attempts on channel 16, 22 and 73, we
14 had sector give us a call, and they said that they had an AIS
15 snapshot showing that that was fishing vessel BESS CHET. We were
16 unable to get a hold of them. I went back to the station and
17 started looking into MISLE, which is our application to enter all
18 cases and, like, boardings into. And I found fishing vessel BESS
19 CHET and a phone number for a vessel owner that we thought at the
20 time would have been--would have been the person on board the
21 boat. That came back as not being the current owner. They said
22 that they had sold it. I ended up actually Googling the person's
23 name, and it came back as the vessel owner for fishing vessel

1 KRAKEN. I ended up calling him, and he was able to provide me
2 with Stephen Biernacki's phone--phone number, and I was able to
3 get a hold of him and had asked--I said that we had been hailing
4 him multiple times over the duration of 20 minutes and he hadn't
5 responded. He said that he had changed his--changed his radio
6 station and hadn't heard us hailing. So---

7 Q. Did you--after you spoke to the previous owner and were put
8 in touch with the current owner and spoke to Mr. Biernacki over
9 the phone, did you only speak to him that one time or did--were
10 there multiple phone calls?

11 A. I spoke to him initially, telling him who I was. I said,
12 "This is BM2 Dozier here at Station Yaquina Bay. We've been
13 trying to hail you. I was just wondering, you know, do you guys
14 have your radio on?" He responded and said that he must have
15 changed the radio channel and that he would change it back. Then
16 I had received a phone call as the OOD from the watch-stander
17 saying that they were still trying to hail that boat and they
18 weren't able to get a hold of him. So I ended up actually giving
19 him another call and I said, "Our watch-stander is trying to hail
20 you. I just need you to be able to respond on channel 22," and
21 then I asked his intention, whether he was staying out that night
22 or if he was going to be coming back in, and he said that he was
23 pulling a couple more of his pots and that he would be inbound

1 on--on the bar. He was 5 miles southwest of the buoy line.

2 Q. Just a point of clarification before I continue my
3 questioning. Petty Officer Dozier, you mentioned MISLE.

4 A. Yes, ma'am.

5 **AIO:** Making reference to a database that we use. That's the
6 Marine Information for Safety and Law Enforcement. It's a
7 database tool that the Coast Guard uses for working cases.

8 Lieutenant Woods, may we please switch to slide number 3,
9 same--same exhibit. We're going to stay here for a little bit.
10 Can you play the audio if it cooperates?

11 Q. While he's trying to work the audio, are you able, in your
12 monitor to read that communication?

13 A. From the top of the page, ma'am, or just that one?

14 Q. Yes. You don't have to read it out loud. Just for yourself.
15 I just want you to become familiar with it.

16 A. [Complied.]

17 **AIO:** If it doesn't work, we can just zoom to the--to the slide.
18 It's okay.

19 Q. Petty Officer Dozier, can you see on that slide where the
20 operator of the MARY B II makes a reference to a petty officer
21 who called him?

22 A. Yes, ma'am.

23 Q. Is he--is--was he referring to you?

1 A. Yes, ma'am.

2 Q. To the best of your recollection and understanding that this
3 was over 4 months ago, you elaborated a little bit on that
4 conversation, but when you spoke to the operator, did--do you
5 remember, did he identify himself--himself as the operator of the
6 MARY B II?

7 A. Yes, because when I introduced myself as BM2 Dozier from
8 Station Yaquina Bay, I verified, you know, saying, "Is this
9 Stephen Biernacki?" and I asked if he was the owner of fishing
10 vessel BESS CHET, which as I'm reading through here, you see that
11 we talked to fishing vessel MARY B and the next--one of the next
12 transmissions is us hailing out to fishing vessel BESS CHET. We
13 were--we still thought they were two separate fishing vessels.

14 Q. Understood. After your conversation with him, when--when did
15 you understand--and you, I don't just mean you, I mean everyone
16 that was working with the case. When did you understand that
17 this was the same vessel?

18 A. I--I can't put a time on that or point that we realized.

19 Q. After your phone conversation, at some point you switched to
20 radio communications with the operator of the MARY B II; is that
21 correct?

22 A. Yes, ma'am.

23 Q. Do you remember when this shift happened? And by that, I

1 mean was it a result of that phone call?

2 A. Yes, ma'am, because I wanted to establish communications with
3 him on the radio, not via land line.

4 Q. Could the fact that the MARY B II was being identified as the
5 BESS CHET still in the system--could that cause any issues that
6 night for you as you prepared for your operations?

7 A. As we prepared for operations, it would have--it would have
8 just been two fishing vessels coming in instead of one, but it
9 happened to turn out to be one.

10 Q. At some point, as the officer of the day, you shifted from
11 your duties in that and got underway on the motor lifeboat 47266,
12 and the officer in charge of the station got underway on the
13 COAST GUARD VICTORY; is that correct?

14 A. Yes, ma'am.

15 Q. What was your role on the 47-foot motor lifeboat?

16 A. I would have been a crewman at that point. BM2 Scott Wilson
17 was the surfman that was on board.

18 Q. And as a crewman aboard that night, what were your primary
19 duties? What were you primarily doing?

20 A. Navigation for the coxswain at that point, radio
21 communication. We had another vessel was--so the 52 was also
22 underway. We had the beach crew, which would have been mobile-1,
23 and then the fishing vessel. So that's a lot of radio traffic

1 for a coxswain to manage at one point. So having another person
2 managing the radio communications is super helpful.

3 Q. At this point what was the plan for the escort?

4 A. That the motor lifeboat VICTORY would go outbound and wait
5 for fishing vessel MARY B II to get to the buoy line and follow
6 them in, just as the other two escorts had went [sic] prior to
7 that evening.

8 Q. During the escort, Coast Guard was planning to assist by
9 remaining in the channel; is that correct?

10 A. Yes, ma'am.

11 Q. Was this communicated to the MARY B II?

12 A. Yes, ma'am.

13 Q. From the vessel that you were on, the 47-foot motor lifeboat,
14 were there illumination flares that were used or deployed out of
15 that vessel?

16 A. Yes.

17 Q. From your experience, when you've seen that as a tool, does
18 that tend to affect night vision in the vessel that it's coming
19 from or other vessels in--in the vicinity when they're set off?

20 A. Not that I have experienced. I mean, you'll--as it goes up
21 and illuminates the bar, you have a great picture of how the bar
22 looks and then, you know, when it goes out--and that dark was
23 particularly--that night was particularly dark. So when the

1 flare went out, yeah, you kind of go back to seeing not much of
2 anything, but we used an excessive amount of flares that night to
3 try to keep it lit up.

4 Q. Why is that?

5 A. Because of how dark the bar--how dark it was without any
6 moonlight.

7 Q. As you're preparing and getting underway for this escort, did
8 you have any specific concerns with the plan at this point?

9 A. I didn't.

10 Q. The last vessel that was escorted in, the LAST STRAW, did
11 they communicate any concerns to you or any of the other Coast
12 Guard teams--team members regarding the vessel that was still
13 offshore?

14 A. He actually also told us that that would have been the BESS
15 CHET and he kind of broke into our hailing of fishing vessel BESS
16 CHET, like I said, on those three channels and had notified us
17 that he was an East Coast sailor and didn't have a lot of
18 experience coming across our bar.

19 Q. The operator of the LAST STRAW notified you about that,
20 referring to the operator of the BESS CHET?

21 A. Yes, ma'am.

22 Q. And you alluded to this, but just for clarity, what prompted
23 him to--to make that comment to the Coast Guard?

1 A. Just because of how many times and the duration in which we
2 were trying to hail that fishing boat and also the building
3 conditions of the night.

4 Q. And the comment about the East Coast, was that the only thing
5 he said? Was there anything else?

6 A. Just that he didn't have a lot of experience on--on this bar.

7 Q. In your experience, being stationed here, elaborate on--on
8 that. Why is local experience so important coming in--that
9 entrance bar at Yaquina Bay?

10 A. I think that it's under--it's really good to understand the
11 dynamic scenario that you're going to get into dependent upon the
12 weather conditions and the size of the waves, the period--the
13 amount of wind that you have. There are so many different
14 factors that play into the result that you're going to get at the
15 bar. Having no experience kind of--it leaves you in--in a bad
16 spot and uncompetent [sic] in your--in what you're doing, instead
17 of understanding all that and having a good--a good picture of--
18 of how many different things can affect--affect our bar and how
19 to handle those--those situations.

20 Q. Given the conditions that night, do you think it was of
21 particular importance on the night of January 8th to have such
22 experience?

23 A. I think that experience plays a huge factor, especially in

1 that circumstance, weather-dependent.

2 Q. Can you take me through what your role was as the 47 in that
3 plan for the escorts once you arrived at your place. Can you
4 just run me through your--your duties, the duties of the 47
5 during the escort.

6 A. So the 47 was inside of the jetty tips. They're kind of the
7 channel marker for the other two vessels that are coming inbound,
8 which one was ours, the 52-foot motor lifeboat. And we sat
9 center channel with our blue light on, which is a good
10 contrasting color of lights. Coming in that bar at night with
11 the amount of background lighting can sometimes be congestive, if
12 that makes sense. So the 47 was sitting center channel with our
13 light on, and we were illuminating the bar with the Mark-127s.
14 The 52--once the MARY B got into the buoy lines, started coming
15 inbound, and the 52 followed up behind them.

16 Q. To the extent that you can, what--what was the role of the 52
17 during that escort--the VICTORY?

18 A. During an escort the vessel that stays off of the quarter of
19 the fishing vessel or vessel inbound, their role is to kind of
20 take some of the--the velocity and momentum out of the waves that
21 are coming up on the quarter of the fishing vessel inbound. So
22 the--utilizing the props of the motor lifeboat can essentially
23 expend some of the energy of the wave in a little bit different

1 of a direction. They can also notify the captain of the fishing
2 vessel what's coming up behind them. So as the VICTORY gets
3 picked up, then they would be able to say, "It's about a 16-to-
4 18-foot wave," and they notify the captain, "You have a--you have
5 a big wave coming behind you, a 16-foot, that's going to pick up
6 your quarter." So it gives the fishing vessel captain a little
7 bit of time to prepare--to prepare for something picking them up.

8 Q. Thank you. As you were sitting center channel, like you
9 mentioned, with your blue lights on on the 47, were you providing
10 information to the MARY B II, to the operator about the character
11 of the waves and how they were breaking?

12 A. We notified the vessel--the captains of the lulls and the
13 smaller series and the bigger series. You'll typically see a
14 little bit smaller wave size followed by the bigger wave size.
15 Then there's always the lull between the--between the sets. And
16 so we--yes, we were notifying the captain of the sets that were
17 coming in.

18 Q. Do you remember the specific parameters, the length of the
19 lulls and--and the time associated with the series?

20 A. I--I don't, ma'am.

21 Q. So at this point you had been communicating with the operator
22 of the MARY B II via radio.

23 A. Yes, ma'am.

1 Q. And he was answering in--in the sense that he was
2 communicating back to you.

3 A. Yes.

4 Q. As the person who were--was able to speak to the operator
5 also on the phone, when speaking to that person across the radio,
6 did you recognize that to be the same person?

7 A. I believe that it was the same person, yes.

8 **AIO:** Lieutenant Woods, can you please display slide 5.

9 Q. Petty Officer Dozier, you see that image behind me. Would
10 you be able to explain where--you mentioned your position on the
11 47 in the center of the channel. Would you able to--would you be
12 able to point to it, please, and then point to where the 52-
13 footer, the VICTORY, would----

14 A. Where the 47----

15 Q. Yes.

16 A. ----would have been? Approximately center channel right
17 about there [indicating], and the 52 would have been vessel
18 number two, in approximately that position [indicating].

19 **AIO:** Okay. Lieutenant Woods, would you please display slide 10.

20 I would like to play the audio if it works.

21 [Audio was played.]

22 Q. Petty Officer Dozier, I know that was probably not very loud,
23 but in--having the slide there providing you with the transcript

1 of that communication--so you gave the operator of the MARY B II
2 some guidance over the radio. Can you explain?

3 A. So this would have been as they were already coming inbound.
4 The swell direction that night was pretty southerly, which was
5 pushing the waves into the jetty tips a lot further, and also the
6 breaks were coming into the--into the tips further. So I was
7 just giving him preemptive suggestion that once he got inside of
8 the tips, to just stay within the channel on the north side of
9 the channel so that he'd stay away from that bigger side on the
10 south side of the channel that was breaking inside of the tips.

11 Q. I'm going to now try to display slide 11, which shows the
12 continuing communication from that. Once you're able to read
13 that, please let me know. I'll ask you a couple questions about
14 that slide.

15 A. [Complied.]

16 Q. Initially you had provided some information about once the
17 operator was inside the tips, to move north a little bit--from
18 the previous slide. Can you explain by using the slide, if you
19 will, what the operator's reply was to your message?

20 A. He said, "Yeah, I see your blue light there. I'm working my
21 way to the north side here now."

22 Q. What did you say to that?

23 A. "Roger, Captain. I advise that you don't work over to the

1 north too soon. They're starting to break on the north side on
2 the dumping grounds, and there is also a wraparound break on the
3 north side of the channel. Over."

4 Q. And did he acknowledge that?

5 A. Yes, ma'am.

6 Q. What was--what was his reply?

7 A. "Yeah, I got you guys. All right, let me pay attention here
8 because I got so many vessels here now I got AIS going off on my
9 plotter here clogging it up."

10 **AIO:** I'm going to attempt to see if we can do the audio. If
11 not, I'm going to---

12 [Audio was played.]

13 Q. Petty Officer Dozier, do you know what the operator of the
14 MARY B II meant with his statement "so many vessels out here I
15 got AIS going off on my plotter"?

16 A. I'm not sure what he meant. It would be the same AIS tracker
17 that I had mentioned previously, but there was only two other
18 vessels that would have been transmitting AIS within his
19 proximity at that time, which would have been the 52 and the 47.

20 Q. There were no other vessels in the vicinity of where you were
21 with the MARY B II at that time?

22 A. Not that I know of, ma'am.

23 Q. Can you explain in general terms what happened next? If I

1 need to stop you to interject and show a slide, please understand
2 that it's just for the benefit of the public, but can you tell me
3 what happened next?

4 A. Immediately following like this transmission?

5 Q. Uh-huh.

6 A. We started to notice that he was working very far north of
7 the channel. Thia had been right where buoy number 3 would--
8 would typically be in the summer. It is a seasonal aid. And
9 started working his way north. Two different people that were on
10 scene, myself and the commanding officer, who was on the motor
11 lifeboat VICTORY both told him that he needed to come to the
12 south. He had to turn to starboard at that point. Typically we
13 don't give them driving direction of their vessel. The safe
14 operation and navigation of their vessel is their responsibility,
15 but he had worked so far north that we felt that it was
16 appropriate to tell him to come to starboard and that he needed
17 to come very much further south. At that point he ended up beam-
18 to, which is the side of the vessel to the waves, and got
19 capsized at the end of north jetty.

20 **AIO:** Lieutenant Woods, may we please turn to slide 14.

21 Q. Petty Officer Dozier, just take a few seconds to look over
22 that slide and let me know when you're ready for a question.

23 A. [Complied.]

1 Q. Several times in that communication among Coast Guard assets,
2 there was reference to number 3. Is that referencing the
3 navigation buoy number 3?

4 A. Yes, ma'am.

5 Q. Talk about how you used that buoy as a reference, being that
6 it is not on station or was not on station at the--at the time of
7 the accident.

8 A. Just because it was an approximate location and the amount of
9 times that the station members on board the boats go past where
10 buoy number 3 typically is, we have kind of a--about halfway
11 between where buoy number 1 is and the tip of the north jetty.
12 So we have an approximate location of where that buoy should be.

13 Q. So when you're referring to the number 3, is that only in
14 internal Coast Guard communications?

15 A. I think that the fishing fleet also knows where buoy 3
16 typically is, but that would be an assumption. So that's my
17 opinion.

18 Q. Okay. At some point during the escort, the personnel on
19 board the VICTORY and personnel on board the vessel you were on,
20 the motor lifeboat 47266, discussed the speed of the MARY B II
21 and how it was moving. Can you elaborate on that?

22 A. At one point the motor lifeboat VICTORY said that the MARY B
23 was going approximately 2 knots. They also stated that they were

1 having to back down over the waves, like backing the VICTORY away
2 from the MARY B, obviously to stay at a safe distance from them,
3 which is--that's a very slow speed to be transiting inbound. So
4 I think that--I mean, we all kind of perked up to that, that he
5 was only going 2 knots.

6 Q. Previous to that point, what was your understanding of the
7 speed that the MARY B II was making?

8 A. The vessel captain said that he makes between 6 to 7 knots,
9 and that's what he was coming in at from 5 miles south when he
10 was coming towards the buoy line.

11 Q. Once it was noted that this--there was a reduction in speed,
12 do you remember if anyone asked the operator about the reason for
13 the reduction?

14 A. I don't recall, ma'am.

15 Q. Can you talk about how the act of slowing down or--that fact
16 of reduction in speed--can you talk about how those circumstances
17 would affect the vessel's ability to cross the bar safely on that
18 night?

19 A. Dependent upon the tide--so on that night it was a flood tide
20 when he was crossing the bar. So he did have the flood tide
21 pushing him in towards the bar, but during the winter months
22 there's a current that works from the south to the north, which
23 is called a Davidson current, and that was pushing him in a

1 northerly direction. Then you also had the wind that was coming
2 from the southeast, I believe is what it was. So all of those
3 factors and putting that into that scenario, 2 knots isn't
4 sufficient to--to where you would be pushed to with the tide, the
5 Davidson current as well as the wind.

6 **AIO:** Thank you.

7 **LIO:** At this time--are you going to continue? Okay, so it's
8 11:49 and we're having some technical difficulties and we're
9 quite a bit off schedule. So I was going to hold the witness and
10 not release her, if that's acceptable to you, Mr. Reilly, and
11 that way we can reconvene this part of the testimony at a later
12 time and we can work our electronics.

13 **PIIC:** No objection.

14 **LIO:** Thank you. Petty Officer Dozier, we are complete with your
15 testimony at this time; however, I anticipate that you'll be
16 recalled to provide additional testimony at a later time or date.
17 Therefore, I'm not releasing you from your testimony at this
18 time, and you remain under oath. Please do not discuss your
19 testimony or this case with anyone other than your counsel or
20 members--members of the Coast Guard formal investigation team.
21 If you have any questions about this, you may contact my legal
22 advisor, Lieutenant Colin Fogarty.

23 So at this time it's 11:50. We're going to call a recess.

1 Please be back for the hearing to reconvene at 1:00 p.m.

2 [The hearing recessed at 11:51 a.m., 14 May 2019.]

3 [The hearing was called to order at 11:52 a.m., 14 May 2019.]

4 **LIO:** Hey, folks, sorry, really quickly, we're getting back on
5 the record so we're going to capture this on the record, but if
6 at all possible, let's--if at all possible, we'd actually like to
7 reconvene at 12:30 versus 1:00. 12:30. We have a really packed
8 schedule. We're thrown off by having to be out of the venue by
9 2:00. So we're trying to make it all fit. So 12:30 for lunch.

10 [The hearing recessed at 11:52 a.m., 14 May 2019.]

11 **[END OF PAGE]**

12

13

14

15

16

17

18

19

20

21

22

23

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II

2 held in Newport, Oregon

3 on 14 May 2019

4 WITNESS: BEN WHITE

5 [The hearing was called to order at 12:30 p.m., 14 May 2019.]

6 **LIO:** Good afternoon, ladies and gentlemen. It is 12:29 and we
7 are reconvening this public hearing. We're going to now hear
8 testimony from Mr. Ben White, who is a--excuse me, a local diver,
9 who is here to give testimony. He is already at the witness
10 table. Lieutenant Woods, please administer the oath, and he will
11 ask you some preliminary questions.

12 **BEN WHITE was sworn and testified as follows:**

13 **DIRECT EXAMINATION**

14 **Questions by the recorder:**

15 Q. Sir, please state and spell your full name.

16 A. Ben White, B-e-n, W-h-i-t-e.

17 Q. Please state your current employment and position.

18 A. I am employed by the Port of Toledo Shipyard, and I have a
19 side business where I've been diving on local commercial fishing
20 vessels for the last 20 years.

21 Q. Please state any education or training related to your
22 profession.

23 A. Yes, high school education and on-the-job experience.

1 Q. Sir, can you bring the microphone a little bit closer and
2 kind of talk closer into it. Thank you.

3 A. Okay. Again?

4 Q. Yes, sir, can you please repeat any education or training
5 related to your profession.

6 A. On-the-job experience.

7 Q. And do you have any professional licenses or certificates
8 related to your profession?

9 A. Just scuba class card.

10 **REC:** Thank you. At this time I will begin my primary line of
11 questions. Mr. White, thank you for appearing today at this
12 hearing. All of my questions are related to the time frame prior
13 to the loss of the crew and fishing vessel MARY B II. If you
14 would like to take a break at any time, please let us know. We
15 will explore this broad topic: your experience as a commercial
16 diver specific to work related to commercial vessels.

17 Q. What type of underwater work do you do on commercial vessels?

18 A. Repair and maintenance, anything to do with the running gear
19 and the--the soundness of the hull.

20 Q. Mr. White, what type of hull materials do you have experience
21 working with?

22 A. Mainly inspections, seeing the anodes [ph] and propellers and
23 rudders and sonars and transusers [ph], care and maintenance.

1 Q. And specifically wooden hulls, fiberglass?

2 A. Oh, anybody that calls, you know, but, yeah, mainly
3 fiberglass, steel, aluminum, wood.

4 Q. Thank you. Mr. White, do you--do you or have you previously
5 conducted commercial dive work outside of the Newport area?

6 A. Occasionally I get calls to go to other ports and work on our
7 local vessels at other ports.

8 Q. Are there times of the year or seasons that commercial dive
9 work is busier for you than others?

10 A. Yeah. The crab seasons are all hours of the day.

11 Q. Mr. White, I'd like to talk a little bit about Mr. Porter.
12 How well did you know Mr. Porter?

13 A. I--it's not like we went to each other's houses or anything
14 like that. I knew him from the docks and on the boats that he's
15 operated or crewed on.

16 Q. What can you tell us about his competency and skill level as
17 a commercial fisherman?

18 A. I've always thought that he was a great skipper and great
19 crewman. I never worked on any decks with him or anything, but
20 he seemed to be highly trusted and thought of as a crew member
21 and skipper. A lot of people have trusted him with their
22 vessels.

23 Q. I'd like to talk briefly about Mr. Biernacki. Do you know

1 how long he had been operating in the area?

2 A. No, I--I never heard of him until this year--or last year and
3 this year, beginning of crab season.

4 Q. Thank you. And did you have any direct interactions with him
5 prior to the date of the incident?

6 A. Not to my knowledge.

7 **REC:** I'm now going to display Coast Guard Exhibit 012, a
8 screenshot of Mr. Ben White's phone.

9 Q. Please tell me the date and time that Mr. Porter called you
10 with regards to the MARY B II.

11 A. January 8th at 8:03 a.m.

12 Q. Mr. White, the details of the phone calls you received that
13 day are very important. Please take just a moment and kind of
14 take yourself back to that day and situation and then think
15 about, if you can what exactly was said to you and, when you're
16 ready, please let me know and please tell me what was said.

17 A. Josh called me at the--8:03 a.m. in the morning--I'd just got
18 to work at the shipyard--to let me know that the--they had the
19 crab line--the rope from the pot in the wheel and that the
20 skipper would be calling me sometime later on to see how much it
21 costs and when I can be there to take care of it. That was--it
22 was a pretty brief conversation.

23 Q. Do you remember the time that Mr. Biernacki also called you?

1 A. I do not recall exactly when it was. Being--working at the
2 shipyard, we're not supposed to really look at our phones that
3 much.

4 Q. Can you also think back and remember what Mr. Biernacki said
5 to you in that call?

6 A. He asked me how much it cost for my services and what time I
7 would be available to do it, to take care of the line in the
8 wheel. I stated "after work", which was--I get off work at 4:30.
9 I said I'd be out doing my rounds that night, rounds as in diving
10 on a lot of other boats that I had to do.

11 **LIO:** So for the--in the public interest, we did receive your
12 phone records. You gave these to us today.

13 **WIT:** Uh-huh.

14 **LIO:** Thank you for that. We validated the times and numbers and
15 we did just validate Mr. Biernacki calling you at 1358. So
16 we'll--we will enter this into Exhibit 064--Coast Guard Exhibit
17 064. Mr. Reilly, we'll get you a copy for the record at the end
18 of the day.

19 Q. Mr. White, you said that it was a rope from a crab pot. Do
20 you have any idea what those dimensions of the rope might have
21 been, the material or the diameter?

22 A. I am unsure what kind of gear he used or what he had. Most
23 of it--you know, you have floating line, you have sinking line.

1 You have top shots, bottom shots. I have no idea what he--what
2 he--he used. Everybody uses different stuff. I have not dove
3 for him this--to that date, of that year, since he took
4 ownership.

5 Q. Mr. White, in your opinion as a commercial diver, what
6 implications could a line in the wheel have on a vessel's
7 maneuverability?

8 A. Especially on wood boats, depending on how much they had and
9 how it was placed in the propellor, sometimes it piles up forward
10 of it, sometimes it wraps around the flukes of the propellor,
11 sometimes it's all over the place, and it can cause the vessel to
12 shake a lot, which could cause them to slow down so it's not
13 shaking the boat apart, or if there wasn't that much line,
14 sometimes they'll--it doesn't hurt them that bad, they can still
15 make pretty good speed. It just depends on how much he had
16 wrapped up.

17 Q. Did you think it was--was there anything unusual about the
18 fact that two crew members called you about the same issue that
19 day?

20 A. No, I didn't think much of it. I've had it happen before. I
21 can--Josh was concerned with probably--to be--made sure that I
22 was aware and ready because he knows I like advance notice. That
23 way they're not calling me after I'm already at home. He's known

1 that from over the years, just to give me as much heads-up as
2 possible.

3 Q. Mr. White, is there anything else that we haven't discussed
4 that you would like to tell us or bring to our attention?

5 A. I cannot think of anything.

6 **REC:** Thank you for your testimony. I have no further questions.

7 **WIT:** You're welcome.

8 **LIO:** Mr. Reilly?

9 **CROSS-EXAMINATION**

10 **Questions by the party-in-interest counsel:**

11 Q. Mr. White, good afternoon. Thanks for being here. You
12 mentioned a couple ramifications of getting a line in the screw.
13 There'd been testimony here earlier about lines causing damage to
14 the seals, causing other perhaps more adverse consequences than
15 you testified to. Is that--is that possible or is that--how
16 does--how does a line cause--cause damage down there, if it does?

17 A. Well, the--on--especially on the boat in question, the MARY
18 B, a lot of line could make things shake really bad or, you know,
19 cause them to slow down, but in my experience, unless they get a
20 crab pot all the way up to the hull, it generally doesn't--
21 generally boats don't break from it. You know, they can--it can
22 bend their propellers or make it to where their steering--their
23 rudder doesn't turn well and things like that. It can bend what

1 A. No.

2 Q. Nobody mentioned a vibration.

3 A. No. But they knew they had it.

4 Q. Understood. Thank you.

5 A. And I don't know how many trips he made prior to that, but he
6 hadn't called me that crab season. It's--most--a lot of boats
7 generally get crab line very quickly in the beginning of the
8 seasons.

9 **LIO:** Okay. Thank you.

10 **WIT:** All right.

11 **LIO:** Any other questions?

12 [No response.]

13 **LIO:** Mr. White, you are now released as a witness for this
14 formal hearing. Thank you for your testimony and cooperation.

15 **WIT:** Thank you.

16 **LIO:** If I later determine that this board needs additional
17 information from you, I will contact you through--contact you
18 through our counsel. If you have any questions about this
19 investigation, you may contact the investigation's recorder,
20 Lieutenant Luke Woods.

21 We are going to go ahead and take a 10-minute recess--10-
22 minute recess. It is now 12:45. We'll reconvene at 12:55.

23 [The hearing recessed at 12:46 p.m., 14 May 2019.]

U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
held in Newport, Oregon
on 14 May 2019

WITNESS: ROBERT BREWSTER

[The hearing was called to order at 12:54 p.m., 14 May 2019.]

LIO: The time is now 12:53 and we are reconvening this public hearing. We're going to now hear testimony from our next witness, Mr. Brewster. This testimony is happening telephonically and by Skype.

REC: For the benefit of the public, the U.S. Coast Guard at Station Barnegat Light has verified Mr. Brewster's identification.

UNIDENTIFIED SPEAKER: That's correct, Lieutenant.

ROBERT BREWSTER was sworn and testified via remote link-up as follows:

DIRECT EXAMINATION

Questions by the recorder:

Q. Mr. Brewster, please state and spell your full name.

WIT: Not hearing it.

REC: Mr. Brewster, can you hear me now?

WIT: Yes.

Q. Please state and spell your full name.

A. Robert Brewster, R-o-b-e-r-t, B-r-e-w-s-t-e-r.

1 Q. Sir, please state your current employment and position.

2 A. Repeat that.

3 Q. Can you state your current employment position.

4 A. I'm--I own a commercial fishing boat two of them the owner.

5 Q. And, sir, do you have any education or training related to
6 your profession?

7 A. Just--no, not--not a--professional training, just experience.

8 Q. And do you have any professional licenses or certificates
9 related to your profession?

10 A. When I was younger I had 100-ton captain's license, but I let
11 it lapse. I don't have that anymore.

12 **REC:** At this time, sir, I will begin my primary line of
13 questioning. Mr. Brewster, thank you for appearing today at this
14 hearing. All of my questions are related to the time frame prior
15 to the loss of the crew and the fishing vessel MARY B II. If you
16 would like to take a break at any time, please let us know. If
17 you have any audio issues, please let me know as well. Mr.
18 Brewster, we will explore these broad topic areas: your general
19 background in the commercial fishing industry, including any time
20 you operated a vessel, and your professional interaction with Mr.
21 Biernacki and your assessment of his vessel operation and
22 experience, including safety issues, specific geographic areas he
23 operated in, and challenges to vessel operations, any types of

1 vessels operated and any negative issues related to vessel
2 operations.

3 Q. Mr. Brewster, do you have personal experience navigating in
4 and out of Barnegat Light?

5 A. Yes.

6 Q. Is that on a commercial vessel or recreational?

7 A. Commercial and recreational.

8 Q. Mr. Brewster, what was the time frame or time frames that you
9 employed Mr. Biernacki?

10 A. I hired him to run my boat three different times between I'm
11 guessing 2002/2003 until about 2010.

12 Q. And, sir, what were the names of the boats that Mr. Biernacki
13 worked for you on?

14 A. One was the ABBY & HOLLY [ph] and the other was EAGLET II.

15 Q. Sir, can you repeat the name of the first one.

16 A. ABBY & HOLLY.

17 Q. ABBY & HOLLY, thank you. And what--what types of vessels
18 were those?

19 A. The ABBY & HOLLY was a scow boat, and the EAGLET II was a
20 long-liner.

21 Q. Were those--were those considered single-screw or double-
22 screw boats? Did they have----

23 Q. ABBY & HOLLY was a twin-screw and the EAGLET is a single-

1 screw.

2 Q. What positions did Mr. Biernacki fill while under your
3 employment?

4 A. A deck hand and a captain.

5 Q. Approximately how many fishing trips did Mr. Biernacki make
6 while under your employment?

7 A. I don't know. I'm guessing 30 or 40.

8 Q. Do you have any underway experience with Mr. Biernacki?

9 A. No, not--not when he was captain, no.

10 Q. Mr. Brewster, how would you describe Mr. Biernacki's
11 competency with regard to his seamanship, ship handling and
12 decision making?

13 A. It was good, as far as I could tell, you know, from--he was
14 on the boat in the ocean and I'm on land, but it was good.

15 Q. What specific geographic areas did Mr. Biernacki operate
16 while under your employment?

17 A. Basically from--went into [indiscernible] the Inlet.

18 [Off-record side discussion on logistical issues.]

19 Q. Mr. Brewster, are you familiar with bar conditions on the
20 West Coast, particularly Oregon, Yaquina Bay----

21 A. No, just--just what I read or see, but, no--other than that,
22 no.

23 Q. Okay. Is it common practice in Barnegat Inlet for the Coast

1 Guard to conduct vessel escorts into----

2 A. No. Not--I've never--no. Not unless it's--a vessel had to
3 be towed in or escorted in because of mechanical problems, but as
4 far as sea conditions, no.

5 Q. Mr. Brewster, behind you there should be a chart of the
6 Barnegat Inlet.

7 A. Uh-huh.

8 Q. Can we--can you stand by the chart? I just--I would like, if
9 you could, to show me how you--how mariners typically navigate in
10 and out of the inlet.

11 **UNIDENTIFIED SPEAKER:** Lieutenant, just give me one second while
12 I reposition the camera.

13 **REC:** Thank you.

14 **UNIDENTIFIED SPEAKER:** Lieutenant, would you like it closer than
15 that or is that---

16 **REC:** That's good for me. Thank you.

17 **UNIDENTIFIED SPEAKER:** Okay. All right, go ahead.

18 **WIT:** Typically we come down to the north jetty here down to the
19 rock pile. This is the north [indiscernible] and we just scoot
20 around [indiscernible] into the deep water. The buoy channel
21 runs out here [indicating], but very rarely do we come out this
22 way. We just cut around here and we're out. We don't have to
23 deal with the bar. Ninety-nine percent of the commercial boats,

1 that's the way we come and go through the inlet.

2 Q. And, sir, for the record, that's--that's navigating both in
3 and out, that same pattern?

4 A. Yes. In and out, yes.

5 Q. And how frequently would you or Mr. Biernacki, to your
6 knowledge, deal with breaking surf, 10-foot, 12-foot or----

7 A. I don't think--you know, a 10-or-12-foot breaking surf would
8 be a big one in our inlet. We do get them, but we--in the
9 wintertime, mostly. I mean, not--we do deal with that.

10 Q. So it's not common to get 16-to-18-foot breaking surf----

11 A. We never have that big here unless it's a hurricane. I'd say
12 10-to-12-foot would be extremely big for here.

13 Q. Mr. Brewster, do you know how Mr. Biernacki would prepare for
14 dangerous sea conditions going in and out of Barnegat Light--

15 Barnegat Inlet?

16 A. No, I wouldn't know that.

17 Q. Mr. Brewster, do you know of any safety issues involving any
18 underway operations with Mr. Biernacki?

19 A. Not that I know of.

20 Q. So do you have any direct knowledge of any marine casualties
21 that Mr. Biernacki was directly involved in, such as vessel
22 groundings, vessel fires, injured crew members, loss of
23 propulsion or loss of vessels?

1 A. He was operating a boat that went up on a beach like 25 years
2 ago. Not my boat.

3 Q. Do you know the name of that boat, by chance?

4 A. It was the LORI L [ph].

5 Q. LORI L.

6 A. LORI L, yes.

7 Q. Mr.--Mr. Brewster, do you have any direct knowledge of
8 substance usage by Mr. Biernacki prior to or during the operation
9 of a commercial vessel?

10 A. I don't--I don't know that he was. Sometimes I assumed he
11 might have been, but I don't--no direct knowledge, no.

12 Q. Did you ever observe Mr. Biernacki exhibiting any signs of
13 impairment while operating a commercial vessel?

14 A. Not that I could be positive, no.

15 Q. Mr. Brewster, do yo know if Mr. Biernacki owned or partially
16 owned a vessel prior to the MARY B II?

17 A. He owned another boat called the MARY B in Barnegat Light at
18 one point.

19 Q. Did you say the MARY B in Barnegat Light?

20 A. Yes.

21 Q. Do you know the approximate time frame?

22 A. Guessing late 90s, early 2000s, but I don't know.

23 Q. Mr. Brewster, do you know the reason why he's no--he no

1 longer owned the vessel, by chance, or---

2 A. I--I don't know why he lost the vessel, no.

3 Q. Mr. Brewster, is there anything else you would like to tell
4 us that we haven't already discussed?

5 A. No.

6 **LIO:** Mr. Brewster, this is--this is Karen Denny. Can you hear
7 me, sir?

8 **WIT:** Yes.

9 **LIO:** Okay. I have a--I have a few questions for you.

10 **Questions by the lead investigating officer:**

11 Q. So--so you said that you hired Captain Biernacki three times
12 over the years----

13 A. Yes.

14 Q. ----and that he did three--I'm sorry 30 to 40 trips underway
15 for you. Am I correct?

16 A. I'm guessing. Could be more, but I don't have the exact
17 number.

18 Q. And so he was--he operated for you in the capacity of both
19 deck hand and vessel operator, correct?

20 A. Yes.

21 Q. So each of those times that you hired him, was there a reason
22 that he stopped working in your employ?

23 A. Yeah, he just got to be--couldn't keep a crew. He was hard

1 on his crew and just--I just had to, you know, let him go.

2 Q. Okay.

3 A. He--you know, I don't remember what---

4 Q. While he was captain, you said that--I believe that you said
5 that he was good--I'm trying to figure out what you were saying
6 about him being a captain on the vessel. You made kind of a
7 vague statement that I was trying to understand. What made you
8 realize that he was a good captain when you were on shore? Was
9 his communications with you good or not good? Were they
10 engaged--were you engaged with him a lot or not?

11 A. Yeah, I was--I don't know what you mean, but I was engaged
12 with him, yes.

13 Q. Did he communicate actively to you?

14 A. Yes.

15 Q. Okay. And when you say that he couldn't keep a crew, what do
16 you mean by that?

17 A. Well, you know, after a while, you know, he was hard on the
18 crew and they just--I guess they didn't want to work for him or
19 couldn't get along with him. Very demanding, I guess, and they
20 just--you know, they would quit or--or I would fire him.

21 Q. Why would you fire him?

22 A. Just got out of hand after a while. I just--you know, I
23 don't know if he was drinking or what. I just couldn't deal with

1 him, you know, stubborn, hardheaded, abrasive, and I just had to
2 let him go, you know.

3 Q. Sure. You just mentioned drinking. Do you know if he--what
4 was your policy on your boat--on your boats as far as drinking
5 while operating a vessel?

6 A. Oh, I didn't want anybody drinking on my boat, especially
7 when they're operating.

8 Q. So that was your--your policy for your boats?

9 A. Yes. Still----

10 Q. Did--sorry, go ahead.

11 A. I said it still is.

12 Q. Understood. Do you--did you ever let Mr. Biernacki go from
13 your employment because he was drinking?

14 A. Well, he drove the boat--it seemed like he was intoxicated
15 during the day when we were at the dock at times.

16 Q. So did you ever fire him for that?

17 A. Maybe in a roundabout way, yeah.

18 **LIO:** Okay. Some of my--I understand. Thank you. Some of my
19 other investigators have some follow-up questions.

20 **TA:** Good morning, sir. Thank you for being here available via
21 Skype. I have a follow-on question to the Commander.

22 **Questions by the technical advisor:**

23 Q. Have you employed other captains to operate your vessels?

1 A. Yes.

2 Q. Did you ever fire them?

3 A. Oh, yes. I've fired other captains, yes.

4 Q. Under what conditions do you let your employees go?

5 A. Not doing the job, not showing up. I mean, numerous reasons,
6 not--not [indiscernible], not taking care of the boat, not--not
7 catching fish.

8 **TA:** Thank you, sir.

9 **AIO:** Mr. Brewster, can you hear me?

10 **WIT:** Yes.

11 **AIO:** Thank you for your patience. I have two follow-up
12 questions.

13 **Questions by the assistant investigating officer:**

14 Q. Did you ever have or experience any issues getting a hold of
15 Mr. Biernacki on the radio while he was operating vessels for
16 you?

17 A. Not that I remember. It would--it would be through the sat
18 phone if I tried to call the boat. They don't always--all the
19 captains don't always answer all the time I call.

20 Q. Earlier you alluded to the fact that--you stated that he
21 was--he could be demanding, and you used that term.

22 A. Just--he just was tough on the crew, demanding, you know,
23 abrasive at times, you know, maybe even unreasonable----

1 Q. Can--sorry, go ahead.

2 A. If you get a greenhorn on the boat who might be
3 inexperienced, you know, you got to teach them. He's just too
4 deman--you know, too demanding for someone who doesn't know what
5 they're doing.

6 Q. Understood. So you're stating that more in terms of level of
7 patience?

8 A. Yeah, I guess you could say that.

9 Q. What about in terms of safety of operations?

10 A. He seemed safe. He seemed safe, yes.

11 Q. One more follow-up question regarding the topic of drinking.
12 Did you ever hear reports of alcohol consumption by Mr. Biernacki
13 while underway?

14 A. Yeah, rumors, yes.

15 Q. Was that from the crew members?

16 A. After the fact, from people on the dock, other crew members.

17 **AIO:** Thank you, sir.

18 **LIO:** Mr. Reilly?

19 **PIIC:** Just a moment, sir.

20 **CROSS-EXAMINATION**

21 **Questions by the party-in-interest counsel:**

22 Q. Mr. Brewster, good afternoon.

23 A. Good afternoon.

1 Q. What was the size of the ABBY & HOLLY?

2 A. Fifty-foot.

3 Q. How about the EAGLET II?

4 A. Fifty-five-foot.

5 Q. Long-linger--can you describe the typical length of a voyage
6 on a long-liner?

7 A. A week. Basically a week, give or take, up to 2 weeks.

8 Q. It's my understanding that Mr. Biernacki was the master on
9 the EAGLET II in February of 2007. You were the owner of the
10 EAGLET II at that time?

11 A. Yes, I was.

12 Q. Do you have any knowledge of a rescue involving the EAGLET II
13 and the--a fishing vessel called the PROVIDER?

14 A. No, I do not.

15 Q. Okay, there was a--a newspaper article that I provided the
16 board about a--an offshore rescue where the EAGLET II took the
17 PROVIDER in to tow in 40-to-50-knot gusting winds and 20-to-25-
18 knot--excuse me, 20-to-25-knot--foot seas. Any recollection of
19 that?

20 A. I don't think that ever happened. I don't remember that, no.
21 I think I would have remembered that.

22 Q. What's the local newspaper there in Barnegat Light that
23 provides fishing vessel-related stories?

1 A. The *SandPaper*, maybe.

2 Q. Excuse me?

3 A. *SandPaper*.

4 Q. All right. Well, I'll go ahead and when we're done with
5 this, I'll fax you a copy of this story that has all the details.

6 A. I do--now that you've brought it up, I remember reading--
7 reading that somewhere recently, and I just don't recall that at
8 all.

9 Q. Okay.

10 A. I mean, it--it could have had the name wrong of the boats.

11 Q. Well, it had Stephen Biernacki and the EAGLET II. Do you--do
12 you remember somebody named Lance McClellan [ph] as the skipper
13 of the PROVIDER?

14 A. No, I don't.

15 **PIIC:** All right, thank you.

16 **LIO:** Any further questioning from the board?

17 [No response.]

18 **LIO:** Mr. Brewster----

19 **WIT:** Yes.

20 **LIO:** ----you are now released as a witness from this formal
21 hearing. Thank you for your testimony and cooperation. If I
22 later determine that this board needs additional information from
23 you, we will contact you through our counsel. If you have any

1 questions about this investigation, you may contact the
2 investigation recorder, Lieutenant Luke Woods. Thanks again for
3 making the drive out. We appreciate it.

4 **WIT:** All right, thank you.

5 **PIIC:** Commander, can we go ahead and make--allow me to provide a
6 copy of that newspaper article to the board? Just goes to the--
7 the--the memory of that last witness.

8 **LIO:** I'll have to discuss that with you separately.

9 **PIIC:** Sure.

10 **LIO:** Okay. We're going to go ahead and take a short recess--
11 actually, hold on one second. Well, it's 1317 and that was our
12 last witness. So we had some handicaps. We're going to have
13 some extra testimony later on this week. We're going to go ahead
14 and--and conclude today's hearing and we will reconvene the
15 hearing at 8:00 a.m. tomorrow, Wednesday, May 16th--the 15th, I'm
16 sorry, not the 16th, because the 15th is tomorrow. So belay my
17 last. So 8--13--I'm sorry, 1:18 p.m., for the record, and we
18 are--we are dismissed.

19 [The hearing recessed at 1:19 p.m., 14 May 2019.]

20 **[END OF PAGE]**

21

22

23

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 15 May 2019

4 WITNESS: CARL BJORNBERG

5 [The hearing was called to order at 8:00 a.m., 15 May 2019.]

6 **LIO:** Good morning. This hearing will come to order. Today is
7 Wednesday, May 15th and the time is 8:00 a.m. We are continuing
8 at the Newport City Hall in Newport, Oregon.

9 Good morning, ladies and gentlemen. I am Commander Karen
10 Denny, United States Coast Guard, and the executive officer of
11 Marine Safety Unit Portland, Oregon. I'm the lead investigating
12 officer for the Thirteenth Coast Guard District's formal
13 investigation into the events leading to the loss of the fishing
14 vessel MARY B II and the loss of three lives, and I am the
15 presiding officer over these proceedings.

16 The Commander of the Thirteenth Coast Guard District, Rear
17 Admiral Throop, has convened this investigation under the
18 authority of Title 46, United States Code Section 6301, and Title
19 46, Code of Federal Regulations, Part 4, to investigate the
20 circumstances surrounding the sinking of the commercial fishing
21 vessel MARY B II with the loss of three lives on January 8th,
22 2019 while attempting to cross the Yaquina Bay bar and enter the
23 port of Newport, Oregon during the hours of darkness.

1 I am conducting the investigation under the rules of 46 CFR
2 Part 4.

3 The investigation will determine, as closely as possible,
4 the factors that contributed to the incident so that proper
5 recommendations for the prevent--prevention of similar casualties
6 may be made, whether there is evidence that any act of
7 misconduct, inattention to duty, negligence or willful violation
8 of the law on the part of any licensed or certificated person
9 contributed to the casualty, and whether there is evidence that
10 any Coast Guard personnel or any representative or employee of
11 any other government agency or any other person caused or
12 contributed to the casualty.

13 I have previously determined that there is a party in
14 interest for this investigation, and that party in interest is
15 MARY B II LLC, owner of the MARY B II. The legal counsel for the
16 MARY B II LLC is Mr. Chris Reilly. Sir?

17 **PIIC:** Good morning, Commander. Chris Reilly of Nicoll, Black &
18 Feig appearing on behalf of fishing vessel MARY B II LLC. Thank
19 you.

20 **LIO:** This party has a direct interest in the investigation and
21 has demonstrated the potential for contributing significantly to
22 the completeness of the investigation or otherwise enhancing the
23 safety of life and property at sea through participation as a

1 party in interest.

2 All parties in interest have a statutory right to employ
3 counsel to represent them, to cross-examine witnesses, and to
4 have witnesses called on their behalf.

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

12 These proceedings are open to the public and to the media.
13 I ask for the cooperation of all persons present to minimize any
14 disruptive influence on the proceedings in general and on the
15 witnesses in particular. Please turn your cell phones off and--
16 as well as other electronic devices to off or silent or vibrate
17 mode. Please do not enter or depart the hearing room except for
18 periods or--of recess. Flash photography will not be permitted
19 during this opening statement and--will be permitted only during
20 this opening statement and during recess periods.

21 The members of the press of course are welcome and an area
22 has been set aside for their use during the proceedings. The
23 news media may question witnesses concerning the testimony they

1 have given after I have released them from these proceedings. I
2 ask that such interviews be conducted outside of this room.

3 Since the date of the casualty, the Coast Guard has
4 conducted substantial evidence collection activities and some of
5 that previously collected evidence will be considered during
6 these hearings.

7 Should any person have or believe that they--he or she has
8 information not brought forth which may be of direct
9 significance, that person is urged to bring that information to
10 my attention by e-mailing accidentinfo@uscg.mil and, during the
11 hearing, at MARYBII--so that's M-A-R-Y-B-I-I--.uscg@gmail.com.
12 Thank you.

13 We will take a very short 3-minute break to ensure our
14 technology is squared away and then we will call our first
15 witness. Actually, a short delay, we--we are going to take a 10-
16 minute break--10-minute recess. It's 8:05 and we're going to
17 take 10 minutes. We'll reconvene at 8:15.

18 [The hearing recessed at 8:06 a.m., 15 May 2019.]

19 [the hearing was called to order at 8:12 a.m., 15 May 2019.]

20 **LIO:** The time is now 8:12, and we will reconvene this hearing.
21 We will now hear testimony from Mr. Bjornberg. His testimony is
22 coming to us remotely. He is currently at Station Barnegat
23 Light. Mr. Woods?

1 **CARL BJORNBERG was sworn and testified via remote link-up as**
2 **follows:**

3 **DIRECT EXAMINATION**

4 **Questions by the recorder:**

5 Q. Sir, please state and spell your full name.

6 A. My name is Carl Bjornberg, with a C, C-a-r-l,
7 B-j-o-r-n-b-e-r-g.

8 Q. Sir, please state your current employment and position.

9 A. I'm captain of the fishing vessel KILL SHOT [ph]. Right now
10 we're out of South Carolina.

11 Q. Please state any education or training related to your
12 profession.

13 A. I've been doing this since 1981, since I got out of the
14 Navy--U.S. Navy.

15 Q. And please state any professional licenses or certificates
16 related to your profession.

17 A. I have none, just an operator's permit.

18 [Interruption by background discussion on remote connection.]

19 **REC:** At this time, sir, I will begin my primary line of
20 questioning. Mr. Bjornberg, thank you for appearing today at
21 this hearing. All of my questions are related to the time frame
22 prior to the loss of the crew and fishing vessel MARY B II. If
23 you would like to take a break at any time, please let us know.

1 We will explore these broad topic areas: your general background
2 in the commercial fishing industry including any time you
3 operated a vessel, your professional interaction with Mr.
4 Biernacki, and your assessment of his vessel operation experience
5 including safety issues, specific geographic areas he operated in
6 and challenges to vessel operations, types of vessels operated
7 and negative issues related to vessel operation.

8 Q. Mr. Bjornberg, have you personally navigated the Barnegat
9 Inlet waterway on a commercial vessel?

10 A. Yes, I have.

11 Q. Can you please reference the chart on the wall I believe
12 that's in front of you and demonstrate how mariners navigate in
13 and out of the Barnegat Inlet.

14 A. Yes, sir. We usually go--the boats draw a little too much
15 water usually. So we don't go straight out the channel. We go
16 around the north jetty.

17 Q. Sorry, Mr. Bjornberg, can you please stand over by the--over
18 by the chart.

19 A. Yes.

20 **LIO:** Ask BM1 to----

21 **REC:** Sir, is there someone that can rotate the camera? I
22 thought there was someone----

23 **UNIDENTIFIED SPEAKER:** Yes--yes, sir, we're doing it right now.

1 **REC:** Roger. Thank you.

2 **UNIDENTIFIED SPEAKER:** I'm just going to shut off the camera for
3 a second while we reposition. Should be all set now.

4 **REC:** It's all set. Thank you.

5 Q. So, Mr. Bjornberg, can you please demonstrate now how
6 mariners typically **navigate** in and out of the Barnegat Inlet.

7 A. Yes, sir. We usually come straight down along the north
8 [indiscernible] jetty and we come out around the north jetty, go
9 hard to port, go right around the end of the north jetty because
10 there's [indiscernible] water there than there is in the channel
11 because it's such long--you've got [indiscernible] on both sides.
12 So we usually just go out that way. That's the deepest part.

13 Q. Understood. And do you also enter the same path?

14 A. Yes, we do. Yes, we do.

15 Q. Mr. Bjornberg, when experiencing harsh or dangerous weather
16 conditions, is it common for the Coast Guard to conduct vessel
17 escorts into the inlet?

18 A. Not usually. All [indiscernible] trying to tow somebody in,
19 which we've had [indiscernible] tow boats in through there, you
20 know [indiscernible]. That's the only time we usually have a
21 Coast Guard escort.

22 Q. Understood, sir. If you'd like, you can return to the table
23 where you were previously sitting. Sir, what was the time frame

1 or time frames that you employed Mr. Biernacki?

2 A. I employed Steve when he was 16 years old, real close to
3 that. He worked for me for probably 10 years--probably at least
4 10 years.

5 Q. Sir, what were the names of the boats that Mr. Biernacki
6 worked on?

7 A. My boat, the fishing vessel BJORN II, and he worked on the
8 fishing vessel GOFORIT. Both of those boats I owned and a lot of
9 other boats, LORI L. Trying to think of all--APRIL McCALL [ph]--
10 quite a few boats--LINDA CAVLIN [ph] and the EAGLET. That's all
11 I can remember right offhand.

12 Q. Sir, the GO FOR IT, is that one word, GOFORIT--combined in
13 one word?

14 A. Yes, all one word, GOFORIT.

15 Q. And the last boat, the EAGLET, that's just EAGLET?

16 A. EAGLET II [indiscernible].

17 Q. And, sir, were these boats considered single-screw or double-
18 screw boats?

19 A. They were all single-screw.

20 Q. What positions did Mr. Biernacki fill while under your
21 employment?

22 A. When he first came, he was like the first mate, as he was
23 growing up, and then he could take--he was captain of the BJORN.

1 He made one trip on the BJORN[indiscernible] as captain. And
2 then we bought the GOFORIT. So he was captain of the GOFORIT for
3 probably a few months, fished out of South Carolina.

4 Q. Sir, in addition to South Carolina, what specific geographic
5 areas did Mr. Biernacki work for--work for you in?

6 A. Mostly Barnegat Light--Barnegat Light, you know, all the
7 [indiscernible] right up the coast here. He used to like to fish
8 [indiscernible].

9 Q. And where specifically in South Carolina?

10 A. Right in Charleston.

11 Q. And, sir, how would you describe Mr. Biernacki's overall
12 competency with regards to seamanship, ship handling and decision
13 making as a vessel master?

14 A. His handling as a fisherman, he was great. He was great. He
15 fished hard. He fished hard and sometimes you have to be a
16 little--a little nasty, a little too nasty--maybe he wasn't a
17 good decision maker on that--otherwise he was a hard fisherman.
18 He--he would get the job done. Just sometimes he would be a
19 little--little too nasty.

20 Q. So you said he was great. Can you--do you have any examples
21 on things that he did was--that was good or positive that you
22 could provide for us?

23 A. As far as what now?

1 Q. Sir, just do you have any examples of him being a good
2 fisherman? You said he was great. I was just wondering if you
3 could expand a little bit on that.

4 A. Yeah, he was a hard fisherman. I mean, he--he fished hard.
5 You know, he was out there to do his job and he did his job.
6 Sometimes decisions weren't, you know--it would just get too
7 nasty. Some like to fish rougher weather than others, but
8 [indiscernible]. Otherwise he was--as far as I could tell, he
9 was--he was on it. He was--he was--he was a hard fisherman.

10 Q. And, sir, how did dangerous weather conditions factor into
11 his decision-making process with regards to being underway?

12 A. You know, he was--you had the feeling that if he was--you
13 know, if he was out there, you know--if you get weather for a
14 couple days or a day, he would leave anyway. So he was the first
15 one out there to fish. Everybody else would be taking off, but
16 he'd be there waiting to go as soon as the weather dropped out.
17 We've all done that. That's the way it is. Sometimes you have
18 to do that. But otherwise he fished [indiscernible]. I mean, he
19 was--he was on it. The crew didn't like it sometimes, but
20 that's--that's the way it is.

21 Q. Sir, do you know of any--do you know of any bar or inlet
22 crossing experience that Mr. Biernacki has specifically with
23 harsh weather conditions?

1 A. No, only [indiscernible] coming in and out of Barnegat Light.
2 Not now but years ago it was bad. He was on it. He knew. He
3 knew where not to go, you know, not [indiscernible] channel or
4 anything like that. You know, we'd have to pick [indiscernible].
5 Otherwise he was confident--he knew it--knew better not to try to
6 go across the shoal or anything like that.

7 Q. Mr. Bjornberg, do you know of any safety issues involving any
8 underway operations with Mr. Biernacki?

9 A. [Indiscernible] down in Charleston we had a little problem,
10 you know. I guess the boat left the dock and everybody went to
11 sleep. I think the Coast Guard has got a record of that. They
12 had to send the heli--I guess the helicop--somebody pulled the
13 EPIRB [indiscernible]. One of the crew members pulled an EPIRB
14 at the time and the boat was just laying to. So the Coast Guard
15 came out and I think they dropped a swimmer in the water, and he
16 swam to the boat, got on the boat, woke everybody up. I'm sure
17 there's a record of that. That's all I know.

18 Q. Sir, did you say that boat was moored at the dock?

19 A. No, the boat was underway, on the way out.

20 Q. Sir, are you aware of any marine casualties that Mr.
21 Biernacki may have been involved in such as vessel groundings,
22 vessel collisions, losses of propulsion?

23 A. Groundings, yeah. I guess LORI L was on the beach right here

1 in Barnegat Light [indiscernible]. That's about the only one I
2 know of.

3 Q. Do you have any direct knowledge of substance usage by Mr.
4 Biernacki while operating a commercial vessel?

5 A. No. No, we just kept an eye on him, but the--I never seen
6 [sic] anything.

7 Q. Mr. Bjornberg, is there anything else that you would like to
8 tell us that we haven't already discussed?

9 A. Not really. Mr. Biernacki was a hard fisherman. I mean,
10 he--he knew--he knew what he was doing, I thought.
11 [Indiscernible] he worked for me for quite a few years. I know
12 it's different out there. It's different everywhere, but as far
13 as here, he was--he was on top of it. That's all I knew.

14 **REC:** Thank you for your testimony, sir. I have no further
15 questions.

16 **WIT:** All right.

17 **LIO:** Okay. Mr. Bjornberg, hi, my name is Commander Karen Denny,
18 and we do have a few additional questions from members of the
19 investigation. Ms. Bigay?

20 **AIO:** Good morning, Mr. Bjornberg. Can you hear me okay?

21 **WIT:** Yes, I can.

22 **Questions by the assistant investigating officer:**

23 Q. You mentioned Mr. Biernacki was a great fisherman and a--that

1 he fished hard. You hired him to operate one vessel and then you
2 mentioned there was another vessel and he moved on to work with
3 you on that vessel as well, correct?

4 A. Yes.

5 Q. Expanding on your previous testimony of what made him great,
6 can you elaborate on his safety mindset while operating your
7 vessels?

8 A. Yes, he ran--he ran the big boat, which was an 80-foot long-
9 liner. He ran that for one trip [indiscernible]. So that was--
10 that was kind of like the--that was the last trip he took on that
11 as far as being captain. I'm sure there was a couple more, you
12 know, where he went out in the bay, but--then he ran the GOFORIT.
13 That was when we had the boat incident there [indiscernible]
14 Charleston, but that was the [indiscernible] had to let Steve go
15 at that time--we let him go because of all the--you know, what
16 went on. So we figured we had to let him go, and I wrote a long
17 letter to the commander of the Coast Guard in Charleston. We
18 were getting ready to get a big fine for somebody pulling the
19 EPIRB and nobody being up.

20 Q. Sir, regarding that incident and just to clarify, you--you
21 mentioned the EPIRB--can you say again what happened that had to
22 do with an EPIRB and for the--for the benefit of the public, I
23 would just like to reiterate, EPIRB is an emergency position

1 indicating beacon. Can you clarify again what--what happened
2 involving that EPIRB?

3 A. As far as I know, what I was told by the Coast Guard, that
4 the boat was laying to. Somebody pulled the EPIRB--one of the
5 crew members pulled the EPIRB, set it off. And then everybody
6 went to sleep. That's what I was told. I wasn't on the boat. I
7 was on shore. I was running the other boat. So--so we were at
8 the dock at the time. They contacted me, let me know the EPIRB
9 was going off. That's when they told me that they had the
10 swimmer--swimmer went to the boat to get everybody up. So that
11 was kind of a [indiscernible]. That was--he was done then. I
12 think he--he might have made two more trips--just fill-in trips
13 with me after that, but that was it. That was----

14 Q. Understood.

15 A. ----his employment was over then.

16 **LIO:** Mr. Bjornberg, I just need to ask a question there. I need
17 to understand.

18 **Questions by the lead investigating officer:**

19 Q. As the owner of that vessel, you said that that was the last
20 trip he made as captain after that incident.

21 A. Yes.

22 Q. Can you explain to me why you chose--what your decision
23 making was in removing him from the captain position.

1 A. Well, one incident that's--we didn't--we're not going to put
2 up with that again. We can't have that. I don't want anybody on
3 the boat like that, you know. [Indiscernible] Evidently they
4 were drinking or whatever, I don't know what was going on.

5 Q. So----

6 A. They left the dock, they were fine. So---

7 Q. Drinking?

8 A. I guess so. I mean, that's what they said. That's what the
9 Coast Guard told me--something that was going on. So I don't
10 know if there's a report on that or whatever, but that's what I
11 was told. I just ended the thing there because, you know, it was
12 a healthy fine. We don't need any--we don't need that. We don't
13 need any of that on the boat.

14 LIO: Okay. Okay, go ahead. Did you have more questions?

15 **Questions by the assistant investigating officer:**

16 Q. Yes Ma'am. Mr. Bjornberg, just on the topic of this incident,
17 did you follow up with Mr. Biernacki regarding this incident and-
18 -and--and what happened?

19 A. As far as on the GOFORIT?

20 Q. The EPIRB incident.

21 A. Yes. I mean, I--this was what was I was told by the Coast
22 Guard when they contacted me that my EPIRB was going off. So I
23 know that a swimmer came over and got on the boat. I think he

1 was escorted in to Cherry Point, which is just south of
2 Charleston.

3 Q. Understood. So my question goes more to whether you followed
4 up with Mr. Biernacki and--and what his response was to the
5 incident. Maybe there was a reason.

6 A. There didn't seem to be a reason. I don't know. I don't
7 know why--I have no idea what went on. All I know is that's what
8 they told me that went on and that they had to do what they had
9 to do. I had to go talk to the Coast Guard commander there. I
10 wasn't on the boat. I don't know. I mean, I was at the dock
11 with the other boat. So---

12 Q. Earlier you alluded to the crew that went out fishing with--
13 with Mr. Biernacki maybe not appreciating him taking risks. As
14 far as you know, as a person who employed him, the risks that he
15 was taking, were some of them reasonable?

16 A. These are--you know, he'd found an all-green crew. You know,
17 it was really new guys. So they probably--they never **were asked**
18 [indiscernible]. So they--I guess they were kind of freaked out.
19 I don't know what--what--I don't know exactly what went on. I
20 don't know, but I know it was a fresh crew and that's all I know.
21 It's been a while ago--it's been a long time ago. So I'm not
22 exactly sure.

23 Q. Understand. Do you remember what year that happened?

1 A. No. Probably early 2000s. That's when we had the GOFORIT.

2 Q. Okay. I have one last question, Mr. Bjornberg. Earlier in
3 your testimony you said--you were asked a question regarding
4 substance abuse, and your response was that you kept an eye on
5 that. Can you elaborate on why? What do you mean by keeping an
6 eye?

7 A. Oh, we always keep an eye on everybody, check on how--he was
8 always--he had little problems and then, you know, he goes and
9 gets--he straightened out. If he could, [indiscernible], you
10 know, when people say that, that they're not on it, you know,
11 they're not using or anything anymore. I would keep an eye on
12 him. You know, that's it.

13 Q. Understood. I just want to clarify. When you say keeping an
14 eye, you mean you keep an eye across the board, whether or not
15 the operator happens to be Mr. Biernacki. You just keep an eye
16 on all of your operators or----

17 A. Yes.

18 Q. ----was there a specific thing with Mr. Biernacki that made
19 you keep more of an eye?

20 A. No. No, we keep an eye on all of them, you know, because you
21 don't want people [indiscernible]. We don't want them to
22 endanger the crew at all, that's for sure. That's the way it is.
23 So--but we didn't give them any drug tests or anything like that

1 at that time, but you could usually say if somebody--you can tell
2 by their face--their face tells.

3 **LIO:** Mr. Bjornberg, this is Commander Denny again. I have a few
4 questions.

5 **Questions by the lead investigating officer:**

6 Q. I couldn't help but hear that you mentioned a couple
7 qualifiers. So you said that you never saw anything when--in the
8 context of drug use. Did you ever hear about anything?

9 A. Yeah, you hear. That's why I kept an eye on it.

10 Q. Okay. And what did you hear, sir?

11 A. Well, I just heard that, you know, he was using whatever--
12 smoked pot or something. That's--you know, that's the--that's
13 it. I just didn't--we had no heroin addicts or anything like
14 that on the boat. We don't need any of that, and he wasn't one
15 of them to do that.

16 Q. He wasn't one of those to do--I'm sorry, what, sir?

17 A. Any of those--usually it's one of the hard drugs. We don't
18 really want to--in his spare time if he wants to smoke pot,
19 usually, or stuff like that, that's fine, but any hard drugs or
20 anything, you can tell usually by the face. You know, we
21 wouldn't let them go.

22 Q. Sir, you also mentioned--at another point in the conversation
23 you said he had a little problem. What did you mean by that?

1 A. Yeah, once in a while he smokes pot. That's all. But
2 otherwise, you know, who knows. I don't know. I wasn't with
3 him. I didn't stay with him or live with him or anything. When
4 they're off the boat, they're off the boat.

5 Q. We've heard in previous testimony that--that Mr. Biernacki
6 was sole or part owner or operated a vessel named the MARY B.
7 Are you aware of that?

8 A. He was part owner of the MARY B?

9 Q. That he was connected to a vessel called the MARY B--fishing
10 vessel----

11 A. Yes.

12 Q. ----MARY B?

13 A. Yes.

14 Q. Do you know about that vessel, sir?

15 A. The one from Barnegat Light?

16 Q. Yes, sir. Do you know what--do you know how long he operated
17 that vessel, sir?

18 A. It was a couple years--couple years--that was it. We didn't
19 employ him at that time. He had his own boat. So I really--we
20 didn't--we didn't chat much. You know, he was just fishing,
21 fishing hard when he had that boat.

22 Q. So what--what happened to that boat? Do you know, sir?

23 A. I--I don't know what happened. It was sold. I don't--I

1 don't know the circumstances of what exactly happened. All I
2 know is the boat was sold. It's still around here, just a
3 different name.

4 Q. Do you know in general terms? You said you don't know all
5 the details, but do you know in general terms?

6 A. I don't know exactly how he lost it, you know, if he didn't
7 make his payments. I'm not sure. I don't know.

8 Q. You also mentioned the grounding of the LORI L. Can you
9 please expand on that?

10 A. The LORI L was on the beach. [Indiscernible] I guess they
11 got done late hauling gear and everybody went to sleep. Nobody
12 stood watch. So it came 80 miles offshore and went to the beach.

13 Q. Mr. Bjornberg, you--was--and how was Captain Biernacki
14 connected to that? Was he the operator of the vessel at that
15 time?

16 A. Yes, he was. Yes, he was the captain.

17 **LIO:** Okay ~~Great~~. Thank you. Any additional questions from the
18 panel?

19 [No response.]

20 **LIO:** Mr. Reilly?

21 **PIIC:** Just a moment, sir.

22 //

23 //

CROSS-EXAMINATION

Questions by the party-in-interest counsel:

Q. Mr. Bjornberg, good morning. Thanks for appearing. I just want to make sure we're clear on the record. The LORI L was about 25 years ago, that incident?

A. Probably is. Probably is that far.

Q. And the GOFORIT incident could be as--17, 18 years ago?

A. Yes.

Q. When a vessel like the LORI L is underway, is there typically a rotation between the crew members as far as who stays up and who is responsible for maintaining the watch?

A. Yes, that's the way it usually works.

Q. Fair to say you don't have any information that you can share with the board regarding who is the crew member on the LORI L who was maintaining the watch while whoever else was on board was asleep?

A. I have no idea who was on watch. I think the crew was on deck cleaning up and Steve laid down and they were supposed to be doing watches. I think they all just went inside and went to sleep.

PIIC: Okay. Thanks, Mr. Bjornberg.

WIT: Yes.

//

Under 46 U.S. Code§6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II

2 held in Newport, Oregon

3 on 15 May 2019

4 WITNESS: RYAN MORGAN

5 [The hearing was called to order at 8:57 a.m., 15 May 2019.]

6 **LIO:** Okay, ladies and gentlemen, the time is 8:57. We are
7 reconvening this public hearing. We will now hear testimony from
8 our next witness, Mr. Ryan Morgan, who is the previous employer
9 of Mr. Biernacki. Mr. Morgan, please come forward to the witness
10 table and Lieutenant Woods will administer your oath and ask you
11 some preliminary questions.

12 **RYAN MORGAN was sworn and testified as follows:**

13 **DIRECT EXAMINATION**

14 **Questions by the recorder:**

15 Q. Sir, please state and spell your full name.

16 A. Ryan Morgan, R-y-a-n, M-o-r-g-a-n.

17 **REC:** Sir, can you press the key on the mic. You'll have to hold
18 it, I think, while you're----

19 **LIO:** Sir, it's a push-to-talk, but we can--we can switch that if
20 you prefer.

21 **WIT:** Oh, no, this is fine. It's Ryan Morgan, R-y-a-n,
22 M-o-r-g-a-n.

23 Q. Please state your current employment and position.

1 A. I own and operate four vessels here in Newport, Oregon.

2 **REC:** Sir, just if you can, if you can try to talk kind of
3 directly into the mic so that the audience can hear. We
4 appreciate it. Thank you.

5 Q. Please state any education or training related to your
6 profession.

7 A. I have no certifications.

8 **REC:** At this time Lieutenant Commander Foster will begin her
9 primary line of questioning.

10 **TA:** Good morning, sir, and thank you for appearing here today.

11 **WIT:** Good morning to you.

12 **Questions by the technical advisor:**

13 Q. Although you just stated that you are the owner of four
14 vessels, for the record, I need to ask, what is your affiliation
15 with the commercial fishing vessel community on the whole?

16 A. I am the owner of the vessels. I have a partner, Joe, that
17 oversees the operations of the vessel. I manage the business
18 side.

19 Q. And at any time, sir, have you been a crew member, captain,
20 operator of any commercial fishing vessels?

21 A. Certainly I play a fill-in role when we're missing a deck
22 hand or somebody shows up--doesn't show up.

23 Q. Yes, sir.

1 A. I play a fill-in role.

2 Q. And how long have you been involved with the fishing vessel
3 community at large?

4 A. I purchased my first vessel in 2009.

5 Q. And before that?

6 A. Before that I owned a roofing company.

7 Q. What kind of fishing is done out of Newport, Oregon?

8 A. Well, we participate in five different fisheries. Three of
9 the boats are crab boats. One of them is just a salmon/tuna
10 boat. We also long-line black cod and we do some--we do the
11 commercial halibut openers and we do salmon and tuna.

12 Q. Are those fisheries seasonal or do they--are they open year
13 round?

14 A. They are seasonal.

15 Q. And with respect to your vessels, what kind of fisheries do
16 you fish for--do your vessels fish for?

17 A. We do five different fisheries, and each vessel has the
18 fisheries that they participate in, like the MISS NICANI will do
19 crab and tuna. The ALCOR only does salmon and tuna. The RANGER
20 does crab, black cod, halibut, salmon and tuna. So we
21 participate in them with five different boats--four different
22 boats, I'm sorry.

23 Q. Thank you. Are you aware of any special weather

1 considerations unique to operating fishing vessels in the Pacific
2 Northwest?

3 A. Well, we certainly keep an eye on the weather and, you know,
4 our maximum that we try to look at is, you know, we generally
5 don't fish in conditions where the wind is above about 25 miles
6 an hour and 10-foot seas combined. That's kind of our threshold.

7 Q. And when you say "we", that's yourself and your partner or
8 you, the fishing vessel community?

9 A. Well, those are what we live by. Those are standards,
10 really, that Joe has set. Those are really Joe's calls.

11 Q. May I ask why you chose those limitations?

12 A. Well, Joe has been a fisherman for a number of years, you
13 know. He's my age. I think he's fished 30 years, and I--when it
14 comes to the operations of the boats, that is solely Joe's turf.
15 I don't--I don't step on toes on that--in that regard.

16 **TA:** Understood. Lieutenant Woods, please display Coast Guard
17 Exhibit 003, page 1. For the benefit of the public, Mr. Morgan,
18 I am going--my apologies, page 2--I am going to display the
19 hazard areas around Yaquina Bay. This is solely at this point,
20 Mr. Morgan, for you and I to be able to discuss certain areas, if
21 you wish. Do you have a laser pointer in front of you?

22 **LIO:** We'll get you that laser pointer in just a second.

23 **TA:** In the event that you would like to highlight anywhere

1 specific on the chart, I would ask you to do it on the display
2 behind me.

3 **WIT:** Thank you.

4 **TA:** And, sir, if you need us to zoom in on any portion,
5 Lieutenant Woods has that ability.

6 Q. Based on your experience, if a person was new to this area
7 and intended to fish for any of those fisheries, what precautions
8 might you give them with respect to the Yaquina Bay bar?

9 A. Well, first and foremost, I would tell somebody to, you know,
10 talk to a lot of fishermen around here, get some perspective on--
11 on what goes on out there. Most crossings, to my knowledge,
12 happen more on the south side of the bar than the north.

13 Q. And why is that, sir?

14 A. Well, the north side is known as the dumping grounds, and
15 it's a pretty hazardous area.

16 Q. For the sake of public record, can you explain dumping
17 grounds and how they came to be.

18 A. That if things go wrong, it's going to dump you on the beach,
19 was always my understanding.

20 Q. Do you know of any dredge spoil areas, dumping dredge spoil
21 areas in this area?

22 A. I am not familiar with any, no.

23 Q. How do you find and hire operators for your vessels? And by

1 operators I mean captains specifically at this time.

2 A. Again, that's Joe's area. Joe generally comes up with
3 captains.

4 Q. Okay.

5 A. He's done on the docks a lot and he interacts with the people
6 down there.

7 Q. Oh, and for the record, sir, you've mentioned Joe. Can we
8 get the first and last name of Joe.

9 A. Joe Thompson.

10 Q. Okay. Is he present here today?

11 A. He is not.

12 Q. You had said that Joe is down--Mr. Thompson is down on the
13 docks. Is that a normal hiring practice in this area?

14 A. Yes.

15 Q. Okay. So my understanding is if someone needs a job, they're
16 new to the area, they approach people along the docks and say,
17 "Do you have an opening?" or can you help me understand that?

18 A. Well, with deck hands that's certainly the way it happens,
19 for the most part. There is a certain transience--that goes on
20 with deck hands. There's a lot of movement of deck hands. And,
21 you know, captains have come along that have known that we have
22 boats and, you know, we have some turnover and we generally check
23 into boats they've operated before and that type of stuff.

1 Q. Okay. If someone is new on this coast, how--a captain, for
2 example, how would you check into previous employers, like if
3 it's not someone that you know here locally?

4 A. You know, I don't know that I've ever had that situation.
5 So, you know, I rely heavily on Joe----

6 Q. Sure.

7 A. ----and Joe's judgment.

8 Q. So when you hire a captain, is there a normal length of span
9 a captain will work for you? Is it season by season or do you
10 engage people contractually for X amount of trips? Help me
11 understand that.

12 A. Well, I certainly prefer to hire a captain that's going to
13 operate the vessel year round, but things the way they are, you
14 know, I have a lot of captains that will sign on for tuna season.

15 Q. Okay.

16 A. You know, so we will go with season at a time, if necessary.

17 Q. Okay. So with that in mind, is there an average span of time
18 that captains normally work for you?

19 A. Well, Joe has been with me 10 years, and I've had captains
20 that went as little as one trip.

21 Q. Understand. What kind of training or experience do you look
22 for when hiring crew and captains on board your vessels?

23 A. Again--again I'm going to defer a lot of this to Joe. Joe

1 has a lot of Coast Guard certification safety things and, again,
2 I see that as his domain and I rely on Joe for that.

3 Q. Okay. With respect to your vessels, what kind of safety gear
4 do you--do you require to be carried on board your vessels?

5 A. There's certainly a list of safety gear. We're in compliance
6 with all the safety codes--with the Coast Guard safety stuff. We
7 have Coast Guard inspections all the time and, you know,
8 there's--from EPIRBs to flare kits to life rafts. You know,
9 there's--they're set up to meet the standards required.

10 Q. How do you ensure that those standards are being enforced on
11 your vessels?

12 A. Well, like the life raft, a lot of that stuff is date-stamped
13 as to when it expires and needs to be renewed. So, you know,
14 periodically I have a list of when rafts are due to be renewed
15 and that type of stuff. So we just kind of work at it that way.

16 Q. Do you require your captains to conduct safety drills?

17 A. Yes, Joe does.

18 Q. And how do you ensure those drills were, in fact, carried
19 out?

20 A. Just in discussions with Joe.

21 Q. Do you document those drills?

22 A. We do not.

23 Q. Are you required to?

1 A. I do not believe that we are, but it could be possible.

2 Q. Does your company conduct drug or alcohol testing on your
3 employees?

4 A. We have on specific occasions.

5 Q. Can you expand on the reason why that's not more uniform?

6 A. It probably should be more, but we really have gone more at
7 it when we thought there was an issue that we needed to address.

8 Q. Is the lack of drug and alcohol testing typical of vessel
9 owners?

10 A. I would think that's really boat-by-boat situation and all
11 owners and captains are different, but I don't think there's an
12 awful lot of it going on randomly.

13 Q. Thank you. Trying to establish just the normative culture of
14 the commercial fishing----

15 A. Sure.

16 Q. ----industry in this area.

17 A. I understand.

18 Q. How do you or--how do the captains and your company prepare
19 for inclement weather?

20 A. Well, certainly we try to avoid it. We watch forecasts every
21 day. We look at that. We talk to other fishermen, what their
22 thoughts are, what they're doing. We watch what the rest of the
23 fleet does.

1 Q. Do you talk fairly frequently with other vessel owners and
2 captains about plans for large storms or things like that?

3 A. I don't. I know Joe has his network of fisheries--fishermen
4 that he deals with and, you know, he has, as I mentioned, 30
5 years' experience on the ocean here on the West Coast, fishing
6 basically the Oregon coast.

7 Q. It seems to me in the testimony we've heard that the fishing
8 vessel community in this area is very tight-knit. Do you believe
9 that they would be inclusive and would be willing to help a
10 member that was not from this area?

11 A. I believe they would.

12 Q. We heard earlier testimony from a member who created
13 forecasts for NOAA and National Weather Service. Are these some
14 of the products that you or your captains peruse before getting
15 underway?

16 A. We certainly look at NOAA forecasts and buoy conditions. I
17 know we check the numbers at the buoys a lot, see where it's at.

18 Q. Do you listen to any radio broadcasts regarding weather?

19 A. I see mine more on the internet.

20 Q. Are you aware of how your captains, while underway, are
21 apprised of incoming weather?

22 A. Well, they certainly listen to the weather radio on the
23 vessels.

1 Q. And are all of your vessels equipped with the ability or
2 connectivity, if we want to talk about websites--ability radio-
3 wise to monitor that weather?

4 A. They are.

5 Q. Do any of your--are any of your vessels equipped with AIS?

6 A. They are not.

7 Q. They are not. Is there a reason for that?

8 A. We haven't found them necessary for the fisheries that we
9 participate in.

10 Q. Is it typical for mariners in this area to reach out to the
11 Coast Guard station with regards to bar conditions?

12 A. I really--I'm not aware of that.

13 Q. Sure. All right, shifting to your specific experience with
14 Mr. Biernacki or any of the crew members on the MARY B II, were
15 you acquainted with Mr. Biernacki?

16 A. I was not acquainted with Mr. Biernacki. Joe hired Mr.
17 Biernacki as a deck hand on the MISS NICANI.

18 Q. Okay. Did you ever speak to Mr. Biernacki?

19 A. The first time I saw Mr. Biernacki was during an offload of
20 the MISS NICANI after they had returned from a tuna trip.

21 Q. Okay. I'm inferring from that, since you've previously said
22 you were the owner of that vessel, that he was employed by you?

23 A. He was.

1 Q. And in what capacity was Mr. Biernacki employed by you?

2 A. He was hired as a deck hand.

3 Q. And how long was he employed by you?

4 A. I believe he did two, maybe three trips as a deck hand on the
5 MISS NICANI.

6 Q. We have heard from previous testimony that Mr. Biernacki was
7 a very experienced fisherman. What was your impression of Mr.
8 Biernacki's skill?

9 A. Well, I don't have one from observation because I was not on
10 the vessel, but Joe--after the first couple trips, Joe thought
11 that he was a capable fisherman and had been around boats and had
12 some experience.

13 Q. Did Mr.--was Mr. Biernacki ever employed by you as a captain?

14 A. Mr. Biernacki operated as a captain on the vessel RANGER for
15 one trip.

16 Q. Can you describe Mr. Biernacki's stance on safety equipment?

17 A. We certainly gave him a walk-through on the boat when he--
18 when we set up for him to take this trip, and we sent along a
19 deck hand--we sent along Ryan as a deck hand, who had also
20 previously captained the RANGER. So he was familiar with the
21 boat.

22 Q. Do you know when Mr. Biernacki arrived and began working in
23 or around the Newport, Oregon area?

1 A. I do not. The first time I saw him was the offload, and that
2 was probably, my best recollection mid-August, maybe early
3 August.

4 Q. Of what year?

5 A. Of the previous year, 2018, last summer.

6 Q. Okay. During his employment for your company, do you know if
7 Mr. Biernacki ever crossed the Yaquina Bay bar?

8 A. He did.

9 Q. Do you know if he ever crossed it in the months between
10 October and April?

11 A. He did not on the RANGER or one of my vessels.

12 Q. We've heard from previous testimony and from the weather
13 expert that sea conditions in this area change quite dramatically
14 from the summer to the winter months. Is this similar to your
15 experience?

16 A. It's a different ocean.

17 **LIO:** What do you mean by that, it's a different ocean, sir? For
18 the benefit of the public, both in attendance watching live
19 stream.

20 **WIT:** You're subject to much different conditions in the winter
21 than you are in the summer, as a general rule.

22 Q. Do you give recommendations as captain--to your captains, as
23 the owner, specifically surrounding severe weather conditions?

1 A. I've always said to my captains, bar crossings are solely
2 their responsibility, solely their decisions to make and that I
3 want them to make good decisions, but in the end, I won't
4 question. I'm going to leave those decisions in their hands.

5 Q. Ostensibly to relieve any kind of induced pressure; you want
6 them to be safe?

7 A. Absolutely. I don't want them to feel the pressure that they
8 have to cross that bar.

9 Q. Returning to the time Mr. Biernacki worked for you on the
10 RANGER, do you know if he ever ran any safety drills with his
11 crew or with--you had alluded to a Ryan as a deck hand?

12 A. I do not believe that took place.

13 Q. Is that a requirement?

14 A. Not in this case it wasn't.

15 Q. During the time that Mr. Biernacki was a captain for you, did
16 you ever conduct drug or alcohol testing?

17 A. I did not.

18 Q. Are you required to?

19 A. I do not believe so.

20 Q. How would you describe Mr. Biernacki's safety mindset when
21 operating or crewing on board fishing vessels?

22 **PIIC:** Objection.

23 **LIO:** Basis?

1 **PIIC:** This gentleman has told the board several times that he
2 was not aboard the vessels. He leaves the vessel operations up
3 to his partner. He has no firsthand knowledge of this. So it
4 would be very difficult for him to describe what occurred on that
5 vessel.

6 **LIO:** Okay, we're going to take a 2-minute recess. Mr. Reilly,
7 would you approach, please. The time is 9:17.

8 [The hearing recessed at 9:18 a.m., 15 May 2019.]

9 [The hearing was called to order at 9:23 hours, 15 May 2019.]

10 **LIO:** So we'll go ahead and unmute. So for the record, we had a
11 discussion and Mr. Reilly's objection is sustained. Mrs. Foster,
12 if you could ask more direct questions.

13 **TA:** Yes, ma'am.

14 Q. Mr. Morgan, let me rephrase. As the vessel owner, would you
15 describe your operation to be a real--a partnership where the
16 owner support captains for supplies they need. For example, if a
17 captain of yours were to reach out to you and say, "I recommend
18 or I require this to enhance to safety, to make the trip better,"
19 is that the kind of relationship you have or Mr. Thompson has
20 with your captains?

21 A. It is. We certainly take their positions into consideration
22 and their concerns. We like to address things pretty openly.

23 Q. Thank you. Shifting now to Captain Biernacki's time working

1 on the RANGER, when--and I need a year, please--did Mr. Biernacki
2 start working on board that vessel?

3 A. August of 2018.

4 Q. Okay. And what was his--his role on board was captain. Can
5 you describe how he came to be employed by you in that capacity?

6 A. He had been working with Joe on the MISS NICANI.

7 Q. Okay.

8 A. And at that time the RANGER was being operated by Kelly and
9 Ryan, and they came to me as a pair. Kelly owns a boat. His
10 boat was broken down, and he had agreed to run the RANGER while
11 he could come up with the money to fix his boat. Okay, well,
12 Kelly moved on and we were looking for another captain. And
13 Steve had talked to Joe about it and said that he had had
14 experience running boats and that he wanted an opportunity.
15 Okay, and Joe had relayed that to me and asked me what my
16 thoughts were, and I said, "Can we get Ryan to go with him on the
17 first trip?" just so we have somebody that's familiar with the
18 operation of the RANGER itself, because Steve had--Mr. Biernacki
19 had never been on that boat. And we agreed that, under those
20 circumstances, we would give Mr. Biernacki an opportunity to run
21 the boat.

22 Q. And you alluded to that was the first time he had worked for
23 you as a captain. Was that the last?

1 A. It was.

2 Q. Is there a reason for that?

3 A. Yes, we had a bit of an incident.

4 Q. Can you expand upon that?

5 A. I left in the morning after we had had this discussion. They
6 had an ice appointment that afternoon. They're all ice boats,
7 which means we store the fish in ice. And we left and I thought
8 they were going fishing. Okay? About 6:00 that evening I
9 received a text message from James Klimer [ph], who works for us
10 generally during crab season, and the text message just said,
11 "What the hell is going on on the RANGER?" And so I responded
12 back to him and said, "What do you mean?" He said--sent me back
13 a text message saying that there was a female calling for help.
14 And so at that point I quit texting him and I called him. I
15 said, "What are you talking about?" He goes--that he was fishing
16 on a different vessel. They were on their way in and that they
17 heard a female on the RANGER crying for help, and then they heard
18 a male voice say, "Get the fuck off that radio, you fucking
19 cunt," and----

20 **LIO:** Wait. Just--sir--okay----

21 **WIT:** ----and then there was a slap.

22 **TA:** Okay, understood.

23 **LIO:** Okay.

1 **LIO:** Request that for future testimony, we attempt to refrain
2 from using the actual curse words, please.

3 **WIT:** I understand.

4 **LIO:** Yes, sir.

5 **WIT:** I understand.

6 Q. Mr. Morgan, for the sake of clarity, my understanding was
7 that Captain Biernacki and Ryan were the only two people supposed
8 to be on your vessel.

9 A. That was my understanding as well.

10 Q. Does Ryan have a--can you describe Ryan voice-wise?

11 A. Ryan is a 6'3" 300-pound guy with a deep voice.

12 Q. Would you assume, based on what you had been told, that the
13 voice was not Ryan?

14 A. I did.

15 Q. Okay. Did you have an opportunity to clarify those events
16 with Mr. Biernacki?

17 A. I did not.

18 Q. Why is that?

19 A. I didn't see him for another 6 weeks.

20 Q. Did he return to port with your vessel?

21 A. A few days later.

22 Q. And you did not have an opportunity to speak with him when he
23 returned?

1 A. I did not. Two days later, after many text messages
2 wondering where my boat was, I came up in the morning about 6:00
3 and the boat was tied up and he was gone. His stuff was off the
4 boat. He didn't leave any personal items on the boat. He just
5 came in, tied the boat up and left.

6 Q. Did you take any steps, once you received the initial
7 notification that there might be something awry, to speak to or
8 get a hold of Captain Biernacki?

9 A. I made many attempts, when he was on the vessel, to contact
10 him.

11 Q. In what manner, sir? Radio, cell phone?

12 A. Text. We actually did try to reach him on the radio from the
13 port, off one of the other vessels as well, and we didn't get any
14 response.

15 Q. Is that typical for your captains? Are you able to--is there
16 a traditional way that you are able to reach out to them?

17 A. Yes. Generally I can reach them with a text message.

18 Q. Okay. We have found that with respect to the MARY B II, that
19 it was difficult at times for the Coast Guard to hail or get a
20 hold of the MARY B II on the night of the incident, 8th of
21 January 2019. Did you have any other experiences while under
22 your employment that it was difficult to hail Captain Biernacki
23 via radio?

1 A. During that 36-hour period, we reached out to him many times
2 and I did not get a response until late the second day that he
3 was on his way in. I got a text message back saying he was on
4 his way in.

5 Q. Could--did you get--could that have been due to a dead cell
6 phone?

7 A. Certainly.

8 Q. Why do you believe there was difficulty in response for VHF
9 radio?

10 A. I don't know.

11 Q. Are there any known VHF radio gaps in this area?

12 A. Oh, you certainly lose the VHF contact at a certain distance
13 offshore.

14 Q. Sure. How far offshore was the RANGER for the fishery it was
15 engaged in?

16 A. I don't know specifically, but I would guess the 40-mile
17 range.

18 Q. Is that a known area of VHF gap?

19 A. You're pushing it at that point, certainly.

20 Q. Did you have any experiences with Mr. Biernacki where he
21 appeared under the influence of drugs or alcohol?

22 A. I did. Just at the start of crab season this previous year.

23 So this would probably be late December because we didn't go 'til

1 January. He approached me in the parking lot one morning and he
2 said that he understood that I had a gear box for a boat that
3 would fit into his, and he didn't like the one that was in his.
4 He asked if I would be interested in selling it. He was very--
5 very intoxicated. I refer to it as being mumble-mouth. You
6 know, we've all experienced it. And I just basically told him
7 that I was in a hurry and I was leaving.

8 Q. For clarity, though, he was on the dock; he was on land
9 during that exchange?

10 A. It was in the parking lot of port 7.

11 **TA:** Roger. Mr. Morgan, at this time I have concluded my
12 questions.

13 **LIO:** Sir, I have some questions for you.

14 **Questions by the lead investigating officer:**

15 Q. Is it fair to say that Mr. Thompson handles most or all of
16 the day-to-day boat operations?

17 A. Certainly.

18 Q. Do you two have good communications generally about things
19 that are happening?

20 A. We generally speak multiple times a day.

21 Q. Would he be the best person to answer questions regarding
22 safety and standard operations?

23 A. Yes.

1 Q. Do you know his whereabouts today?

2 A. I believe he's in town. I haven't spoken with him this
3 morning, but he certainly knows I'm here.

4 Q. Can you make him available for telephonic testimony?

5 A. I can give him a call.

6 Q. Okay, we'll readdress that in--when your testimony concludes,
7 sir. I have some questions--did you fish on January 8th, 2019?

8 A. We did not. We did not fish the previous day or throughout
9 that storm series.

10 Q. So when you say "we", you're talking about your--all of your
11 vessels, sir?

12 A. I am speaking of all of the--of the three crab vessels, yes.

13 Q. And could you please articulate to me why you did that--that
14 was like a--a decision that you made?

15 A. The decision is based on weather forecast.

16 Q. So would you please explain to me what your thought process
17 was for that and how you got to that decision.

18 A. Well, we look at forecasts and buoy conditions and--and we
19 judge a lot by the fleet, you know, and the fleet was in those
20 days, for the most part. There were a few boats coming in as the
21 storm ended, but on--I believe it would be the 9th, the following
22 day. I mean, it was a full port. I don't believe there was many
23 boats out fishing.

1 **LIO:** Are there any other questions from the panel? Lieutenant
2 Bigay, go ahead.

3 **Questions by the assistant investigating officer:**

4 Q. Good morning, Mr. Morgan.

5 A. Good morning.

6 Q. Going back to that incident that you mentioned, there was
7 another person who was supposed to go out on that--on that
8 vessel, but it ended up being Mr. Biernacki, correct?

9 A. Well, he was to go along as a deck hand with Mr. Biernacki.

10 Q. Understood, and that was Ryan?

11 A. Ryan, yes.

12 Q. Did you ask him what happened regarding that incident?

13 A. I did, but after that morning I actually didn't see Ryan
14 again until during this previous crab season, the one that's just
15 wrapping up now. He was working on another boat here in town,
16 and I had an opportunity to--to discuss it with him.

17 Q. Can--can you tell us what he said?

18 A. He said that after we left that morning and they were
19 prepping the boat, getting ready to go ice, that Steve just
20 basically--Mr. Biernacki just basically told him, "Look, you're
21 here to do what..."--he had tried to put some input into the
22 situation and Mr. Biernacki just told him, "Look, you're here to
23 do what I tell you. You're not here to tell me what to do," and

1 he left. He just walked off the dock and left. Yes, I was kind
2 of upset I didn't get at least a phone call from him explaining
3 why he left.

4 Q. Sir, earlier in your testimony, you mentioned regarding
5 making determinations to--to go out if--if there's going to be
6 bad weather. You mentioned that you talked to other fishermen as
7 well.

8 A. Yes.

9 Q. Can you elaborate a little bit on how you take their input
10 into consideration?

11 A. Well, on the docks there's, you know--first of all, I defer
12 all these decisions to Joe.

13 Q. Okay.

14 A. Okay, but there is a general discussion on the dock about
15 ongoing weather conditions and storm conditions. It's just a
16 natural thing that happens on the docks.

17 **LIO:** So, Mr. Morgan, I just have one additional question with
18 regards to the incident.

19 **Questions by the lead investigating officer:**

20 Q. You mentioned that Captain Biernacki brought your vessel, the
21 RANGER, in and that you didn't see him for another--I believe you
22 said 6 weeks. So did you have an opportunity--would you have
23 officially fired him if you had seen him?

1 A. Certainly.

2 Q. So what you're saying is that the events that occurred
3 previously to that were grounds for you to terminate employment.

4 A. Certainly.

5 Q. Did you make an attempt to officially terminate his
6 employment or is there something else--is there just an
7 understanding that he is no longer working for you?

8 A. Well, I think through the exchange of text messages that I
9 had sent him and he coming back, I think he assumed that's
10 probably where it was going, because I didn't hear from him after
11 the boat was returned.

12 Q. Did you consider him--did you consider his employment
13 terminated after that?

14 A. Absolutely. I mean, I--we--bottom line, I found the whole
15 incident to be quite embarrassing.

16 **LIO:** Thank you, sir. We have one more question. Ms. Bigay?

17 **Questions by the assistant investigating officer:**

18 Q. Mr. Morgan, one quick follow-up, after that incident or--you
19 mentioned an incident that happened before that. Did you ever--
20 just in your time having him as a--as an operator, did you ever
21 attempt to--or had reason to want to perform drug tests?

22 A. I did not. I had very little interaction with him on a
23 personal level.

1 **AIO:** Understood. Thank you.

2 **LIO:** Mr. Reilly?

3 **CROSS-EXAMINATION**

4 **Questions by the party-in-interest counsel:**

5 Q. Thanks for being here, sir. The RANGER, is that a U.S.-
6 documented vessel?

7 A. It is.

8 Q. And the information that you've testified to regarding what
9 was said over the radio, you didn't hear that firsthand. It was
10 told to you by someone you trusted.

11 A. That's correct.

12 Q. Do you know what channel that was communicated on?

13 A. I don't, but I would believe 16, but I don't know that.

14 Q. So at the time you were told that, that was before you had
15 started texting or trying to reach out to the RANGER?

16 A. Certainly. Up until that point I thought everything was
17 fine.

18 Q. And at that point you thought this other crew member named
19 Ryan was still on board the vessel.

20 A. I did.

21 Q. What is that crew member Ryan's last name?

22 A. I believe it's Howard.

23 Q. So at the time this was communicated to you, fair to say it

1 sounded to you like somebody committed an assault on your vessel.

2 A. I was certainly under that thought, yes.

3 Q. And understanding that somebody had potentially committed an
4 assault or at least it sounded like an assault on your vessel,
5 you would have reached out to the federal or state authorities to
6 notify them of your concerns about the assault.

7 A. Certainly.

8 Q. And which parties did you reach out to to express those
9 concerns and report this incident?

10 A. My first reach-out was to Officer Heather Van Meter. I'm
11 familiar with her. I see her on the docks all the time, and at
12 this point it was late in the evening, probably 9:00 at night,
13 quite late--you know, it's light quite late that time of year,
14 and we were over here by--me and Joe were over by the Coast Guard
15 tower. And Joe had mentioned to me that he had received a text
16 message from Mr. Biernacki saying that he had broken a stay on
17 one of the poles and that he was on his way in. And that had
18 happened in the afternoon. Okay? So we're out here about 9:00
19 at night and we can't see any lights on the horizon. Okay? And
20 I said to Joe--I said, "We've got to do something, right?" He
21 kind of agreed with me, and I thought to myself, you know, I'm in
22 a position of calling the Coast Guard on my own boat. So I
23 reached out to Heather first, and it was--and she didn't answer

1 her phone. So then I called the Coast Guard.

2 Q. And was it the Coast Guard station or the Coast Guard----

3 A. I called the Coast Guard station here at Yaquina Bay. I had
4 that number in my phone.

5 Q. That was on or about sometime in August?

6 A. It was--yes.

7 Q. What, if any, follow-up did you receive from the Coast Guard
8 regarding their--their attempts to investigate the matter?

9 A. I called the Coast Guard here. They told me they'd get back
10 to me. I had a phone call returned to me, and I believe that
11 that phone call came out of North Bend, if I remember correctly.
12 And then over that and the next 24 hours, I had probably four to
13 six phone calls back and forth with the Coast Guard over the
14 situation.

15 Q. So as you understood it, at that time you were comfortable
16 the Coast Guard was investigating what had happened?

17 A. Absolutely.

18 Q. At any point did you come to know who the woman was who was,
19 as it was reported to you, on the radio?

20 A. I have never met her, spoken to her or seen her, but I
21 believe she is a local girl that many fishermen are familiar
22 with.

23 Q. When the Coast Guard was investigating this potential assault

1 in August of 2018, in your communications with them did you
2 provide them any leads as to the identity of this potential other
3 person on board?

4 A. I did not. I was not familiar with who she is.

5 Q. Subsequent to your communications, those five--five or so
6 communications you had with the Coast Guard regarding this
7 incident, did you receive any additional follow-up information
8 from the Coast Guard regarding the--sort of the findings of their
9 investigation?

10 A. Well, as it played out, I saw it as kind of an ongoing
11 situation. I--we had done many attempts to contact Mr.
12 Biernacki, and I had just done it out of, you know, "Hey, we've
13 heard you had a problem. Thought you were on your way in.
14 Haven't heard from you," that kind of stuff. It was all ignored.
15 Somewhere in the afternoon I got kind of frustrated and I sent
16 him a text and said, "Look, the Coast Guard is looking for you.
17 You need to come back," and I was under the impression the Coast
18 Guard was looking for him. Okay? Then I get a text message back
19 from Mr. Biernacki and he says, "Why is the Coast Guard looking
20 for me?" and I sent him a text message back and said apparently a
21 fight that he had had on the radio went out over the radio. And
22 he responded back to me and said that she had gotten sick and she
23 wanted to come in and he didn't want to bring her, but she had

1 changed her mind and decided to stay and that everything was all
2 right. And then he--then the text message asked me to call me
3 the Coast Guard and explain that to them. And I replied to him,
4 "I'm not explaining anything to the Coast Guard. This one's on
5 you." And then I reached back out to the Coast Guard and said,
6 "Hey, I've heard from him. He's on his way in," and the Coast
7 Guard quite bluntly told me, "We're not..."--because I was under
8 the impression they were looking for him, and they made it clear
9 to me that they were not looking for him.

10 Q. And your initial report to the Coast Guard about that
11 incident was descriptive regarding what you had heard--what you
12 testified to here, you expressed that information to the Coast
13 Guard as--so as to alert them to the potential that there was a--
14 potentially an assault?

15 A. I stated it as bluntly as I did here a minute ago.

16 Q. As an employer over the last 10 years, you've hired many crew
17 members on your five vessels.

18 A. That's correct.

19 Q. Fair to say when you hired those crew members, you did not
20 undertake to do a criminal history on any of those crew members,
21 did you?

22 A. We did not.

23 Q. And when you hired those crew members, you undertake to

1 require any of them to go down to the local clinic to do a drug
2 screen?

3 A. We have not. We have certainly approached employees with,
4 "Hey, we think there's an issue here. We want you to take a drug
5 test." I think most of them have just declined to take the test
6 and quit.

7 Q. All right. But my question is sort of in the hiring process,
8 sort of at that--that commencement of the relationship. That's
9 not part of your hiring protocol.

10 A. It is not.

11 Q. And you, as an owner, communicate your expectations to your
12 employees--and it's probably even on the contract you have with
13 your employees, your expectations about drug use?

14 A. Absolutely. We use pretty much a standard contract
15 employment form that checks off what they're responsible for,
16 what we're responsible for and certainly states that, you know,
17 everything is going to be operated in conjunction with Coast
18 Guard standards. It's a pretty standard marine employment
19 contract.

20 Q. And it probably specifically states something to the effect
21 that drug use is prohibited on your vessels.

22 A. Certainly.

23 Q. And as an employer, if somebody in the public reported to you

1 that he or she believed one of your employees was operating a
2 vessel under the influence of drugs or alcohol, fair to say that
3 you would aggressively look into that situation and investigate
4 it?

5 A. Absolutely. As an instance, I had a buyer 2 years ago
6 telling me that he thought one of my guys had an issue, and the
7 next day I confronted him with it and he opted to quit rather
8 than take a drug test.

9 Q. Fair to say as an employer, absent observations that--that
10 you or somebody you trust provided to you or information that's
11 provided to you by a member of the public or a report of an
12 incident that's provided to you, you just have to trust that your
13 employees are following the rules that--and guidelines you set
14 out.

15 A. That's correct.

16 **PIIC:** That's all I have. Thanks.

17 **LIO:** Thank you.

18 **REDIRECT EXAMINATION**

19 **Questions by the lead investigating officer:**

20 Q. Mr. Morgan, Mr. Reilly asked you about a policy about drugs
21 on board the vessel. Can you tell me if you had a policy for
22 your vessels about alcohol on board the vessel.

23 A. Our policy is very simple: no alcohol or drugs on the boat,

1 whether you're at sea or at the dock. I don't even allow
2 drinking at the dock. You know, I just don't want alcohol on the
3 boats. I'm in a position where I have multiple boats and there's
4 a lot of egos involved and you bring alcohol into egos on the
5 docks, I've literally had deck hands from rival--both my boats
6 but rival boats, if you will, slugging it out on the dock in the
7 past over issues. So we've just banned alcohol from the boats
8 completely.

9 Q. Mr. Morgan, you mentioned that after the RANGER was brought
10 back in August that personal belongings had been taken by Mr.
11 Biernacki, so there were none of those left on board. Was
12 anything left on board?

13 A. Nothing out of the ordinary or that stands out. I mean,
14 there were none of his personal items on the boat.

15 Q. So there was no alcohol left on board.

16 A. There was not.

17 **LIO:** Okay, thank you. Any other--any other questions from
18 the---

19 [No response.]

20 **LIO:** Mr. Morgan, you are now released as a witness from this
21 formal hearing. Thank you for your testimony and cooperation.
22 If I later determine that this board needs additional information
23 from you, I will contact you through our counsel. If you have

1 any questions about this investigation, you may contact the
2 investigation recorder, Lieutenant Luke Woods. Sir, after we
3 take a 10-minute--actually, we're going to take a 10-minute
4 recess. Request you approach so we can get Mr. Thompson's
5 information.

6 It is currently 9:51. We're going to take a 10-minute
7 break.

8 [The hearing recessed at 9:51 a.m., 15 May 2019.]

9 **[END OF PAGE]**

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II

2 held in Newport, Oregon

3 on 15 May 2019

4 WITNESS: CWO PAUL ASHLEY, USCG

5 [The hearing was called to order at 10:03 a.m., 15 May 2019.]

6 **LIO:** It is currently 10:02 and we're reconvening this public
7 hearing. We're now going to hear testimony from our next
8 witness, and that is BOSN Paul Ashley, Commanding Officer, of
9 Station Barnegat Light. This testimony is happening remotely via
10 Skype. Mr. Woods, would you swear the witness in.

11 **CHIEF WARRANT OFFICER PAUL J. ASHLEY, U.S. Coast Guard, was sworn**
12 **and testified via remote link-up as follows:**

13 **UNIDENTIFIED SPEAKER:** Give us one second while I reposition the
14 camera.

15 **REC:** Roger.

16 **UNIDENTIFIED SPEAKER:** All right, we should be all set.

17 **DIRECT EXAMINATION**

18 **Questions by the recorder:**

19 Q. Please state and spell your full name.

20 A. Chief Warrant Officer Paul J. Ashley, P-a-u-l, J,
21 A-s-h-l-e-y.

22 **REC:** Will the counsel please state and spell your name.

23 **LCDR LEAGUE:** My name is Jan League. First name spelling, J-a-n,

1 last name spelling, L-e-a-g-u-e.

2 Q. Please state your current employment and position.

3 A. I am the Commanding Officer of the Coast Guard Station
4 Barnegat Light.

5 Q. Please state any education or training related to your
6 profession.

7 A. Well, numerous training throughout Coast Guard programs, and
8 I have an Associate's Degree [indiscernible] State University.

9 Q. Please state any professional licenses or certificates
10 related to your profession.

11 A. I do not have any.

12 **REC:** At this time Lieutenant Commander Foster will begin her
13 primary line of questioning.

14 **WIT:** Okay.

15 **TA:** Good morning, BOSN Ashley. Thank you for appearing today at
16 this hearing via Skype. If you are going to move the camera and
17 take a wide view of something like a chart, please let us know.
18 Lieutenant Woods, please display Coast Guard Exhibit 14, which
19 is, BOSN Ashley, for your benefit, nautical chart number 12323,
20 Sea Girt to Little Egg Inlet, and produced by NOAA, which shows
21 the waters of Barnegat Inlet, New Jersey.

22 **WIT:** Okay.

23 //

1 **Questions by the technical advisor:**

2 Q. BOSN Ashley, while we pull up that exhibit, please give us a
3 little more detail about your background as it relates to boat
4 operations, specifically your certifications as heavy weather and
5 surf.

6 A. Okay. Well, I've been in the active-duty Coast Guard for
7 about 22½ years. Of those 22 years, 18 of which have been at
8 lifeboat stations, two heavy weather--correction, three heavy
9 weather stations and I have been attached to Station Barnegat
10 Light for a total of 11 years.

11 Q. Thank you, BOSN. You went to the National Motor Lifeboat
12 School, which is located on the West Coast in Cape
13 Disappointment, Ilwaco, Washington. For the benefit of the
14 public, can you briefly describe the purpose of the National
15 Motor Lifeboat School.

16 A. The purpose of lifeboat school is to train people that are
17 going to heavy weather--basic operator of 47 lifeboat--basic
18 operator course, the heavy weather course and then there's the
19 surf course. I attended first in 2002 at the heavy weather
20 course and then in 2005/2006 I was out there for a period of time
21 for the surf course.

22 Q. Are there any other locations in the United States that are
23 used to train heavy weather or surf certifications?

1 A. Other than the surf units themselves, no.

2 Q. Is it fair to say, then, that you have familiarity with West
3 Coast weather?

4 A. Yes.

5 Q. In general, because we will get into more specifics as it
6 relates to Barnegat Inlet and Yaquina Bay later, are there
7 differences between East Coast and West Coast marine environments
8 and, if so, would you please explain them.

9 A. Well, yes, there are, and I would say the core difference is
10 the--the waves themselves. East Coast waves--or wave impact--not
11 necessarily deep ocean waves but the waves that impact the inlet
12 are typically not as large, not as fast, and the period or
13 frequency or range is much shorter.

14 **TA:** Thank you, BOSN. For the benefit of the public, I would ask
15 you and you cameraman to please move to and use the chart that we
16 initially saw and for the next line of questions.

17 **WIT:** Give us one second, please, while we move positions.

18 **TA:** Thank you. BOSN, actually would you please refer to the
19 chart on your right for the initial questions. I'd like to see
20 the NOAA chart.

21 **WIT:** Okay, so this is the chart 12324. [Indiscernible] for
22 Barnegat and [indiscernible]. Do you want to see the chart in
23 its entirety, ma'am?

1 **TA:** No, being zoomed in is exactly what I was looking for.

2 Thank you.

3 **WIT:** Okay.

4 **TA:** We are experiencing some glare on our end. If you could
5 please have the cameraman only focus on the chart itself at
6 first.

7 **UNIDENTIFIED SPEAKER:** Give us one second while we just
8 reposition.

9 **TA:** Thank you.

10 **UNIDENTIFIED SPEAKER:** How's that looking?

11 **TA:** Thank you. That's--that's perfect.

12 Q. BOSN Ashley, if I were new to the Barnegat Inlet area and
13 asked you to identify hazards in the local area as a mariner I
14 should be aware of, would you take this time to illustrate some
15 of those using the chart.

16 A. Yes, so I would say initially the [indiscernible] hazard and
17 then starting from this area, which we refer to as stop water--
18 this would be the main channel, which is deeper. Typically see
19 some of the recreational vessels use it and then this would be
20 the north bar, north cut, and then this right here [indicating],
21 this dashed line, that indicates--that's what we call the
22 submerged north jetty. Then the inlet itself has a shoal that
23 runs in its entirety from about here [indicating] all the way to

1 about here [indicating].

2 Q. BOSN, can you take a moment to specifically highlight any
3 Aids-to-Navigation in this area.

4 A. Yes. There's a gated buoy right here [indicating] which is 3
5 and 4. There is a buoy inside [indiscernible] at about here
6 [indicating], which is buoy 9. And then buoy 11 is right here
7 [indicating]. Then there's another [indiscernible] further out
8 which is 1 and 2 and then the [indiscernible] buoy, which you can
9 see is marked. The reason why they're not charted is we tend to
10 move them a little bit due to the breakers. They've just never
11 charted them.

12 Q. Are any of those aids seasonal in nature?

13 A. No, they all are permanent.

14 Q. Does your station experience breaking bar?

15 A. Yes, ma'am, we are one of the 19 designated surf units.

16 Q. For public understanding, can you explain what is meant by
17 the term "breaking bar" and illustrate in particular where it
18 breaks in Barnegat Inlet.

19 A. Well, the definition of a breaking bar would be any wave that
20 breaks in a continuous line. Pretty much there's an area that
21 breaks right inside the [indiscernible] over 12 to 15 feet in
22 size and will break in this area [indicating]. This entire area
23 right here will break once [indiscernible] 8 to 10 feet and then

1 this is where you'd see the fathom curve forms a "U" breaks that
2 entire area as well. So whenever the wave height exceeds about
3 10 to 12 feet, this entire area is breaking waves.

4 Q. Are there any commercial fishing vessels operating out of
5 Barnegat Inlet?

6 A. Yes, there are, ma'am.

7 Q. What types of fisheries do they fish for?

8 A. Primarily multi species groundfish, [indiscernible]----
9 scallop, longline as well.

10 Q. Are these----

11 A. ----[indiscernible] as well.

12 Q. Are these seasonal fisheries?

13 A. No, they are year round.

14 Q. Are these fisheries derby style or by quota?

15 A. They are all quota.

16 Q. Are you aware of any policies or procedures restricting the
17 movement of commercial fishing vessels in and--or out of Barnegat
18 Inlet?

19 A. There is no policy.

20 **TA:** BOSN, you may be seated.

21 **WIT:** Yes, ma'am.

22 **UNIDENTIFIED SPEAKER:** Again we'll just take a second to
23 reposition.

1 **TA:** Thank you, BOSN.

2 **WIT:** Yes, ma'am.

3 Q. Does the Coast Guard have set wave heights or wind speeds
4 that they classify heavy weather or surf conditions?

5 A. Ma'am, can you say that one more time. You broke up a little
6 bit there.

7 Q. Does the Coast Guard have set wave heights or wind speeds
8 that classify heavy weather or surf conditions?

9 A. As far as for--for designation of the unit itself, ma'am?

10 Q. No, I'm looking for--we've heard in previous testimony that
11 the Station Yaquina Bay considers certain wave heights and/or
12 certain wind speeds to be heavy weather and above that to be
13 classified as surf. What I'm asking is whether your station has
14 similar--similar standards for classifying heavy weather and surf
15 conditions.

16 A. Ma'am, we just follow whatever is put out by Commandant,
17 which is for heavy weather conditions seas exceeding 8 feet,
18 winds 30 knots, and for surf, I--I--I'm quite certain it's just
19 any--any wave breaking in a line is the definition of breaking
20 surf, regardless of size. There's--there's internal height
21 restrictions, but--does that make sense?

22 Q. Yes, BOSN. So for clarity and for the public record, there
23 is no differentiation between East Coast and West Coast heavy

1 weather and surf conditions. You're saying that across every
2 Coast Guard unit it's the same numbers?

3 A. Yes. Yes, ma'am.

4 Q. Can you estimate the number of times a year or percentage of
5 the year that Station Barnegat Light has identified these heavy
6 weather or surf conditions.

7 A. We have an average over the course of the last 5 years, about
8 55 days of surf exceeding 8 feet.

9 Q. During your time at Barnegat Inlet, can you talk about the
10 most significant surf or heavy weather conditions you have
11 encountered. And I'm looking specifically for wave heights
12 and/or wind speed.

13 A. I would say the highest level that I've experienced, wind
14 speed is probably close to 65 knots and wave height is probably--
15 I've never seen it break over 18 feet.

16 Q. BOSN, we are trying to compare conditions that are typically
17 encountered in Barnegat Inlet with the conditions that existed on
18 the night of the accident in Yaquina bar. Please listen while I
19 give the parameters that were observed and forecasted that
20 evening and then I have further questions.

21 A. Yes, ma'am.

22 Q. The accident leading to the loss of the fishing vessel MARY B
23 II in January of 2019 occurred in hazardous surf conditions and

1 at night off the coast of Oregon. Station Yaquina Bay observed
2 12-to-14-foot seas with occasional 16-foot breaks. The
3 forecasted weather was southeast winds, 20 to 25 knots, with
4 gusts to 35 knots, rising to 25 to 30 knots with gusts of 40
5 after midnight. Combined seas were 12 feet with a dominant
6 period of 11 seconds, building to 20 feet and a dominant period
7 of 18 seconds. I know--I know I just threw a lot of numbers at
8 you, but with your experience, can you give us a layman's opinion
9 of what that would look like or what--what a mariner might
10 experience in those kind of conditions.

11 A. You--am I comparing that, what they would expect at Barnegat
12 Inlet or in Newport?

13 Q. Sure. With comparison to your experience on the East Coast
14 and in particular out of Barnegat, are those--are those operating
15 parameters in excess of what's normally at Barnegat, on par with
16 those at Barnegat or below what's on Barnegat?

17 A. I would say the forecast--what was forecasted in the scenario
18 you gave me, I can't even imagine those numbers happening here.
19 Twenty feet at--did you say 16 seconds?

20 Q. Twenty feet and a dominant period of 18 seconds, BOSN.

21 A. Yes, I can't--I can't even imagine that size of wave on the
22 East Coast anywhere. That's something that we would see from a--
23 from a hurricane, probably in the category of a cat-2 or cat-3

1 storm.

2 Q. Can you help me understand why--why the difference between
3 East Coast and West Coast weather conditions.

4 A. I think the key difference is is that our waves have a
5 stretch of maybe--this is all based on--these are all averages,
6 the norm, but the most--the average we're expecting to see is
7 something maybe in the realm of 250 miles offshore, where the
8 Pacific Ocean is--you know, they're getting oceanic waves from
9 probably 1500 miles of--of fetch. It's just a lot of them grow
10 to that--to that period where--I would say the largest period
11 that I've seen here, the largest wave in period was probably
12 something in the realm of 12 feet at maybe 16 seconds, which
13 produces a 18-foot breaking wave in Barnegat Inlet.

14 Q. Thank you, BOSN. We heard previous testimony from a
15 fisherman local to Barnegat Inlet and I quote "10 to 12 feet
16 would be extremely big here", end quote. He was referring to the
17 size of the waves. This is consistent with the testimony you
18 just gave. Would you characterize the previous witness's
19 testimony as accurate based on your experience?

20 A. I would--I would say--I wouldn't use the word "extreme". I
21 would say that's our normality. When we're off training, it's
22 usually 10 to 12 feet is our normal. I would say something--you
23 know, over 15 to 18 feet is probably our extremes here.

1 Q. When you--when the Barnegat Inlet does experience those
2 conditions, do you, as the Coast Guard station, take strides to
3 alert mariners of these dangers?

4 A. We do. So when we do see something that's coming in that was
5 not forecasted--the weather here is fairly predictable. We do
6 have a good, I would say, 3 to 5 days of warning that's something
7 coming in. You know, we take notice of the fleet, see how many
8 boats are here and so we walk over to the couple commercial docks
9 and just let them know, if needed.

10 Q. Do you make any AM radio reports of bar conditions that
11 mariners can tune into on a commercial radio station that
12 highlight bar conditions?

13 A. No, ma'am, we do not do that. We do make continuous bar
14 reports. So one of my crew will go out at least every hour to 2
15 hours in surf conditions, log those conditions and, if someone
16 were to call and ask, we'd provide those conditions.

17 Q. Does Barnegat--Station Barnegat Light display any warning
18 signs or lights alerting mariners to a dangerous condition?

19 A. [Indiscernible], ma'am.

20 Q. I'm sorry, BOSN?

21 A. No, we don't do any of that.

22 **TA:** Lieutenant Woods, please display Exhibit 003, page 1.

23 Q. Okay, BOSN, you'll have to forgive me. We're experiencing

1 some technical difficulties. What I was trying to display for
2 the public is an exhibit that we've displayed several times
3 before during this hearing. It is a public handout, a pamphlet,
4 that has a chart on one side of hazard areas of Yaquina Bay and
5 also the other side gives mariners information on how they can
6 contact the Coast Guard and gives them local weather information
7 and some excerpts, for example, that might help them better
8 understand conditions and hazards around Yaquina. Are you aware
9 of anyone, either yourself or your parent command, that creates a
10 pamphlet similar for Barnegat Inlet?

11 A. No, I--I've never seen that for Barnegat Inlet, no.

12 Q. For recreational boating safety, are there any materials made
13 available to enhance public safety?

14 A. That we provide?

15 Q. Yes. Meaning the Coast Guard.

16 A. I would say, yes, the Coast Guard Auxiliary, they make
17 numerous pamphlets--any type of brochures just for general
18 boating safety, yes.

19 Q. And can you characterize those? Are those more in line with
20 lifejacket awareness or anything specifically about surf
21 conditions or heavy weather?

22 A. No, they're all associated with rip current risk, alcohol use
23 and lifejackets but nothing on the inlet specifically. There

1 are--I have seen some where they just do very basic
2 [indiscernible] as far as aid type and what size [indiscernible].

3 Q. If a mariner were new to Barnegat Inlet, what kind of
4 materials are made available to them so that they can be aware of
5 shifting shoals or the presence of Aids-to-Navigation in the
6 area?

7 A. It would just be the chart provided by NOAA and then Coast
8 Pilot as well.

9 Q. Are you familiar with Coast Pilot 3?

10 A. Yes.

11 Q. BOSN, for the benefit of the public, I'm going to read a
12 small excerpt from Coast Pilot 3, specifically the portion
13 regarding Barnegat Light and the shifting shoals and the buoys.
14 Specifically Coast Pilot 3 states,

15 "Barnegat Inlet channel and Oyster Creek
16 channel are subject to continual change to
17 shoaling. The buoys marking these channels
18 are shifted frequently to mark the best
19 water and therefore not charted. Mariners
20 are advised to use caution and local
21 knowledge. It was reported that various
22 aids marking Oyster Creek channel may be
23 submerged because of strong tidal currents.

1 Breakers may cross the inlet with an ebb
2 tide and an easterly wind. Strangers
3 should not attempt to transit the inlet
4 under any but ideal conditions. Boatmen
5 needing assistance should lay out the inlet
6 and contact the local Coast Guard station."

7 Can you describe any assistance that the local Coast Guard
8 station, i.e. your station, provides to mariners in those
9 conditions?

10 A. Yes, typically what we do is--they'll just do that. They'll
11 stay outside, contact us. We will respond. We then escort them
12 in. If it's a real hard breaking seas condition, we strongly
13 advise them to continue on south or whichever direction there is
14 to possibly look at the next inlet.

15 Q. Are there any waterway restrictions you manage such as bar
16 closures, bar restrictions on size and type of vessels?

17 A. No, there are not.

18 Q. Is your waterway or the area of your responsibility subject
19 to a regulated navigation area?

20 A. I'm not sure what you mean by regulated navigation area.

21 Q. Do you, as the commanding officer of Station Barnegat Light,
22 have the ability to close the bar to commercial or recreational
23 traffic?

1 A. No, I do not have that authority.

2 Q. Does the captain of the port have that authority?

3 A. Basically, no, I do not think he does as well. He may. I'm
4 not sure, ma'am.

5 Q. Can you give us a little more information about how you--like
6 the policies and procedures surrounding vessel escorts.

7 A. Well, it's condition-based, primarily. [Indiscernible] what
8 we try and do is just have them follow us in and, you know, at
9 slow speed, but before we do that, we encourage everybody to put
10 on lifejackets, you know, remain out on deck. [Indiscernible]
11 procedures, things like that, and then have them follow us in.
12 Then once they get into a certain area, we go our separate ways.
13 Rough bar conditions, same type of thing except we use two
14 lifeboats, where the primary--the first boat will try and, you
15 know, [indiscernible] for the boat to follow and then mainly the
16 second lifeboat will provide almost like a shadowing type--
17 shadowing or herding. If it's a slower moving boat such as a
18 sailboat, we'll try and take the energy out of the waves
19 following the sailboat, if that makes sense, until they get in.

20 Q. Thank you, BOSN. I'd like you to now move to the exhibit
21 that was on the wall, not the chart but the--the aerial view----

22 A. [Indiscernible.]

23 Q. Yeah, the photograph of Barnegat Inlet.

1 A. Okay.

2 **UNIDENTIFIED SPEAKER:** All right, give us one second while we
3 reposition.

4 **TA:** Thank you, BOSN.

5 **WIT:** All right. Can you see [indiscernible]?

6 **TA:** I can.

7 Q. I'd like--so I'm going to ask you some specific questions
8 about the buoy line. Can you take----

9 A. Okay.

10 Q. ----a minute and re-familiarize us with the buoys.

11 A. Okay. So real quickly, these markers [indiscernible] the
12 jetties, so number 6 and number 7. Then we have number 4 and
13 number 3, which is a gate indicating what we call the main
14 channel. Then we have number 2 and a number 1, which is, I would
15 say, roughly 200 yards east of this gate [indicating] and then
16 there's a more south about another 200 yards from that.

17 Q. Thank you, BOSN. BOSN, we've heard testimony that Mr.
18 Biernacki was familiar with and fished extensively out of
19 Barnegat Light. We've also heard testimony regarding a seasonal
20 aid that is outside of Station Yaquina Bay. Can you describe as
21 a mariner how important the buoy line--what--if a--if a fisherman
22 fished out of Barnegat Inlet for quite some time, would they be
23 reliant upon or would they expect similar buoy markings coming in

1 and out of a treacherous area on the West Coast?

2 A. Well, I--I--I can say for--for the commercial fishing fleet
3 here, they probably rely on--on the North "6" the most, that's
4 number 6, because there's an area called the north cut, which is
5 right here [indicating]. That's where the deepest water is and
6 tends to break last. So that is the North cut breaks here,
7 [indiscernible] may not be breaking at that point. So we see
8 swells but still no breaks. This area starts to break once we
9 exceed 12 feet. Then--so we focus on number 6 and know that
10 there's a hole of deeper water all around the range of like say--
11 I would say 12 to 18 feet deep, and that extends for about, I
12 would say, 50 yards seaward. I don't know if the image--you can
13 see the hole there, but they would come in here [indicating]
14 that we don't have marked for, but that would be number 9. And
15 then they want to make sure that they're north of that because
16 [indiscernible] shoal that I was talking about earlier, that's
17 where--there's breakers in there as well.

18 Q. Are the jetties lighted in your area?

19 A. Yes, they are.

20 Q. Are both of them lighted?

21 A. Yes. Yes, they are, ma'am.

22 Q. Do you have a range?

23 A. No range, ma'am.

1 Q. Are ranges something that is unique to the West Coast or, in
2 your experience, are there ranges on the East Coast and, if so,
3 can you briefly describe them?

4 A. There are ranges all throughout the--all throughout the
5 country that I've seen. I've seen fixed ranges and I've seen--I
6 think illuminated ranges or optical ranges--I'm not sure their
7 exact--how does that [indiscernible]. When I was stationed in
8 Maine, you know, flashing whatever color, which would indicate
9 you need to come to port or starboard until you saw white, which
10 means you're on range, if that makes sense.

11 Q. Would you characterize the majority of the ranges that you're
12 familiar with by a certain color? I'm asking what--what a
13 mariner would expect a range color to be on your coast.

14 A. I would say white.

15 Q. Are there any other colors on the East Coast for ranges that
16 you are aware of?

17 A. Not off the top of my head, ma'am.

18 Q. Thank you. How do we communicate the information for a range
19 to the public? For example, is there a common terminology that
20 the commercial fishing vessel community would be familiar with?

21 A. I would--I mean, I've never had to have done that, do a range
22 here, but----

23 Q. For example, would--if we were--if the Coast Guard were

1 communicating with a mariner that they were one board left or one
2 board right, do you think that the commercial fishing vessel
3 community would understand that parlance in your neck--in your
4 area of responsibility?

5 A. If they were--yes, I would--there would definitely be an
6 expectation, if that commercial fishing vessel was--was home-
7 ported in that inlet or that harbor, then, yes, I would expect
8 them to know what was meant by that.

9 Q. Are there other phrases that a mariner may be familiar with
10 with respect to the ranges, that you're aware of?

11 A. Well, you--it would be on range to north of range, right of
12 range, left of range, whatever your target would be and then the
13 direction of where you--where you need to go or where you are, if
14 that makes sense.

15 Q. Thank you, BOSN. My last couple of questions relate
16 specifically to escorts. When your crew is escorting a vessel,
17 how much communication via radio is there with the fishing vessel
18 or the--with a vessel?

19 A. Well, I would say before the escort actually starts, there's
20 an extensive amount. Again, we're estab--we're getting as much
21 information as we can about them as far as how many people they
22 have on board, catch, weight, things like that. Then it's--we
23 establish an emergency plan. During the actual escort, things

1 are in motion at that point. So there's probably not as much
2 communication, but there may be, you know, some. And then
3 afterwards, I would say there's probably a good--good amount of
4 communication again as well.

5 Q. BOSN, are you saying that during the actual crossing, there
6 is less radio communication?

7 A. I would say in most cases, yes, that's the case because
8 that's the most dangerous part of the evolution. So the operator
9 is operating at that point. Crew members are lookouts. So
10 they're fairly occupied carrying out the mission of the evolution
11 safely. Sometimes when you start talking or communicating, that
12 may be a distraction or--yeah, that's the best way to put it, a
13 distraction.

14 Q. If your vessel was shadowing or herding a vessel, as you
15 alluded to earlier, and you noticed that the vessel crossing the
16 bar had slowed significantly to an unsafe speed, would you reach
17 out to them via radio and ascertain why they slowed?

18 A. Absolutely, yes.

19 Q. Are there any circumstances that you train your crew or
20 yourself--would not have reached out to the mariner at that time?

21 A. No. No, I would want them to do that.

22 **TA:** Thank you, BOSN.

23 **LIO:** We'll ask additional questions from the rest of the panel.

1 Lieutenant Bigay?

2 **AIO:** BOSN Ashley, can you hear me okay?

3 **WIT:** Yes, ma'am.

4 **Questions by the assistant investigating officer:**

5 Q. In a situation where you are assisting a mariner across that
6 inlet on the way in from fishing offshore, if there was a moment
7 where a course correction was needed in order to turn south, what
8 turn would that be?

9 A. What turn would that be?

10 Q. Yes, in terms of----

11 A. I'm----

12 Q. ----if that mariner needed to turn south suddenly to correct
13 course, would that be----

14 A. Okay.

15 Q. ----port or starboard?

16 A. For Barnegat Inlet?

17 Q. Yes.

18 A. It all depends on which way they were coming in, ma'am. If
19 they were coming in the main channel, it would be turn to port.
20 If they were coming in the north cut, in essence they could
21 just--they would be turning--they'd be either going straight--
22 they would continue course and then turn to port and go up the
23 main channel. Our--Barnegat Inlet has a southeast basin. So

1 fixing [indiscernible] 135 or 155.

2 Q. Understand. So, again, just as--for clarification, you
3 mentioned the term--to a course correction--course correction to
4 south would mean a turn to port?

5 A. Yeah, it would--it would have to be almost a 90-degree turn,
6 ma'am.

7 Q. Okay. Okay. For a mariner undergoing the same situation on
8 the West Coast--I would just like for you to imagine we're on a
9 different coast right now, same situation where you're trying to
10 head in an inlet, a bar and the situation on the West--on the
11 West Coast and you attempted to course correct south on the West
12 Coast. Would that be a port turn or a starboard turn?

13 A. That would be a starboard turn.

14 **AIO:** Thank you, BOSN Ashley.

15 **WIT:** Yes.

16 **LIO:** Mr. Reilly?

17 **CROSS-EXAMINATION**

18 **Questions by the party-in-interest counsel:**

19 Q. Mr. Ashley, good afternoon.

20 A. Afternoon.

21 Q. Thank you for your service and thanks for being here today.
22 Can I ask you about a hypothetical vessel escort for a commercial
23 fishing vessel on the West Coast in a dangerous bar condition.

1 A. Uh-huh.

2 Q. In this hypothetical, in advance of the escort you receive
3 information that the particular operator on the vessel lacks
4 local knowledge or experience regarding the particularly
5 hazardous conditions that exist during the escort. What, if
6 anything, would you as sort of the escorting officer do
7 differently in a situation like that in conducting those pre-
8 escort communications?

9 A. Well, I think the first thing I would try and do is
10 discourage them from--not coming in. That's probably what I
11 would try--that would be my initial thought. Although if there
12 was no other nearby port that they could sail to and the
13 conditions were going to be deteriorating, then I would--I would
14 take as much time as I could to teach them about the water
15 they're about to cross. I would make sure that they have full
16 understanding of what they're about to get into.

17 **PIIC:** Thank you, sir. No further questions.

18 **LIO:** BOSN Ashley, this is Commander Denny. I have two one
19 additional question for you.

20 **REDIRECT EXAMINATION**

21 **Questions by the lead investigating officer:**

22 Q. We've talked in--we've talked at length about the Aids-to-
23 Navigation configuration that you have over there. Do any of the

1 Aids-to-Navigation also have virtual aids assigned to them?

2 A. Virtual aids?

3 Q. Yes, like AIS. They give off an AIS signal. They'd show off
4 on a chart plotter.

5 A. No, no, nothing like that, Commander.

6 **LIO:** Thank you. Lieutenant Bigay, one more question?

7 **AIO:** Thank you, Commander. BOSN Ashley, can you still hear me
8 okay?

9 **WIT:** Yes, ma'am.

10 **Questions by the assistant investigating officer:**

11 Q. Going back to my--to my question regarding the difference in
12 turn, port and starboard, East Coast versus West Coast, in your
13 experience a mariner who predominantly was fishing on the East
14 Coast who moves to the West Coast to operate vessels and is
15 attempting to enter the bar, that mariner needed to make a sudden
16 course correction under pressure, do you think there might be a
17 confusion in terms of which way that turn went if that person is
18 used to East Coast sailing?

19 A. I would--I would--there's a possibility for anything--for any
20 mariner to be caught in a circumstance where they're going to--
21 they'll probably revert to their behaviors. So, yes, if somebody
22 was--say for myself that's been on the East Coast my entire
23 career with the exception of being out there temporarily, if I

1 was to be assigned out there, I would--it would take me a while
2 to get used to--going down in the inlet, I'm going--going
3 starboard would be north versus port for me. So, yeah, I would
4 absolutely say that that's accurate, ma'am.

5 **AIO:** Thank you, sir.

6 **LIO:** BOSN Ashley, it's Commander Denny again. I have just a few
7 more questions.

8 **Questions by the lead investigating officer:**

9 Q. Are you familiar with bar crossing plans?

10 A. I have never--I've heard of bar crossing, but I've never
11 heard of a bar crossing plan.

12 **LIO:** Okay, thank you. BOSN Ashley, you are now released as a
13 witness at this formal hearing. Thank you for your testimony and
14 cooperation. If I later determine that this board needs
15 additional information from you, I will contact you through our
16 counsel and your counsel. If you have any additional questions
17 about this investigation, you may contact the investigation
18 recorder, Lieutenant Luke Woods. Thank you again.

19 **WIT:** Thank you, Commander.

20 **LIO:** As an administrative note, since we had some technical
21 difficulties with showing some of the exhibits, we'll make sure
22 that we put the exhibits we were talking about and introduced,
23 which were the NOAA charts, the ones that BOSN Ashley was

1 showing--we'll go ahead and--and put those on the news room.

2 That was Exhibit 014, 015 and 037, which was Coast Pilot.

3 So it is currently 10:45. We'll go ahead and take a 10-
4 minute recess. We'll be back, reconvene at 10:55. Thank you.

5 [The hearing recessed at 10:46 a.m., 15 May 2019.]

6 **[END OF PAGE]**

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
held in Newport, Oregon
on 15 May 2019

WITNESS: CHARLES BUSBY

[The hearing was called to order at 10:58 a.m., 15 May 2019.]

LIO: Okay, ladies and gentlemen, it is 10:57, and we are reconvening this public hearing. We will now hear testimony from our next witness, which is Mr. Charles Busby. Mr. Busby, if you could come up to the witness table and Lieutenant Woods will administer your oath and ask you some preliminary questions.

CHARLES R. BUSBY was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the recorder:

Q. Please state and spell your full name.

A. Charles Russell Busby, C-h-a-r-l-e-s----

REC: Can you please press the key button on the mic and talk, if you can, directly into the mic.

WIT: Charles Russell Busby, C-h-a-r-l-e-s, R-u-s-s-e-l-l, B-u-s-b-y.

LIO: Thank you, sir. We're just going to adjust the mic.

[Off-record side conversation regarding microphone.]

Q. Sir, please state your current employment and position.

A. I am currently employed on the fishing vessel WINTER HAWK as

1 captain.

2 Q. Please state any education or training related to your
3 position.

4 A. Education and training related to my position would be six
5 AMSEA safety courses, training in survival techniques, first aid,
6 lifesaving techniques.

7 Q. Sir, for the benefit of the public, you said AMSEA, which
8 is--can you----

9 A. It's the sea safety survival course provided by the Coast
10 Guard here on the West Coast for fishermen.

11 Q. Thank you. And do you have any professional licenses or
12 certificates related to your profession?

13 A. No, sir.

14 **REC:** At this time I will begin my primary line of questioning.
15 Thank you for appearing today at this hearing. All of my
16 questions are related to the time frame prior to the loss of the
17 crew and the fishing vessel MARY B II. If you would like to take
18 a break at any time, please let us know. Mr. Busby, we'll
19 explore these broad topic areas: your general background in the
20 commercial fishing industry, your relationship and knowledge of
21 Josh Porter with regards to his occupation as a commercial
22 fisherman.

23 Q. How long have you worked as a commercial fisherman?

1 A. Thirty-two years.

2 Q. Can you go into detail regarding your experience operating
3 commercial fishing vessels, specifically the types of different
4 vessels, maybe the different--whether they were single-screw,
5 twin-screw.

6 A. All the vessels I've operated were single-screw vessels,
7 varying in length from 42 to 62 feet, crabbers, long-liners,
8 shrimp boats--have been my main fishers.

9 Q. Is that primarily out of Newport or are there other
10 geographical areas?

11 A. I--I fished in Alaska until 1996 and some here through those
12 years and then from 96 I fished the lower West Coast.

13 Q. Do you currently or have you ever owned a commercial fishing
14 vessel?

15 A. No, sir.

16 Q. How much experience would you say you have crossing the
17 Yaquina Bay bar?

18 A. Well, as captain I crossed it 13 years on my own and then as
19 a crewman I was always the guy who--who watched for the break
20 behind the boat, was--was given that duty.

21 Q. Do you have personal experience crossing the Yaquina Bay bar
22 during winter--and at night with rough weather conditions?

23 A. Certainly.

1 Q. Do commercial fishing vessels typically use bar crossing
2 plans in the event of heavy weather or for hazardous bar
3 crossings?

4 A. Well, you always try to prepare as best you can, but the--the
5 given conditions are what you receive when you get to that point.
6 It's--it's never the same.

7 Q. Are there any standard preparations that you might make with
8 regards to lifesaving equipment or anything prior to crossing the
9 bar with those--with variable heavy weather conditions?

10 A. Well, yeah, you would want to have your lifejackets on.
11 You'd want to make sure all your hatches and everything were
12 sealed, secure, your back door sealed, secure, anywhere you could
13 take water in.

14 Q. In your experience, are weather reports for the Yaquina Bay
15 bar reliable?

16 A. They're reliable, but you have to--the fisherman has got to
17 be his own best weatherman, in my opinion. I mean, that's just
18 my opinion, but, you know, fishermen become good weathermen,
19 especially with their local forecasts, what's going on in your
20 pinpoint area.

21 Q. If there is heavy weather off the coast of Newport, Oregon,
22 do the fishermen usually communicate to one another or does
23 everyone get the weather information on their own?

1 A. Everybody gets their weather information on their own, but
2 they always communicate--every boat kind of has its group of
3 friends, you know, people they talk to, you know, constantly out
4 in the ocean.

5 Q. So you say that everyone has their group of friends. If
6 there was a new fisherman or someone not from the area, would
7 fishermen try to get a hold of that mariner, potentially, to let
8 them know of weather--updated weather conditions?

9 A. I don't know. I couldn't say that with any certainty, but I
10 would think if--if I was in that position, I would try to reach
11 out.

12 Q. Sir, were you underway on January 8th, 2019, the day of the
13 MARY B II incident?

14 A. Yeah, we were--we were fishing that day.

15 Q. Did you know there was heavy weather in the area?

16 A. Yeah. Yeah--yeah, we knew--we knew of the forecast.

17 Q. Do you remember how you got--how you obtained the weather
18 forecast, whether it was electronically or---

19 A. Both--both digitally on my phone and then I monitor the
20 weather, you know, on the--on the VHF also.

21 Q. How did this--how did that weather forecast affect your
22 decision making as far as you and the crew that you were working
23 with and your plans for the fishing operation that day?

1 A. Well, we--we worked straight through. We were fortunate
2 enough to fill the boat and get in on the high water before the--
3 the seas got too dangerous.

4 Q. Sir, do you remember the times that you departed and returned
5 from being underway?

6 A. I don't remember exact times. I know I was--I was in and
7 delivered by, I believe, 5:00 in the evening. I believe I was
8 home by 7:00. I was getting a nap. I can't remember
9 specifically the time of day I left.

10 Q. I'm going to shift topics now to discuss potentially fouled
11 propellers, fouled propulsion systems. If you were underway and
12 the vessel's prop became fouled by a line, how would that affect
13 your decision making with regards to the remainder of the
14 operation?

15 A. It would depend on how the boat was reacting, whether I had
16 good--good turning, good propulsion. Sometimes you get rope in a
17 wheel and it's not a real big thing, but other times it can--it
18 can lock you up and slow you down and take your turning ability
19 away at some point sometimes.

20 Q. And if you were--if you were being escorted across the bar by
21 Coast Guard vessels, is that--is that information that you would
22 want to pass to them at the begi--prior to beginning the escort,
23 that you had a line in the wheel, even if it wasn't really

1 affecting the maneuverability?

2 A. If it wasn't affecting the maneuverability, I don't think I
3 probably would have made mention of it.

4 Q. Sir, did you have any direct interaction or knowledge of Mr.
5 Biernacki?

6 A. I had met him. He sought a job with me one time, but I had
7 already hired somebody. I just knew him in passing on the dock.
8 I didn't, you know--he wasn't anybody I--I associated with.

9 Q. Do you happen to know how long he was in the area for?

10 A. I remember him being around for a year or two, I think,
11 something like that.

12 Q. Sir, I would now like to focus on your knowledge of Mr.
13 Joshua Porter. How did you know Mr. Porter?

14 A. I was a personal friend for a couple decades.

15 Q. And did you ever work on a commercial vessel with Mr. Porter?

16 A. I fished a long-line season with him on the NORMA M [ph].

17 Q. And what position did he fill on that boat?

18 A. We were both hands on the boat crew.

19 Q. Sir, how would you describe Mr. Porter's competency as a
20 commercial fisherman?

21 A. Oh, he's an able-bodied seaman. He had good skills.

22 Q. Did Mr. Porter give you any information about his employment
23 ~~about~~ **aboard** the MARY B II?

1 A. I--yeah, he told me he was going to fish on the boat.

2 Q. Did he tell you anything about his experience aboard the MARY

3 B II?

4 A. I--I didn't--we didn't have time to really get into that. We
5 were both trying to get going fishing on separate operations.

6 You know, it's--it's pretty fast paced when you're trying to get
7 going.

8 Q. Sir, do you remember the last time that you spoke with Mr.
9 Porter?

10 A. I think it was--I think it was 2 days before the wreck.

11 Q. And was that in person or was that via phone or text?

12 A. It was in person. It was on the dock in passing.

13 Q. Mr. Busby, is there anything else you would like to tell us
14 that we haven't already discussed?

15 A. No, I don't have a lot--I was expecting more questions. Is
16 this all you have for me or----

17 **LIO:** We--no, no, sir, we have some questions.

18 **WIT:** Oh, great, yeah, okay.

19 **LIO:** Go ahead, Lieutenant Bigay.

20 **Questions by the assistant investigating officer:**

21 Q. Mr. Busby, good morning.

22 A. Good morning.

23 Q. You mentioned about Mr. Porter--you said that he had good

1 skills.

2 A. Yeah.

3 Q. Can you elaborate on that?

4 A. Yeah, he was--he was really familiar with the deck of a boat,
5 the working of a boat, you know, the ins and outs, all the
6 mechanics, you know, just everything about a boat. He was--he
7 was a good deck hand.

8 Q. How would you describe Mr. Porter's safety mindset?

9 A. He was--he was always safe, you know. It's--he's a good guy.
10 He also looked out for the other man's back, you know. He just--
11 he worked safely. He--you know, nothing dangerous. I ran with
12 him a bit offshore tuna fishing, you know, just in communication
13 with him. He just--just an all--a really safe guy.

14 Q. While you worked with him on board--you said the NORMA M.

15 A. Yes, correct.

16 Q. You were both crewmen at the time.

17 A. Yes, we were both crewmen at the time.

18 Q. Did either you or him ever move on to operate that vessel?

19 A. Josh operated the vessel for a while.

20 Q. Were you still a crewman during that time?

21 A. No.

22 Q. While he worked with you as a--as crew, did he ever try to
23 provide you feedback or suggestions on better ways to work on

1 deck or safety of operations?

2 A. No, everything flowed pretty good on the boat. We had good
3 experience on the boat and just, you know, everything worked.

4 Q. Earlier you stated you did not--when asked about your
5 experience with the operator of the MARY B II, Mr. Biernacki, you
6 mentioned you didn't associate with him. Can I ask why?

7 A. Well, in all honesty, I believe that, you know--I believed,
8 in my own opinion, that the man was probably using, and I have a
9 past--17 years ago I had a past and I just don't--it's not me and
10 I don't want to be anywhere around it, and if I suspect it, I'm
11 just not having it.

12 Q. I understand, sir. What led you to believe that?

13 A. My experience with it and the erratic behavior.

14 Q. Can you elaborate on the behavior you observed?

15 A. Just real fast motion for no apparent reason and just not
16 really having it together.

17 Q. Sir, earlier you mentioned, when asked about weather
18 conditions and input from--from different fishermen, you--you
19 mentioned you--in a situation where there was new--someone new to
20 the area, you would probably try to reach out----

21 A. Well, I would expect--I said I would expect that maybe they
22 would reach out and try to--not myself reach out to him, but as--
23 as a captain, if I did not have good information, I would have

1 been reaching out to somebody for better information----

2 Q. Under----

3 A. ----to get me home.

4 Q. Understood. So you mean the new person to the area reaching
5 out to----

6 A. Yeah.

7 Q. ----the local folks.

8 A. Absolutely.

9 Q. Did you ever learn about Mr. Biernacki reaching out to the
10 local folks----

11 A. No. No, when--when this all happened, like I said, I--I was
12 already home in bed getting a nap, anti--anticipating making the
13 next--you know, the next tide--next available tide when the
14 weather came down. So I'd already been up for a couple days
15 working. So I was getting some sleep.

16 Q. Sir, earlier you mentioned--trying to describe Mr.
17 Biernacki's behavior that led you to not want to associate, you
18 described some fast motions. Could that be attributed to maybe
19 just caffeine or--or energy drinks?

20 A. I--I don't think so, not--if you're asking for my opinion, I
21 don't think so.

22 **LIO:** Sir, can you--sir, you had direct observations, which is
23 why you have, you know, created this opinion in your mind on why

1 you don't think so.

2 **WIT:** Yeah.

3 **LIO:** Could you elaborate on that, please?

4 **WIT:** Well, I--I abused substances for a decade and a half and,
5 you know, I've got pretty well--pretty well--you know, I know
6 what's going on. I know what time it is. I just--you know,
7 that's my opinion and that's what that is. You know, I just---

8 **LIO:** I think I'm just trying to better understand what you
9 observed that would--that would make you----

10 **WIT:** Not--not normal motion, just--just not normal motion. It's
11 hard to describe. I mean, I could get up and, you know, like--
12 but it's just not normal motion.

13 **LIO:** Lieutenant, go ahead.

14 Q. Sir, in your experience crewing with Mr. Porter--before I ask
15 that question, you're also personal friends of Mr. Porter; is
16 that correct?

17 A. Yeah. Yeah.

18 Q. In your experience with him, do you think, given an unsafe
19 situation or if he was a member of the crew, maybe even the same
20 boat that--that you were on, if he felt something wasn't safe or
21 appropriate or being done the correct way, would he provide
22 feedback and try to offer suggestions--advise or try to correct
23 that?

1 A. I believe he would. You know, you're not right there, but I
2 believe he would. I mean, experience would tell you, if you
3 didn't like what was going on, you know, you'd say something
4 about it.

5 Q. Did you--did you ever observe this in terms of him providing
6 feedback or doing that----

7 A. No.

8 Q. ----while you were----

9 A. No. While we were fishing together?

10 Q. Uh-huh.

11 A. No. Like I say, when we were fishing together on the NORMA
12 M, the skipper had a handle on what was going on on the boat and
13 he just--you know, he provided the details of what to do and, as
14 crew, we just--you know, we provided the work. And when
15 everything is working on a commercial boat, there's--you know,
16 the interaction is minimal. You're just out there working,
17 having a good time, pretty much.

18 **AIO:** Mr. Busby, may I ask you to please lean into the
19 microphone.

20 **WIT:** Oh, sorry. I'm sorry about that.

21 Q. Can you restate that? I'm sorry.

22 A. Yeah, I'm sorry. So on the NORMA M, we--the skipper pretty
23 much relayed everything we did, you know, on a daily basis, and

1 we just--we just worked and went through our day, you know, just
2 on our daily tasks.

3 **AIO:** Understood. Thank you, sir.

4 **LIO:** Lieutenant Commander Foster?

5 **Questions by the technical advisor:**

6 Q. Good morning, sir.

7 A. Good morning.

8 Q. I'm asking in relation to your experience on fishing vessels
9 in crossing this bar. If your vessel can make--if the vessel you
10 were on would make about 6 to 7 knots and given adverse weather
11 conditions, at what speed would you try to cross the bar?

12 A. Oh, I would try to--I would try to cross it just as quickly
13 as I could, you know, given the conditions. There's--there's a
14 lot that goes into the mechanics of crossing a bar. You don't
15 just--you can't--you've got to time everything between the wave--
16 you can't--you can't give it full throttle constantly. If you do
17 and you get on the crest of a wave, the--the inertia of the
18 wave--your speed will compound so rapidly you can get out of
19 control. So at some point you have to back off the throttle and
20 let stuff try to glide by you. If you don't, you can really get
21 in trouble.

22 Q. Can you help us understand how you would accurately judge,
23 like you had said, driving with the throttle, sometimes called

1 throttle jockeying. How would you assess that? Are you looking
2 at the waves? Help us un----

3 A. I'm--I'm--I'm looking--I'm looking at the wave as it passes
4 me, the timing--you sit outside and you time--try to time the
5 swell and you get in between--you figure your length--your length
6 of time between the swell and you start your travel in. Okay,
7 now, as--as the waves crest behind you, as they're coming up on
8 you, if you have good crew or if you have good line of sight
9 yourself, as you see that next wave start to come and crest
10 behind you, you have to throttle back, because if it gets you in
11 the crest and you go with it, you're in trouble, you're out of
12 control.

13 Q. We've heard previous testimony about the extreme darkness of
14 the evening of the 8th of January. What are some ways that
15 you've seen that have been effective to try to help figure out
16 the timing, the lull, the sets, things like that of the waves to
17 help a mariner safely navigate that?

18 A. Well, a good--a good watch doesn't hurt, so you can time--get
19 actual minutes or seconds between swells. You have your range
20 lights. There's a certain point of--if you're sitting and
21 waiting, you don't want to get inside that second buoy out. You
22 know, you don't want to be near the breakwater. You want to time
23 everything from outside, but you want to be as near as you can so

1 you're not, you know--so you cut the length of time down getting
2 across, because that's--that's your--that's your moment of real
3 danger, when you're right there, you know, between that second
4 buoy and coming in to the tips. That's where bad things happen.

5 Q. In your opinion, if someone were new to the area, how long
6 might it take someone to--and please either use months or
7 seasons. How long might it take for someone to learn how to
8 safely navigate this bar?

9 A. Well, I--I say seasons, because it--the weather conditions
10 that you're fishing hard in are only a couple, 3 months of the
11 year where you have this bad southerly and westerly that creates
12 the--the issue here. It's not--you know, one season of crabbing,
13 I mean, you learn a bit about it, but like I say, it changes on
14 a--on a daily and hourly basis and sometimes by the minute when
15 you're there.

16 Q. Have you ever been on a vessel that has requested or received
17 an escort from the Coast Guard?

18 A. I've been--I've been escorted on a--on a boat or two in my
19 time.

20 Q. Can you briefly describe, if you know, the radio
21 communications, the amount and frequency of information that was
22 passed?

23 A. A lot--a lot of communication about timing in the beginning

1 and--and once--once you've decided to go, the--the
2 communications--there's a lot less of it because you're just--
3 you're--you're straightforward paying attention. Your guys are
4 paying attention behind you and you've really got to keep your
5 mindset focused right there.

6 Q. Have any of the vessels that you've operated had AIS at the
7 time that you were crossing the bar?

8 A. No, ma'am.

9 Q. Can I ask you to expand whether they just didn't have them on
10 there or you didn't use them.

11 A. They just did not have them on there at the time.

12 **TA:** Thank you, sir.

13 **WIT:** You bet.

14 **TA:** No further questions.

15 **LIO:** Mr. Busby, I have a few questions for you.

16 **Questions by the lead investigating officer:**

17 Q. Earlier you--we discussed your experience with a line in the
18 screw. Can you--can you help me understand that phenomenon? In
19 your experience, can the impact of a line change over time, like
20 it creates some vibration----

21 A. I--it----

22 Q. ----in the beginning and then more----

23 A. It would depend on----

1 Q. ----or less?

2 A. I suppose it would depend on how the line parted. If the
3 line parted clean, two clean ends at the prop, then you wouldn't
4 have an issue. But if you had a long length of line that was
5 still attached and wound to the prop, then eventually you might
6 have trouble over time.

7 Q. So--so if a--over time it can have--it could start with
8 little impact and then become more impactful?

9 A. It--it could if you had--just like I say, it depends on the
10 amount of rope you have in the wheel and the situation on how the
11 line was cut. If you have a lot of rope and it could wind all up
12 and bind your prop, then you'd have an issue, but if it's just a
13 short piece of line and you cut clean--generally if you get a
14 line in the wheel and it's crap rope, it's not, you know, 7/16th
15 at the biggest or half inch, you generally just wind the boat
16 back and forth, forward and reverse, until you cut the line. You
17 generally get a pretty clean cut on it and you don't wind a lot
18 of excess up. If you have excess rope, it's generally hanging
19 off the back of the boat and you can see it.

20 Q. Okay. So the impact, though, as far as impacting of the
21 vessel, can that happen suddenly, the change in impact, where you
22 said, you know, you could still get----

23 A. I'm not--I'm not an expert, but I--I suppose there--there

1 could have been a given situation where it happened, but I've
2 personally never seen it.

3 Q. Okay, thank you for that. Did Mr. Porter look forward to
4 going fishing with Mr. Biernacki, to your knowledge?

5 A. No, I don't think so. It was just something to get him by
6 until--he had--he had another job lined up a week or so later, I
7 believe, and he was just looking to get by and get some bills
8 paid.

9 Q. To your knowledge, did anyone tell him not to get underway
10 with Mr. Biernacki?

11 A. I asked him personally not to go fishing with him.

12 Q. And why is that, sir?

13 A. Just because--just because of what we spoke of earlier, what
14 I saw and I just didn't feel it was a good place for Josh Porter.

15 Q. Did Mr. Porter ever explain any hesitation to you about
16 getting underway with Captain Biernacki?

17 A. I wasn't present when they got underway. I was--I was busy
18 getting my own gear out. That was where--kind of where our
19 communication ended coming up into that--was you know, everybody
20 partied ~~partied~~ parted and went to get the gear out and go fishing.

21 It's--in that particular time----

22 Q. Sir, I apologize for interrupting your flow. Would you
23 mind--tip the mic.

1 A. Yeah, I'm sorry.

2 Q. Thank you, sir.

3 A. In that--in that particular time, it's really hard to--to do
4 a lot of communication just, you know, with other people. You
5 know, you're so busy trying to get your own show going.

6 Q. Speaking of getting one's own show going, can you specify the
7 name of the vessel that you were on and then the vessel
8 particulars, please.

9 A. The vessel I fish is the fishing vessel WINTER HAWK. It's a
10 42-foot vessel.

11 Q. Okay. So about the same size as the MARY----

12 A. In the same size category, pretty much. It's a steel boat.
13 It's a little bit more boat.

14 Q. Excellent, okay. Would you say that there are other
15 characteristics, aside from the construction of--you know, the
16 material of the vessel's construction that was different? Are
17 there other differences between the MARY B II and the vessel that
18 you were on----

19 A. Yeah.

20 Q. ----at the time?

21 A. Yeah, my vessel is a tanked crab boat, meaning the whole fish
22 hold is--is flooded with water. It's not--it's not an insert
23 tank boat. It's a different dynamic. All your--your load is

1 lower in the water. So your center of gravity sits better at the
2 waterline.

3 Q. Okay. And you mentioned earlier in your testimony that you
4 and your vessel were already in on the afternoon of January 8th,
5 2019. You said you were offloading at approximately 1700----

6 A. Yeah.

7 Q. ----and home by 1900, so 5:00 p.m. and 7:00 p.m.

8 A. Yeah, correct.

9 Q. And so did you make a conscious decision to plan your trip
10 backwards like--over those times to come in early? Was that a
11 conscious decision----

12 A. Yeah, it was----

13 Q. ----and what went into that?

14 A. It was a conscious decision. We knew we had weather coming.
15 We wanted to fill the boat before--we didn't get any nap or
16 anything, worked straight through the night to fill the boat and
17 got back to town. That was our--that was our plan.

18 **LIO:** I understand. Lieutenant Bigay, one more?

19 **Questions by the assistant investigating officer:**

20 Q. Mr. Busby, thank you for your patience.

21 A. A. No problem.

22 Q. Knowing Mr. Porter, do you know what his attitude towards
23 drug and alcohol was?

1 A. He absolutely abstained. He was into it. He, you know,
2 just--that wasn't him. He was--that guy was constantly in the
3 business of saving lives away from the substance, you know, not
4 promoting.

5 Q. While being part of the crew on board the NORMA M with him,
6 did you ever observe him using drugs or drinking alcohol while
7 underway?

8 A. No.

9 Q. In the days prior to the 8th of January, did you have
10 interactions with Mr. Porter? I think you said you had seen him.

11 A. Yeah, I just saw him in passing on the dock real quickly.

12 Q. In terms of his physical condition, did he seem okay in terms
13 of range of motion or arms, legs, any injuries that you could
14 tell?

15 A. No, he was fine.

16 **AIO:** Thank you.

17 **Questions by the lead investigating officer:**

18 Q. Sir, you mentioned very early on that you've attended six
19 AMSEA safety courses.

20 A. Yeah.

21 Q. And that you have--you have 32 years of experience. And so
22 you've taken the class six times.

23 A. Yeah.

1 Q. Can you tell me why you've chosen to do that? Why--why go
2 more than once?

3 A. Muscle memory. If you do it more than once, it's in your
4 mind. You're ready. Every time I go there's something that I--
5 I've not remembered and it has brought it back to me. It's just
6 a good refresher for us, and it's good especially if you've got
7 new guys on the boat, you know. You go do it. You know, you get
8 them some experience, too, which is--it's a real good thing.

9 LIO: Okay, thank you.

10 WIT: Yeah.

11 LIO: Mr. Reilly?

12 **CROSS-EXAMINATION**

13 **Questions by the party-in-interest counsel:**

14 Q. Mr. Busby, thanks for being here.

15 A. Yeah.

16 Q. With respect to bringing a fishing vessel across the bar in
17 difficult conditions, fair to say when you arrived sort of at
18 that first buoy and are monitoring the conditions, observing--
19 sort of in the observing mode, do you spend sort of at least a
20 full cycle there through the--the big set, the small set and the
21 lull as far as timing things?

22 A. Yeah--yeah, depending on--depending on how big it is, at
23 least once. If it's--if it's real big and confused, you know,

1 sometimes you sit through a couple, three cycles trying to get it
2 figured out.

3 Q. You also talked about the particularly hazardous area--just
4 to make sure I'm clear, would that be the area between where buoy
5 3 normally sits and the end of the tips?

6 A. Yeah. Yeah, between--between the tips and the first buoy
7 is--it's--and it can--it can be all the way out to the second
8 buoy, depending on the size of the seas, but generally--generally
9 where it gets real big is the shallowest on the bar, and it gets
10 shallower the closer you get to the tips. So as you get in
11 closer, the seas are building. The ground gets shorter. The
12 wave height gets taller as it comes in.

13 Q. And ideally you want to position your vessel sort of as close
14 to that area as possible so when that lull occurs, that's when
15 you commence your--your serious attempt to--to get in between the
16 jetties?

17 A. Correct.

18 Q. And with respect to your observations of Mr. Biernacki, was
19 that based on more than one time seeing him? Was that based on
20 more than a 5-minute discussion? We really didn't get any
21 specifics about that.

22 A. That was based on me seeing him around on the dock for the
23 last year or so.

1 Q. Okay, so it was more than one time.

2 A. More than one time, yeah.

3 Q. And a total amount of time, at least 10 minutes of
4 observation, maybe more?

5 A. Yeah--yeah, absolutely.

6 Q. So when you discouraged Mr. Porter from going on this vessel,
7 did you have a candid discussion with him regarding your
8 observations of Mr. Biernacki and your suspicion that there was
9 some sort of substance use?

10 A. Yeah, I--I basically just told him I didn't think it was the
11 spot for him. You know, I didn't think there was good things
12 going on there. That's kind of the way I put it to him. I mean,
13 he--I just don't know--I don't know if he knew what was going on
14 or what. I--but I told him I didn't like what I saw.

15 Q. So the record is perfectly clear, did you specifically warn
16 Mr. Porter about your suspicions about substance use on board
17 that vessel?

18 A. Yeah, I--I thought--I told him I thought there was stuff
19 going on there.

20 Q. If we were having a conversation and you told me there was
21 stuff going on, it might not be apparent to me that what you're
22 saying is somebody is using drugs. I'm trying to understand if
23 there was a--sort of a candid and clear conversation in which Mr.

1 Porter was informed of your suspicions that there was drug use--
2 you know, I'm just saying----

3 A. I----

4 Q. ----there might be a little----

5 A. I--I----

6 Q. ----ambiguity there.

7 A. I--I couldn't--I couldn't say that--that--that the crew was
8 on drugs on board on that boat. I told him I had my suspicions,
9 and that's--that's as far as it went. I said, "I suspect that
10 there--there are things being used." That's what I, you know--it
11 was a quick conversation just in passing. You know, like I said,
12 we were both trying to get fishing.

13 Q. Prior to January 8th, do you remember having conversations
14 with anybody other than Mr. Porter about those same specific
15 suspicions?

16 A. No. No, sir.

17 Q. Is it fair to say that prior to January 8th, you did not have
18 any conversations with the owner of the fishing vessel MARY B II
19 about your suspicions about drug use?

20 A. No.

21 Q. Given your testimony concerning Mr. Porter's competency,
22 character for safe fishing, concern for safety, would you agree
23 that he--somebody with his character and attitude would be a good

1 hire by any fishing vessel owner?

2 A. Ab--absolutely, yeah. He was--he was a fine crewman.

3 Q. Were you here earlier today during the testimony of the owner
4 of the fishing vessel RANGER?

5 A. No, sir.

6 Q. Prior to January 8th of 2019 had you been informed by anybody
7 on the docks of an incident involving Mr. Biernacki on the
8 fishing vessel RANGER?

9 A. No. I witnessed him throwing kind of a tirade on the boat
10 one day down on the dock because somebody had parked in his spot
11 or something like that, as I remember, but that's the only
12 incident I can remember between him and the--the RANGER. I tie
13 like three--three slips from the RANGER on dock 7.

14 Q. So by parking, you're talking mooring the vessel?

15 A. Yeah, mooring--yeah, mooring the vessel. We're real close
16 there.

17 Q. With respect to your testimony about knowing the weather in
18 advance on January 8th and taking--undertaking to--which
19 apparently required some extra fishing at night?

20 A. Yeah, yeah, we worked straight through. We never took a nap.
21 We just worked straight through and pulled the boat and came to
22 town.

23 Q. And just so there's--there's clarity, when you know say "we

1 worked straight through", when you're crabbing it's an all-hands
2 evolution.

3 A. Yeah, you're--you--in the beginning, if you're not--if you're
4 not going until you fill the boat and getting to town, somebody
5 else is catching those crabs. So you just--it's--the real money
6 is made in the first 2 or 3 weeks of the season. So you just
7 have to go.

8 Q. And the reason the real money is made early in the season is
9 just there's more crab per pot?

10 A. Correct, yeah, the volume is there in the beginning and, as
11 it goes, you catch less. You've got--there's a lot of
12 competition.

13 Q. So if you'd been up all night, by the time you got back to
14 port, you were pretty exhausted.

15 A. We were all tired but functioning.

16 **PIIC:** Thank you, sir.

17 **WIT:** Yeah, you bet.

18 **LIO:** Mr. Busby, we do have a couple of follow-on questions for
19 you.

20 **WIT:** Sure.

21 **REDIRECT EXAMINATION**

22 **Questions by the lead investigating officer:**

23 Q. So when you were talking to Mr. Reilly, you mentioned, you

1 know, that you've got to get real close--time the sets, observe
2 before you make the bar crossing.

3 A. Sure, yeah. If you're smart, you do.

4 Q. So depending on the weather conditions, can the term
5 "close"--can that be different for differing weather conditions?

6 A. Yeah, it can. The--the bigger the bar, the farther out you
7 want to be when you're--when you're making a check, when you're--
8 when you're timing everything. The larger the wave, the--you
9 know, the more propensity to break farther out.

10 Q. Okay. So have you ever--have you ever fished or crossed the
11 bar in conditions that were similar to that night?

12 A. With my boat, 42-foot, I--I pretty much draw the line at--at
13 anything less than square and 13 feet. Less than square, I mean
14 a 13-foot wave at 13 seconds is square. Anything less than that,
15 that wave is coming at you so fast you're not going to be able to
16 travel beyond it and get up it safely, in my opinion, you know,
17 in a small vessel. So the longer the--the longer the period is
18 compared to wave length--say a 12-foot wave at 16 seconds is a
19 much better crossing than a 12-foot wave at 8 seconds.

20 Q. So--so to answer the question, are you saying that you
21 would--if you were in that position and you were out still----

22 A. Yeah.

23 Q. ----you would not have chosen to cross the bar? I don't want

1 to assume. I just want to make sure I understand.

2 A. I wasn't----

3 **PIIC:** Objection.

4 **WIT:** I wasn't there at that moment----

5 **PIIC:** Objection.

6 **LIO:** Basis?

7 **PIIC:** I just want to make sure, since he wasn't there, you're
8 asking about his decision in assumed conditions. You've got a
9 report of the conditions. Maybe you can just make sure his
10 thoughts about what those conditions are are--are based on the
11 record. So----

12 **LIO:** Okay.

13 **PIIC:** ----I'm not sure he knows those conditions.

14 **LIO:** Thanks, Mr. Reilly. Appreciate that. Actually, yes, we
15 can get--we can read off the conditions that were reported for
16 about that time.

17 **WIT:** Yeah, please do for clarification.

18 **LIO:** Yup, absolutely. Just a second.

19 **TA:** Sir, that evening Station Yaquina Bay observed 12-to-14-foot
20 seas with occasional 16-foot breaks. The forecasted weather was
21 southeast wind 20 to 25 knots, gusts to 35 knots, rising 20 to
22 30--rising to 20 to 30 knots with gusts to 40 after midnight.
23 Combined seas were 12 feet with a dominant period of 11 seconds,

1 building to 20 feet with a dominant period of 18 seconds.

2 **WIT:** Yeah, I would have--I would have liked--I would have tried
3 to beat that in. Personally, I wouldn't--I would not have--with
4 my experience level, I would not have pushed it so far to stay
5 out beyond that. I would have timed it like I did to get in.
6 That's--that's more bar than I would have crossed with my boat.

7 **LIO:** Understood.

8 **WIT:** Given the conditions and not being right there, I mean,
9 that being less than square, I think I would have opted out to
10 cross that bar.

11 **Questions by the lead investigating officer:**

12 Q. So you would have crossed the bar--if you were out in those
13 conditions, you would have crossed the bar to try and make sure
14 that you weren't out at sea when they got bigger?

15 A. Yeah, correct, I would have--I would have--given those
16 conditions right there, I don't think I would have made the
17 crossing. I think I would have tried--are you getting what I'm
18 saying?

19 Q. No. Explain to me again.

20 A. I'm trying to--I'm trying to not confuse you. At that level
21 and that quickness, I wouldn't have been there. I would have
22 been in before then. That's where I'm at with it. It would--
23 that--that's--that's more bar than I would have crossed under

1 those conditions.

2 **LIO:** Okay, I understand. Lieutenant Bigay, do you still have a
3 question?

4 **AIO:** Yes, if I may.

5 **Questions by the assistant investigating officer:**

6 Q. So understand that you would--you're saying you would have
7 been in already.

8 A. Correct. Yeah, correct.

9 Q. In a situation where you were not in already and you were out
10 there still offshore attempting to come in under those conditions
11 that Lieutenant Commander Foster just read, would you have opted
12 to wait and--and time it out and get an assessment of--of what
13 that looked like before crossing?

14 A. Oh, absolutely. It would have had to have been assessed.
15 Like I said, every bar is different. You have to be right there.

16 Q. Understood. Would--would that need to time it change if, as
17 you were navigating to come into the bar, you had information
18 from the Coast Guard that they were ready to escort you and they
19 had provided you information on the wave parameters and
20 characteristics?

21 A. It's so hard to say if you're not right there, but if I had
22 the Coast Guard with me and there was an absolute need to get in,
23 if I--I just--I have questions of my own. I--you know, it--it

1 would matter--it would matter wholly on whether I could turn that
2 boat around and safely survive the period of time of the storm
3 offshore and not have to cross that bar. That would come into
4 play before I ever made the decision to cross that bar under
5 those conditions.

6 **AIO:** Thank you, sir.

7 **LIO:** Mr. Reilly, you had a question?

8 **RECROSS-EXAMINATION**

9 **Questions by the party-in-interest counsel:**

10 Q. Thanks, Mr. Busby. Understanding you're the vessel operator
11 or the master of the vessel, but you're actually not the owner of
12 your fishing vessel.

13 A. Yeah, that's correct. It's owned by Robert Alby [ph].

14 Q. Does your owner promulgate any written guidance to you as the
15 master with respect to what bar conditions are approved or
16 suitable for your vessel to transit this bar?

17 A. It's solely left up to me as the operator.

18 **PIIC:** Thank you, sir.

19 **LIO:** Ms. Foster?

20 **REDIRECT EXAMINATION**

21 **Questions by the technical advisor:**

22 Q. Mr. Busby, a couple of questions just about local familiarity
23 with some terms that we've had testimony on. Are you aware

1 whether Yaquina Bay has ranges?

2 A. Yes, ma'am, there are ranges.

3 Q. Are those light or board ranges?

4 A. They're light ranges, red on red.

5 Q. Can you please help me understand in local parlance how
6 someone would describe--like if you were going to describe to me
7 whether I was in the center of the channel, to the right or to
8 the left, can you tell me how you would describe that to someone.

9 A. As--as you're approaching the bar, your--you have--you have a
10 flashing top light and you have a solid bottom light, and as--as
11 you pass the ranges, when--when you come on line, what you call
12 center line on--on the channel, the lights line up as you come
13 onto center channel. Once those lines line up, you make your
14 turn and you're coming right down center line in the channel. So
15 if you're--if you're making your crossing on the bar, say you're
16 coming from south, as you--as you approached, your--your lights
17 would--would appear like this--well, your lights would appear
18 like this [indicating]. So as you get closer to center line,
19 your--your lights come into center like this [indicating]. Once
20 they're--once they're one line over the top like this
21 [indicating], you're at center line and you can make your turn
22 and you're coming right--right down the main channel. You're
23 lined up with your ranges outside--your buoys outside, your

1 ranges inside. You're making a straight line for the bar at that
2 point.

3 Q. Yes, sir. And are you familiar with using the terms "one
4 board left" or "one board right" of channel?

5 A. I--I'm not familiar with that terminology. Most of my
6 experience has been right or left of center line----

7 Q. Understand.

8 A. ----coming and going.

9 Q. So for clarity, if I were going to say come right, in your
10 mind that means I would need to come right to be center channel?

11 A. Yeah, you'd come right, come ~~over~~ starboard to center
12 channel----

13 Q. Great.

14 A. ----at this entrance.

15 **TA:** Thank you, sir.

16 **WIT:** You're welcome.

17 **LIO:** So as an administrative note, we just used a prop. We just
18 used a model of the range--of a range. For administrative
19 purposes, that is Exhibit 054 that we used.

20 Q. Sorry, sir, using--either demonstrating or just verbally
21 telling me, if someone--if you heard on the radio someone passing
22 to you "you are two boards north", would that mean anything to
23 you?

1 A. To me--to me it wouldn't. Like I said, I was--I was schooled
2 differently, you know, on center line and south and north here on
3 this bar.

4 Q. Understand. So on this bar, local parlance would be to use
5 starboard or port.

6 A. For me and the vessels I've been on, that's--that's what it's
7 been.

8 **TA:** Thank you, sir.

9 **WIT:** Yes, you're welcome.

10 **Questions by the lead investigating officer:**

11 Q. Mr. Busby----

12 A. Yes, ma'am.

13 Q. ----so Mr. Reilly asked a really good question. Is it common
14 for vessel owners or operators to have written policies about bar
15 condition and approved crossings, to your knowledge and
16 experience?

17 A. Not to my knowledge or experience. No vessel I've operated
18 or been under, there has been that policy.

19 Q. And from your experience with working with operators--with
20 operators and also with owners as an operator, what kind of
21 communications do you have with--let's say you're the operator
22 and someone is an owner. Do you communicate a lot with owners,
23 from your experience?

1 A. Well, for this vessel I'm pretty much left up to the
2 management. I see the boat owner weekly, you know, and we
3 discuss things about the boat, what we need, what we don't need
4 and that, but he's not--the owner of the vessel I operate is a--
5 is an older gentleman. He's kind of left it up to me, you know,
6 the whole management end of the deal, other than, you know,
7 signing papers and all that.

8 Q. Does your vessel--does the owner of the vessel that you
9 operate have crew contracts--hiring contracts?

10 A. Yes, correct.

11 Q. Last question. You've crossed the bar numerous times over
12 your 32 years' experience. Is there anything you think the Coast
13 Guard can do to make it safer for fishermen and mariners?

14 A. Yeah, it's--it's a really tough one. It's--there's--it's
15 hard. I--this is really tough.

16 Q. Take your time. It's okay.

17 A. What you do is great. I--it's hard for just a--just a common
18 man like myself to come up with something great that you guys
19 could do different. You know, it's--I'm just really unclear on--
20 you know, I--it seems like you're always there for us, you know,
21 under--under any given circumstances. I've been helped a lot by
22 the Coast Guard over the course of my career. As far as I know--
23 I know you guys aren't allowed to--to come right out and--and

1 tell us an appropriate time to make our crossing. You can--you
2 can advise that it, you know, may be a good time or whatever.
3 You can't come right out and say that--it just seems like there's
4 got to be some kind of a standard, you know, to---

5 **LIO:** Okay. Okay. Well, thank you. Mr. Reilly [sic], you are
6 now released as a witness from this formal hearing. Thank you
7 for your testimony and cooperation. If I later determine that
8 this board needs additional information from you, I'll contact
9 you through our counsel. If you have any questions about this
10 investigation, you may contact the investigation recorder,
11 Lieutenant Luke Woods.

12 **WIT:** Yeah, okay, thank you.

13 **LIO:** Thank you again.

14 **WIT:** Yeah, thanks again.

15 **LIO:** The time is now 11:52. We're going to take--we're actually
16 going to break for lunch. We'll reconvene at 1:00 p.m.--1:00
17 p.m.

18 [The hearing recessed at 11:53 a.m., 15 May 2019.]

19 **[END OF PAGE]**

20

21

22

23

Under 46 U.S. Code§6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 15 May 2019

4 WITNESS: DENISE PORTER

5 [The hearing was called to order at 12:59 p.m., 15 May 2019.]

6 **LIO:** Good afternoon. It's 12:59 and we will reconvene this
7 public hearing. Before we take testimony from our next witness,
8 I have two administrative remarks.

9 In previous testimony from Mr. Brewster, which was yesterday
10 afternoon--he was the former employer of Captain Biernacki--we
11 heard that he was unaware of a rescue that Mr. Biernacki was--
12 played a big part in. That was corrected afterwards, and there
13 was an article that attested to his participation in the rescue.
14 We are going to add that article as Coast Guard Exhibit 065 for
15 the record, and it will be available on the newsroom when we
16 upload all of the documents.

17 As another administrative matter, this afternoon we're going
18 to be getting testimony from the medical examiner as well as
19 personnel from the Oregon State forensic lab. We will not be
20 displaying any photographs with this testimony.

21 We will now take--we will now hear testimony from our next
22 witness, Ms. Denise Porter. Ms. Porter, please come forward to
23 the witness table and Lieutenant Woods will administer your oath

1 and ask you some preliminary questions.

2 **DENISE B. R. PORTER was sworn and testified as follows:**

3 **DIRECT EXAMINATION**

4 **Questions by the recorder:**

5 Q. Please state and spell your full name.

6 A. Denise Barrett Ramirez Porter. That's D-e-n-i-s-e. Barrett
7 is B-a-r-r-e-t-t. Ramirez, R-a-m-i-r-e-z. Porter, P-o-r-t-e-r.

8 Q. And please identify the person sitting next to you.

9 A. This is my son-in-law. He's here for support.

10 **REC:** Can you please state and spell your name.

11 **MR. RENE:** Brandon Michael Rene, B-r-a-n-d-o-n. Michael,
12 M-i-c-h-a-e-l. Last name, Rene, R-e-n-e.

13 Q. Please state any professional licenses or certificates that
14 you now have or have ever had relating to commercial fishing.

15 A. Commercial fishing, I did take the safety course that the
16 Coast Guard offers, and I did take a sailing--like learning how
17 to sail in the harbor in the--in the--up and down the--the river.

18 **REC:** At this time Lieutenant Bigay will begin her primary lines
19 of questioning.

20 **AIO:** Good afternoon, Ms. Porter. Thank you for your willingness
21 to appear and provide testimony today. On behalf of the
22 investigation, my sincerest condolences for your loss. I
23 understand this to be a difficult time and some questions are

1 going to be tough. If you need to take a break at any moment,
2 please let me know. All of my questions relate to the time
3 before the loss of the vessel MARY B II unless I state otherwise.
4 I would now like to follow up on some of the questions that
5 Lieutenant Woods was asking.

6 **Questions by the assistant investigating officer:**

7 Q. How long had you and Mr. Porter been together?

8 A. So we met in--I'm going to say March--no, April of 2008 and
9 we didn't become until a couple until probably later that year.

10 **LIO:** Ms.--ma'am, would you mind just speaking up a little bit,
11 please.

12 **WIT:** Okay.

13 **LIO:** You can move the mic if you want so it's a little bit
14 closer.

15 **WIT:** Okay.

16 **LIO:** Thank you.

17 Q. What is your level of experience with commercial fishing, if
18 any?

19 A. Okay, well, I started--in 2010 I came to Newport with Josh
20 and probably right there after, you know, he put me on a boat and
21 just started fishing. We did long-lining together for first on
22 the NORMA M and we did long-lining tuna **did** halibut probably for
23 3½ years, 4 years. Well, he ran the NORMA M for about--he crewed

1 on the NORMA M and the ran the NORMA M for about a total of 5, 5½
2 years.

3 Q. And while he ran that vessel, you were a crew member?

4 A. Yes, I was.

5 Q. You mentioned some of the fishery types that you were engaged
6 with. Was one of these Dungeness crab?

7 A. So because it's so dangerous, he didn't--yeah, I wasn't--I
8 didn't do those.

9 Q. Did--do you know that Mr. Porter--of Mr. Porter having
10 completed the Coast Guard AMSEA--and I'll state it for the--for
11 the record; it's Alaska Marine Safety Education Association--
12 drill conductor course.

13 A. Yes, he did.

14 Q. And you mentioned you had completed that as well.

15 A. Yes, I did. He also did the first aid and--yeah, the first
16 aid--extensive first aid, how to use the--all the equipment in
17 case of a heart attack and stuff like that. He did do that.

18 Q. Did you complete that course just because you were a crew
19 member on board a vessel or was there any other reason pushing
20 you to complete that course?

21 A. Well, for the fact that I wasn't a really good swimmer, Josh
22 made me complete that course and just know my--know what to do in
23 case of an emergency.

1 Q. Going off of what you just said, can you talk about Mr.
2 Porter's safety mindset in terms of vessel operations.

3 A. He was very safe. I could just give you an example of--so
4 tuna fishing, it was usually--just this past 2 years it was just
5 he and I on our boat, but before that there was usually three
6 crew. So--but like--so say if a gaff went overboard--the gaff is
7 what you use to hook a fish with when it--when you're bringing it
8 in. If we had to go back and get it, he basically used that as a
9 man overboard. So we would have to, you know, have the guy--the
10 third person pointing and--you know, out on deck pointing, the
11 other one at the door and then the one at the door is relating to
12 Josh where--where to go. The most current man overboard was this
13 summer. Out of the blue he just threw a lifejacket over. He
14 starts--he was on deck and I was driving and he just started
15 screaming "man overboard" and I'm just like--like I froze, and he
16 came in and he said, "You can't do that." He goes, "Because that
17 could be me." And so because of the way he said it, I just
18 started to automatically turn the boat--right--and it was on
19 autopilot. So I had forgot to turn the autopilot to override or
20 manual, and so he came in, explained to me--he goes, "Don't be
21 surprised. It's going to happen again." And a couple hours
22 later he did it, and I did everything that he had explained to me
23 to do again. Even though I had learned it through the Coast

1 Guard thing, it's just like I went blank for a second.

2 Q. Shifting now, Ms. Porter, to Mr. Porter's time operating
3 vessels in the Newport area. Can you talk about the vessels that
4 he operated out of this port?

5 A. That he operated as captain or just that he worked on?

6 Q. Let's start with the ones that he was crewing on.

7 A. Okay, so he crewed on the LAST STRAW, the NORTHSKA [ph]. He
8 crewed on the NORMA M, crewed on the JUDY, SUNSET CHARGE, TEMPO,
9 HAPPY SEA--that was out of Crescent City. SADIE K [ph] was out
10 of California. He crewed on a squid boat out of California, and
11 I'm sure there was many more, but this is during the time that
12 I've been here in Newport with him.

13 Q. How about in the sense of operating vessels?

14 A. So he was the captain of the NORMA M. He captained the JUDY.
15 He captained the SUNSET CHARGE, the APACHE IV. Yeah, and I think
16 that's it. And his own boat, which was the FEARLESS II.

17 Q. How many times would you approximate, if you could--how many
18 times did Mr. Porter cross the Yaquina Bay bar as an operator?

19 A. Well, whole seasons. So--seasons of captaining during crab,
20 seasons of tuna fishing. That's a long season. So he would come
21 back and forth. I don't know, a few hundred times, more than a
22 few hundred times, I would say, you know, going out and coming
23 in.

1 Q. Do you know whether any of those times were times where there
2 were heavy seas or adverse weather conditions?

3 A. So I know of one time. It was during crab season. It was
4 like the opener of it. And it was really, really bad out and--
5 but it was during the day. And so there were massive boats
6 trying to come in, and I just remember seeing photos--because I
7 wasn't on the boat. I just remember seeing photos, and there
8 were like boats just lined up coming out of the--you know, like
9 where--you know, where they line up at. And each boat was taking
10 its time, you know, like coming across, and Josh was one of those
11 boats. You know, I remember--and Josh telling me--it was his
12 turn to come up, like it was going to be his turn to cross, and
13 he actually didn't feel safe at that point. So he turned around
14 and went to the back of the line and waited for the other boats
15 to go. And, you know, I'm just going to say this, he--when he
16 did actually come across, somebody took a picture, and that
17 picture made the cover of *Pacific Fisherman*. You know what I
18 mean? Because it was an awesome picture. It was this huge wave
19 in back of him and he was coming across. It was--it was a scary
20 time for a lot of the boats.

21 Q. Ms. Porter, do you know whether Mr. Porter ran any safety
22 drills with his crew when he was an operator? I understand you
23 mentioned some man overboard drills that he performed with you,

1 but I mean in addition.

2 A. During--I can't say during crab season if he did any. I just
3 know during tuna and the long-lining--tuna for us, yes. Other
4 than what he did when I was on board, that's about it, that I
5 know of.

6 Q. Shifting now to the time frame when Mr. Porter began working
7 on board the MARY B II. When did Mr. Porter start working on
8 board that vessel?

9 A. He started working on that boat like the 1st of January,
10 somewhere around there. He had got the job probably about the
11 29th. So I don't think he actually went to the boat until the
12 30th--yeah, because they weren't working on the 31st because we--
13 we were somewhere else on the 31st.

14 Q. What was to be his role on board?

15 A. He was a block guy.

16 Q. Can you elaborate?

17 A. So the block guy is the guy that runs the block that pulls
18 the crab pots out of the water.

19 Q. Can you describe how he came to find that job?

20 A. So we had--we had a gear shed--took a storage unit--in South
21 Beach, and out storage--it was 906 and they were in 905. Josh
22 pulled in from being out of town and Steve was outside and they
23 just started talking and Josh said--he asked Josh if he had a

1 job. Josh had said no. He was going to look for a job that day
2 and then he didn't find one right away. So he called Steve back
3 and said, "I'm available."

4 Q. When you say Steve, you mean Mr. Biernacki----

5 A. Yes.

6 Q. ----the operator. Ms. Porter, do you know what Mr. Porter's
7 intentions on--regarding his employment on board the MARY B II
8 were in terms of whether it was--there was a permanency to it or
9 it was due to be temporary?

10 A. It was due to be temporary, because the same day that he
11 committed to Steve, later that afternoon he was asked to--to be
12 the block guy for the TANNA C [ph]--the fishing vessel TANNA C.
13 So he--they gave him a date. So he was only going to work until
14 the 9th, because he was going to start that job on the 9th.

15 Q. And he communicated that to Mr. Biernacki?

16 A. Yes.

17 **LIO:** Ms. Porter, before--sorry for interrupting, but could you
18 please clarify the date. Was it--you said the 29th and the 1st.
19 Was it--so he went to the boat on the 30th, you said, then?

20 **WIT:** Yes.

21 **LIO:** Okay, thank you.

22 Q. Ms. Porter, you mentioned the operator, Mr. Biernacki. Did
23 you know him or get to know him during the time that Mr. Porter

1 was working on board the vessel?

2 A. No. And I--I remember telling Josh--because usually we would
3 check the boat he ran--I would know the captain and the crew.
4 Because of any incident that may happen, he always had me be
5 like--exchange phone numbers, because if I needed to get a hold--
6 if I needed to get a hold of somebody or if somebody needed to
7 get a hold of me, that I would--you know, I had phone numbers,
8 you know, to owners or whatever. And I remember asking Josh and
9 he said, "There's no reason. I'm not going to be on this boat
10 very long."

11 Q. So then along those same lines, did you meet the other crew
12 member on board that boat, the MARY B II?

13 A. No, I never met Jimmy or Steve.

14 Q. When you say Jimmy, you mean--

15 A. Mr. Lacey.

16 Q. --Mr. James Lacey.

17 A. Uh-huh.

18 Q. Did Mr. Porter talk to you about them, Mr. Biernacki or Mr.
19 Lacey, in terms of the fishing operations and how the job was
20 going?

21 A. Yes.

22 Q. Can you elaborate?

23 A. I don't want to be mean or anything, but--so the first day he

1 came--they went out to set pots--well, so he didn't want to work
2 in the gear shed, basically, like at the same time as him. He
3 just had Steve give him jobs to do that he could do by himself,
4 because he--he didn't like being around him. But specifically
5 the first time they went to set pots, Josh came by and he was
6 like, "I'm so embarrassed." I go, "Why?" He goes, "Because they
7 rigged all the gear wrong and, you know, when other fish--other
8 fishermen know I'm on this boat and when they go by and see that
9 gear, they're going to associate me with that, with that rigging
10 of the gear." He goes, "I'm so embarrassed." I go, "Why don't
11 you fix it?" and he was like, "Because there's not enough time
12 between dropping pot and trying to fix it and then set it up.
13 There's just not enough time to do each pot."

14 Q. What was--can you elaborate or did he ever tell you what
15 specifically was wrong with the gear?

16 A. The buoys were backwards.

17 Q. Can you elaborate? What does--what are the implications of
18 that?

19 A. I--I don't really know what the implications are. I just
20 know that there's a certain way you set gear, that you, you know,
21 prepare the pots. And so, like, you have two buoys, a smaller
22 buoy and a bigger buoy. And they were backwards. You know, the
23 bigger one was--I don't know, it was--they were backwards. He

1 was really embarrassed. That's all I know.

2 Q. And just to clarify, this was--this is what lets them know
3 where the pots are?

4 A. Yes. Yes. Yeah, they--they sit on the water. The crab pot
5 sinks down, but the buoy is actually on top of the water so you
6 can find your crab pot.

7 Q. When was the first day that Mr. Porter went out underway on
8 board the MARY B II?

9 A. That would be--it was the 1st.

10 Q. Did Mr. Porter mention to you that he participated on any
11 drills with the crew of the MARY B II prior to going fishing?

12 A. No.

13 Q. Is there a chance that he might have participated in those
14 drills but just didn't tell you?

15 A. No.

16 Q. Is that because typically he would--he would always tell you
17 or----

18 A. Yeah, he--yeah, as far--yeah. He--we talked about
19 everything, especially about his day and the--it was like his
20 first time on that boat. And so he's describing to me what's--
21 what's going on. And--yeah. He wasn't comfortable.

22 Q. Can you elaborate?

23 A. That morning when they were going to go set pots, Josh was--

1 because it's usually early in the morning he just was--he was
2 mad. This was like his first trip. So I didn't understand,
3 like, what the problem was. And--like, "What's the matter?" and
4 he said, "I don't know what's wrong with this guy. He hasn't
5 checked the tide, and the tide just doesn't look right to be
6 loading up the pots and going out." He said, "It just--if we
7 wait 2 more hours, it'll be fine." And I'm just like, "Well, did
8 you say anything?" He said, "He won't listen to me." He goes,
9 "And I need this. I'm just going to go."

10 Q. That was on the 1st, which was the first trip.

11 A. First trip out.

12 Q. Did he mention anything else about how that specific trip
13 went on that day?

14 A. Not good. Not good at the beginning because when--I got a
15 text from him and--I can't exactly remember. I thought I was
16 going to be able to see the text.

17 **AIO:** Well, if you give me a second, Ms. Porter. So, Lieutenant
18 Woods, may you display, please, Exhibit 024, page 1. Then zoom
19 in on a little bit on that first text.

20 Q. Ms. Porter, is this text the one you're referring to?

21 A. Yes.

22 Q. Can you read what it says?

23 A. It says,

1 "We ran aground, barely got off, stuck for
2 about 10 minutes. Loaded with pots and the
3 tide is going out. Right by the
4 Embarcadero."

5 Q. You said this was the 1st. Do you remember about what time?

6 A. No. There should be a time stamp on there. I have my phone
7 if we need it.

8 **LIO:** As an administrative note for the record, the--the blue
9 text in a red rectangle was added by the Coast Guard--Coast Guard
10 marking. Because we had screenshots, we do not have the time
11 stamp on that. So administratively that's not from the phone.

12 Q. Ms. Porter, on that text, when he says "right by the
13 Embarcadero", what does he mean by that? Can you elaborate?

14 A. Well, the Embarcadero is--it's a hotel, apartment complex
15 right there in the marina.

16 Q. Did he mention whether the vessel had any damage as a result
17 of that incident?

18 A. Not at that time.

19 Q. He didn't mention it or the vessel didn't have any damage?

20 A. He didn't mention it at that time.

21 Q. Did he mention it any other time?

22 A. He mentioned about a leak in the boat and how they were--and
23 how Mr.--I don't know how to say his name--Bernaski--was fixing

1 it.

2 Q. Mr. Biernacki.

3 A. Biernacki.

4 Q. Do you know whether, when he mentioned that leak, that it was
5 connected to this or it was an isolated---

6 A. He didn't mention that it was part of the grounding or--or
7 what. He just said there's a major leak on the boat.

8 Q. After setting pots, when was the next day that they went out?

9 **LIO:** Can you hold for just a second? Ms. Bigay, do you want
10 to--do you want us to pull up the map and show the area of the
11 Embarcadero?

12 **AIO:** We can if we have it, yes, ma'am.

13 **LIO:** Okay, that's going to be Coast Guard Exhibit 004, NOAA
14 chart. If you could zoom in on the term--where the Embarcadero
15 is. Ms. Porter, will you be able to show us on there with a
16 laser pointer where the Embarcadero is.

17 **WIT:** I'll try to.

18 **LIO:** Yes, ma'am. So, ma'am, there's a--there's a laser pointer
19 on your desk--yup.

20 **MR. RENE:** She has to find it on here first and----

21 **LIO:** Gotcha. Perfect.

22 **WIT:** So I'm thinking--because this is the marina--so right here
23 [indicating].

1 **AIO:** So--yes, thank you.

2 **WIT:** Yeah, right in there is the Embarcadero. So somewhere in
3 front of there.

4 **MR. RENE:** Those buildings along the edge----

5 **LIO:** Sir, for--just for a matter of record, Ms. Porter is giving
6 the testimony, and I appreciate you being there for her, but
7 she's going to give the testimony. Thank you.

8 Ms. Bigay, are you good?

9 **AIO:** Okay. Is that---

10 **LIO:** Yeah.

11 Q. Ms. Porter, after setting pots that day, when was the next
12 time they went out on board the MARY B II?

13 A. They finished setting--they didn't even get all the pots out
14 because it got too late or the weather or something, and it
15 wasn't again until--I think they didn't go out again until like
16 the 6th, the 5th. I'm not exactly sure exactly what date they
17 started, you know, pots--whatever the opener--the day they were
18 allowed to----

19 Q. Okay.

20 A. ----they went back out.

21 Q. If you need take time to remember, that's okay.

22 A. It would be easier if I had my phone because I could--I could
23 actually see it.

1 **LIO:** We're going to continue without it.

2 **AIO:** Ms. Porter, just one second.

3 **Q.** On that--I'll go back to this. Ms. Porter, I want to try,
4 as best you can, if you can recall, to go through the 96 hours
5 prior to the date of the accident in order to establish whether
6 fatigue may have been a factor affecting Mr. Porter as a crew
7 member on board the vessel. If it's easier for you working
8 backwards from that date, on January 7th, did Mr. Porter go out
9 on board the MARY B II?

10 **A.** Yes.

11 **Q.** Do you remember how long he was out fishing?

12 **A.** No.

13 **Q.** Do you remember around what time he came back in?

14 **A.** I would assume--it would be in the evening. It would have
15 been in the evening.

16 **Q.** Working back from that date, on January 6th do you remember
17 if he was out on board the vessel?

18 **A.** I'm not sure. I mean, I--I would only go by my--what--what I
19 have on the texts with him. That's all--that's what I remember.

20 **Q.** Ms. Porter, so on the 29th of January----

21 **A.** Uh-huh.

22 **Q.** ----Coast Guard investigators conducted an interview with you
23 regarding Mr. Porter's experience and he was association with the

1 accident; is that correct?

2 A. Yes.

3 Q. On that day do you remember telling investigators about the
4 soaking period and that the vessel was not out on the 5th, the
5 4th and the 3rd?

6 A. Yeah, because they can't. They drop their pots and then they
7 don't fish until so many hours. But they didn't go right out to
8 pick up pots because Mr. Bernaski--I can't say his name right.

9 **LIO:** Biernacki.

10 **WIT:** Biernacki.

11 Q. You can just say the operator.

12 A. The operator. He--he was fixing a leak in the boat and it
13 hadn't dried yet. It was--he was using Splash Zone to patch up a
14 leak. It was a concern of Josh's.

15 Q. Do you know if that was resolved? You said it hadn't dried
16 yet. Can you elaborate?

17 A. I'm assuming it had to have dried or worked for Josh to
18 actually get on the boat.

19 Q. Why do you say that?

20 A. Because I'm sure if there was a leak--he was worried about
21 the leak. If he was worried about the leak, he wouldn't have got
22 on the boat. You know what I mean? Because it wouldn't have
23 been safe. But--so I'm assuming Josh was--you know, he checked

1 it out before he got on there to make sure it wasn't, you know,
2 really leaky.

3 Q. Did he tell you anything about mentioning this to the
4 operator or having a conversation about it with the operator?

5 A. Josh just mentioned to me that he couldn't talk to him. He
6 didn't listen. He didn't want Josh to tell him how to do
7 anything.

8 Q. Okay.

9 A. That was Josh's hardest part because Josh is basically a
10 teacher. You know what I mean? He didn't--he liked to teach
11 people how to, you know, do things, especially fishing. He loved
12 fishing. And the operator was not--wasn't having it.

13 Q. Did you know Mr. Porter to have any underlying medical
14 conditions that restricted or affected his motor skills or
15 decision making?

16 A. None. He was very healthy.

17 Q. Did Mr. Porter consume any alcohol?

18 A. No.

19 Q. Any drugs?

20 A. No. Josh had 11½ years clean from any mind-altering
21 substances.

22 Q. Did Mr. Porter mention anything about drugs or alcohol being
23 consumed by the operator of the MARY B II while operating?

1 A. We had discussions about it, and he--he said, "This guy is
2 going to hurt somebody," and every time, like, we talked about
3 it, it was, "Then why are you on there?" and he was like, "I got
4 bills to pay. We need this first pick--this first and second
5 pick and then I get on the next boat and everything will be--then
6 we'll be okay. I just need to get through this next week and
7 everything will be okay. We'll have--we'll have money to pay our
8 bills." And that's the only reason he got back on that boat.

9 Q. You mentioned that you talked about it.

10 A. We talked about it often.

11 Q. Was there anything specific that he witnessed?

12 A. He did witness alcohol on the boat. They didn't begin
13 fishing one morning until--Josh had to be at the boat at 5:00--
14 4:30 or 5:00, and he got there and the operator didn't want to
15 leave until after 6:00 so he could--Josh was really mad--so he
16 could buy the alcohol for the--for the day of the trip.

17 Q. Which day was that?

18 A. That was--I'm going to say 2 days before. I'm not really
19 positive exactly on the dates. It was just a couple of--maybe
20 not the trip----

21 Q. It was not the day of the incident?

22 A. No. No. It was the trip before that.

23 Q. Okay. On January 8th, the night of the incident, do you know

1 what time the crew departed port to go fishing?

2 A. Josh got up at--at 3:00 and he left the house at 4:00 because
3 they were leaving at 5:00.

4 Q. Do you know that they left that--at 5:00--try to speak of
5 it----

6 A. I don't know exactly what time they left. I don't.

7 Q. Okay. Did Mr. Porter tell you anything about how the crew,
8 which included him, prepared for that trip that day?

9 A. No.

10 **AIO:** Lieutenant Woods, may we please display Coast Guard Exhibit
11 021.

12 Q. Ms. Porter, this shows----

13 **AIO:** Let's do page 2, please.

14 Q. This shows a phone call received on January 8th at 2:18 p.m.,
15 correct?

16 A. Uh-huh.

17 Q. Can you talk about what you discussed on the phone with Mr.
18 Porter during that phone call as it pertains to this case?

19 A. So he called me because he was supposed to be in--when he
20 left in the morning, we had the discussion of him not wanting to
21 go, and so it was more like, "Why are you going?" He said,
22 "Well, we'll be in by 2:00, no later than 4:00." So this phone
23 call is to let me know that he wasn't going to be in 'til 4:00

1 but that it was getting rough out there.

2 Q. He mentioned that it--getting rough meaning the weather?

3 A. Yeah, the weather was going to pick up and they were supposed
4 to be coming in about 4:00.

5 **AIO:** Lieutenant Woods, can you please display Coast Guard
6 Exhibit 024, page 2.

7 Q. Before we discuss this exhibit, Ms. Porter, I have a follow-
8 up question about the--my previous question regarding that phone
9 call, 2:18 p.m. just for your recollection. Did Mr. Porter
10 discuss any leaks or issues with the vessel during--with the
11 vessel during that phone call?

12 A. No. No, he didn't.

13 Q. Okay. Turning your attention now to this exhibit, Coast
14 Guard Exhibit 024, that first text that Mr. Porter sent you, sent
15 at 9:25 p.m. on the 8th, starts with "this guy", can you read
16 that text.

17 A. "This guy said we were going to be in before dark. Now it's
18 really big and the Coast Guard called him saying the LAST STRAW
19 had problems crossing--had trouble crossing. I'm putting on my
20 lifejacket. Coast Guard is sending a boat. You can come watch
21 if you want."

22 Q. And can you read what he--what you replied?

23 A. "The edge by the jetty. That little park." So I was meaning

1 Chicken Point.

2 Q. And Mr. Porter's reply?

3 A. "He's not--he's not too bright."

4 Q. Can you elaborate on the context of this text in terms of you
5 knowing Mr. Porter and--and trying to figure out what--what he
6 was trying to say?

7 A. Yes. Because I had a phone call in between--in between this
8 because it--or maybe it was another text. I just remember
9 talking to Josh and he was--he was mad. He said that these guys
10 were mad at him and--because he had told them there was a reason
11 nobody was out there and he doesn't know what he was doing. Josh
12 talked about that a lot in the just--in the 7 days. He talked
13 about the operator not knowing what he was doing. He didn't
14 know.

15 Q. Did Mr. Porter, with his experience running vessels in the
16 Newport area--did he mentioned he tried to help the operator,
17 provide advice, provide feedback?

18 A. All the time. When they--when they were dropping the pots,
19 the operator didn't know how to use the plotter--the plotter that
20 they use to mark where each pot is. He didn't know how to do it.
21 And so Josh said he tried to help him, and he just started
22 screaming at him and told him to go--just to get out on deck.
23 That's when Josh had said, "I only got a couple more days of

1 this. I'm done." You know, he just--but--yeah. You have to
2 understand Josh. He's--he wasn't a quitter. So he was going to
3 finish the time that he said he was going to work with Steve and
4 told Steve--or the operator, and at that point he wasn't going to
5 work any--any time after that.

6 Q. Going back to that text, the third line down on that first
7 text refers to it getting real big. Is that a reference to the
8 weather?

9 A. Yes, the wave--you know, the ocean.

10 **AIO:** Lieutenant Woods, may we please turn to page 3 of that
11 exhibit.

12 Q. Ms. Porter--one second. He mentioned the--you mentioned the
13 edge by the jetty, that little park. Did you make your way to
14 that park?

15 A. Yes. Actually not because I was talking about the north side
16 of the--of the bar. I ended up going to the south----

17 Q. Okay.

18 A. ----to the south jetty.

19 Q. When was this? Do you recall?

20 A. I probably left the house at like 8:40, maybe 9:00. Yeah.
21 Might have been a little bit later. I'm not really sure. At the
22 time I just remember when I got this text, I was out the door.

23 Q. And--and then you headed straight to the--you mentioned south

1 jetty?

2 A. Yes. Okay, so, when I got this text and he said, "You should
3 come watch," I got in the truck and I started driving. Halfway
4 there is when I got the text that said, "Don't stress out. Coast
5 Guard is going to be right here." That's--I put, "Okay, but I'm
6 already stressed out." So I get there. I get--I was coming up
7 to the bridge and all I could see were these lights just shooting
8 up into the--into the--you know, into the sky and I ended up
9 texting him that, "They're shooting..."--I don't think I finished
10 the text because I was driving, but I said, "They're shooting up
11 flares." And the very last text I got from him was, "WTF".
12 That's all he wrote. I'm not going to say it.

13 **LIO:** Mr. Reilly, so we're not quite finished with our
14 questioning, but to keep it on schedule, I'm going to turn it
15 over to you. I anticipate having this witness available for
16 recall, but we have 10 more minutes prior to next testimony if
17 you'd like to ask some questions.

18 **PIIC:** Sure. Mrs. Porter, good afternoon. Thank you for being
19 here. We're very sorry for your loss. The last text that you
20 mentioned, did he actually say "Who is?" and then the comment you
21 made? Was there a question that he had asked in that last text
22 as well? Maybe we can just move the position up.

23 **WIT:** Oh, where he--"he's not too bright"?

1 **PIIC:** No. Maybe it's the next page.

2 **AIO:** We haven't----

3 **LIO:** The one before?

4 **PIIC:** The last page.

5 **AIO:** We've only shown 1 and 2.

6 **PIIC:** She testified about the last text that Mr. Porter sent
7 her, which is not on--it's in the series of--the series of texts,
8 but I don't----

9 **AIO:** That's----

10 **PIIC:** ----think we've shown it yet.

11 **AIO:** That's correct. We haven't--we haven't shown it yet. I
12 thought we were going to break. So we--we're not done with that
13 line of questioning.

14 **LIO:** Right, but----

15 **AIO:** That's the reason, but if----

16 **LIO:** Because she mentioned it, he's----

17 **PIIC:** Clear for the record what the----

18 **LIO:** ----allowed to ask her.

19 **PIIC:** ----context of that was because it wasn't----

20 **AIO:** Yes.

21 **PIIC:** ----clear. Are we going to--if we're going to show--we'll
22 wait. That's fine.

23 **AIO:** Okay. Yes, I absolutely have all the intention to continue

1 on with my lines of questioning, and that was going to be my
2 next--my next question.

3 **LIO:** It was just the--to keep on schedule. There's certain
4 witnesses that are coming up this afternoon that are like hard-
5 set times that we have to start.

6 **PIIC:** All right. Well, I'll reserve. I'll wait 'til my turn
7 later. That's fine.

8 **LIO:** Okay, thank you. That said, then would you like to take
9 the last 8, 9 minutes to continue?

10 **AIO:** Yes.

11 Q. Ms. Porter, sorry about that and thank you for your patience.

12 A. That's okay.

13 **AIO:** Lieutenant Woods, may we--may--will you please display
14 Coast Guard Exhibit 024, page 4 now. Would you be able to zoom
15 in just a little bit for my old eyes.

16 Q. Ms. Porter, would you be able to read that text from Mr.
17 Porter?

18 A. "I think they're a little pissed. I told him there was a
19 reason nobody was out here."

20 Q. What did he say later in reference to their location?

21 A. You want me to read that?

22 Q. His--his text.

23 A. His text, "We're about 20 minutes from the tip." Because I

1 had asked him how long before the Coast Guard got there. I
2 wasn't----

3 Q. Okay. And when he states--in his first text, referring to
4 what he thinks and that, "I told them there was a reason nobody's
5 out here," who is he referring to?

6 A. The operator and the other deck hand.

7 Q. And when he says, "There's a reason nobody's out here," what
8 does he mean?

9 A. We had a conversation after this, but he meant the weather,
10 because he was telling me--I don't know how to--I don't know
11 exactly where it was in here because there should be some time
12 differences, but he texted me that first text. After that then I
13 asked him how long before the Coast Guard gets there. He said 20
14 minutes. When he called me, he said----

15 **AIO:** One second. Lieutenant Woods, may you please display Coast
16 Guard Exhibit 021, page 1.

17 Q. It's just the phone call that you're referring to, Ms.
18 Porter. Please go.

19 A. There's some more talking--there was a later phone call than
20 this one.

21 Q. Okay.

22 A. But my phone didn't save it.

23 Q. Okay.

1 A. It just--this was--I don't know what happened, but he had
2 called me and--in the midst of the texting back and forth, he
3 called me and said, "I'm scared. It's really big out here. I'm
4 putting my lifejacket on, and I'm putting my phone and wallet in
5 my pocket." He said, "I gotta go," and, you know, he said, "I
6 love you," and then we hung up. Then that's when we started
7 texting again about where he was, 20 minutes from the tip. The
8 Coast Guard was--you know, that's when he told me, "Don't stress
9 out because the Coast Guard is there. We'll be there." I asked
10 him how long before the Coast Guard gets there, because I know
11 where they are. They're already--it can be really bad.

12 Q. Uh-huh.

13 A. And he said, "Twenty minutes." So I basically in my head
14 know how far 20 minutes is out there. So I'm like, okay, I have
15 enough time to get to the jetty so I can at least watch what's
16 going on.

17 **AIO:** Thank you. Lieutenant Woods, would you please switch to
18 the previous exhibit, the "20 minute" text.

19 Q. Do you know--did he mention during that phone call how he
20 knew that the Coast Guard was going to be there?

21 A. Because--so in the phone call there was, "This guy doesn't--
22 this guy doesn't keep his radio on. Coast Guard couldn't even
23 get a hold of us." He was like, "I don't even know how they got

1 a hold of us, but the LAST STRAW had problems coming in and I
2 just can't believe this." You know, this was the phone call. It
3 was--he was mad. He was mad, and--and that's when he was telling
4 me, "I think they're pissed. They're not talking to me." So---

5 Q. Because he presumably mentioned something or why?

6 A. Because he was telling them what could hap--he was trying to
7 help and they--they were mad at him. He was trying to help. He
8 was trying to tell them--I mean, they--Josh only went out because
9 he was supposed to be in no later than 4:00. No later than 4:00
10 they were supposed to be in, and at 4:00 they decided to--the
11 operator decided to go and do two more screens. By then it was
12 already big, but--and Josh was upset about that.

13 Q. Ms. Porter, as you understand, we're going to have to break
14 here in a little bit, but before that, I just want to clarify
15 what's on the slide. His text to you says, "We're about 20
16 minutes from the tips." When--when he says "the tips", does he
17 mean the entrance to the bar?

18 A. The--yeah, the tip of the jetties.

19 Q. So he's referencing the MARY B II at that point.

20 A. Oh, yes, because that's what he was on.

21 **AIO:** Lieutenant Woods, can you please display Coast Guard
22 Exhibit 024, this time page 5.

23 Q. Ms. Porter, will you please read the series of texts.

1 A. "Wherever you want" is in reference to--I was asking him if
2 he wanted me on the north or south jetty, and he said "wherever
3 you want". And then--so this is when I was trying to cross the--
4 the bridge. I said, "They're shooting up flares." And he put,
5 "WTF. Who is?" I said--and I didn't finish this text, "I don't
6 know. I think probably..." to myself. "Is that you coming
7 across now?" So right--yeah, right during all of that, I saw him
8 coming across or, you know, there were boats. I knew there were
9 three boats out there because I could see the lights of all three
10 boats.

11 Q. You didn't get to finish this text when you said, "I don't
12 know. I think probably..."

13 A. And I was going to put the Coast Guard because I knew the
14 Coast Guard was out there.

15 Q. And you knew that because he had mentioned it on the----

16 A. That you guys were coming--that you guys were--that you guys
17 were out there or you'd be there.

18 Q. You made reference to driving across the bridge. At what
19 point are you at the south jetty? Do you ever--do you ever get
20 there?

21 A. Yes. So at--so at 9:56 is when--is when I was already at the
22 south jetty. I was already there. I'd already walked--parked
23 the truck and walked out.

1 Q. What happened next?

2 A. So I'm on the jetty and I'm watching the flares, the
3 spotlights, you know, because they're trying to--you know, they
4 had some spotlights, but they were lighting the flares. And then
5 I remember watching. I remember I took a picture because I
6 thought--I don't know, I thought I could take a picture. I've
7 always taken pictures of when they're coming across. Took two
8 pictures and then I sent the text, "Are you guys through now?"
9 just because there was--there was a lot of--I don't--I don't
10 want--because it was kind of--it was like a drizzle rain. It
11 wasn't a lot of--like it wasn't raining. It was like a drizzle.
12 And I wear glasses. So I had to take my glasses off and I put
13 them up. And then I just saw a bunch of lights over on the north
14 side of the jetty and that's when I texted him, "Are you guys
15 through now?" because I couldn't really see because I don't--you
16 know, and then I didn't get a text back, which I know at that
17 point, coming across the jetty, he's not going to text me because
18 they're busy. And so I just went to turn around and that far out
19 in the jetty there's like dunes. You walk down and then up and
20 then down again. So I went down because I'm going back to my
21 truck. And when I came up--when I came up--and this is just from
22 knowing and watching him come in many times, that in my
23 peripheral at that point, I would have seen the lights of the

1 boat. I didn't see anything like--like it didn't catch my
2 attention in that dark. It would have caught my attention. So I
3 turned around and that's when I seen [sic] the Coast Guard with
4 the spotlights and then there's a series of questions that I
5 texted him and I didn't get no answer back. You can figure out
6 what was going on because I could never experience that. Then I
7 saw the helicopter and I assumed something bad had happened. I
8 don't know, I never talked to him again.

9 **LIO:** Ms. Porter, we will need to suspend the questioning at this
10 time and we will need to have you recalled. At that time Mr.
11 Reilly will be able to question you and we'll be able to question
12 the witness. Thank you for your patience, Ms. Porter. I know
13 how difficult this is for you. So we are now complete with your
14 testimony for today; however, I anticipate that you may be
15 recalled to provide additional testimony at a later date.
16 Therefore, I am not releasing you from your testimony at this
17 time, and you remain under oath. Please do not discuss your
18 testimony or this case with anyone other than your--the members
19 of the Coast Guard formal investigation team. If you have any
20 questions about this, you may contact my legal advisor,
21 Lieutenant Colin Fogarty. Thank you.

22 **WIT:** Thank you.

23 **LIO:** It is 2:02. We will take a 5-minute recess and then we

Under 46 U.S. Code§6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 will convene at 2:07.

2 [The hearing recessed at 2:03 p.m., 15 May 2019.]

3 [END OF PAGE]

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

Under 46 U.S. Code§6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
held in Newport, Oregon
on 15 May 2019

WITNESSES: MARILYN FRASER, ROBERT JONES & KAYLON WELLS

[The hearing was called to order at 2:08 p.m., 15 May 2019.]

LIO: It's 2:07 and we are reconvening this public hearing. We will now hear testimony from a group of witnesses, but we will be taking that testimony in two phases. At this point I'd please like to call up Dr. Marilyn Fraser, Mr. Kaylon Wells and Mr. Robert Jones to the witness table. Lieutenant Woods will administer your oath and ask you some preliminary--well, he'll administer your oath.

MARILYN FRASER, ROBERT M. JONES AND KAYLON WELLS were sworn.

LIO: At this time Mr. Wells and Mr. Jones will--will sit over there and, Dr. Fraser, please have a seat. Lieutenant Woods is going to ask you some preliminary questions.

MARILYN FRASER testified as follows:

DIRECT EXAMINATION

Questions by the recorder:

Q. Please state and spell your full name.

A. Marilyn Fraser, F-r-a-s-e-r.

Q. Please state your current employment and position.

A. I am employed as a family practice physician by Samaritan

1 Medical Systems and also I am employed by the Lincoln County
2 District Attorney's Office as the county medical examiner.

3 Q. Please state any education or training related to your
4 profession.

5 A. I have an undergraduate degree in pharmaceutical sciences
6 from University of British Columbia in Vancouver, BC, and I have
7 an M.D. from the same university in British Columbia. I did a 4-
8 month externship in pathology between my second and third years
9 of medical school, and I did a training program when I joined on
10 as the county medical examiner.

11 Q. And please state any professional licenses or certificates
12 related to your profession.

13 A. So I am licensed to practice medicine in the state of Oregon.

14 **REC:** At this time Commander Denny will begin her primary line of
15 questioning.

16 **LIO:** Dr. Fraser, thank you for appearing today at this hearing.
17 For the benefit of the public, there will be some commentary in
18 this testimony that may be difficult to listen to or can cause an
19 emotional toll on the families and friends of these men who
20 perished. I will call for a brief recess if it becomes
21 necessary. For the benefit of the public, Dr. Fraser, if you
22 could please stay away from using medical jargon and, if
23 possible, explain any answers in layman's terms. The Coast Guard

1 has prepared a combined exhibit for the medical examination and
2 toxicology results. Your testimony will directly relate to the
3 postmortem medical examination of the deceased crew. That
4 exhibit is Coast Guard Exhibit 025, crew medical exam and
5 toxicology results composite. At this point I would like to
6 follow up on some of the questions Lieutenant Woods asked you at
7 the beginning of your appearance.

8 **Questions by the lead investigating officer:**

9 Q. Ma'am, could you please talk about your background and
10 training as a medical doctor and then continue on to your duties
11 as a medical examiner.

12 A. So I am an M.D. I've worked as a family practice physician
13 since 1983. I did some work in Canada and then we moved to
14 Oregon coast and I have since worked in Lincoln City on the
15 Oregon coast. So that's a lot of years of family practice. When
16 I became the Lincoln County medical examiner, there was a need--
17 in Oregon--this state, each county tries to provide a physician
18 who is willing to act as the medical examiner whose primary job
19 is to determine the manner and cause of death of unattended or
20 accidental deaths isolated in our statute. All of the county
21 medical examiners at that time were invited to a training program
22 which I attended--which I attended, which was put on by the
23 forensic pathologists who work at the state office. Our referral

1 center is forensic pathologists who work out of Clackamas, the
2 main center. In our peripheral area we don't do autopsies. We
3 do external examinations of bodies. We review medical records.
4 We interact with law enforcement and then we interact with the
5 state office to advise them of our findings. The state office
6 will make a decision as to whether a full autopsy would offer
7 more information that would be definitive in determining manner
8 and cause of death. We draw fluids for toxicology if it's
9 mandated or indicated.

10 Q. Please talk about your background and training--actually,
11 excuse me, please expound on any training that you mentioned.
12 You mentioned the externship. So can you talk about any training
13 that you received that directly related to your duties as medical
14 examiner?

15 A. As medical examiner we did the--the training is--is based on
16 being a physician and being willing and interested. So a lot of
17 the training that we get is directed from the state office and is
18 not didactic. It's ongoing. It's an interaction with phone
19 calls, descriptions, medical records, questions. We did a formal
20 lecture program with slides when I took on the job. That was
21 directed by the state medical examiners. Several years later
22 they brought out a medical/legal death investigation training
23 program, which was a 40-hour didactic program that was run--run

1 through the state police office up in Clackamas.

2 Q. Thank you. Shifting focus, can you tell us about the
3 facility where you conducted the medical examination for the
4 three crew members of the MARY B II. Where is that facility
5 located?

6 A. It is in Newport.

7 Q. Is it a state facility?

8 A. No, it is a private funeral home.

9 Q. Is that--is that typical for this area?

10 A. Yes, that's typical for our county.

11 Q. So is that facility and the operation of the medical examiner
12 in some way certified to indicate that it meets the professional
13 standards for conducting medical examinations? Is it accredited?

14 A. We don't accredit funeral homes, per se, and the state office
15 does all of the forensic medical/legal autopsies that are done
16 for our county.

17 Q. Doctor, to your knowledge were, then, autopsies conducted on
18 these three crewmen?

19 A. No, they were not.

20 Q. Turning to the night of January 8th, 2019, the three crewmen
21 of the fishing vessel MARY B II perished late that night. Please
22 explain how and when you were engaged to act in the medical
23 examiner role and what were you asked to do.

1 A. So what I was asked to do was external examination on the
2 three bodies of the three crewmen to determine cause and manner
3 of death. One of the crewman went to the emergency room. He was
4 transported, and an attempt was made at resuscitation at the
5 emergency room and that failed. So that death was pronounced in
6 the emergency room, and I did a follow-up external examination on
7 that body. One of the bodies was washed up at Nye Beach and
8 delivered to the funeral home from there. And the third body was
9 taken out of the capsized boat and moved to the funeral home.
10 And I did my external examination there.

11 Q. So for my understanding, just to clarify for me, all three
12 persons were examined at the funeral home.

13 A. Yes.

14 Q. Are you the primary person assigned to perform these medical
15 **examinations** for this case?

16 A. I am.

17 **LIO:** Lieutenant Woods, please prepare to display Coast Guard
18 025, crew medical exam and toxicology results composite. And
19 we're going to focus on various pages. There will be certain
20 pages that we end up focusing on and other witnesses may focus on
21 the toxicology part of this process.

22 Q. Dr. Fraser, do you have a standard procedure or policy
23 guidance that explains what happens when the victim arrives at

1 the funeral home?

2 A. So the standard procedure or policy is often determined by
3 the nature of the death. Our procedure is the body is placed on
4 an appropriate examining table, and my materials are available
5 for drawing fluids for toxicology specimens. At the time I
6 examined these bodies they had all been unclothed. There was a
7 state trooper in attendance.

8 Q. Were there additional staff members to help you with the
9 medical examination?

10 A. There were staff members that were there to help me if I need
11 to move and roll and examine bodies.

12 Q. But they are not your staff.

13 A. No.

14 Q. Okay. Did you follow all the procedures and the policies
15 that govern medical examination processes in cases like this?

16 A. Yes, I did.

17 **LIO:** I would now like to make the public aware of the fact that
18 we're going to discuss the results of the medical examination.
19 Lieutenant Woods, we're going to focus on page 1 through 3, 6
20 through 8 and pages 11 through 13.

21 Q. Ma'am, in your narrative you explain that the cause of
22 death--the cause of death and make remarks on the victim, and
23 these remarks contain information about physical appearance as

1 well as your observation. Do you recall what the cause of death
2 for all three victims were?

3 A. Cause of death for all three victims was determined to be
4 drowning.

5 Q. Ma'am, the report is on the screen and also there is a
6 physical binder if that is easier for you to consult your report.
7 Can you briefly characterize any other significant findings that
8 may have been attributed to the accident.

9 A. And so in essence, the bodies showed no significant injuries
10 that would have suggested death from anything other than
11 drowning.

12 Q. As a medical examiner, when you examine a victim like any of
13 these victims and draw a professional conclusion that a bruise,
14 laceration or other trauma occurred, can you--can you draw a
15 professional conclusion that a bruise or laceration or other
16 trauma occurred before death in marine accidents such as this
17 one?

18 A. When an injury is sustained before death, typically there is
19 blood circulating. And so there are inflammatory changes that
20 react--that are reactive at the site in antemortem or before-
21 death injuries. So in order to get a bruise from an injury, you
22 need to have rupturing of blood vessels and some swelling and
23 some time for that discoloration to appear. And so usually one

1 can identify injuries that occur before death or immediately
2 before circulation ceases, as opposed to those injuries that
3 occur after death.

4 Q. So--and I understand you correctly, then, that after death
5 there is less bleeding because--is that a correct----

6 A. There's less tissue reaction and there is less bleeding
7 because there isn't blood circulating.

8 Q. Is it possible that--that trauma is induced after death--
9 could be due to wave action, extrication or other mechanism of
10 injury?

11 A. Absolutely.

12 Q. If a coroner was to be bring in a victim like these men and
13 tells you that they perished in a boating accident, do you
14 conduct extensive internal forensic examinations?

15 A. The extensive internal forensic examination would involve an
16 autopsy. Here the state medical examiners will make the decision
17 as to whether doing the internal examination is going to affect
18 or alter the determination of the cause and manner of death, and
19 in this instance she did not.

20 Q. Thank you. Does an internal forensic exam--does that
21 classification and level follow standard procedures that are
22 accepted as practice for a medical examine--meaning sorry, that
23 classification, you said that the medical examiner, which is Dr.

1 Stauffenberg--is that correct?

2 A. She was the medical examiner who was assigned to this case.

3 There are four at the state level, and in Oregon when a body goes
4 to autopsy, we don't do partial autopsies and we don't do any
5 autopsy work in peripheral funeral home situations. They are all
6 done to forensic pathology standards at the state.

7 Q. Thank you. Is that--so you mentioned that that's for Oregon.
8 Do you know if those are national standards for medical examiners
9 and classification for autopsies?

10 A. Different states have different standards or thresholds for
11 doing autopsies, and I don't know where our state fits in.

12 Q. I'd like to draw your attention to Mr. Biernacki's medical
13 examination report. The report there starts on page 13.

14 **LIO:** Mr. Woods, would you mind---

15 Q. Ma'am, there's a note that says,

16 "Metal ring in left earlobe. Both forearms
17 were tattooed. A superficial scalp
18 laceration without underlying skull injury
19 with swelling/bruising was noted with a
20 small amount of adjacent bleeding. There
21 was no significant injury or trauma to the
22 chest, abdomen or extremities, and the
23 scalp laceration was compatible with

1 postmortem injury."

2 Is there any way that a postmortem--in this type of accident, is
3 there any way, postmortem, in this type of accident to determine
4 if there were any medical impairment--by that I mean did the
5 victim suffer scalp trauma before death?

6 A. That would be a question to ask the forensic pathologist.
7 The scalp laceration showed no swelling. It didn't show any
8 opening or underlying spread of tissue. It was bleeding
9 minimally, and scalp lacerations typically bleed more in people
10 that are actively pumping. It was my opinion that was a
11 postmortem scalp laceration.

12 Q. Staying with the same injury identification for this crew
13 person, with this--with this type of examination, can you
14 determine if the victim suffered a concussion before death which
15 may--may have resulted in impairment?

16 A. No.

17 Q. Would you, based on your professional experience, be able to
18 comment on whether this crew person could have been knocked
19 unconscious or perhaps this injury caused a blood clot or
20 swelling under the skull, causing him to black out or lose motor
21 skills before death?

22 A. I would suggest that would be unlikely, but no.

23 Q. In any medical examination could you ascertain if a victim

1 was unconscious at the time of death?

2 A. No.

3 Q. What are the circumstances where you can expand your medical
4 examination to make these determinations or what is the process
5 if you believe that additional determinations need to be made?

6 A. Can you ask that again, please?

7 Q. Yes. So are there any circumstances where you would do more
8 than the gross forensic examination, the external examination--
9 like what would be the circumstances where you may need to--I
10 don't know if it's refer--would you refer it--that case to Dr.
11 Stauffenberg or one of the medical examiners?

12 A. Correct. So what I do is phone up the forensic medical
13 examiner who is on call for that period of time and I would
14 explain to them the situation and ask if it would be appropriate
15 if they would accept the case for autopsy. Dr. Stauffenberg felt
16 at the time, based on the timeline that we had, the information
17 that we had, that toxicology would be necessary, which we all
18 agreed was, but that a full autopsy would not really add
19 definitive information.

20 **LIO:** Yes, ma'am. I'm going to ask one of our logistics people
21 to just move the mic a little closer to you. Thank you, ma'am.
22 If we could adjust do it and just do a quick test.

23 **WIT:** Hello. Is that better?

1 **LIO:** Yes, ma'am. Thank you much. I appreciate it.

2 Q. So we're going to shift a little bit about the process of the
3 medical examination and who draws the samples for toxicology.

4 What--what is the process of your medical examination?

5 A. The toxicology specimens are typically drawn from the femoral
6 vein, if possible, which it was in all of these victims. That
7 gives us the most accurate and reproducible blood levels. And so
8 I drew the fluids on all three.

9 Q. Thank you. And is--is it standard practice to pull the
10 samples--to draw the samples that you did?

11 A. Yes.

12 Q. And was policy and procedure followed in this case with
13 respect to the toxicology standards--samples?

14 A. My part was.

15 Q. Within state government--within state government, the
16 forensic pathologist, Dr. Stauffenberg, did she--did she examine
17 your reports and certify it or approve the results of your
18 medical examinations?

19 A. Yes, she did.

20 Q. Are there any other significant findings in your examinations
21 of the deceased crew that you feel are significant that I have
22 not asked you about?

23 A. No. The bodies were reviewed for anything that was

1 suggestive of a potentially fatal injury that might have
2 precluded drowning as a cause of death.

3 Q. Thank you. Was--when you were examining the victims, was
4 there any--that you recall, was there any injury or condition
5 that you noted that might affect vision, speech, hearing or range
6 of movement?

7 A. No.

8 **LIO:** Thank you. Those are all the questions that I have. Does
9 anyone on the panel have any additional questions?

10 [No response.]

11 **LIO:** Mr. Reilly?

12 **CROSS-EXAMINATION**

13 **Questions by the party-in-interest counsel:**

14 Q. Thank you for being here, Doctor. The medical examiner
15 report, which is Coast Guard Exhibit 25, that's an official
16 government document?

17 A. Yes.

18 Q. Can you just lean just a little bit closer to that mic.

19 A. Okay.

20 Q. It's important that the medical examiner reports be accurate?

21 A. Uh-huh.

22 Q. The particular report here--I guess there are three, one for
23 each of the decedents.

1 A. Correct.

2 Q. I understand the documents--they're intended to be complete
3 in and of themselves, those--that's three separate reports?

4 A. Correct.

5 Q. Is the information on the forms with respect to the dates of
6 the examinations intended to be accurate? In other words, that's
7 the time when you were physically present at the funeral home
8 conducting the examinations?

9 A. Yes, it is, and there is a time range.

10 Q. Were all three reports completed in sort of the same time
11 range within a couple days of each other?

12 A. Yes.

13 Q. You used the term "external examination". Can you briefly
14 describe what that entails, whether there's any touching of the
15 body or--or whether it's a--it's a visual examination.

16 A. It starts off with a visual examination, looking for any kind
17 of obvious injuries, followed up by physical examination. The
18 bodies are rolled to look back as well as front. Part of that
19 external examination involves confirmation of identification,
20 which--the bodies have been fingerprinted. So we did have
21 confirmation of ID, but I'm looking for anything that suggests
22 the body doesn't match what we believe the identification to be.
23 Anything that is suspected to be a potential cause of life-

1 threatening injury, I would check. So I would check chest walls,
2 look at spine, check necks, check skulls.

3 Q. You say check skulls. I'm not sure exactly what that might
4 mean to a layman.

5 A. And so that means that I run fingers and thumbs over a skull
6 in its entirety to make sure that it is intact and I can't feel
7 any areas that are damaged.

8 Q. In the case of Mr. Biernacki's report, which is Exhibit 25
9 at----

10 **LIO:** Page 13.

11 **PIIC:** Does it start at page 11?

12 **LIO:** Yes, but we were going to talk about toxicology with the
13 toxicologists.

14 **PIIC:** I was hoping to go over some details on the report.

15 **LIO:** Very well.

16 Q. Are you aware that there were two versions of this document?
17 Would you have two versions of this document in your records?

18 A. Mr. Bier--Mr. Biernacki's document? I have my documents in
19 front of me.

20 Q. So you have the--the originals. Does your original version
21 of Mr. Biernacki's document--what's the date of birth that's
22 listed on his--his page?

23 A. I have a date of birth of February 13th, 1968.

1 Q. I'm going to hand you a different report. It's for Mr.
2 Biernacki, but it's got a different date of birth--and just ask
3 if you've seen this report.

4 **LIO:** Do you have a copy for the board? We have not made up
5 another.

6 **PIIC:** I'll walk it around.

7 **LIO:** Thanks.

8 **PIIC:** May I approach?

9 **LIO:** Please.

10 [Off-record side discussion.]

11 Q. Doctor, I also notice it looks like the typeset on your--the
12 report that you had in your hand there is slightly different
13 than--maybe we can turn to page 11 of that exhibit. Because I'm
14 wondering if there are--if the report that was sent to the next
15 of kin, is that just--is that a different form than what you're
16 working off?

17 A. I can't answer that question because I don't send reports to
18 next of kin.

19 Q. Okay. So you're--you're filling out documents, and the state
20 medical examiner has access to them on a computer, probably?

21 A. Correct.

22 **PIIC:** Can you go to the previous page.

23 Q. So this is the first page of Captain Biernacki's report. Is

1 that--it looks a little different than the report you--you--you
2 have in front of you. Is it--do you input information directly
3 into a computer?

4 A. The program that we were using back at that time was a
5 FileMaker program, and so the way the FileMaker program works is
6 that it is set up in a particular--it's downloaded onto a
7 particular computer. It's not a transferrable file. And so the
8 information gets entered in that and then the file gets e-mailed
9 up to the state and they transcribe. There's a little bit of
10 difficulty with that because if I am printing out a copy so I
11 have a copy for my own record, then I'm printing it on my
12 printer, and if adjustments or changes are made to the initial
13 copy, then they all have to be done by resending, which involves
14 a lot of transcription time and lag time. We've currently gone
15 to MDILog, and that became active in March, which is a much more
16 facile program.

17 **PIIC:** Thank you, Doctor. With respect to the narrative on Mr.
18 Biernacki, maybe we can turn to page 13.

19 Q. So Mr. Biernacki's narrative report, the first paragraph
20 states,

21 "This 48-year-old man was transported from
22 the ocean to the emergency room after the
23 crab boat he was working on capsized.

1 Resuscitation attempts failed."

2 Did I read that correctly?

3 A. You read that correctly, and so I have the corrected version
4 here, which I am hoping the state has corrected, because there
5 was a transposition in the report.

6 Q. Okay, I'm not sure--that's the--what you're seeing on the
7 screen is actually the--the version the board has. If there's
8 a----

9 **PIIC:** Maybe we can take a brief recess, get a copy of the--the
10 version the doctor is working from.

11 **LIO:** Mr. Reilly, are there--are there other substantive changes
12 as well that you would like to bring up that will require that
13 or--I mean, that is----

14 **PIIC:** There's--there's----

15 **LIO:** ----clearly an----

16 **PIIC:** ----a few differences, as far as I understand, between the
17 information that's in all three reports and what we understand to
18 be some facts in the case. So, yeah, I think it's a little
19 important to go through and make sure the reports are accurate
20 for the board's purposes.

21 **LIO:** Okay, we're going to go ahead----

22 **PIIC:** I assume the board is going to be relying on the----

23 **LIO:** Well, of course.

1 **PIIC:** ----reports.

2 **LIO:** So I'd like to take a recess. It is 2:40. We're going to
3 take a 5-minute recess. We'll reconvene--excuse me, it's 2:41.
4 We'll take a recess for 5 minutes, reconvene at 2:46.

5 [The hearing recessed at 2:41 p.m., 15 May 2019.]

6 [The hearing was called to order at 2:48 p.m., 15 May 2019.]

7 **LIO:** Okay, it is--it is 2:47 and we will reconvene the public
8 hearing.

9 Mr. Reilly?

10 **PIIC:** Thanks.

11 Q. Doctor, during the break you were--you asked for an
12 opportunity just to talk about logistically and process-wise
13 the--the process by which these reports are generated in between
14 your office and the medical officer--medical examiner's office in
15 Portland. So maybe let's take an opportunity to do that now.

16 A. Certainly. So the program that we're using for this--at this
17 particular time was a three-page form. The first page was mostly
18 demographics and summary. The second page was more funeral home
19 documentation of information, and the third page was a narrative.
20 The difficulty with that is that oftentimes when I'm getting
21 information, I have different people calling. I have the funeral
22 home providing information. We don't always know who exactly who
23 is who and I don't always have information. On the other hand,

1 there is a time frame when we need to be putting together some
2 kind of a report to send up to the state medical examiner's
3 office. And so occasionally I will get information that is
4 incomplete or inaccurate that later needs to be corrected. That
5 happens.

6 Q. Thank you, Doctor. I want to go back to the physical exam in
7 this case of Mr. Biernacki. At the time you did that exam, did
8 you have an understanding of the post-capsizing location of
9 Captain Biernacki's body prior to retrieval?

10 A. I did not have a lot of detailed information from OSP or
11 Coast Guard at the time of the external examination. I was
12 advised that the body had been found in the wheelhouse and that
13 he had been removed and brought to the funeral home.

14 Q. With respect to the amount of blood that was observed on
15 Captain Biernacki's face, is it fair to say that the time spent
16 by a deceased person in a turbulent environment involving waves
17 and water might impact the amount of blood that's visible when
18 that body is retrieved?

19 A. Yes, that is fair. Postmortem or post-stopping-circulation
20 injuries have a different appearance, generally.

21 Q. Does your report address whether Captain Biernacki was
22 clothed at the time his body was found?

23 A. I was not present at the time that his body was found.

1 Q. If any drugs or illicit substances were on Captain
2 Biernacki's person or in his clothes at the time he was found,
3 would the investigative process make note of that? Would that be
4 something that's--that's apparent from the paperwork prepared by
5 your office or the Portland office?

6 A. Not by my office. That would have been part of the paperwork
7 prepared by the lead investigators at the scene legally, and that
8 would be Oregon State Police.

9 Q. With respect to Captain Biernacki's head, if there were--if
10 there was any apparent injury to his nose, that would have also
11 been something you would have noted, had you observed that, in
12 your narrative and on your report?

13 A. And so typically what I'm looking at in my narrative and my
14 report are any kind of significant or potentially life-
15 threatening injuries. These were three working fishermen. And
16 so their hands had a lot of things. Those injuries were not
17 detailed minutely. I was looking for things like major head
18 trauma, major chest wall trauma.

19 **PIIC:** Thank you very much, Doctor. Commander, that's all I
20 have.

21 **LIO:** Thank you. Dr. Fraser, I--you're excused from the witness
22 table at this moment, but please stick around.

23 Mr. Wells and Mr. Jones, would you mind please coming to the

1 witness table.

2 **ROBERT M. JONES AND KAYLON WELLS testified as follows:**

3 **DIRECT EXAMINATION**

4 **Questions by the recorder:**

5 Q. Beginning with the gentleman to my left, sir, please state
6 and spell your full name.

7 A. (Mr. Jones) Robert Marshall Jones, R-o-b-e-r-t, J-o-n-e-s.

8 Q. Sir, will you please state and spell your full name.

9 A. (Mr. Wells) My name is Kaylon Wells, K-a-y-l-o-n, W-e-l-l-s.

10 Q. Mr. Jones, can you please state your current employment and
11 position.

12 A. (Mr. Jones) Yes, I'm a forensic lab supervisor for the
13 Oregon State Police Forensic Laboratory in Clackamas, Oregon.

14 Q. And can you please state education or training related to
15 your profession.

16 A. Yeah, I have a bachelor of science, majoring in chemistry
17 from the University of Washington in Seattle. I later got a
18 master's of science in computer science from Portland State
19 University and then, experience related to this, I was an
20 analytical chemist for an environmental laboratory for 5 years
21 and then hired on with Oregon State Police forensics in 1995. So
22 I've been there since, almost 24 years.

23 Q. And do you have any professional licenses or certificates

1 related to your profession?

2 A. No. Member of professional organizations but Oregon State
3 Police authorizes staff to perform testing and such. We don't
4 have external certifications.

5 Q. And, sir, can you please state your current employment and
6 position.

7 A. (Mr. Wells) I'm a forensic scientist at the Oregon State
8 Police Forensic Lab, the same lab in Clackamas.

9 Q. Please state education or training related to your
10 profession.

11 A. I have a bachelor's of science degree in forensic chemistry
12 from Western Oregon University. After that I had an internship
13 at the forensic lab--at the Oregon State Police Forensic Lab in
14 Clackamas and then I was hired to work there.

15 Q. And do you have any professional licenses or certificates
16 related to your profession?

17 A. I do not.

18 **REC:** Gentlemen, as a reminder, please try to speak directly into
19 the mic and within a couple inches. So, sir, if you could pull
20 it a little bit closer, we'd appreciate that. Thank you. And at
21 this time I turn it over to Commander Denny.

22 **LIO:** Gentlemen, thank you for appearing today at this hearing.
23 I will direct my questions to the two of you and I request that

1 the most appropriate person answer the questions. Is that okay?

2 **WIT:** (Unidentified) Okay.

3 **LIO:** For the benefit of the public, please state away from using
4 medical jargon and explain any answers in layman's terms, please.

5 **WIT:** (Unidentified) All right.

6 **LIO:** The Coast Guard has prepared a combined exhibit for the
7 medical examination and toxicology reports. Your testimony will
8 directly relate to the postmortem examination--toxicology,
9 rather, of the deceased crew. The exhibit is Coast Guard 050,
10 crew toxicology lab results.

11 **Questions by the lead investigating officer:**

12 Q. Is the lab--the Oregon State Forensic Lab certified by any
13 accrediting organization to ensure that the procedures used in
14 the toxicology lab comply with the standard medical practice?

15 A. (Mr. Jones) Yes, the--the laboratory is accredited by the
16 ANSI National Accreditation Board. Formerly it was the
17 Associated--Association of Crime Laboratory Directors National
18 Accreditation Board. But the laboratory has been accredited
19 since 1985, I believe, but our most--as far as what the
20 accreditation means, we have--we have provided all of our
21 procedures and opened up our laboratory for inspection. So we
22 have external assessments on a period of, I believe, every 4
23 years now. So we have passed our external assessments and we

1 conduct internal assessments annually. So the--we are using
2 standard practices. We're using standard laboratory equipment
3 and analytical techniques that are--have each been validated for
4 accuracy, precision and suitability.

5 Q. So--so it's currently accredited.

6 A. It is currently accredited, yes.

7 Q. Thank you. Can you talk about the chain of custody and
8 explain what that means to the--those present and the public.

9 A. Sure. Chain of custody is--what is the chain or the
10 progression of a piece of evidence through, in our case, the
11 laboratory. So we're going to track a piece of evidence as soon
12 as it enters a locker or location or staff member that we have
13 access to. In this case, medical examiner evidence comes into a
14 shared refrigerator/freezer shared between the toxicology unit
15 and the medical examiner. Their staff will place evidence into
16 that locked refrigerator. We will have notification that there
17 is evidence available. Plus we will check it on a--on a daily
18 basis. That evidence then is brought into the laboratory and
19 then we will record that using what we refer to as our LIMS
20 system or laboratory information management system. So that's
21 going to involve typically using scanner technology, but we're--
22 we're going to scan a piece of evidence. The person who received
23 the evidence is going to--they're going to be logged into this

1 computer and they're going to have to use a PIN number that's
2 only known to them. So that is our official chain of custody.
3 From there we can see how an ev--piece of evidence went--I guess
4 progressed through the lab, where it started in a storage locker,
5 usually then to a staff person. Then it's going to go to a--
6 maybe a temporary storage location, back to a staff person.
7 Eventually it's going to make its way back to the return locker,
8 which then the medical examiner would take their evidence back.

9 Q. Does it appear that the chain of custody was maintained on
10 the samples for the three crew members?

11 A. Yes.

12 Q. Did it appear that the samples from these victims were not
13 tampered with or the samples compromised?

14 A. No, there's no indication that they were compromised or
15 tampered.

16 Q. And did you and your staff follow all the procedures and
17 policies that govern toxicology examination processes like this
18 one or in cases like this one?

19 A. Yes. I should make it clear that I did not perform the blood
20 alcohol analysis in this case, but I supervise the staff member
21 who did. So at--at least to be clear, I've reviewed the case
22 notes, and there is no indication that--it--it--it appears--my--
23 my opinion is that all procedures and policies were followed, but

1 I did not do the work myself.

2 **LIO:** Thank you. Lieutenant Woods, please display page 20 of
3 Exhibit 050. We'll go ahead and talk about the results for Mr.
4 Joshua Porter.

5 Q. Please look at these results and briefly explain what we're
6 seeing.

7 **LIO:** Zoom in.

8 Q. And also there's a binder with a hard copy of these--of this
9 exhibit.

10 A. (Mr. Wells) This is my report, Kaylon Wells, who did the
11 analysis in this case. And I had no findings for Joshua Porter.

12 Q. Looking at these test results, can you briefly explain how
13 you arrived at the results for the receipt of the samples and
14 then testing and compiling these results to the final record that
15 we see here.

16 A. As Mr. Jones explained, the evidence was received through a
17 locked refrigerator. Once I had transferred it into my
18 possession, there's a two-process step for any testing that we do
19 in terms of confirmation. The first step is a presumptive
20 screening of the blood. In that case there was no--there's 11
21 categories of drugs that are screened for in that presumptive
22 test, and all 11 categories were negative. And a follow-up test
23 of the blood is done where the sample is analyzed, processed

1 chemically to extract any unknown drugs from the sample, and then
2 analyzed on a very specific instrument, drug analyzer instrument.
3 And when I did that test, again, there were no findings.

4 **LIO:** Thank you. Mr. Woods, would you please go to page 15.

5 Q. And briefly please explain what we're seeing here.

6 A. (Mr. Jones) This is the analytical report--this is Robert
7 Jones answering. This is the analytical report for the blood
8 alcohol analysis. Joshua Porter was the subject, and for this
9 there were no findings. So both ethanol and acetone were not
10 detected.

11 **LIO:** Thank you. Mr. Woods, please go--turning to the same
12 exhibit, page 6, for Mr. James Lacey, and zoom in. Thank you.

13 **WIT:** (Mr Wells) So on this report, in the first part of my
14 test, the presumptive test, one of the categories of the 11 drugs
15 screened positive, and that was the cannabinoids panel, which is
16 for marijuana. And in the secondary test, no drugs were
17 confirmed. And in our--in our laboratory, for medical examiner
18 cases we do not follow up on cannabinoid positive presumptive
19 tests as requested by the medical examiner.

20 Q. Is that because--does that have to do with Oregon legalizing
21 the use of medical or recreational marijuana?

22 A. It has to do with the--basically we're looking for anything
23 that could have contributed to a cause of death, and the positive

1 marijuana result doesn't usually factor into a cause of death.
2 People don't overdose from marijuana. And so as per the medical
3 examiner, just a screening and not a confir--all--confirmation
4 test is all that's needed.

5 Q. In a motor vehicle accident is there a requirement for
6 confirmation of the presence of marijuana or its derivatives?

7 A. So in a motor vehicle accident, it--it depends on the case.
8 It's--if the person is living, then we do confirm that--that
9 screen; however, in Oregon we only perform testing on urine of
10 the individuals living after a motor vehicle accident. And so we
11 don't confirm it in blood in our laboratory at all, because blood
12 is only analyzed for medical examiner cases.

13 Q. Okay. And--so turning to page 1 of this exhibit--go ahead
14 and get there--and then, Mr. Jones, would you please talk about
15 these observations.

16 A. (Mr. Jones) Yeah, this is scientist Sherry Roe's [ph]
17 analytical report for the blood alcohol analysis of James Lacey,
18 and both ethanol and acetone were not detected.

19 Q. I'm looking now at page 33 from Mr. Biernacki's test results.
20 Can you please elaborate on the testing of the sample here. Tell
21 me what they say and explain in the simplest terms what--how you
22 were testing the samples.

23 A. (Mr. Wells) So as the--as with the other cases, this

1 analysis followed a two-step process. In the first initial
2 presumptive screen, in this case two different categories of
3 drugs were screened positive, and that was for methamphetamine
4 and amphetamine. In the follow-up confirmation test, I did
5 confirm the presence of methamphetamine and amphetamine. And
6 then in this case an additional test was done in order to
7 determine the level of drug in the blood, and upon doing that
8 quantitation test, I determined the level of methamphetamine was
9 0.50 milligrams per liter and the amphetamine was 0.17 milligrams
10 per liter.

11 Q. Sir, how can you be sure that the sample came from Mr.
12 Biernacki's body?

13 A. When we receive blood and other specimens from the medical
14 examiner's office, they come pre-labeled with names and--and case
15 numbers. That is part of the sticker that has a barcode that we
16 scan in order to track it. So right on the barcode sticker is
17 the name and the case number for each blood sample received.

18 Q. Why did you not test the samples listed as Exhibit 02 and 03
19 on this page? Is that required? Just the notation that's there
20 below the results.

21 A. The request form that we get from the medical examiner, that
22 tells us what testing they would like done, and in this case the
23 urine and vitreous humor were not requested to be tested.

1 Q. Do you have any knowledge of any other reason that the
2 substances listed in the exhibit might be found in the sample?

3 A. No.

4 Q. Have you observed these kinds of test results where both
5 methamphetamine and amphetamine are found together?

6 A. Yes, ma'am. Amphetamine is a metabolite of methamphetamine,
7 which means it's a breakdown product produced in the body through
8 metabolism, and so it's typical for these two drugs to be found
9 together.

10 Q. Thank you. Finally, let's talk about the results on page 28.

11 **LIO:** Zoom in, please.

12 Q. The value we see here for ethanol is 0.033 grams per
13 deciliter.

14 A. (Mr. Jones) Yes, that is correct.

15 Q. How does that compare for the legal limit that would be
16 detected when testing for a vehicle operator under the influence
17 or driving while intoxicated?

18 A. It's referred to as grams percent. So if you understand that
19 a .08 percent is the standard per-se limit for presumed
20 intoxication, this is on that same scale. So .033 is a little
21 bit less than half the legal limit for presumed intoxication.

22 Q. And is--is--is there some kind of legal limit for the
23 operation of any kind of aircraft--you just mentioned vehicle--or

1 boat for drugs like methamphetamine or amphetamine that
2 constitute impairment?

3 A. For alcohol there is a per-se limit for impairment, but for--
4 for motor vehicles for driving cases, operating a motor vehicle
5 on a public space and highway, it's either a .08 or an
6 observation of impairment, impairment to a perceptible degree.
7 There are no such per-se limits for drugs other than alcohol.

8 Q. If we assume that these persons had survived and that these--
9 these were the test results that happened, what would happen next
10 under the procedures and policies of the state of Oregon?

11 A. That I--I can't--I don't think I'm qualified to discuss. We
12 simply will--are testing toxicology evidence at the direction of
13 the medical examiner.

14 Q. Do you have knowledge of what in the process would happen
15 next as far as does it get referred to law enforcement agency
16 or---

17 A. Yes, there would be--whoever was the investigating agency,
18 I'm sure, would file a report with the local--whoever had
19 jurisdiction, if it was the county district attorney or maybe if
20 it was a federal case there would be a federal prosecutor from
21 there to investigate the case and proceed with an indictment or,
22 you know, a filing if they felt that there was something they
23 could charge with. As I said, that's my loose understanding of

1 the process.

2 Q. Thank you. Mr. Biernacki's sample was drawn at 4:00 p.m.--
3 roughly 4:00 p.m. on January 9th, 2019. Does that have any
4 bearing on the results that were detected in his sample for
5 ethanol in his system?

6 A. Well, it is going to be reasonably close to the value at the
7 time of death. So I'm unable to--there are methods such as
8 retrograde extrapolation or Widmark determinations where you can
9 make an estimate of what alcohol levels were at some point in the
10 past; however, there's a lot of assumptions such as knowing when
11 drinking stopped, when did drinking start, things like that.
12 Ethanol, when it's absorbed by the body, it's distributed through
13 the blood and will go everywhere where water is in the body.
14 It'll eventually get into distribution in all the--all the bodily
15 fluids and there can be some postmortem distribution, but it's
16 going to probably be reasonably closer with the peripheral blood
17 sample that was drawn.

18 Q. So, Mr. Wells, for the amphetamine and methamphetamine, is
19 there a similar understanding that this--does the drug stay at
20 the--similarly the same level as close to death?

21 A. (Mr. Wells) That's--it's a little more complicated for
22 drugs, and the reason being is that drugs are not distributed
23 through the body at an even concentration. Certain parts of the

1 body could accumulate drugs more than others. And then after
2 death, those drugs could move about the body and redistribute a
3 little bit. However, Dr. Fraser mentioned always dra--always
4 drawing from the femoral, and that is because it is more isolated
5 from those compartments of the body that accumulate more drugs.
6 And so a femoral draw is the best estimation of a concentration
7 at the time of death, but there--it's--it's hard to interpret
8 after death because there's always some--some degree of
9 decomposition and movement of fluids that could occur.

10 **LIO:** Thank you. Please, Lieutenant Woods, could you turn to
11 page 9 of this exhibit.

12 Q. So what we're looking here--at here is a couple things.
13 Looking at the top right of the page there's some initials. Can
14 you tell me what they mean?

15 A. In the postmortem section there's a laboratory technician who
16 does some presumptive-level testing. So in this case I prepared
17 the blood sample for the first presumptive test, but the lab
18 technician actually ran the test on the instrument, and those are
19 her initials on the--on the page.

20 Q. Okay. So as you go down the page there's various substances,
21 and one of them is methadone. That indicates to the right that
22 it's elevated. First, do you know why that is detected and
23 listed as elevated?

1 A. Because this is a presumptive test, it works almost like a
2 color test where reaction is occurring. So there are other
3 compounds in the body that could react with a certain assay,
4 which is why all of these tests, aside from the cannabinoids, is
5 followed up by a confirmatory test to make sure that there wasn't
6 a false positive with the--the presumptive, and in this case
7 it's--it looks like something had a reaction on that assay, but
8 it was not--it was not confirmed.

9 Q. Are there any other findings in your tox--toxicological
10 examination of the deceased crew that you feel are significant
11 that I've not yet asked you about?

12 A. (Mr. Jones) I can't think of any. (Mr. Wells) No.

13 **LIO:** Thank you again for your testimony. I have no further
14 questions. I'll see if any of other members of my investigation
15 team have any questions.

16 [No response.]

17 **LIO:** Mr. Reilly?

18 **CROSS-EXAMINATION**

19 **Questions by the party-in-interest counsel:**

20 Q. Thank you, gentlemen, for being here. There's a product on
21 the market called CBD. Have you heard of that?

22 A. (Mr. Wells) Yes.

23 Q. Can ingestion of CBD give rise to a finding of canna--I

1 apologize for not being able to pronounce it well--the finding up
2 there that's marked in green, can that product give rise to such
3 a finding?

4 A. The--the screening is designed for THC, tetrahydrocannabinol,
5 and CBD is cannabidiol, which is a similar cannabinoid product.
6 There is some cross-reactivity to the assay to other--other
7 molecules that are structurally similar to THC. For CBD
8 specifically, I'm not sure at what level it would cause a
9 reaction similar to that of THC.

10 Q. It seems to be a popular product. They're selling it on--at
11 Safeway. As I understood your testimony, given the fact there
12 was no confirming test here, is it fair to say there's still a
13 possibility of a false positive with respect to Mr. Lacey's
14 findings?

15 A. With the other drugs that are not the target of the assay in
16 this case--I said the target is THC but there are other
17 structurally similar compounds--what usually happens is the level
18 of the structurally similar compound would need to be much higher
19 in order to produce the same reaction as the target compound. So
20 although it might be possible, it would--it would need to be
21 potentially very high in order for that to be true.

22 Q. So I guess you're talking about probabilities here, but in
23 any individual case, fair to say you can't tell the board that

1 Mr. Lacey absolutely ingested THC in a case like this. Fair to
2 say?

3 A. Without confirmation, that is true.

4 Q. And as I understood your testimony, the purpose of that
5 confirming test with respect to Mr. Biernacki, you actually
6 established the level of that compound in his system.

7 A. Correct.

8 Q. Do you know if your laboratory has retained the remaining
9 samples for any of these three decedents?

10 A. After my analysis is complete, I repackage the evidence and
11 return it to the submitting agency, in this case, the medical
12 examiner.

13 Q. I see. So you have none at your laboratory.

14 A. Correct.

15 **PIIC:** Thank you very much, sir. Thanks, Commander.

16 **LIO:** Thank you. I just have one or two additional questions.

17 **REDIRECT EXAMINATION**

18 **Questions by the lead investigating officer:**

19 Q. Okay, the one other question that I have is do you know of
20 any product on the market that can give rise to a false positive
21 for methamphetamine?

22 A. There are other methamphetamine drugs that could have a
23 reaction with this test; however, it would have been discovered

1 in a confirmatory analysis, and the confirmatory analysis
2 specifically identified methamphetamine and amphetamine.

3 **LIO:** Okay. Dr. Fraser, Dr.--Mr. Wells and Mr. Jones, you are
4 now released as witnesses from this formal hearing. Thank you
5 for your testimony and cooperation. If I later need--later
6 determine that this board needs additional information from you,
7 I will contact you through your agency and through our counsel.
8 If you have any questions about this investigation, you may
9 contact the investigation recorder, Lieutenant Luke Woods. Thank
10 you again.

11 We're going to go ahead and take a 2-to-3-minute break to
12 set up the remote testimony for Dr. Bourgeois. The time is 3:20.
13 We'll reconvene at 3:23.

14 [The hearing recessed at 3:20 p.m., 15 May 2019.]

15 **[END OF PAGE]**

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II

2 held in Newport, Oregon

3 on 15 May 2019

4 WITNESS: BRIAN BOURGEOIS

5 [The hearing was called to order at 3:25 p.m., 15 May 2019.]

6 **LIO:** It is 3:24 and this public hearing is being reconvened.

7 We'll now hear testimony from Dr. Brian Bourgeois, medical review
8 officer. This testimony is being provided remotely. Doctor,
9 thank you for standing. We're going to have Lieutenant Woods,
10 our recorder, administer your oath and ask you some preliminary
11 questions.

12 **WIT:** Okay.

13 **BRIAN M. BOURGEOIS was sworn and testified via remote link-up as**
14 **follows:**

15 **LIO:** Good afternoon, Dr. Bourgeois. Can you hear me okay?

16 **WIT:** I can. Thank you.

17 **LIO:** Yes, sir. Thank you for appearing today at this hearing.
18 The Coast Guard has sent one of our investigators to your
19 location to verify your identity for today's testimony. We've
20 also sent you----

21 **WIT:** Correct.

22 **LIO:** ----the relevant exhibits to examine beforehand so that you
23 could effectively answer our questions. If--if you need a break

1 at any time, please let me know.

2 **WIT:** Okay.

3 **LIO:** I'd like to follow up on some of the questions--excuse me,
4 Lieutenant Woods, can you ask him the foundation questions,
5 please. Thank you.

6 **DIRECT EXAMINATION**

7 **Questions by the recorder:**

8 Q. Sir, please state and spell your full name.

9 A. My name is Brian Michael Bourgeois. Spelling is B-r-i-a-n,
10 M-i-c-h-a-e-l, B-o-u-r-g-e-o-i-s.

11 Q. Sir, please state your current employment and position.

12 A. I am the owner of the West Jefferson Industrial Medicine, and
13 I am the primary physician at that practice.

14 Q. Please state any education or training related to your
15 profession.

16 A. I received a degree in medicine, doctor of medicine, from
17 Louisiana State University. I completed that in 1993. I then
18 completed residency in general surgery. Once again it was in a
19 state university medical center, 1998, board-certified in surgery
20 the following year. I also had training as--and certification as
21 a medical review officer through the American Academy of Medical
22 Review Officers. That was first--I think I was first certified
23 about 14 years ago, back in--probably actually 2003, so longer

1 than that now. I also have certifications in dive medicine,
2 complex hyperbaric through NOAA, and also I am an FAA examiner
3 and am on the medical board of the Coast Guard Medical Advisory
4 Committee.

5 **REC:** Thank you, sir. At this time I will turn it over to
6 Commander Denny.

7 **Questions by the lead investigating officer:**

8 Q. So, sir--so, again, could you refresh my memory. How many
9 years have you been a medical review officer?

10 A. Since 2003, going on 16 years.

11 Q. Sir, could you please describe the duties of a medical review
12 officer in detail.

13 A. A medical review officer is in charge of reviewing results of
14 drug screens that are done in relation to either pre-employment,
15 post-accident, random, reasonable suspicion. We look at the
16 results as they're returned from the lab. We often have
17 interaction with the donor to determine whether there's a
18 reasonable prescription source of the medication and/or if there
19 is a safety concern.

20 Q. Thank you. So you--you mentioned quite a few other
21 certifications. Can you describe any specialized training or
22 continuing education that you've taken directly related to
23 detection and identification of chemical substances.

1 A. So as part of--as part of medical review officer, the
2 training for medical review officer is directed to the
3 identification and review of both illicit and prescription drugs
4 that are tested for. Identification of the drugs themselves is
5 actually done by the lab scientists. So--so that is reported to
6 the medical review officer. The only time the medical review
7 officer is involved in that process is if there is a question of
8 validity or if a further test has to be done.

9 Q. Okay. And you mentioned that you're a member of the Coast
10 Guard's Merchant Mariner Medical Advisory Committee, which is a
11 federal advisory committee. Can you explain the purpose of the
12 committee?

13 A. So the medical advisory committee was formed, I want to say,
14 back in 2010--8, 10. We were charged with multiple duties over
15 the past years. I was one of the original members. So we are
16 charged with everything from review of the current NVIC [ph] to
17 individual medical issues related to the health and safety of a
18 mariner, also certain issues related to fitness to hold a
19 merchant mariner certification. We do review of medications,
20 medical conditions. We also review hearing, vision standards,
21 certain physical standards. All that is in relationship to one's
22 ability to hold a merchant mariner certificate.

23 Q. And--and, sir, how long you have been part of that committee

1 and provided advice to this group?

2 A. I want--I'm going to estimate about 10 years since the
3 inception of that group.

4 **LIO:** Thank you. Lieutenant Woods, actually, please display
5 Exhibit 025, which is the crew medical exam and toxicology
6 results composite. Please go to page 14 and 15.

7 Q. Dr. Bourgeois, we're going to the composite document, pages
8 14 and 15. The Coast Guard provided you with this exhibit, which
9 is 15 pages long. It contains the results of the postmortem
10 medical evaluations and also the toxicology results. The
11 operator of the MARY B II, Captain Biernacki, was found to have
12 chemical substances and alcohol in his system. Is that correct,
13 based on you looking at these documents?

14 A. I'm going to pull--I'm going to pull up my documents right
15 now so I can see this.

16 Q. Yes, sir.

17 A. Yes. So I have the document with the report for a Stephen
18 Biernacki, the report from the Oregon lab here. I have that in
19 front of me.

20 Q. Yes, sir. So what--what we're looking at is the analytical
21 report for him.

22 A. Yes.

23 Q. And does it show that he has--found--been found to have

1 chemical substances and alcohol in his system?

2 A. The report that I have here has toxicological examination
3 confirms the president--the presence of methamphetamine and
4 amphetamine. That is on page--that's the first report I have.
5 Let's see, I have another report also. So that confirms the
6 presence of methamphetamine.

7 Q. Yes, sir.

8 A. And let's see the alcohol they put in.

9 **LIO:** Mr. Woods, can you switch it to page 15, please.

10 **WIT:** Yeah, let's see if you can pull up that for me. That would
11 save that quickly. I've seen it. I just--I want to make sure I
12 have--what page did you say that was? I'm sorry.

13 **LIO:** Sir, that was page 15.

14 **WIT:** Yes. So 15--there it is. I've got it. Okay, I'm looking
15 at it. So once again analytical report on Stephen Biernacki,
16 alcohol volatiles analysis confirms ethanol at a level of .033
17 grams per deciliter and acetone is not detected.

18 Q. Yes, sir. So as a medical review officer, you mentioned that
19 you're very involved in--in looking at results for mariners that
20 work in the commercial vessel industry. Sir, have you reviewed
21 medical results for mariners that work in the commercial fishing
22 vessel industry?

23 A. Yes.

1 Q. Based on your experience, are the navigation, seamanship and
2 operational control duties or functions for a commercial vessel--
3 fishing vessel any different than they are for let's say a
4 tugboat or a ferryboat or large passenger vessel?

5 A. No, they should be the same.

6 Q. So looking at these results, let's say that they come from
7 someone who is on a 68-foot commercial small passenger vessel
8 that operates under a merchant's mariner credential let's say out
9 of Newport, Oregon. What would happen to that mariner based on
10 these results?

11 A. As a medical review officer, reviewing these documents, a
12 mariner in that situation, I would term this mariner not fit for
13 duty and certainly not what I would call seaworthy.

14 Q. Would the mariner be allowed to continue to operate having
15 had the results you see on pages--14?

16 A. Absolutely not.

17 Q. Sir, why is that?

18 A. A mariner with the presence of methamphetamine specifically--
19 potentially also included amphetamine is--in my opinion, would be
20 considered impaired.

21 Q. Based on these testing results, then, sir, what would you do?

22 A. I would issue effectively a stand-down order. My first call
23 would be to the designated employee representative, which is who

1 I'm instructed to call as a medical review officer. I would tell
2 them that they have a mariner on board, identify the mariner, who
3 must immediately be taken off duty. If they happen to be
4 offshore, I would have someone inform the boat that he has to be
5 taken off duty and return to shore at the soonest time possible.

6 Q. Thank you, sir. Would you also notify the Coast Guard?

7 A. I do not always notify the Coast Guard. I--as a medical
8 review officer, I am duty-bound to notify the employer or the
9 vessel operator. I have notified Coast Guard in the past, but my
10 first contact would be the--the operator of the vessel or someone
11 who is in charge of the logistics of the vessel.

12 Q. Yes, sir. Thank you, Dr. Bourgeois. On page 15 that we
13 looked at the ethanol results, would that impact the ability of
14 the mariner to operate a vessel?

15 A. I believe it would. I think it presents a specific safety
16 concern, the presence of any alcohol.

17 Q. Okay. Slightly different question. Are the two substances
18 that are on page 14 of Exhibit 025, the methamphetamine and
19 amphetamine, are they one and the same illegal drugs or are they
20 byproducts of the same compound, sir?

21 A. More likely than not in this situation, they are the
22 byproducts of methamphetamine. You can have concomitant
23 administration or ingestion of amphetamine and methamphetamine,

1 but when it's reported like this, the result is that there was a
2 methamphetamine positive. It is, if you notice, at a higher
3 concentration. The reason they report amphetamine with this is
4 from a lab standard. Once they report a methamphetamine above
5 this level or confirm at that level, they have to report a
6 concomitant presence of amphetamine, because that is a byproduct
7 of methamphetamine. So they are--they're typically reported
8 together.

9 Q. Sir, what is the difference in the terms "controlled
10 substances" and "illegal drugs", for the benefit of the public?

11 A. Controlled substances, in my opinion, are substances that are
12 administered through a licensed physician or practitioner,
13 effectively prescription medication. There are different classes
14 of controlled medications. They go from a class I, which is
15 effectively an experimental drug that has very limited
16 distribution or access at usually only academic centers, down to
17 class IV, but class II, these drugs are typically narcotics, some
18 stimulants, other medicines. So that is what's a controlled
19 drug, written by a provider who has a license to write medication
20 and specifically controlled substances and then also distributed
21 by a pharmacist who also has a license to dispense those
22 medications. An illegal drug is a drug that is not allowed by
23 the law to be taken publicly or effectively not allowed by law to

1 be handled or possessed by any individual.

2 Q. Are either of the two drugs listed on the analytical report
3 controlled substances or are they considered illegal drugs by the
4 government of the United States?

5 A. So amphetamine, as the easier of the two, is a both
6 controlled--is a controlled substance but not necessarily an
7 illegal substance. Amphetamine is used for routine treatment of
8 individuals for multiple conditions. So it is not necessarily
9 illegal, but it is controlled. It's also a class II. So that is
10 effectively the highest class of drug outside of experimental
11 use. Methamphetamine is an illegal drug, number one. I would--
12 it is not a control--it is a controlled substance, but it is more
13 likely than not a level I drug or a class I controlled substance,
14 so typically for experimental use. It is not something that
15 myself as a licensed physician could write a prescription for.

16 Q. Are merchant mariners of the United States prohibit--
17 prohibited from using illegal drugs or abusing prescription
18 drugs?

19 A. Yes.

20 Q. In your position as a medical review officer, are those
21 results and the way they are listed on the two pages consistent
22 to how a drug testing result would be captured?

23 A. Yes, they're--they're listed as a--I would say a typical

1 reporting in--in this type of case where it is a postmortem exam.

2 Q. And looking specifically at the levels of methamphetamine and
3 amphetamine, would that cause impairment for the subject?

4 A. I would say the methamphetamine certainly. The amphetamine
5 may or may not cause impairment.

6 Q. Sir, looking to any impairment that may be caused by
7 methamphetamines or amphetamines, what might be some signs or
8 behavioral issues brought about by this level of use when we
9 focus on vessel operation?

10 A. The methamphetamine is the more, I'm going to say, apropos
11 one to speak of. So like I said initially, the amphetamine is
12 reported because it's a byproduct of methamphetamine. So we're
13 going to talk about the methamphetamine. Methamphetamine is a
14 stimulant like amphetamine. A single dose or initial dose of
15 methamphetamine initially may produce a level of heightened
16 awareness. The problem comes not at the initial administration
17 but as time expires and with the chronic use or presence of
18 methamphetamine. So individuals who use and/or abuse
19 methamphetamine on a routine basis or even one time, they
20 experience multiple problems that will impair their ability to
21 operate safely a vessel or a complicated situation. They
22 experience fatigue, cognitive disability, psychoses, delusional
23 behavior, inattention, lack of focus on a task. With the greater

1 use and with long-term use and more chronic use, the use problems
2 become magnified. The other problem becomes that after multiple
3 uses, the initial and sometimes seen as beneficial effect of
4 increased awareness is no longer present. So it often goes to
5 overly heightened awareness, paranoid delusion and psychoses.
6 They also can develop motor abnormalities which will potentially
7 impair their ability to actually physically operate, control,
8 maintain normal gait, balance, maneuver around complicated
9 vessels, et cetera.

10 Q. So what were the areas where you said these drugs would
11 impact physical condition? You mentioned motor skills. What
12 about eyesight or hearing?

13 A. So part of the problem with the psychoses and delusional
14 behaviors is that these individuals do not have what I would call
15 the wherewithal to be able to--to be able to sort through
16 problems, maintain focus, perform dedicated tasks. And so that
17 becomes an increasing issue with the use of methamphetamine.

18 Q. So, sir, I don't want to assume anything. So I think you've
19 already alluded to it, but I'm just going to ask the questions.
20 Is methamphetamine addictive?

21 A. Methamphetamine is extremely addictive. It is sometimes even
22 said that a single dose of--dose of methamphetamine causes
23 addiction on the initial dose. It doesn't even take a second

1 dose. I think you'll find that most people will say that
2 methamphetamine, once administered or once taken in, is
3 immediately addictive.

4 Q. You've mentioned an array of--of symptoms that--that one
5 could see after a subject ingests methamphetamine. Can a----

6 A. Correct.

7 Q. ----user of methamphetamines exhibit extreme lethargy? Can
8 the--can the down side of methamphetamine use result in
9 exhaustion?

10 A. Yes. And that is actually increased or magnified with
11 repetitive doses or repetitive use.

12 Q. Dr. Bourgeois, can you walk me through the cycle from the
13 time that someone ingests methamphetamine to the end of when it
14 clears the individual's system.

15 A. So in--initially what you see is someone who has an increased
16 sense of awareness, a lot of--let's say a great deal of energy.
17 They are hypervigilant. That lasts usually for a relatively
18 short period of time, on the order of maybe a few hours. The
19 half life of methamphetamine is on the order of about 10 hours.
20 So the drug is reasonably quickly cleared. So the--the pre--the
21 presence of that heightened awareness will wear off relatively
22 quickly. The individual then starts experiencing a just
23 depressed mood where they often have problems with delusions,

1 whether they have auditory, visual delusions, paranoia. They
2 also will potentially have problems with persecution syndromes
3 and subsequent to that they start reaching the down phase. So
4 these individuals become extremely lethargic, very tired. This
5 is what often will increase their second dose or repetitive dose-
6 seeking behavior as they're looking for that high again. The
7 lethargy is pretty profound, to the point where most of these
8 individuals will, you know, effectively pass out for a period of
9 time until the drug has cleared the system and the side effects
10 have worn off.

11 Q. Thank you. One more question with regard to the areas where
12 you said this drug would impact physical condition. Would it
13 affect--could it affect speech?

14 A. Yes, it certainly could. I think it can affect speech
15 physically as well as it can affect someone's cognitive ability
16 to carry on a conversation or participate in a conversation with
17 someone else.

18 Q. Okay. Would that level found of amphetamines in Mr.
19 Biernacki have affected his decision making at the time of the
20 accident, which was approximately 10:00 p.m. on the evening of
21 January 8th, 2019, in your professional opinion?

22 A. I think it would have--the level of methamphetamine
23 specifically would have affected his ability to make what I'm

1 going to call reasonable cognitive decisions.

2 Q. Sir, you mentioned just a few minutes ago half life and you
3 said that it was about 10 hours. Can you explain for the benefit
4 of the public the concept of half life of drugs.

5 A. Half life of a drug--the half life is the time which it takes
6 for half of the current dosage to be cleared from the body. So
7 drugs are not cleared linearly. They are cleared on a--on
8 effectively an inverse logarithmic scale. So if you take a drug
9 or medication or have at time zero and the half life is 10
10 hours, let's say your dosage is ten at time zero. Ten hours from
11 then, your--your presence is five. Now, another 10 hours from
12 that, so 20 hours from your original dosage, the presence is now
13 two and a half. So it halves the prev--previous dosage from the
14 previous half. Then another 10 hours, so you're now 30 hours,
15 the dosage would be 1.75. That would be half of the 2.5, until
16 it reaches zero. So what will happen is that the drug, albeit in
17 less, lower quantities, will stay in the system for a significant
18 period of time. Now, that--it's difficult to say whether the
19 concentration that is present at any time would produce a
20 specific reproducible percentage of impairment. That can be done
21 with--somewhat with alcohol, but it's very difficult with other
22 drugs and I don't know that it--that a percentage of impairment
23 could be attributed to a certain level of methamphetamine.

1 Q. Okay, thank you, Doctor. So in the postmortem test, if you
2 take the--both the--the drug test and the alcohol test, if the
3 two substances were taken together, so ethanol, which is what's
4 listed as--having a presence of ethanol--would that substance
5 taken together with methamphetamine to amphetamine make the
6 impairment more pronounced?

7 A. I believe it would.

8 Q. Dr. Bourgeois, could you share your professional opinion on
9 the impact of ethanol on impairment if it was the only substance
10 detected in the samples in the case of Captain Biernacki.

11 A. I think the problem with the ethanol is similar in result,
12 although maybe my mechanism not the same as methamphetamine. The
13 problem with ethanol is that it creates cognitive disability. We
14 often hear of it in relationship to driving impairment, and so
15 the impairment is the actual inability of the individual to make
16 a reasonable, timely, cognitive decision, whether that be
17 stopping for a red light, whether that be operating a vessel,
18 whether that be riding a motorcycle or bicycle. There is actual
19 impairment of one's ability to perform higher cognitive functions
20 or higher motor functions.

21 Q. Okay. Are there any things that might impact your assessment
22 related to the impairment of a critical decision maker of these
23 three substances when we examine the samples for Captain

1 Biernacki, like the type of sample or storage or temperature or
2 the fact that--would it affect the postmortem sample result
3 accuracy?

4 A. I don't believe it would. One of the things you noted about
5 this postmortem result that's a little different than a live
6 subject is that the test confirmed the presence of these drugs
7 above a certain level. They do not give an absolute
8 concentration as you can with a real-time sample. The--and that
9 would probably be a better question for the lab scientist himself
10 or herself, but that would--I think the presence or absence of
11 the drug is not affected by the fact that this is postmortem.
12 The only thing that may be affected is the--the actual--trying to
13 extrapolate the actual concentration at the time of death or at a
14 certain time of impairment.

15 **LIO:** Thank you. Lieutenant Woods, please prepare to display
16 Coast Guard Exhibit 25, page 19--I'm sorry, 9 and 10.

17 Q. Dr. Bourgeois, turning your attention to page 9 of Coast
18 Guard Ex--Ex--Exhibit 025, which are the results for the
19 toxicology test for Mr. Lacey, can you please explain these--look
20 at these test results. Exhibit 01----

21 A. Okay.

22 Q. ----tested positive for cannabinoids. Can you----

23 A. Yes.

1 Q. ----can you please explain what cannabinoids are.

2 A. So cannabinoids are the actual by product after metabolism of
3 tetrahydrocannabinol or the active--the psychoactive ingredient
4 of marijuana. So when a lab reports what is commonly referred to
5 as positive marijuana, what they're actually reporting is
6 cannabinoids. A cannabinoid is the metabolic byproduct that is
7 actually seen and tested for in a sample.

8 Q. Sir, in your professional opinion, could you please talk
9 about the results as they relate to any impairment for Mr. Lacey,
10 the crew member on the MARY B II, on the night of January 8,
11 2019.

12 A. So the presence of cannabinoids suggests that there was a
13 presence of a potentially impairing or cognitive-impairing
14 substance. And once again, by that I mean something similar to
15 what we've spoken about, which would be a substance that impairs
16 one's higher motor function or higher cognitive ability.

17 Q. And, sir, the--the note on these--on these results that say
18 that--that it's not confirmed, as an MRO can you explain what
19 that notation means and what that would mean for us?

20 A. Right. So the examination--so when they test for drugs they
21 use two separate methods. There is an analyzer that is used for
22 a screening level. Then there is a confirmation test that's
23 performed by a gas chromatography mass spectrometry. You'll see

1 it referred to as GCMS. So an analyzer, which is the--I'm going
2 to call initial or first test is a machine that allows a reaction
3 to develop between a substance and a substrate or reagent. That
4 reaction or that finding triggers a--triggers, effectively, a--a
5 positive or negative. The machine will read that as a positive
6 or negative. Sometimes it's a change in color, a light, depends
7 on how the machine works. So analyzers are very accurate. They
8 are the first line. If you get a negative on an analyzer, the
9 process stops there. Once you have a positive on an analyzer,
10 you then take the same sample and you will run it through a GCMS.
11 So a GCMS effectively takes a liquid, usually, and volatilizes
12 it, so basically turns it into a gas. The gas will be read,
13 depending on what contents are in there. Each substance in the--
14 in the sample--let's say if the presence of any substance in the
15 sample--that substance has what I think can best be described as
16 a fingerprint. And each substance has a specific fingerprint.
17 That fingerprint is read, then hence you identify a substance.
18 So when you have something that's positive on an analyzer but not
19 confirmed, it means that the first test showed the presence of
20 that substance. So the reagent test was positive. It then goes
21 on to a GCMS. The GCMS will fail to confirm a result--can be for
22 multiple reasons. You actually don't often see a failure to
23 confirm. That's pretty rare. I will say that--I would be remiss

1 if I said I had an extensive amount of knowledge with
2 postmortems, and there may be some difficulties in postmortem
3 confirmation, and that would probably be a better question for
4 the lab scientist, but you can--you can see a failure to confirm
5 because of the level of drug, that it doesn't reach the cutoff.
6 You may see the presence of a--a--a false positive on the
7 analyzer. So you get either a substance that triggers a positive
8 falsely because you have a cross-reactivity. You may also have
9 sometimes a--a--an adulterant or a substance that keeps the gas
10 chromatograph mass spectrometer from actually doing the test.
11 There are substances that will actually I'm going to say damage
12 the machine. So if the presence of that substance is there, they
13 will not confirm the test. It will not run it, hence not
14 confirmed. But those are some of the common reasons that things
15 are not confirmed.

16 Q. Thank you, sir. So with regard to Coast Guard testing
17 protocols, is it okay for a subject to test positive in a state
18 where marijuana is legal for recreational or medical use?

19 A. No, I do not believe so.

20 Q. Sir, moving to page 10 of the results for any impairment for
21 Mr. Lacey, it indicates that no ethanol and/or acetone were
22 present for that sample. On your documents is that correct?

23 A. That is correct.

1 **LIO:** Lieutenant Woods, please display pages 4 and 5.

2 Q. Finally, Dr. Bourgeois, turning our attention to Mr. Joshua
3 Porter, the other crew member on the MARY B II that night, do you
4 see any indications of the use of alcohol or dangerous drugs or
5 common pharmaceuticals?

6 A. Yeah, so the analytical report is not--says not detected for
7 ethanol or acetone and the--the other--there is no other
8 reference to any illegal, illicit, prescription medications or
9 otherwise or drugs in the remainder of the analytical report.

10 Q. If any of these tests had resulted in a listing of common
11 pharmaceuticals, what would be the impairment effects of
12 prescribed medications on critical decision making for persons
13 operating vessels in dangerous situations like entering the bar
14 at Yaquina Bay?

15 A. So I will say, though, that the presence or lack thereof of a
16 potentially impairing medication can only be surmised if the lab
17 test actually tested for that--for that substance. So what we
18 find is that there are numerous impairing substances or
19 medications, if we refer to it as that, that are not tested for
20 on a routine basis. Sometimes it's simply because they're kind
21 of difficult to test for and analyze. Sometimes it's because of
22 cost. Sometimes it's just not part of routine testing. So there
23 are any number of substances--this includes prescription

1 medications such as muscle relaxers, sedatives, medications that
2 have those effects as a side effect. They're used off-label
3 sometimes. But you can also see it in over-the-counter purchased
4 things such as synthetic--synthetic-type marijuanas that are very
5 popular, inhalational recreational drugs that are sold outside
6 the purview of the FDA or DEA. You can sometimes test for these
7 things, but the problem with it is is that the man--the illicit
8 manufacturers of these will manipulate the chemical structure
9 faster than the lab can keep up with it. So you see this in--
10 commonly referred to a substance as spice or these--what are
11 sometimes sold as marijuana-like synthetic substances. The
12 problem with this is a lot of these are made in other parts of
13 the world. They are actually probably made by some pretty smart
14 people. They change the chemical makeup, add little attachment
15 groups here and there that don't necessarily change the effect of
16 the--of the--of the substance but will change the binding effect
17 when someone tries to test for it. The labs do a pretty good of
18 figuring it out, but a lot of times they cannot figure out these
19 changes until they actually see it. So there is a--there's a
20 breakpoint there. But there are also numerous prescription
21 medications and what people routinely use that are, in my
22 opinion, impairing that are not tested for. So you don't really
23 ever know if they were there.

1 Q. Okay. And so some of these--some of these medications that
2 you just mentioned, would allergy medications, perhaps, or some
3 other over-the-counter medications, could those impair a fishing
4 boat captain?

5 A. I would say yes. Probably the most common one is
6 diphenhydramine or--or brand name Benadryl. That medication is--
7 has a very slow half life. It has sedative effects that are well
8 known. It affects some people much more than it does others.
9 That degree of effect between different individuals is often
10 unpredictable. It will also--it may also potentiate the side
11 effects of some other medications that are taken. So
12 potentiation means that it may make a side effect greater just by
13 the combination of the two. That's a very common one, and it
14 is--it's used routinely. There are other over-the-counter sleep
15 aids that are used that do the same thing. There's multiple
16 medications that can potentially interact with one prescription
17 medication and will cause impairment, potentially.

18 Q. And would any of those over-the-counter medications cause a
19 positive result for methamphetamine on a test like the 11-panel
20 test that was performed on Captain Biernacki?

21 A. No, the--the methamphetamine you will only see as a result of
22 prescription medications. You may see methamphetamine in
23 prescription medications that are produced and bought outside the

1 United States that may or may not require prescription. Mexico
2 has a real problem with it, methamphetamine. They're often
3 attributed as, quote, "diet pills". And people do go there to
4 buy them, but there's a significant amount of methamphetamine in
5 there. The only--probably the only single over-the-counter
6 medication that you will see that will produce a methamphetamine
7 positive--and we're going to talk about that in a second--is a
8 certain type of Vicks nasal inhaler. So it is not very common.
9 My understanding is that it's almost not sold anywhere in the
10 U.S. any longer. It used to be a problem. Methamphetamine has
11 two what's called racemic--or isomers. They can have a D and L
12 isomer. So you can think of it--an isomer as your two hands,
13 your left and right hand. So if you put your hands together,
14 palms facing each other like that, they will look the same and
15 they mimic each other, but take them apart and you try to lie one
16 on top of the other and they're different. So one is called a D.
17 One is called the L. D and L stand for dextro and levorotatory,
18 so the way light rotates left to right. The L methamphetamine
19 is--can be attributed to let's say systemic use. That's the one
20 that may be attributed to a nasal inhaler. But the D is always
21 illicit use. It is always illegal, illicit substance. I have
22 never seen a documented case of a Vicks nasal inhaler, but I've
23 read about it in books.

1 Q. Dr. Bourgeois, my final topic is based on your advisory role
2 for the Merchant Marine Medical Advisory Committee, the MEDMAC,
3 and your advisory role as a medical officer--medical review
4 officer. So in general vessels like the 42-foot fishing vessel
5 MARY B II are not--are not required to have crews that have Coast
6 Guard licenses or similar credentials. Is it important to assess
7 the physical condition of people who work in maritime--in the
8 marine industry, and what is the typical interval to conduct
9 these physical examinations?

10 A. I think it's important to assess the physical fitness,
11 medical history, et cetera, of an individual who is working in an
12 offshore capacity, marine or otherwise. The typical interval
13 for--may range depending on whether you have a young, healthy
14 person or a older person with previous medical history. So the
15 interval can range anywhere from 5 years to I'm going to say
16 commonly yearly, although there are some medical conditions in
17 which the National Maritime Center will require a 6-month or
18 shorter interval update on--can be lab tests, success of a
19 treatment, et cetera, but you're talking somewhere in that range,
20 between 5--5 years and a year, typically, for most individuals.

21 Q. Does the existing merchant marine physical capture any issues
22 related to the use of drugs, prescribed or over-the-counter drug
23 use?

1 A. You would hope it does. I--I do not think that there's 100%
2 capture rate. That would be--that would be overly ambitious to
3 think that there's 100% capture rate. I think that the current
4 examination standard and parameters are, I'm going to say,
5 adequate. I think that what is missing is an expanded drug
6 screen panel. The physical examination itself I think is--is
7 probably as good as it needs to be or can be. Granted, you're
8 going to have some individuals who are just good at masking their
9 use, but the only other way to increase capture rate would be to
10 expand the drug screening parameters, because sometimes that's
11 the only window you have into someone's life or, you know,
12 patterns outside of the number of minutes or portion of time that
13 they're in front of a physician or provider in an office.

14 Q. Does the existing program also capture mental health issues
15 that might affect human performance?

16 A. It may. Once again, it's--it's far from 100% capture rate,
17 but it--it may catch some, yes, certainly. I mean, I have
18 caught--I have caught some personally and--and hence have--either
19 deny or had further information to assure that they're reasonably
20 well cared for. That's certainly not 100%.

21 Q. Does the medical review for a mariner's fitness also give
22 waivers in certain physical limitations and conditions?

23 A. Yes, there is a waive process. Waivers are issued through

1 the National Maritime Center. They're not issued by the
2 providers. We can suggest the waive process as an examiner, but
3 we are not the individuals that issue the waiver. That's done
4 purely to the--to the National Maritime Center in Martinsburg.

5 Q. Sir, to your knowledge, what is the purpose of the Coast
6 Guard's drug and alcohol testing program for the marine industry?

7 A. I believe that it is a part of the process that attempts to
8 ensure the safety of both the mariner, his fellow mariners and
9 the public, as well as the waterways on which they operate.

10 Q. The owner of the MARY B II LLC, the owner of the vessel, was
11 not required to have a drug testing program because the vessel
12 had no crew aboard that had licenses, certificate or registry or
13 Coast Guard-issued merchant mariner documents. If the owner had
14 a drug testing program, would that potentially have reduced the
15 likelihood of physical behavior or mental impairment due to
16 controlled substances detected in these crew testing results?

17 A. I believe it would have.

18 Q. Based on your training and experience, is it probable that
19 the methamphetamine in Captain Biernacki's system contributed to
20 the sinking and his death?

21 **PIIC:** Objection.

22 **LIO:** Basis?

23 **PIIC:** I'm unfamiliar and it hasn't been established so far that

1 the doctor has anything other than these lab reports. Has--has
2 he studied the--the reports of the incident? How can he have
3 that--how can he found an opinion on the scope of what you're
4 asking based on lab reports?

5 **LIO:** You know what? I'll sustain that.

6 Q. Sir, do you have any observations or comments related to the
7 test results that you've examined that we've not asked about that
8 you might like to share with the investigation?

9 A. No.

10 **LIO:** Does any member of the investigation team have any
11 additional questions?

12 [No response.]

13 **LIO:** Mr. Reilly?

14 **CROSS-EXAMINATION**

15 **Questions by the party-in-interest counsel:**

16 Q. Thank you for being here, Doctor. With respect to Mr.
17 Lacey's examination results, I just wanted to share with you some
18 testimony we had from the lab in which the chemist said the
19 reason there was an unconfirmed test result was because they did
20 not do the spectrometry on the blood because it was a death case.
21 Does that make sense?

22 A. If that's what he said, I believe so. I'm not--I'll say
23 this. I am--I have only--I don't know, even less than a handful

1 of occasions reviewed postmortem tests. I have not reviewed a
2 marijuana postmortem or cannabinoid postmortem test. So I have
3 not been presented with that situation, which would maybe prompt
4 me to ask that question of the lab scientist. I can see that
5 being the case from my knowledge, but I just have a hard time
6 saying that I definitely agree just because I've never been
7 really presented with that situation----

8 Q. Yeah, I'm sorry, I wasn't asking----

9 A. ----that scenario.

10 Q. Yeah, I wasn't asking if you agreed with the process. I just
11 wanted to make sure--because my follow-on question has to do with
12 this. That's the process in Oregon because, as a matter of
13 policy, they've determined it's not worth their resources to look
14 into--further inquire into the presence of--potential presence of
15 THC in somebody's system in a postmortem examination, simply a
16 policy decision they've made. Okay?

17 A. No, I--yeah, I--I can understand that. Like I said, the--the
18 analyzers, the screenings tests, are extremely accurate. I have
19 never seen one overturned, especially as a cannabinoid. So I can
20 see that.

21 Q. Sure, and my follow-up question with respect to Mr. Lacey's
22 result, just wanted to make sure it's crystal clear. If you did,
23 as an MRO in the case of a merchant mariner, have an unconfirmed

1 report, that would not be a basis for a suspension or revocation,
2 potentially be a basis for a retesting or something along those
3 lines, but no one's ticket would be pulled based on an
4 unconfirmed report. Is that fair to say?

5 A. I believe that would be true, although that decision is made
6 at the Coast Guard level and is not made by myself, but I believe
7 that is true, that they would have to go through a retesting,
8 yes.

9 Q. All right, and with respect to Mr. Biernacki's results, I
10 just want to make sure I understood your testimony. The--the--
11 the lab chemist testified as to the initial screening test as
12 well as spectrometry, which determined the actual level of those
13 substances in his blood. Is that how you understood it?

14 A. The way I read the results is that the--the results as it's
15 reported--I'm going to pull up--I think it's page 14. As it's
16 reported--I'm getting there, just coming a little slow. Let's
17 see if we can both look at the same thing so we're talking apples
18 and apples. So here we go. We have a report of--we have a
19 report of methamphetamine and amphetamine. Those levels that are
20 reported are the--are--are the--are what's typically considered
21 the screening and confirmation level. Initially when I saw this,
22 I was--I always was--I'm going to say suspicious for questioning
23 not in a derogatory manner but you almost never--well, let's say

1 I--I've--I made almost--I don't say never very often, but I don't
2 think I've ever seen a level report that is exactly the same as
3 the cutoff level. And these--these are the cutoff levels. So
4 what I--what I believe to be the case is that once they--once
5 they reached the cutoff level, hence a positive, a non-negative,
6 they report it positive for presence at that level for which they
7 tested or for which they use as a cutoff. What I see on drug
8 screen reports coming from labs on non-postmortem individuals is
9 I will see a--we'll use methamphetamine as the example. I will
10 see listing methamphetamine. It will have three columns after
11 the drug. First column will be the actual level that was hit
12 when the test was run. It will then state positive--presence
13 positive or something and then it will have the cutoff level that
14 the lab uses for both the screening exam and the confirmation
15 exam. So what I believe--because I'm not seeing all those
16 numbers here, what I believe I'm seeing is the positive at these
17 cutoffs and not necessarily the actual concentration, because the
18 reality is I'm not sure that the lab could report an actual
19 concentration because it's a postmortem specimen. This is not a
20 live collected specimen where you're going to have a definitive
21 volume. It is not processed in the same fashion. So I'm not
22 sure that they could report a level that is equivalent in--in--in
23 let's say reportability to a live specimen, if that makes sense

1 to you.

2 Q. Thank you, Doctor. With respect to your opinion of
3 impairment based on the levels that are reported on page 14 here,
4 the methamphetamine and amphetamine levels, can you point me to
5 some resource, article, professional reference that will
6 establish that these levels of substances, given the uncertainty
7 of these results, would likely cause impairment?

8 A. I do not know of a specific study or source that, once again,
9 states a percent or degree of impairment based on presence of a--
10 of this drugs at any specific level. All this tells you is that
11 the drug is present. It's not supposed to be there, but it's
12 there.

13 Q. All right, Doctor, it's fair to say you haven't done any
14 specific research on your--your own in order to measure potential
15 impairment in subjects who had measurable quantities in the range
16 of the--of these quantities in their systems?

17 A. No, I haven't done--I have not done that research, no, sir.

18 Q. With respect to the alcohol number, is it your understanding
19 that that was the same type of mechanism, a screen and a
20 confirmation but not a determination of an actual amount or is
21 that different?

22 A. I don't know because obviously the alcohols that are
23 typically done are breath alcohol specimens. So breath alcohol

1 specimens are reported a little differently. Since the
2 individual was deceased, we obviously cannot get a breath
3 alcohol. This is effectively a blood specimen. I believe that--
4 I'm not sure--I'm not sure, honestly, what they are reporting
5 here, whether they're reporting an actual level or the cutoff
6 level, because what I don't know is the process for the actual
7 testing method that they use in the lab to confirm or test for
8 the presence of ethanol. And--and it may or may not be
9 equivalent to what's used in a breath alcohol test. That would
10 be a question for the lab scientist more than myself.

11 Q. Thanks, Doctor. And say I was a hypothetical skeptic about
12 the extent of impairment on the data that we've been presented
13 with respect to the alcohol, can you point me to any sort of
14 professional reference, treatise, article where I can look to and
15 confirm your opinion that in a postmortem blood sample a
16 finding--confirmed finding of alcohol at that level would have
17 caused impairment?

18 A. I can't quote you an article, but the amount of research done
19 with ethanol and impairment is extensive, to say the least. I--I
20 typically use--I read articles through the National
21 Practitioner's Database or--or through the CDC and NHI, Centers
22 for Disease Control--there is a plethora of information about
23 ethanol and its impairing effects at certain levels. Hence,

1 that's why there is a definitive level that is tested for on
2 individuals who are considered impaired. It's reproducible.
3 It's reproducible from individual to individual. It doesn't
4 fluctuate whether they're 6' tall, 300 pounds or 5', 100 pounds.
5 The concentration is the concentration that causes impairment.
6 So I--I can't tell you a specific source, but it's--it's a well-
7 researched topic.

8 Q. All right, Doctor, is there anything in these lab reports
9 that you've reviewed that indicates that Mr. Biernacki had these
10 substances in his system at week prior to his death?

11 A. I'm just going to ask for a bit of clarification. So a week
12 prior to the date the specimens were taken or a week prior to the
13 date he was deceased?

14 Q. All right, let's--let's do that in two parts. The first
15 one----

16 A. Yes.

17 Q. ----let's--let's assume he is deceased the evening of January
18 8th, 2019 and let's say January 1st, had a blood test been
19 performed on him, would the test have revealed the presence of
20 the substances that were reported in his system after his death?

21 A. No. It would be--it's a separate test. You can't say
22 anything--this test only tells you that this is the condition--or
23 these substances were present at the time of his death. That's

1 what it tells you. It is a picture in time. You--you may--may
2 be able to extrapolate back for a short period of time, but if
3 you had another test that was done 7 days prior, those are
4 separate tests, because--one of the reasons is the type of test
5 you're performing. Number two is because the half lives of the
6 substances that were found would have caused them to have been
7 cleared if there was a previous ingestion 7 days earlier. Also,
8 the--the--the previous test or the current test, if it was a hair
9 specimen, will change that. So there's a lot of factors to
10 consider, but I think most correctly you have to say that those
11 are two separate tests taken at two periods in time and they're
12 not necessarily--they cannot necessarily be correlated as a cause
13 and effect or presence/non-presence.

14 Q. Is it a fair statement that test results such as these do not
15 tell you two variables: the time of ingestion and the amount of
16 the substance that was ingested?

17 A. I think--I think that's true, yes.

18 **PIIC:** Doctor, thank you for your time and participation.
19 Commander.

20 **LIO:** Dr. Bourgeois, I do have a few more questions for you.

21 **REDIRECT EXAMINATION**

22 **Questions by the lead investigating officer:**

23 Q. Sir, with respect to methamphetamine, are you familiar with

1 the divided-attention tests? Can you--can you tell us what that
2 might be, what an example might be?

3 A. Divided-attention test, you said?

4 Q. Yes, sir.

5 A. Yes, so I have--I have--I'm going to have to say that I have
6 little--I have a little familiarity with it. I've never
7 performed it myself. I have seen it referred to in studies. And
8 so what a divided-attention test attempts to quantitate is one's
9 ability to perform multiple tasks at any one time.

10 Q. So----

11 A. Or----

12 Q. Oh, sorry, go ahead.

13 A. ----one's ability to stay on point or focus when doing a
14 task.

15 Q. So would an example of that be like driving a car, where one
16 has to adjust speed, direction, braking to accommodate sensory
17 information about other traffic or like road signs, traffic
18 lights or sudden changes in conditions? Would that be
19 theoretically considered a divided-attention task?

20 A. I think it would be, yes. That's a good example.

21 Q. I understand that an impaired person can sometimes safely
22 process these tasks when conditions are familiar, like, for
23 example, if it's a--it's a short, commonly traveled distance

1 under clear driving conditions. Would you agree that potentially
2 an impaired person would be able to still safely process tasks
3 that way?

4 A. I would say no.

5 Q. Okay. Compared to a car, where--to compared to a car, is a
6 boat at night that's subject to violent and unpredictable forces,
7 moving it up and down, port and starboard, fore and aft while
8 crossing a bar with wind noise going to be more difficult--
9 difficult to control than driving a car under clear conditions?

10 A. I think that's true, yes.

11 Q. Can you think of a more difficult situation?

12 A. Not necessarily more difficult. I can think of as difficult.
13 Simply making the weather conditions worse, an impaired vessel,
14 maybe, where you are--loss of power, loss of rudder, that those
15 things may make it worse. You just have more variables to deal
16 with.

17 Q. Dr. Bourgeois, we've heard testimony that the MARY B II was
18 operating and was in good operating material condition and that
19 Captain Biernacki had the choice of returning earlier when the
20 weather conditions were better for crossing the bar, but he did
21 not. We have testimony also that Captain Biernacki had
22 methamphetamine in his system to produce a level of 0.50
23 milligrams per liter of blood at the time of his death. Under

1 those conditions, is it probable--probable that he was impaired
2 and not at his best to process the information needed to safely
3 navigate through the bar?

4 **PIIC:** Objection.

5 **LIO:** Basis?

6 **PIIC:** The doctor has testified that he doesn't know either the
7 time of ingestion or the dose of ingestion, and your question
8 discusses the earlier--the time of the earlier decision to--to
9 not go in earlier. I think it's very difficult for him to--it's
10 really the same objection as last time. Those facts don't really
11 provide a foundation for a causation opinion from a doctor who is
12 reviewing lab documents.

13 **LIO:** Let me rephrase.

14 Q. Is it likely that Mr. Biernacki was impaired at the time he
15 crossed the bar?

16 A. I don't--I don't know that.

17 **LIO:** Okay, thank you, Dr. Bourgeois.

18 **PIIC:** No further questions. Thanks for your participation,
19 Doctor.

20 **WIT:** Thank you.

21 **LIO:** Dr. Bourgeois, as----

22 **WIT:** Yes.

23 **LIO:** Sorry. Thank you again for your testimony. You are now

1 released as a witness from this formal hearing. Thank you again
2 for your cooperation. If I later determine that this board needs
3 additional information from you, I will contact you through
4 your--through our counsel. If--if you have any questions about
5 this investigation, you may contact the investigation recorder,
6 Lieutenant Luke Woods. Thanks again for calling in.

7 **WIT:** Okay, thank you. Bye-bye.

8 [Off-record discussion.]

9 **LIO:** We're going to take--it's 4:37. It's 4:37. We're going to
10 go ahead and take a 5-minute recess to clear this and we'll--
11 we'll do another testimony here just shortly. Five-minute
12 recess, 4:38. We'll be back at 4:42.

13 [The hearing recessed at 4:38 p.m., 15 May 2019.]

14 **[END OF PAGE]**

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II

2 held in Newport, Oregon

3 on 15 May 2019

4 WITNESS: JOSEPH THOMPSON

5 [The hearing was called to order at 4:45 p.m., 15 May 2019.]

6 **LIO:** Ladies and gentlemen, it's 1644 and we're going to
7 reconvene this public hearing. So we have a witness that was not
8 originally on the witness list that resulted in--that resulted in
9 us getting another witness that we're going to interview. That
10 was done in concurrence with the party in interest, counsel for
11 the party in interest, as well as the Coast Guard investigation
12 team. So we will now be hearing testimony from Mr. Joe Thompson.
13 Mr. Thompson, could you please come forward to the witness table
14 and Lieutenant Woods will administer your oath and ask you some
15 preliminary questions.

16 **JOSEPH W. THOMPSON was sworn and testified as follows:**

17 **REC:** Sir, before we begin, if you can please be sure and talk
18 directly into the microphone and have it just a couple of inches
19 away from your mouth, that would be great.

20 **DIRECT EXAMINATION**

21 **Questions by the recorder:**

22 Q. Please state and spell your full name.

23 A. Joseph Walter Thompson, J-o-s-e-p-h----

1 **LIO:** Sorry, sir. If you could please--we're going to adjust the
2 mic really quickly so it's not push-to-talk.

3 **WIT:** All right.

4 **REC:** It's good right now. Just don't push it up, sir.

5 **LIO:** Sorry about that. Please continue.

6 **WIT:** Joseph Walter Thompson, J-o-s-e-p-h, W-a-l-t-e-r,
7 T-h-o-m-p-s-o-n.

8 Q. Sir, please state your current employment and position.

9 A. Captain of a commercial fishing vessel.

10 Q. Please state any edu--education or training directly related
11 to your profession.

12 A. I've taken the Coast Guard--approved--I'm not sure exactly
13 what it's called, the survival safety course and first aid
14 courses.

15 Q. Sir, do you have any professional licenses or certificates
16 that are directly related to your profession?

17 A. Just cards for those two courses.

18 **REC:** And at this time, sir, Commander Denny--I'll turn it over
19 to her.

20 **Questions by the lead investigating officer:**

21 Q. Good afternoon, sir. Thank you for--for agreeing to come in
22 and testify at this hearing on short notice. We spoke to your
23 business partner, Mr. Morgan, earlier today, and he indicated

1 that you primarily handle the operations of the business with
2 respect to the four vessels that you--that you guys own and
3 manage. Is that correct, sir?

4 A. Yes.

5 Q. So by operations, then, can you tell us a little bit about
6 what that means, what you do.

7 A. I just make sure they're maintained and I have a big say in
8 who are crew members and operators of the vessels.

9 Q. Okay. So what--what's your interaction and knowledge of Mr.
10 Steve Biernacki?

11 A. He came to me early last summer and I needed--he was on the
12 dockside looking for work, and I happened to need a fill-in
13 crewman. And so I hired him and took him on a day trip.

14 Q. Sir, what vessel was that on?

15 A. That was on fishing vessel MISS NICANI.

16 Q. And how many trips did--did Mr. Biernacki do with you on the
17 MISS NICANI?

18 A. I believe he made two trips on the NICANI and then when we
19 got back we needed someone to run the RANGER, another vessel, for
20 a trip, and he took that on.

21 **Questions by the assistant investigating officer:**

22 Q. Good afternoon, Mr. Thompson. So you just mentioned he was
23 employed on the MISS NICANI and--and then was hired on the

1 RANGER. Can you speak to Mr. Biernacki's abilities as an--as a
2 vessel operator and his safety mindset in terms of how that
3 contributed to you keeping him on for--for another employment on
4 another vessel?

5 A. While he was working for my deck, he was safety-minded. You
6 know, we had no problems with him. He wasn't--no big issue with
7 him at all. Then when he told me about--that he had ran [sic]
8 boats and--on the East Coast and I think he--I believe he even
9 told me he was in the--in Hawaii on a vessel, running the vessel.
10 So we needed somebody and he seemed competent enough to take the
11 vessel out on a trip, you know, a local tuna trip.

12 **Questions by the technical advisor:**

13 Q. Good afternoon, Mr. Thompson. During Mr. Biernacki's
14 employment for you, are you aware of any times that he crossed
15 the Yaquina Bay bar?

16 A. During his employment with me?

17 Q. Yes, sir.

18 A. When he left--he left on the RANGER and brought it back, yes.

19 Q. What month was that, sir?

20 A. Oh, boy. That would have to be, I would say, somewhere in
21 probably August, September--August/September.

22 Q. Was that August of 2018?

23 A. This past summer, yeah, last summer.

1 Q. Are you aware of whether Mr. Biernacki had any experience
2 crossing the Yaquina Bay bar after October 1st, 2018?

3 A. The only--not on my vessel, but I know he had purchased the
4 MARY B and he was running that.

5 Q. We've heard previous testimony that Mr. Biernacki was the
6 captain of the fishing vessel RANGER. During this time--I'm
7 sorry---

8 **LIO:** I'll fill in some--I've got a question.

9 **Questions by the lead investigating officer:**

10 Q. What do you look for when you're hiring deck hands and vessel
11 captains? What are the things that you're looking for?

12 A. I question them and try to get if they have any knowledge at
13 all, you know. I kind of check on if they know how to operate
14 the--the navigational equipment, radios and that kind of stuff.
15 It's pretty hard to--judgment at the stuff, but that's what I ask
16 them. If they seem knowledgeable without, you know, going into
17 too much stuttering and stuff, I guess, I would say it seems to
18 be that they know what they're talking about a little bit.

19 Q. So why did you select Mr. Biernacki? Was it out of--you
20 had--it was a necessity or was there another choice but you chose
21 him over others?

22 A. Actually it started out as there was another gentleman was
23 going to run the boat and Mr. Biernacki was going to be a

1 crewman, but he clashed, apparently, and the other gentleman said
2 he wouldn't--he didn't want to take the boat out with him. So we
3 offered it to Stephen to take it out on the trip as captain. It
4 was necessity. The boat needed to go, and he was willing to do
5 it.

6 Q. And that was after observation of two trips when he was----

7 A. With----

8 Q. ----acting as--as deck hand.

9 A. Yes.

10 Q. Okay. So what--did he serve--let's go back to the deck hand
11 piece. Did he serve well in that capacity?

12 A. Yes, he did. I had no problems.

13 Q. And so, sir, did he serve well in the capacity of captain on
14 the RANGER?

15 A. No.

16 Q. Why not?

17 A. Well, he took a female deck hand and we got word that there
18 was a problem of some sort. She wanted to come home and she was
19 on the radio crying, and then it just went silent. Then we heard
20 this from another vessel operator who was on a tuna boat.

21 Q. Moving on to other things, what did Mr. Biernacki, from your
22 observations--what did he do well?

23 A. Oh, he--he worked the deck well from--he was always cleaning

1 and keeping things orderly and--we were tuna fishing. So there's
2 constantly running the gear, doing what needed to be done as a
3 crew.

4 Q. Other than the incident involving the female deck hand, what
5 things did he do poorly?

6 A. Communication was one. I--at one time he came in within
7 contact--texting range for me and I told him that we had heard
8 that there was this problem. So "we need you to bring the boat
9 home". Well, he didn't bring the boat back for another day.

10 Q. So did--do you know if he ignored the radio or if he turned
11 it off?

12 A. I have no idea which he did. I'm hoping he ignored it.

13 Q. Do you feel that that has--as vessel captain, from your
14 observation of him, do you feel like Mr. Biernacki took risks?

15 A. Yes, I think he did. I know what he did with the incident,
16 you know, the crabbing. That was a risk he took.

17 Q. So would you say they were unnecessary risks?

18 A. That's hard to answer. Depends on your--you know, how you
19 feel about your vessel, what you think your vessel can do--the
20 risk you'll take when operating out there.

21 Q. If it was your vessel, do you think he would have taken
22 unnecessary risks?

23 A. If it was mine at that time, yes.

1 **Questions by the technical advisor:**

2 Q. Sir, I'd like to follow up on an earlier question and
3 something you just alluded to. Forgive the crude comparison, but
4 if someone were operating my vehicle and disappeared with it for
5 several days, I would have some concerns. Did you or Mr. Morgan
6 make any attempts to find the vessel other than texting Mr.
7 Biernacki?

8 A. We asked other vessels if they had seen or heard from him,
9 that type of deal. We did have some contact with local Coast
10 Guard station here.

11 Q. Were you able to follow up with Mr. Biernacki following that
12 incident once the vessel did return to port?

13 A. Yes, after he come [sic] back, we--we talked and had a pretty
14 heated discussion and he was relieved as captain at that time.

15 Q. Did he offer any explanation as to the events of that time
16 period?

17 A. The only thing he offered to us was she was being a baby and
18 was fine after.

19 Q. Are there any gaps in cell phone coverage or VHF radio
20 coverage in this area that you're aware of?

21 A. Cell phone coverage there is. You get out too far and the
22 service isn't very good, but radios work pretty well here.

23 Q. We have heard testimony that there has been at least one

1 instance of Mr. Biernacki turning off his radios or turning down
2 his radios. Was that your experience while he was under your
3 employment?

4 A. I don't know what he did on the RANGER. I wasn't there. But
5 when he was a crewman on my vessel, no, he wasn't involved with
6 the radios.

7 Q. Were the radios in good working order on the RANGER during
8 the time Captain Biernacki was underway?

9 A. Yes.

10 **TA:** Thank you, sir.

11 **Questions by the recorder:**

12 Q. Sir, you--you said he--something to the effect of he ran gear
13 well. So previous testimony alleged that Mr. Biernacki may have
14 been unfamiliar with some of the crabbing equipment. So your
15 experience with him, how skilled was he with the fishing
16 operation in terms of different fishing gear and fishing
17 equipment?

18 A. I couldn't answer how well he was versed, but--because the
19 only thing he did with me was tuna, and he knew the tuna gear and
20 what needed to be done with that--with that equipment.

21 **REC:** Thank you.

22 **Questions by the assistant investigating officer:**

23 Q. Mr. Thompson, you mentioned during the incident with the--

1 with the RANGER that fellow fishermen overheard this altercation
2 over the radio. Did--did you ever hear about those mariners
3 attempting to contact Mr. Biernacki on the radio, asking, you
4 know, what--what's going on?

5 A. Yes, I believe the one vessel that--he actually talked to the
6 girl on the radio and then she was cut off and then he didn't
7 hear from her no [sic] more.

8 Q. Understood. Was--were there other vessels attempting to
9 help--were they able to contact Mr. Biernacki and get an
10 explanation?

11 A. I'm not sure. I don't know if they were or not or did. I
12 wasn't out that trip.

13 Q. And the woman who was on the radio, was she a member of the
14 crew?

15 A. No, it was somebody that he hired to go as a crew member. I
16 had no idea who she was. I didn't even know she was on the boat
17 'til they were out.

18 Q. So he--just a point of clarification, you hired Mr. Biernacki
19 to be an operator of the RANGER.

20 A. Yes.

21 Q. With--under that, does that allow him to hire his own crew?

22 A. Yes, usually we hire the captain and they hire the crew that
23 they're comfortable with or however they---

1 Q. Is there an expectation that he would let you know who those
2 crew members are prior to the trips?

3 A. Most of the time, I have, yes. I've known--talked--didn't
4 have a chance to talk to him, but I--he hired her and then he had
5 left early that next morning. I had never--I had no opportunity
6 to meet her.

7 **Questions by the technical advisor:**

8 Q. Sir, what kind of safety gear do you carry on your vessels?

9 A. We have all the required gear and then normally a couple
10 extra lifejackets and fire extinguishers and what have you and
11 safety--emergency safety-type--it's in a barrel, it's in a
12 bucket.

13 Q. Do you require your captains to conduct drills prior to
14 getting underway?

15 A. Yes, they should.

16 Q. Do you document that information?

17 A. They're supposed to.

18 Q. Do you verify the documentation?

19 A. No, I don't.

20 Q. Why?

21 A. I just never--never did. I don't know.

22 Q. Does your company conduct drug or alcohol testing on your
23 employees?

1 A. We haven't.

2 **Questions by the lead investigating officer:**

3 Q. Do you--does your company have a policy about alcohol use on
4 board----

5 A. Yes.

6 Q. ----vessels?

7 A. There's--yeah, there's no--supposed to be--there's supposed
8 to be no alcohol or drugs on the vessel.

9 **Questions by the technical advisor:**

10 Q. Can you elaborate on "supposed to be"? Who sets those
11 parameters?

12 A. Well, there's been--there's been incidents that, you know--at
13 the docks, anyway, that there has been alcohol on--you know,
14 found on the vessel.

15 Q. We heard earlier testimony about crew agreements. Was the
16 female crew member that you previously referenced, had she signed
17 a crew agreement?

18 A. No.

19 Q. Is that something uniformly you require from your employees?

20 A. Yeah, usually we have signed agreements, yes.

21 **Questions by the assistant investigating officer:**

22 Q. Mr. Thompson, why didn't she sign--sign a crew agreement?

23 A. I never even knew of her until after they'd already left

1 port.

2 **Questions by the lead investigating officer:**

3 Q. Sir, we've heard that--from several Newport fishermen and
4 those on the dock that Captain Biernacki used drugs, and the
5 postmortem medical examination revealed drugs and alcohol in his
6 system. What do you know about his substance abuse?

7 A. My personal--I have no idea. You know, I have observations.
8 I know he used to drink. I've seen him intoxicated on the docks.
9 And he's had some erratic behavior that I would believe was
10 substance abuse.

11 Q. Erratic?

12 A. Really--doing a lot but doing nothing type--you know, move
13 the ropes from side to side of the boat, back and forth, pull
14 them up, put them down, re--start over. It just seemed to be
15 like you're doing a whole lot of nothing and having to do it. I
16 don't--I've never been around it long enough, but that's erratic
17 behavior. It's not alcohol, that's for sure.

18 Q. Could those behaviors result from an excess in caffeine,
19 perhaps from coffee or Red Bull?

20 A. I don't believe so. I think it's beyond that. I drink a lot
21 of coffee and I don't act like that.

22 Q. Do you feel that conducting mandatory drug testing may
23 decrease mishaps or fatalities in the fishing industry?

1 A. I believe it would help a lot, deter a lot of problems, yes.

2 **Questions by the assistant investigating officer:**

3 Q. Mr. Thompson, can you talk about your ability to detect signs
4 of impairment, what led you to believe or to make the assessment
5 that you did regarding Mr. Biernacki?

6 A. Well, I--I--intoxicated--he came and talk to me and I could
7 smell it. I don't drink anymore. I haven't drank [sic] in 10
8 years. So I can really smell the alcohol, you know, on a--that's
9 pretty much it.

10 **Questions by the technical advisor:**

11 Q. So your--with your safety mindset, stating that you believe
12 that mandatory drug and alcohol would improve safety, why doesn't
13 your company require those tests?

14 A. Well, that--that--I'm not sure. That would be up to Ryan.
15 He's in charge of that kind of stuff.

16 **TA:** Understand. Thank you.

17 **LIO:** Mr. Reilly?

18 **CROSS-EXAMINATION**

19 **Questions by the party-in-interest counsel:**

20 Q. Sir, thank you so much for being here this afternoon. How
21 long were the two trips on the MISS NICANI fishing for tuna?

22 A. I think one of them was 3 days and one was 4.

23 Q. And you were als--you were on that boat at the time?

1 A. Yes.

2 Q. So in those 7 days, you probably got a--had a fair amount of
3 time spent observing and interacting with Mr. Biernacki?

4 A. Yes.

5 Q. And after that time and those observations, you made a
6 decision as one of the owners of your company to allow him to be
7 the master on the RANGER based on what information he had
8 provided you. Fair to say that behavior that you observed with
9 respect to the RANGER was unexpected based on your own
10 observations that you made after two trips?

11 A. Yes. What happened on that trip was unexpected.

12 Q. There was some testimony earlier with respect to the RANGER
13 incident about the report that was made to the Coast Guard. Do
14 you know if you were involved in any of the communications with
15 the Coast Guard regarding the incident on the RANGER that was
16 reported over the radio as well as sort of the--the notion that
17 your boat--your vessel was unaccounted for, at least for some
18 brief time that made you very uncomfortable?

19 A. Yes, I personally talked to a couple--I'm not sure who it
20 was--at the Coast Guard station here.

21 Q. Did you relay to the Coast Guard the report that, at least as
22 we understood it, sounded like some sort of assault occurred on
23 board the vessel?

1 A. I don't remember if I reported that directly to them. I was
2 more concerned of why he wasn't answering his radio and where he
3 was. Then--because later the Coast Guard directly asked me if I
4 was concerned, and at that time--concerned the vessel, and at
5 that time I wasn't because I had texted him and informed him to
6 come back and I was under the assumption that's what he was
7 doing.

8 **PIIC:** Thank you, sir. Thank you, Commander.

9 **LIO:** Mr. Thompson, thank you for your--your time and your
10 testimony, your flexibility. You're now released as a witness at
11 this formal hearing. If I later determine that this board needs
12 additional information from you, I will contact you through our
13 counsel. If you have any questions on this investigation, you
14 may contact the investigation recorder, Lieutenant Luke Woods.
15 So what we're going to do--sir, so you're released.

16 We're not going to take a break, in the interest of time,
17 and the availability of the venue. So we're going to go ahead
18 and shift directly back to Ms. Porter and continue her testimony.

19 Sir, thank you so much for coming.

20 **[END OF PAGE]**

Under 46 U.S. Code§6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 15 May 2019

4 WITNESS: DENISE PORTER (resumed)

5 LIO: Ms. Porter, just as a reminder before we continue our--our
6 testimony, you are still under oath.

7 DENISE PORTER was previously sworn and testified further as
8 follows:

9 LIO: Ms. Bigay?

10 AIO: Ms. Porter, thank you for your flexibility as well. Just
11 waiting to get set up here because we're still talking about some
12 exhibits that we had up. The last exhibit that we had discussed
13 was 024, page 5.

14 DIRECT EXAMINATION (RESUMED)

15 Questions by the assistant investigating officer:

16 Q. Ms. Porter, you talked about having this text conversation
17 with Mr. Porter regarding the--the flares and him asking who was
18 shooting off flares and you attempting to tell him "probably the
19 Coast Guard" but not finishing your text.

20 A. Right.

21 Q. Ms. Porter, during this time that you were texting with Mr.
22 Porter, you mentioned you also received phone calls.

23 A. Yes.

1 Q. There's a phone call from 9:44 p.m. that we have a screenshot
2 of, but you mentioned a different phone call that did not save in
3 your phone records in order to be able to make a screenshot. Is
4 that correct?

5 A. Yes.

6 Q. Was that phone call also at around that same time frame?

7 A. Yes.

8 Q. Can you explain what was discussed during that phone call as
9 it pertains to this case?

10 A. It was mainly just telling me to--you know, the Coast Guard
11 was coming, that it was--he was mad. He was mad. He was like,
12 "It's so big out here." It was just like that kind of
13 conversation that was explaining what was going on. You know
14 what I'm saying? It was--and then reiterating where his phone
15 and his wallet were going to be. You know what I mean? And
16 like, at that moment, I didn't understand why he would even tell
17 me something like that. You know? I didn't understand really
18 what was going on.

19 Q. What do you understand that to mean now?

20 A. That it was really bad out there. You know what I'm saying?
21 Like--I've seen him come across the bar. So I'm--I know--I know
22 that he had a lot of confidence in himself crossing the bar. I
23 know that. And that the bar conditions and--and the help from

1 the Coast Guard and just like radar, all of that stuff, he knew
2 how to use, he knew how to bring a boat across, but at that
3 moment, talking to him, he was questioning every decision that
4 was being made and he had no choice. You know? So he was taking
5 the precaution of "putting my phone and my wallet in my pocket
6 and I'm putting my lifejacket on; I'm scared". You know, that
7 was--I don't know, I just figured, like, he was doing what he was
8 trained to do. You know what I'm saying? Maybe the wallet and
9 stuff, he was putting that away, but, you know, the--the
10 lifejacket and stuff, he was--he was just talking to me.

11 Q. Was his statement of putting the phone away and the wallet
12 away a means to tell you that he--it was time for him not to be
13 distracted or did you understand that to mean something else?

14 A. Time for him not to be distracted but--you have to know Josh.
15 His phone was, you know, everything, and so, you know--like, just
16 so that he knew where it was. I don't--I really don't know. I
17 really--you know, he was just telling me what he was doing. So,
18 like, as he was doing it, he was telling me, you know, except for
19 the phone because we were on it, but I don't--yeah.

20 **AIO:** Lieutenant Woods, could you please display Coast Guard
21 Exhibit 051.

22 Q. Ms. Porter, you received--after the accident you have
23 received a text or information about a text from a friend of Mr.

1 Porter's. You provided that to the investigation team; is that
2 correct?

3 A. Yes, I did.

4 Q. Can you read the text from Mr. Porter at 9:42.

5 A. "Say a little prayer. We're about to cross the bar. It
6 doesn't look good."

7 Q. Ms. Porter, who is the individual that Mr. Porter is texting
8 with there?

9 A. That's Chris Gifford [ph]. He's like Josh's best friend.
10 He's actually Josh's sponsor--I mean, sponsee. So Josh walked
11 him through the program--the 12-step program that we're in, and
12 that's how they met. They just became really good friends.

13 Q. How long have they been friends?

14 A. I want to say about at least 5 years. At least.

15 Q. Ms. Porter, knowing Mr. Porter and his experience level, what
16 does this text tell you about how he was feeling as he was about
17 to cross the bar that night?

18 A. Scared.

19 Q. Did Mr.--you said Gifford?

20 A. Gifford.

21 Q. Did Mr. Gifford provide any additional information to you
22 that Mr. Porter might have told him?

23 A. No, it was just this. It was just a text from that day.

1 Q. Ms. Porter, has anyone else approached you after the date of
2 the incident with information that they think might have
3 contributed to the accident?

4 A. Quite a few people. There's one that stands out the most to
5 me, and from his statement to me, I just started making it known
6 that if you have any information, you need to get a hold of the
7 Coast Guard, "Here's their phone number," because it was really
8 bad. It was--it was bad.

9 Q. Who was this individual?

10 A. Brett Hemrick [ph]. He was the guy they got the bait from
11 that morning.

12 Q. What did he tell you?

13 A. He said, "If you're approached by the Coast Guard, you need
14 to make sure that they get my phone number. That morning when
15 Steve came, he looked like he was going to chew his own ear off."
16 I'm like, "What are you talking about?" He was like, "He--like,
17 he couldn't stand still. His neck was turned and it looked like
18 he was going to chew his own ear off." I said, "Where was Josh?"
19 He said, "Him and Jimmy were loading--was loading bait into
20 Josh's truck that morning."

21 Q. He said him and someone----

22 A. James Lacey.

23 Q. Ms. Porter, is there anything that I may not have asked you

1 that you feel is pertinent to this investigation or that may
2 result in safety measures to prevent tragedies like this from
3 happening again?

4 A. Not right now. I can't think of anything.

5 **LIO:** Mr. Reilly?

6 **CROSS-EXAMINATION**

7 **Questions by the party-in-interest counsel:**

8 Q. Thanks for being here, ma'am. You testified in detail about
9 your husband's character as a safe fisherman and somebody who was
10 very capable and experienced as a fisherman. Would you agree
11 that the vessel owners--the various vessel owners that hired him
12 universally made a good decision because he was a good worker who
13 would contribute to the vessel?

14 A. Yes.

15 Q. We've heard testimony from you and from--from other folks
16 about pre-casualty incidents and observations regarding Mr.
17 Biernacki's behavior and even potentially apparent drug use. Are
18 you aware of anyone who communicated those observations to the
19 local police?

20 A. No.

21 Q. Are you aware of anybody who communicated those observations
22 to the U.S. Coast Guard?

23 A. No, not myself.

1 Q. Are you aware of anybody who communi--communicated those
2 observations to the vessel owner?

3 A. No.

4 **PIIC:** Thank you, ma'am. Commander.

5 **LIO:** Thank you, Mr. Reilly. We have a follow-up question. Go
6 ahead.

7 **REDIRECT EXAMINATION**

8 **Questions by the assistant investigating officer:**

9 Q. Ms. Porter, you just stated in your answer to Mr. Reilly's
10 question that hiring Mr. Porter was an absolutely good decision
11 for any employer. Did you think that the experience that Mr.
12 Porter was able to bring was effectively used by the operator of
13 the MARY B II?

14 A. No, I don't.

15 Q. Why?

16 A. Because if he would have handed over the--the wheel, he would
17 have put--just told Josh, "I can't do it," Josh--they would be
18 here today. Josh would have crossed that bar. He would have--he
19 would--he would have made it. He would have crossed that bar.
20 He's--he was that capable of doing it with the help of the Coast
21 Guard. You don't--and just knowing the bar. I mean, I've come
22 across the bar with Josh with fog so thick I couldn't see in
23 front of me and he did it with the--just the radar, the Yaquina

1 Bay bar. Do you see what I'm saying? He was very capable of
2 crossing that bar in all types of weather. I truly believe that.
3 I know that. I was on--I've been on the boat with him crossing
4 the bar in all kinds of weather. I've been on a sailboat, a 28-
5 foot little sailboat with just a small outboard motor and he
6 crossed the bar and it was stormy. It was--I mean, I was--I was
7 scared because I--that was my first time out on the boat, but he
8 made it look so easy.

9 Q. Ma'am, just for----

10 **AIO:** Sorry, Commander. Apologies.

11 Q. Just for clarification, so understanding that vast
12 experience, still to the question would he have--would he have
13 communicated that?

14 A. Oh, yes.

15 Q. And attempted to share that?

16 A. Oh, yes.

17 **Questions by the lead investigating officer:**

18 Q. Mrs. Porter, did Mr. Porter ever relay to you any times
19 where--about his reservations or concerns or about him not
20 wanting to go to certain spots on the vessel for any reason? Did
21 he ever mention concerns like that to you?

22 A. The morning of--so 3:00, 4:00 in the morning, when he was
23 getting ready to leave, he--like, this is my last thing of Josh

1 is him sitting at the end of the bed, saying, "I don't want to
2 go." I'm like, "Why?" He goes, "Because this guy doesn't know
3 what he's doing. He hasn't checked the weather. He doesn't
4 believe me. This is not a good time to go. We can wait another
5 day." And I was like, "Well, why are you going?" He was like,
6 "Got bills to pay. This is a pick." You know, it was--it would
7 have been their second pick. And--and we did. You know, we had
8 bills to pay. We were a month behind on everything, and he had
9 to go. He said, "I have to go."

10 **LIO:** Are there any other questions?

11 [No response.]

12 **LIO:** Mr. Reilly, any other questions?

13 **PIIC:** No, Commander. Thanks.

14 **LIO:** Mrs. Porter, you're now released as a witness from this
15 formal hearing. Thank you for your testimony and cooperation.
16 If I later determine that this board needs additional information
17 from you, I will contact you through our counsel. If you have
18 any questions about this investigation, you may contact the
19 investigation recorder, Lieutenant Luke Woods. Thank you.

20 **WIT:** Thank you.

21 **LIO:** The time is 5:24 and we have finished our testimony for the
22 day. This hearing will reconvene at 8:00 in the morning on
23 Thursday, May 16. Thank you.

Under 46 U.S. Code§6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

[The hearing recessed at 5:25 p.m., 15 May 2019.]

[END OF PAGE]

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 16 May 2019

4 WITNESS: MERRICK HALLER

5 [The hearing was called to order at 8:00 a.m., 16 May 2019.]

6 **LIO:** Good morning. This hearing will come to order. Today is
7 Thursday, May 16th, 2019, and the time is 8:00 a.m. We are
8 continuing at Newport City Hall, Newport, Oregon.

9 Good morning, ladies and gentlemen. I am Commander Karen
10 Denny, United States Coast Guard, and the executive officer of
11 Coast Guard Marine Safety Unit Portland, Oregon. I'm the lead
12 investigating officer for the Thirteenth Coast Guard District's
13 formal investigation into the events leading to the loss of the
14 fishing vessel MARY B II and the loss of three lives, and I am
15 the presiding officer over these proceedings.

16 The Commander of Thirteenth Coast Guard District, Rear
17 Admiral Throop, has convened this investigation under the
18 authority of Title 46, United States Code Section 6301, and Title
19 46, Code of Federal Regulations, Part 4, to investigate the
20 circumstances surrounding the sinking of the commercial fishing
21 vessel MARY B II with the loss of three lives on January 8, 2019
22 while attempting to cross the Yaquina Bay bar and enter the port
23 of Newport, Oregon during the hours of darkness.

1 I am conducting the investigation under the rules of 64--
2 excuse me, 46 CFR Part 4.

3 And the investigation will determine, as closely as
4 possible, the factors that contributed to the incident so that
5 proper recommendations for the prevention of similar casualties
6 may be made, whether there is evidence that any misconduct,
7 inattention to duty, negligence or willful violation of the law
8 on any part of any licensed or certificated person contributed to
9 the casualty, and whether there is evidence that any Coast Guard
10 personnel or any representative or employee of any other
11 government agency or any other person caused or contributed to
12 the casualty.

13 I have prev--previously determined that the MARY B II LLC,
14 owner of the MARY B II, and its legal counsels are a party in
15 interest at this investigation. Mr. Reilly?

16 **PIIC:** Good morning, Commander. I'm Chris Reilly, Nicoll, Black
17 & Feig, here on behalf of **FISHING VESSEL** MARY B II LLC. Thank
18 you.

19 **LIO:** This party has a direct interest in the investigation and
20 has demonstrated the potential for contributing significantly to
21 the completeness of the investigation or otherwise enhancing the
22 safety of life or property at sea through participation as a
23 party in interest.

1 All parties in interest have a statutory right to employ
2 counsel to represent them, to cross-examine witnesses, and to
3 have witnesses called on their behalf.

4 I will examine all witnesses at this formal hearing under
5 oath or affirmation, and witnesses will be subject to federal
6 laws and penalties governing false official statements.

7 Witnesses who are not parties in interest may be advised by their
8 counsel concerning their rights; however, such counsel may not
9 examine or cross-examine other witnesses or otherwise
10 participate.

11 These proceedings are open to the public and to the media.

12 I ask for the cooperation of all persons present to minimize any
13 disruptive influence on the proceedings in general and on the
14 witnesses in particular. Please turn your cell phones off or
15 other electronic devices off or to silent or vibrate mode.

16 Please do not enter or depart the hearing room unless--excuse me,
17 except for during periods of recess. Flash photography will not
18 be--will be permitted during this opening statement and during
19 recess periods but not during testimony.

20 Members of the press are of course welcome and an area has
21 been set aside for their use during these proceedings. The news
22 media may question witnesses concerning the testimony they have
23 given after I have released them from these proceedings. I ask

1 that such interviews be conducted outside of this room.

2 Since the date of the casualty, the Coast Guard has
3 conducted substantial evidence collection activities and some of
4 that previously collected evidence will be considered during
5 these hearings.

6 Should any person have or believe that he or she has
7 information not brought forth but that could be of direct
8 significance, that person is urged to bring that information to
9 my attention by e-mailing accidentinfo@uscg.mil and, during the
10 hearing, at e-mail MARYBII--that's M-A-R-Y-B-I-I--
11 .uscg@gmail.com. Thank you.

12 We will now call our first witness of the day. We will now
13 hear testimony from our first witness, and that is Dr. Merrick C.
14 Haller. Professor Haller, please come forward to the witness
15 table and Lieutenant Woods will administer your oath and ask you
16 some preliminary questions.

17 **MERRICK HALLER was sworn and testified as follows:**

18 **DIRECT EXAMINATION**

19 **Questions by the recorder:**

20 Q. Good morning, sir. Please state and spell your full name.

21 A. Merrick Haller, M-e-r-r-i-c-k, H-a-l-l-e-r.

22 Q. Please state your current employment and position.

23 A. I am a professor at Oregon State University.

1 Q. Please state any education or training related to your
2 profession.

3 A. I have an undergraduate degree in earth and atmospheric
4 sciences, and I have a master's and Ph.D. in civil engineering.

5 Q. And do you have any professional licenses or certificates
6 related to your profession?

7 A. No. My Ph.D. is my credential.

8 **REC:** At this time Lieutenant Bigay will begin her primary line
9 of questioning.

10 **AIO:** Good morning, Professor. Thank you for appearing at this
11 hearing today. If you need to take a break at any moment, please
12 let me know. I ask that you please be as clear as you can be
13 with your answers and, for the benefit of the public, explain any
14 highly technical terms that we might be discussing today. In
15 front of you there should be a laser pointer. In case you need
16 to point at any exhibit during an answer to a question during
17 your testimony, if and when you do that, I would ask you to
18 please point in the direction of the monitor right behind me.

19 **Questions by the assistant investigating officer:**

20 Q. Professor, in the course of your testimony here I will be
21 referencing some exhibits. For the benefit of the public, did
22 the Coast Guard ask you to look at your research tools and
23 provide any products you had which may be helpful to the

1 investigation?

2 A. Yes, they did.

3 Q. You are associated with the Oregon State University's
4 Nearshore Remote Sensing Group?

5 A. Yes, I am.

6 Q. I would like you to talk a little bit about that--

7 **AIO:** --but first I would ask Lieutenant Woods to please display
8 Coast Guard Exhibit 033, page 1.

9 Q. Can you please talk about your research in general terms?

10 A. Sure. In my research group we use remote sensing tools to
11 analyze waves and currents in the coastal zone. One of those
12 remote sensing tools is a marine radar. There's a picture of a
13 marine radar right there [indicating] on top of a scaffolding.
14 So we have a station that we've been operating at Newport for
15 several years now, and we also go around the country on short-
16 term deployments on specific studies.

17 **AIO:** Lieutenant Woods, would you please display page 2 of that
18 exhibit.

19 Q. For the benefit of the public and in general terms again,
20 would you be able to talk about what you are trying to accomplish
21 with your research and, in general terms, what type of equipment
22 is used?

23 A. Okay. The equipment that we use is a marine radar, which is

1 a commercial system often used on ships. Ships use them to look
2 for other ships. They also produce images of the ocean surface.
3 So that's the data that we use in our research, again, to track
4 waves. We do some estimation of ocean currents. We use the wave
5 tracking to try to estimate what the depth of the water is across
6 places of interest. This picture here [indicating] shows our old
7 setup at Newport. This is where it used to be located, on the
8 south jetty, but it's now moved and our system is up at the Coast
9 Guard station up here on the north side.

10 Q. You mentioned that this radar is similar to the ones used on
11 vessels. Does this system have something called an automatic
12 radar plotting aid or ARPA?

13 A. It does not.

14 Q. Is it typical 3-centimeter X-band radar, similar to what's
15 used on ships?

16 A. Yes, it is an X-band radar. The--and it has a particularly
17 long antenna for better resolution.

18 Q. You mentioned the radar that is located on the watch tower
19 that belongs to Station Yaquina Bay. Why specifically is this
20 equipment located there?

21 A. It's located there because it's at a high altitude, and the
22 higher we can get the antenna up, the better our imaging of the
23 ocean surface is. So we've worked with the Coast Guard station

1 there and they've allowed us to put the antenna on the watch
2 tower for that reason.

3 Q. And the main purpose of this radar is to look at that section
4 of the ocean, the entrance to Yaquina Bay for the purposes of
5 your research.

6 A. Yes, it's funded through an ocean observing system called
7 NANOOS, but it's basically to provide information on the wave
8 conditions around the inlet.

9 Q. Is there any other purpose for that radar?

10 A. We also are developing tools where we estimate a map of the
11 sea bottom from the data. Those are the two main purposes for
12 it.

13 Q. Is that rotating antenna array stock or is it reengineered
14 for your research?

15 A. The antenna itself has not been reengineered. It's standard.
16 The data acquisition system is customized by--by our group.

17 Q. And how far out to sea does that radar located on the tower
18 capture radar images?

19 A. That is dependent on the wave conditions on that given day.
20 We can look out as--we look out--look out 6 kilometers from the
21 radar. On a quiet day you won't see any waves that far out, but
22 on a decent wave day we will see waves as far as 6 kilometers
23 from the radar.

1 Q. Are there any atmospheric conditions which will degrade the
2 quality of the radar image?

3 A. Yes, a heavy rainstorm will definitely degrade the quality.

4 Q. Using this equipment, can you measure any vertical height of
5 the seas or the swells?

6 A. No, we do not measure the height of the waves directly.

7 Q. Professor, on the night of January 8th, 2019, this radar
8 captured a return image of the swells, and it showed what we now
9 know to be the Coast Guard's 52-foot motor lifeboat VICTORY and
10 the fishing vessel MARY B II. Is that correct?

11 A. That is correct.

12 **AIO:** I'm going to ask Lieutenant Woods to switch to page 3 and
13 have you discuss what we see on this page. Lieutenant Woods, if
14 you could please zoom in a tiny little bit so we can make out
15 those times there.

16 **WIT:** I'm sorry----

17 **AIO:** Yes.

18 **WIT:** ----you want me to describe what I see?

19 **AIO:** Please, sir.

20 **WIT:** Okay. So we have--through after-the-fact analysis, we
21 tracked the two vessels, and they are--those tracks are shown in
22 green and in blue. And there are--there's labels here indicating
23 at what time each vessel was at a given position. So at 22:01

1 Pacific Standard Time, the positions are there [indicating]. At
2 22:05:30, they are right there [indicating]. Then the last time
3 stamp is 22:07:27 and we see that one--that is what we think is
4 the MARY B II and that is the Coast Guard vessel right there
5 [indicating].

6 Q. Thank you, Professor. Just as a point of clarification, 2200
7 is 10:00 p.m.?

8 A. Yes.

9 Q. And you mentioned the vessel labels--you're saying vessel two
10 was which vessel?

11 A. It is our understanding that vessel two is the Coast Guard
12 vessel VICTORY.

13 Q. And vessel one?

14 A. The MARY B II.

15 Q. Professor, for the record, did the Coast Guard ask you to
16 take this product that you had and create a minute-by-minute
17 track of the fishing vessel MARY B II--of the track?

18 A. Yes, they did.

19 **AIO:** Lieutenant Woods, would you please turn to page 4.

20 Q. Professor, may I have you please talk about what we see here.

21 A. Yes. So this is, as you said, a minute-by-minute track of
22 the position of what we think is the MARY B II, and at each
23 minute we've put a circle there and then we've connected the

1 circles with the green line. And so the timing on here starts at
2 10:00 and each for 7 minutes, until 10:07 and then from 10:07 to
3 10:07 and 30 seconds, there's two circles on top of each other.
4 So it looks like the vessel is stationary at that period. And
5 so, yup, it steadily moves towards the jetties over that 7-minute
6 period and then it's stationary here at the end and then we can--
7 we're unable to track it further because there was no--no further
8 radar returns from it.

9 Q. Understood, Professor, we have evidence and have testimony
10 that the 47-foot Coast Guard motor lifeboat, an additional
11 vessel, was in the vicinity and marking the center of the channel
12 that night. At any time were you able to get a suitable radar
13 target to show that vessel?

14 A. I'm sorry, could you repeat? Which vessel are we speaking
15 about again?

16 Q. There was a--in addition to the 52-foot VICTORY----

17 A. Uh-huh.

18 Q. ----there was a 47-foot motor lifeboat. This vessel was
19 marking the center of the channel. It was inside of the jetty
20 tips. At any point did the radar produce an image of that
21 vessel?

22 A. In my recollection, we did see a vessel in the channel;
23 however, we did not do any tracking on that vessel.

1 **AIO:** Understood. Thank you. One second, Dr. Haller.

2 Q. Finally, Professor, I'll have Lieutenant Woods turn to page 5
3 and I want you to talk about what we see on this image.

4 A. Okay, this is a single radar image--a single image. We
5 collect a sequence of these in order to do that tracking. So on
6 this image these linear features oriented in a vertical direction
7 are the incoming waves, and we also see--so we're looking down
8 from above is the way this image looks, and these are the
9 jetties--right--jetties--and we've over--this is the tracking
10 information overlaid on there again. And so it's--these--there
11 are small bright features in here that are vessels, and this is
12 the track, again, where this is 10:00 and then at 10:05 there's
13 some small circles over here, identifying the location, and then
14 at 22:07:27 is the end of that--that track of that vessel there.
15 You can see at that time--you can see wave crests. Basically the
16 wave crest is where the vessel is.

17 Q. Professor, can you explain what that difference in color that
18 we see----

19 A. Yes. Yes. So it's a false color image, and the way it's
20 been chosen is such that very low radar returns show up as dark
21 black and then the brighter the radar return, then the color
22 changes from red, orange to yellow, so yellow being the brightest
23 radar returns.

1 Q. What does that mean in terms of the characteristics for that
2 wave?

3 A. For the waves, the brighter it is indicates that the wave is
4 steeper. And then for hard objects--hard metal objects will give
5 you a brighter return. So that's why they're yellow.

6 Q. Professor, earlier you mentioned that there was--that your
7 tool was able to pinpoint that 47-foot vessel although it was not
8 tracked.

9 A. Uh-huh.

10 Q. Is that something that we can see clearly here and, if not--
11 if not, that's okay.

12 A. I wouldn't be confident that I could--because what I--in
13 order to identify a vessel, I would look in a different product,
14 more average product, which brings out the vessels and damps out
15 the wave signals. That's how we identify vessels. So in this
16 one I would be speculating.

17 Q. And you've mentioned that vessel was not tracked. But does--
18 does that data still exist and, if we wanted to, would we be able
19 to do that?

20 A. I believe so. I'm sure the data exists, and I believe we
21 could track it.

22 Q. If we requested that, you would be able to provide that, sir?

23 A. We would analyze the data and I would be able to tell you

1 whether or not we could track it or not after I analyzed it.

2 **AIO:** Thank you, sir. Lieutenant Woods, will you please display
3 Coast Guard 034.

4 Q. Professor, I'm just going to have you talk about what we see
5 here.

6 A. Okay, this is the image sequence, and it looks like it starts
7 right at 10:00 and it represents--I'm not sure how long it goes.
8 I'm just going to--yeah, it's going to go all the way to the end.
9 So it looks like it's going to be full 7½ and a little bit
10 longer. Okay, so this represents the raw data that we used to do
11 all of the tracking, and like I said, there's processing that has
12 to go on in order to produce the track. So you're not seeing the
13 processing, per se, but you're seeing what has come out of the
14 processing overlaid onto the raw data. And in the raw data, if
15 you want to play that again, you'll see the--clearly the waves
16 propagating in and you'll see our tracking information move
17 forward in time as well. So you see the movement of the two
18 vessels as the green and blue lines start to grow. I'm seeing
19 the green track being more towards the channel and further in and
20 then the blue line is trailing behind. And we see waves coming
21 in and actually some very bright waves occur right--right there
22 [indicating], right as the track ends.

23 Q. I asked you a little bit about this before, but from--from

1 this image in terms of it being a video, are you able to
2 determine the character of the waves, and by that I mean whether
3 they're steep, angular, rolling, with more or less energy?

4 A. Well, the brighter they are is suggestive of them being
5 steeper and larger, and we know, for example, that a wave starts
6 to break, that makes the wave very bright in the radar image as
7 well. And so when I see--so I--that's evident here. These
8 waves, say, that are shoaling and close to shore, they're very
9 bright because they're breaking. And so in this sequence, it
10 looks to me like very near the end of the track, the waves were
11 particularly bright and, therefore, steep and possible breaking.

12 Q. Does that tell you anything about the force of those waves?

13 A. Not directly. So--just based on an understanding, of course,
14 that the larger waves, deeper wave would provide more impact.

15 Q. And from this product are we able to determine anything about
16 the currents that night?

17 A. Not directly. I can only speak to my intuitive understanding
18 from looking--experience looking at this data and not from this
19 particular data product but from another product that we don't
20 have here, and so my--my interpretation from looking at that was
21 suggestive of there being a northward-flowing current on that
22 day, but that's not directly evident from this image.

23 Q. Professor, I want to play that video again, but I'm going to

1 ask you a specific question about it.

2 **AIO:** Lieutenant Woods, may we please have that video pause at
3 second 30, if we have the--oh, perfect. Yes, it's paused at 30.

4 Q. Sir, because I want you to keep the pointer and I don't want
5 to steal it from you, I'm just going to tell you essentially what
6 to look for so that you understand what question I'm going to
7 ask. So immediately when we play this video, we will see three
8 successive waves--I think you alluded to them already--that are
9 the brighter yellow in contrast with the rest of the water, which
10 is more of a darker maroon. And I--and I--and I want you to take
11 a look at those and I'm going to ask a question about that.

12 Again, I counted three, but--

13 **AIO:** Lieutenant Woods, if we can play that. Starting at 30,
14 yes.

15 Q. Were you able to see what I was talking about?

16 A. I believe so. You want me to point out the particular waves
17 that you're referring to?

18 **AIO:** Sure. If we could get it back to 30.

19 **WIT:** Right. So these three waves in here are approaching where
20 the vessel tracks are right here [indicating]. And so as they
21 come through, when you play the movie forward, they get very
22 bright right as they pass over this point, right in here
23 [indicating]. Yeah.

1 Q. Sir--and, again, aside from what you've already stated about
2 the character of those waves, is there anything else that we can
3 ascertain about what we're seeing?

4 A. I wouldn't want to go beyond saying that they appear to be
5 steeper and larger than the waves that came before.

6 Q. As far as you know, is this--are these conditions that we're
7 seeing in--in this product, is this typical for the area?

8 A. Well, they don't occur every day, but these kind of
9 conditions occur during storms all the time.

10 Q. So these type of conditions are associated with storms or
11 could----

12 A. Yes. Yes.

13 Q. Could they happen on a day where it's that calm and there's
14 no adverse weather?

15 A. One can get large swells even on a sunny day. Most
16 frequently, though, they are associated with storms. I don't
17 believe the waves were all that extreme for the climate that we
18 have here, well within what occurs.

19 Q. Sir, I'm going to have Lieutenant Woods play that short movie
20 again, and this time I just--if possible, if you are able to spot
21 it, I--I was going to ask if at any point we're able to see that
22 additional vessel, the 47-footer.

23 A. Okay.

1 Q. From the beginning, just to make sense.

2 A. So I do notice--it's probably difficult to see, it's so far
3 away, but I can see it here on the screen, that there is a fixed
4 bright point up there----

5 Q. Uh-huh.

6 A. ----that that's the first place I would start tracking. It's
7 suggestive of a vessel being parked there.

8 Q. Why does it suggest that?

9 A. Because it's not moving and it's bright. So we look for
10 persistent signals. Vessels move slower than the waves. So
11 that's why it's suggestive of a vessel being there.

12 **AIO:** Lieutenant Woods, would you please display Coast Guard
13 Exhibit 035.

14 Q. Professor, this is going to be a different movie product.
15 I'm going to ask you about it once we are able to play it.
16 Professor, is this the same video that we just saw but with a
17 chart overlay on it?

18 A. Essentially. It's the tracking information extracted from
19 the radar data and then overlaid onto the bathymetric chart.

20 Q. Can you talk about how that was done in--in terms of the
21 alignment of that chart and how we can understand that to be
22 accurate?

23 A. Sure. It was done by hand. The alignment part was done by

1 hand. So we had to--to look at the chart--the detail--the lat
2 and longitude grid is at a coarse resolution. So what we have to
3 do is we have to basically overlay our radar image with this
4 chart until we get all the land features to line up right. Then
5 we know we've got them overlaid correctly. Then we take the
6 tragedy information and plot it on there.

7 **AIO:** Lieutenant Woods, may I have you play that again. I have
8 one specific question and it goes to that alignment. I'm going
9 to tell you to pause it at a point.

10 Q. At--looking at that video at 22:05 we see the--vessel one,
11 the green line, which we've identified as being the MARY B II,
12 veer off of the channel and then obviously that line--the blue
13 line, the VICTORY, also veer off the channel. In terms of how
14 that chart----

15 **PIIC:** Objection.

16 **LIO:** Basis?

17 **PIIC:** The question appears to be testifying and characterizing
18 what we see. It's not apparent, at least to my eyes, that
19 there's a veering at that point. I think the witness should be
20 able to testify and the questioner should not characterize using
21 terms like that.

22 **LIO:** Sustained. Lieutenant Bigay, please rephrase.

23 Q. Professor, in terms of the alignment, how do we know that

1 what we're seeing is accurate and matches what would be on a
2 chart?

3 A. How do we know it's accurate? I can only say that we've done
4 our best to align--the radar information is very precise, but
5 then we have to manually align it with this bathymetric chart.
6 The tracking--in our estimation, our tracking is accurate within
7 100 feet. Our accuracy in our tracking is--it's not--what's the
8 right word? It's better in the distance from the radar and is a
9 little bit less accurate in what we call the azimuthal direction,
10 the north/south, but, again, we think that--in our estimation,
11 that the accuracy is better than 100-foot--100-feet precision.
12 Does that answer that question?

13 **AIO:** Yes, thank you, sir. Lieutenant Woods, may we just play
14 that video to completion again.

15 Q. Professor, there is another time stamp here at 22:07. Can
16 you--can you explain what that time--time stamp means?

17 A. That is the time stamp when we no longer can track what we
18 think is the MARY B II. The blue line continued because we could
19 still track that. So that time stamp is when we stop tracking
20 the green vessel.

21 Q. Understood. Professor, as--as you know, there was a marine
22 casualty that--that night and there was wreckage from that
23 casualty. At any point with your tools were you able to see

1 anything regarding the wreckage or remains from that--from the
2 vessel?

3 A. When we--we haven't shown this information here, but when we
4 looked at our data at a later time, we saw a bright feature show
5 up on the beach, and I read the newspaper reports that
6 something--part of the wreckage had washed up on the beach. So
7 those two were suggestive. You can see the helicopter fly
8 around--what I think is the helicopter fly around at a later time
9 as well.

10 Q. Sir, my apologies. I may have missed it, but can you point
11 to where you thought of that--you saw that----

12 A. In my recollection there was a bright feature that showed up
13 later up on the beach up in this area here [indicating].

14 Q. Thank you, sir. Professor, turning now to our final topic,
15 we've established that on the day of the incident the weather
16 conditions included 12-to-14-foot swells, occasional 16 breakers
17 and winds were east-southeast at 10 to 13 knots. Can this--this
18 radar--can this tool be used to get real-time information about
19 the sea state?

20 A. We provide real-time information about wave direction and
21 wave length or wave period, but we do not provide real-time
22 information on wave height. That's not something that we do in
23 particular.

1 Q. Is there anything provided by this tool that would be
2 information that's not already part of weather reports?

3 A. Yes, the detail of the wave spectrum that we produce is
4 beyond what's in the weather report, typically.

5 Q. What's the repetity [sic] with which that information can be
6 obtained?

7 A. Well, it could be obtained every 15 minutes with the kind of
8 data that we collect.

9 Q. Professor, that night it's been established that--there's
10 been testimony that the operator of the fishing vessel MARY B II
11 stated they could make 6 knots and later on Coast Guard has
12 attested--testified to the fact that they noted a reduction in
13 speed. Can this radar data show any reductions in speed from
14 vessels?

15 A. If you go back to the slide that showed the time stamp every
16 minute---

17 Q. Uh-huh. I think that's slide 4 of 033.

18 A. Yes. So we could make estimates--approximate estimates of
19 speed by looking at this information. Each of the circles are
20 about a minute apart. And so the distance between the circles
21 would be indicative of speed. In my estimation, between minute 4
22 and 5, which is between these two right here [indicating], I
23 believe--yes, it looks to me like those two circles are somewhat

1 closer together than they were out here [indicating]. So that
2 would be indicative of a bit of a slowing, but it's not--it's not
3 a large difference.

4 Q. Sir, can your research on wave and sea conditions, current,
5 swells, be used to improve the safety of mariners in near-coastal
6 waters of these bars?

7 A. That's our goal--one of our goals that we're trying to
8 achieve. We want to make this information available and we want
9 people to use it for marine safety. So I can only hope that it
10 is useful for the operators.

11 Q. What would be the ideal real-life applications of your
12 research?

13 A. Well, ideally people who need to know what the waves are
14 doing at a given--in real time, to use that information about the
15 wave spectrum that we collect to help in safety would be ideal.
16 We also are trying to produce information that would update the
17 bathymetric chart based on our data. So it's maybe not in a real
18 time but on a longer weekly time scale, monthly time scale, any
19 changes in the sand shoals moving around--also a product we're
20 trying to produce.

21 Q. Sir, looking at what you've learned about the sinking and the
22 tragic loss of the MARY B II and based on your background, do you
23 have any thoughts on what may be done to improve safety overall

1 and enhance the safety and operations around the waterway at
2 Yaquina Bay entrance bar?

3 A. I wouldn't feel qualified to make any sort of safety
4 recommendations. I'm a scientist, not a--my work is to better
5 understand the physics behind waves and currents. I have very
6 little marine experience. So I wouldn't--I wouldn't feel
7 qualified to speak to safety operations.

8 **AIO:** Professor, thank you. Thank you for your patience today
9 and your testimony. I have no further questions.

10 **LIO:** Thank you, Professor. Lieutenant Foster--Lieutenant
11 Commander Foster?

12 **Questions by the technical advisor:**

13 Q. Good morning, sir. Using your laser pointer, could you
14 indicate where on this chart at this--in this orientation, where
15 the northerly current--you believe the northerly current starts.

16 A. I don't really know where it starts, but in my recollection,
17 what we were able to see is a flow across the jetties from south
18 to north and so it was--my recollection in the radar information,
19 it was in this area [indicating] that we could see that.

20 Q. Would it be accurate to characterize the--you earlier
21 testified there was a small area of reducing of speed. Would it
22 be accurate to say that in that same area there was a cross--like
23 a cross-jetty northerly current?

1 A. That would be my interpretation. It's not--we do not have
2 direct measurements of it, but in my interpretation, I believe
3 that's what was happening.

4 **TA:** Thank you. No further questions.

5 **LIO:** Lieutenant Woods?

6 **Questions by the recorder:**

7 Q. Professor, in previous testimony someone spoke fairly
8 confidently about a condition called the Davidson Current and
9 that it was present during this incident. Are you familiar with
10 this current?

11 A. Not really. I--I don't know it--didn't know it had a name.
12 I only know it from my experience looking at our data.

13 **REC:** Thank you.

14 **Questions by the lead investigating officer:**

15 Q. Professor, since we're clearly interested in this current,
16 you mentioned that you used a different data product that we
17 didn't have up here regarding being able to make an indirect
18 understanding in that sense of that there was a current. What is
19 that product?

20 A. It's what we call a wave average product. So it's--it's been
21 filtered so that we're looking at--not at the wave by wave signal
22 but we're looking at things that persist for longer and move
23 slower. So, yeah, it's kind of like a sequence of time exposures

1 rather than snapshots that we sequence together and then--we do
2 that because then it takes the wave signal away and we look at
3 the signal that persists longer. The signal that persists longer
4 is usually due to currents in the area.

5 **LIO:** Thank you. Mr. Reilly?

6 CROSS-EXAMINATION

7 Questions by the party-in-interest counsel:

8 Q. Professor, good morning. Thank you for being here, and I
9 commend the work you and your team did here. It's fantastic
10 stuff. I want to make sure we--we've got all the information
11 we--we need to--to use the product properly. Talk about time for
12 a second. Can you describe the--the manner in which your time on
13 your radar system is calibrated.

14 A. Sure. We connect through GPS. So we're keeping our clock
15 synchronized with GPS time constantly, and then as data is
16 recorded there is a time associated with each frame--captive
17 data.

18 Q. Perfect. Thanks. And with respect to the overlay, you--you
19 worked with the scale of the respective radar image and the chart
20 to find a match such that the ends of the jetties were aligned
21 and the coasts were aligned?

22 A. Yes.

23 Q. We've talked about a couple characteristics of waves here in

1 the--in the testimony, including your testimony--was the term
2 "period", the height of waves. Is there any measurement of the
3 speed of the waves, the advancement of the waves? Is that
4 something that can be calculated from the product you created?

5 A. From the data that we have, yes, absolutely. So we could
6 track a wave as it progressed through the movie. I haven't yet
7 done that, but it certainly could be done.

8 **PIIC:** Thank you again, Professor. Commander, that's all I have.

9 **LIO:** Thank you. Professor Haller, you are now released as a
10 witness at this formal hearing. Thank you for your testimony and
11 your cooperation. If I later determine that this board needs
12 additional information from you, I will contact you through our
13 counsel. If you have any additional questions about this
14 investigation, you may contact the investigation recorder,
15 Lieutenant Luke Woods. Thank you again.

16 It is 8:54. We'll take a 10-minute recess and be back at
17 9:04.

18 [The hearing recessed at 8:54 a.m., 16 May 2019.]

19 **[END OF PAGE]**

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 16 May 2019

4 WITNESS: DANIEL HARDIN

5 [The hearing was called to order at 9:05 a.m., 16 May 2019.]

6 **LIO:** It's now 9:04 a.m. and we're reconvening this public
7 hearing. We will now hear testimony from our next witness, Mr.
8 Dan Hardin, from District 13--Coast Guard District 13 commercial
9 fishing vessel program. Mr. Hardin, please come forward to the
10 witness table and Lieutenant Woods will administer your oath and
11 ask you some preliminary questions.

12 **DANIEL HARDIN was sworn and testified as follows:**

13 **DIRECT EXAMINATION**

14 **Questions by the recorder:**

15 Q. Sir, please state and spell your full name.

16 A. So my name is Daniel Hardin, D-a-n-i-e-l. Last name Hardin,
17 H-a-r-d-i-n.

18 **REC:** Will the counsel please state and spell your name.

19 **LCDR LEAGUE:** My name is Jan League, J-a-n, L-e-a-g-u-e.

20 Q. Sir, please state your current employment and position.

21 A. So I work for the United States Coast Guard in the Thirteenth
22 Coast Guard District. I am the fishing vessel safety coordinator
23 for the district office.

1 Q. Please state any education or training related to your
2 profession.

3 A. I have a master's degree in instructional and performance
4 improvement. I have letters of designation as a commercial
5 fishing vessel dockside examiner. When I was active duty, I was
6 a Coast Guard marine inspector. I had letters to conduct
7 inspections of all size of commercial fishing--excuse me,
8 commercial passenger vessels all the way to cruise ships, all
9 freight vessels, all tank ships, both foreign and domestic.

10 Q. Please state any professional licenses or certificates
11 related to your profession.

12 A. I don't have any.

13 **REC:** Thank you. At this time Commander Denny will begin her
14 primary line of questioning.

15 **LIO:** Good morning, Mr. Hardin.

16 **WIT:** Good morning, Commander.

17 **LIO:** Thank you for appearing today at this hearing. If you need
18 to take a break at any time, please let me know. All of my
19 questions are related to the time frame prior to the loss of the
20 crew and the fishing vessel MARY B II unless otherwise noted.

21 **Questions by the lead investigating officer:**

22 Q. I'd like to take a few minutes to follow up on some questions
23 that Lieutenant Woods asked you at the beginning of your

1 appearance. Can you please expand on your background and any
2 training and experience that are related to your duties in the
3 Coast Guard?

4 A. Well, I did--I touched on my qualifications. I have been to
5 Yorktown, Virginia for the 9-week marine inspection school when I
6 was active duty. As a civilian I got the job as a commercial
7 fishing vessel safety dockside examiner. Later I became the
8 district commercial fishing vessel safety coordinator. I have
9 been through the first aid and CPR courses that fishermen have to
10 go through. I have been the AMSEA and other drill conductor
11 courses that the commercial fishing vessel operators and crew are
12 required to go through.

13 Q. Can you tell us a little bit more about the Coast Guard's
14 role in ensuring the safety of commercial fishing vessel
15 operations.

16 A. So the commercial fishing vessel safety program that we began
17 on September 15th, 1991. Before that there were really no major
18 safety requirements for commercial fishing vessels other than
19 life vests and whatever the fishermen learned to put on their
20 boats for potential survival. After 1991--actually, before 1991
21 the Coast Guard came out, due to some accidents, and put out some
22 voluntary compliance recommendations. And then later in 1991,
23 congress passed the Commercial Fishing Vessel Safety Act that,

1 again, went into effect in 1991. Since then or starting then,
2 vessels were required to have particular equipment on board based
3 on the vessel's operating parameters, like how far offshore does
4 the vessel operate, how many people are on board, how--what's the
5 length of the vessel, whether or not the vessel is documented or
6 state-registered. If I didn't already mention it, the distance
7 offshore. But our program, the commercial fishing vessel safety
8 program, was a voluntary program. In other words, you--the
9 fishermen weren't required to be in compliance with the program,
10 and our job was to do examinations of the vessels at the request
11 of the fishing vessel owner/operator to ensure that the vessel
12 had all the required equipment. But at that time it was not
13 required. Later--I say later--congress enacted in the Coast
14 Guard Authorization Act of 2010, which was later amended in 2012,
15 that any vessel that operates beyond the territorial sea baseline
16 in the ocean is required to get a dockside exam. So that changed
17 in--in 2015. And that's when everybody that operated in the
18 ocean was required to get a dockside exam.

19 Q. Would you agree in general that commercial fishing vessel
20 operations are maritime operations of a certain level similar to
21 other commercial maritime operations like small passenger
22 vessels, towing operations and so forth?

23 A. Absolutely, yes.

1 Q. Mr. Hardin, what are the tools that the Coast Guard uses to
2 enhance the safety of fishing vessels and cruises, the dockside
3 safety, which you mentioned, and--and you also mentioned that
4 they became required from voluntary, if--if I'm correct--
5 correctly understanding you--and that was in 2015 based on a 2012
6 amendment.

7 A. It was the Coast Guard Authorization Act of 2012. I believe
8 it was the Marine Transportation and Coast Guard Authorization
9 Act. I think that's what they called that one.

10 Q. How often are dockside examinations conducted?

11 A. So according to our guidance, we conduct the dockside exam
12 and we issue a decal to the vessel that's good for 2 years from
13 the date that we did the examination. According to our guidance
14 from congress, a vessel is required to get a dockside exam at
15 least once ever 5 years. So that means that if we do an
16 examination of a vessel, we will issue the decal for 2 years.
17 That decal will expire, but the vessel is not required to get
18 another mandatory dockside exam until 5 years after the date that
19 we did the last exam.

20 Q. Let me--let me go back to the previous comment that you made.
21 You said that it's--if they go out--out to territorial seas.

22 A. Yes.

23 Q. So that's from the baseline?

1 A. Yes.

2 Q. And can you explain what you just said before about the 2
3 years and then they don't have to get it until 5 years. Why is
4 that?

5 A. So we issue the decal for 2 years. There are a lot of--there
6 are several government entities that depend on the decal being
7 valid, for example, for the National Marine Fisheries Service--a
8 lot of times the National Marine Fisheries Service will put an
9 observer--a fisheries observer on board their vessels. And the
10 vessel is required to have a valid decal, and the National Marine
11 Fisheries Service requires that that decal not be more than 2
12 years old. So the regulations that have been--the guidance that
13 we have been provided from headquarters is that we will issue a
14 decal for 2 years and then--and then the vessel can continue to
15 operate and not have to get a mandatory dockside exam until 5
16 years has passed. I would say that the majority of fishermen
17 don't wait 5 years, but we can't--we can't require a vessel to
18 get another exam in less than 5 years. Currently that's the way
19 it is. And so, for example, if we board a vessel, we wouldn't
20 terminate a vessel's voyage for failure of having a valid decal
21 as long as they had an examination in the last 5 years. That's
22 the way the regulations currently exist.

23 **LIO:** Okay. Lieutenant Woods, would you please pull up Coast

1 Guard 043, which is entitled "fishsafewest.info" web page, just
2 three pages.

3 Q. Mr. Hardin, would you please, for the benefit of the public,
4 just go back and establish some foundational information. We
5 were talking about territorial seas and baseline. In the
6 interest of understanding for the public, can you explain what
7 those are, how many miles out that is.

8 A. Okay. So if you delve into the regulations, the regulations
9 talk about vessels that are documented, for example, that operate
10 beyond the boundary line. So, first of all, there's a thing
11 called the boundary line, and so right now many of the
12 regulations are based on the boundary line. The boundary line is
13 the high level--high level or the--yeah, the high-level mark on
14 the shoreline of the ocean and crosses small rivers and inlets.
15 So the boundary line--when we look at our regulations, the
16 boundary line and a documented vessel--if both those two things
17 are true, then there are certain regulations that are required
18 for those vessels that operate the boundary line and different
19 from those vessels that operate inside the boundary line. So
20 there's less onerous requirements--safety requirements for
21 vessels operating inside the boundary line. Now, next, this
22 applicability of mandatory dockside exams is based on the
23 legislative language that says any vessel that operates beyond 3

1 nautical miles from the territorial sea baseline, which, again,
2 for the--for the Pacific area, is the high-water mark on
3 shoreline--if you operate beyond 3 nautical miles from shore--
4 from the shoreline, then you're required to get the mandatory
5 dockside exam. That's the only place that that term is used, and
6 that's the applicability of the mandatory dockside exam.

7 Q. So how does territorial seas fall into that?

8 A. That's just the terminology we use, the territory of the
9 United States out to 3 miles. So that's called the territorial
10 seas, within 3 miles.

11 Q. Sir, can a vessel with a decal in Florida head to Oregon
12 and--and not get an interaction with vessel examiners befo--about
13 crossing bars or immersion suits?

14 A. You can certainly bring your vessel here, but since a vessel
15 down in Florida operates in warm water, warm water is one of the
16 criteria that change, for example, the survival craft
17 requirements. So where in Florida where you might be 50 miles
18 offshore, you might need one kind of survival craft. If you were
19 to move up into the cold water of the Pacific Northwest, your
20 requirements would change. And so they--that vessel should get
21 an examination for the vessel in which they're operating. Now,
22 vessels are transient. For example, we have vessels that go
23 between California and Oregon, the fisheries. The fish don't

1 know to stay in their own state. So they move up and down the
2 coast. The fishermen follow the fish, they catch the fish, and
3 so we could very well have vessels from down in--from San Diego
4 that were operating in warm water that could come up this way and
5 they should have the equipment for the area that they're
6 operating in. So normally that work is done by our boarding
7 officers, conducting boardings at sea, but commercial fishermen
8 should be aware that, when they change an area, they should check
9 in with our commercial fishing vessel examiners to check their
10 equipment and make sure they're--they have what they're required
11 to have by regulation. That's the master's responsibility to
12 ensure that they're operating in compliance with regulation.

13 Q. Thank you. So--so now we're talking--we've talked about that
14 and the vessel examinations a little bit. We talked about
15 voluntary versus required. So would you say it's worth--for a
16 fishing vessel operator or company to submit to this dockside
17 safety exam?

18 A. Absolutely. It's always a great idea to have another set of
19 eyes looking at your vessel. You--a commercial fisherman on
20 his--on a vessel is worried about more things than just their
21 safety equipment, and so to have another set of eyes to look at
22 their vessel every 2 years--we do have some folks that'll get
23 them annually because they believe in having someone come out and

1 check. And our dockside examiners are trained to know exactly
2 what a vessel is required to have--and have examined that
3 equipment to ensure that it's in acceptable or serviceable
4 condition.

5 Q. Mr. Hardin, we have Exhibit 043 of--over my shoulder here and
6 you can see it on your screen. Do you recognize this screenshot
7 of this website?

8 A. Yes, ma'am. This is the website put together to disseminate
9 information to commercial fishermen about--information that
10 affects them. So this is the home page that will--that provides
11 the latest information or, if something happens, I'll make a
12 change to it. For example, at the top there, you'll see it talks
13 about a vessel--where a man fell overboard from his vessel while
14 it was at the dock and didn't have a way to get back aboard his
15 boat. So we thought we would put some information about that
16 particular situation and any information that the Coast Guard
17 officially put out about that, either locally or--or federally.
18 So this website here is something that we advertise to the
19 commercial fishing fleet. If you look across the top you'll see
20 that there's a home page and then there's a dockside examination
21 page. On that page, this page guides the commercial fisherman
22 through what a dockside exam looks like. It actually has what we
23 call a checklist generator that will tell a commercial fisherman

1 exactly what a particular vessel is required to have. So if you
2 were to go to the dockside examin--examination page and select
3 the checklist generator, the checklist generator has different
4 questions that it asks the operator. Then based on the operating
5 parameters of the vessel that we're very familiar with but that
6 are confusing to understand to someone that doesn't deal with
7 this every day--for example, the operator will put in the
8 vessel's length, how many people are on board, if the vessel
9 operates beyond 3, 12, 20, 50 miles from shore, all the different
10 parameters that make regulations apply or not apply. And after
11 they've done that and pushed the submit button, they get a custom
12 checklist for their particular vessel, the purpose being is that
13 if we can get the commercial fishermen to understand everything
14 that they need aboard their vessel and get all that stuff on
15 there before they ask our examiners to come out, we can save
16 everybody a lot of time, because commercial fishermen want to get
17 in compliance and go fishing and not spend multiple days talking
18 with Coast Guard dockside examiners.

19 **LIO:** Understand. Lieutenant Woods, could you please scroll to
20 page 2 of this same exhibit and zoom in on the lower half--what's
21 currently showing as the lower half. A little bit more, please.

22 **WIT:** That's the third page.

23 **LIO:** That's the third page. Thank you.

1 Q. Sir, can you see on your screen the part that starts with
2 "preparing for your vessel exam"?

3 A. Yes.

4 Q. Can you please talk about that just a little bit more?

5 A. Okay, so this just runs through the process of getting a
6 dockside exam. And the first thing it talks about is using some
7 device, either desktop, a laptop, a tablet or a smartphone, to
8 determine what equipment their vessel is required to have. In
9 there is a link to the checklist generator. Then it goes on to
10 say, you know, use the checklist to examine your vessel, ensure
11 you have all the required equipment and then go ahead and call
12 for a dockside exam so we can come out and examine your vessel.
13 We hope that the operator will be able to pass on the first visit
14 to their vessel.

15 Q. Thank you. So if a vessel is boarded at sea and they've had
16 an exam and they've gotten the decal, does that prepare them for
17 more successful boarding at sea?

18 A. It does. Now, it's important to remember that normally the
19 reason for the boarding has to do with the fisheries that the
20 vessel is engaged in, and so that is normally the boarding team's
21 primary mission is to board the vessel to ensure that fishermen
22 are complying with the fishery's regulations for their particular
23 fishery. But they will also check the vessel for safety, and if

1 they have a dockside exam decal and the decal is not expired,
2 then normally what they'll do is do a--a quick check of the
3 vessel's primary lifesaving equipment, something we call the big
4 eight, and so they'll just spot-check that equipment. If it
5 looks like all equipment is still in compliance with the decal,
6 then they'll move on to their--their mission related to fisheries
7 enforcement. Now, if you don't have a decal and--one, now you're
8 required to have one. So if they're required to have one and
9 they don't have one, they'll be written up for failure not [sic]
10 to have a mandatory dockside exam decal--if the decal is more
11 than 5 years old.

12 Q. Thank you. So are there any other tools or initiatives that
13 the Coast Guard uses to ensure the safety of fishing vessels?

14 A. Well, can you go to the third page since we were there just a
15 second ago, if it's okay with you? So the--so one of the things
16 that is--is of interest to commercial fishing vessels is all the
17 different regulations that apply to them. So what I did on this
18 page was put every regulation applicable to a vessel--a
19 commercial fishing vessel on this page, and then within those
20 folders there I have an alphabetical listing. And so those are
21 tools for them to use if they have a question about a particular
22 item and want to see any regulation related to that topic or any
23 guidance that was put out by Coast Guard headquarters or one of

1 our districts or whatever, then they can, for example, go down to
2 survival craft and then look at any regulation having to do with
3 survival craft, just to make their job a little bit easier. We
4 also do special operations. For example, the Dungeness crab
5 fishery in the Pacific Northwest, we found, was the most
6 hazardous fishery on the West Coast of the United States, even
7 more hazardous than any of the Alaska fisheries. That work was
8 done by the National Institute for Occupational Safety and
9 Health, the folks up in Alaska. They're experts in what they
10 call injury epidemiology, and they know how to take accident
11 investigations and then go through those investigations and
12 provide us, the Coast Guard, with information about all the
13 different accidents that are happening, what particular fishery
14 they occurred in, what type of accident was it that caused people
15 to either perish or not. So finding out that the Dungeness crab
16 fishery was the most hazardous fishery in the country--and we
17 really knew that, but--and so we--we did an operation we called
18 Operation Safe Crab. Remember, this was back when vessels were
19 not required to mandatorily get a dockside exam, and what we
20 would do is we would put commercial fishing vessel dockside
21 examiners on all the docks up and down the coast. We would
22 provide them training, the required drill conductor training. We
23 would provide them stability training. We would provide them

1 damage control training. We'd offer to give courtesy dockside
2 exams to these vessels before they got underway. So we'll do
3 pulse operations for particular fisheries that--that we're
4 concerned about.

5 Q. And you mentioned that in the past tense, but before, when
6 the dockside exams were voluntary, do we still do that in the
7 Thirteenth District?

8 A. So we don't do that--that much of a push as a pulse operation
9 anymore because these vessels are hard to get a mandatory
10 dockside exam, but what our examiners will do is they will make
11 themselves available out on the docks, for example, for fishermen
12 that need a new dockside exam. So they'll make themselves
13 available before the big push and the fishermen take off to go
14 fishing. As this board has heard before, the start date is often
15 questionable. It can start here in the Pacific Northwest as
16 early as December 1. Often may be--often it may be pushed back
17 because of the--the shell of the crab--the meat has not filled
18 the shell. So they have state fishery entities that go out and
19 check for those kind of things or domoic acid or there may be a
20 disagreement about the price--willing to pay. So it becomes hard
21 for us sometimes to know when the fishing is actually going to
22 start. So they work--they listen close--when I say they, our
23 dockside examiners that are stationed both at Sector Puget Sound

1 and the Marine Safety Unit in Portland, Oregon stay in close
2 touch with the different fishery--fishing operators and--for
3 example, the Dungeness crab fishery--and try to be there when
4 they know everybody is going to be getting ready to go. We know
5 that they have a--a point where they can drop their pots or what
6 they call wet their pots several days before the actual fishery
7 will open. So we'll try to be there when the fishermen are at
8 the docks with their vessels to provide any--any guidance they
9 need as it relates to compliance with the regulations, and the
10 Marine Safety Unit in Portland often tries to coor--coordinate
11 drill conductor courses before the start of a particular fishery.
12 For example, this last fishery started in--was going--could
13 potentially start December 1 of 2018. And so in November the--
14 our dockside examiners from Marine Safety Unit Portland scheduled
15 a drill conductor course, an AMSEA, Alaska Marine Safety
16 Education----

17 Q. We're going to talk about that in just a few minutes.

18 A. Okay. So they did a couple courses before the start of the
19 fishery.

20 Q. Awesome. I do have a question with respect to the dockside
21 safety exams. I didn't want to go too far off of that before we
22 moved on. You've really described the initiatives that we've
23 been doing in the District 13 area. Are these--are these exams

1 in the Coast--in the local Coast Guard district, are they
2 different than other Coast Guard districts, the dockside safety
3 exam?

4 A. So the applicability of the regulations is dependent upon
5 where the vessel is operating. So, for example, if you're
6 operating in Maine, their boundary line is different from ours.
7 Like ours is--our boundary line is right on the coastline. The
8 boundary line in Maine can be as far as 50 miles offshore. And
9 so it can be different. There's warm waters and cold waters, as
10 I described before. So although all of the regulations are in 46
11 CFR Part 28--those are the commercial fishing vessel safety
12 regulations--they're dependent on a lot of different parameters.
13 So there--there, for example, are differences from the East Coast
14 and the West Coast and when immersion suits, as opposed to
15 lifejackets, are required aboard different vessels. So you have
16 to be qualified for your particular area to do examinations of
17 commercial fishing vessels.

18 Q. So it sounds like what you're saying is that--that we tailor,
19 essentially, the--the exams to meet characteristics of the coasts
20 they're--the geographic location. So do we tailor our dockside
21 safety exams here to the unique characteristics of the Oregon
22 coast?

23 A. I would say that what we do is we make sure that whatever the

1 equipment requirements are that relate to our particular area,
2 those are the things that we make sure that the vessels are in
3 compliance with. We don't make our own rules for our own area.
4 We are bound to comply with 46 CFR Part 28 as it applies to
5 vessels operating in the Pacific Northwest.

6 Q. Do we modify our dockside safety exams to cover geographic
7 characteristics unique to the Oregon coast like bars or bar
8 crossings?

9 A. No, we don't. Certainly everybody is aware of the bars and--
10 and the RNAs that are on the particular bars, but I don't know
11 that we do anything specific related to talking about the bars or
12 requiring extra equipment on the bars and that kind of thing.

13 Q. Later we're going to discuss the details of commercial
14 fishing vessel dockside exam. Can you tell us what would happen
15 after a person like Mr. Kee completes a dockside exam?

16 A. What happens after? So after the examination is complete, if
17 the vessel is found to be in compliance with the applicable
18 regulations, then Mr. Kee works for--is out of the Coos Bay
19 office and is a dockside examiner--would issue the vessel a decal
20 and then make an entry in our MISLE database, the Marine
21 Information for Safety and Law Enforcement database, that an
22 examination was done on the vessel and for what particular area.
23 If you look at our decal, the decal talks about whether or not

1 the vessel was documented or state-registered, whether or not it
2 was operating beyond the boundary line and how far offshore the
3 vessel was operating. So he would make marks to--on the stamp as
4 to where the vessel operator said that they were going to operate
5 and then issue that decal. He'd also leave the vessel paperwork
6 about the dockside exam, which is our form--our dockside
7 examination form.

8 Q. Can you please elaborate on the training required to become a
9 qualified and designated dockside examiner?

10 A. So each one of our dockside examiners attends a course in
11 Yorktown, Virginia. It's a 1-week course. It's the fishing
12 vessel dockside examiners course in Virginia. After they've
13 complete that--completed that official training--and they could
14 very well start working our dockside examiners, but they'll go
15 out--they'll go out with our dockside examiners and perform
16 examinations of the vessels for compliance with regulations and
17 they would go out with a qualified dockside examiner. Normally--
18 I can't remember the exact number. It's at least five, but I
19 think it's more than that--once they've done a certain amount of
20 vessels and the examiner or examiners that went out with this new
21 examiner, then they would undergo a board--marine board for
22 fishing vessel examiners. They would sit in a room with several
23 qualified dockside examiners and be asked questions about

1 different vessels, applicability, stuff that maybe they hadn't
2 actually seen or didn't see a lot of, to make sure they
3 understand the applicability. So the dockside examiner's job is
4 twofold. One is to determine what the vessel is required to
5 have. Then, two, make sure whatever equipment is required to be
6 aboard the vessels is in serviceable condition. So they'll check
7 their ability to do both of those things.

8 Q. Can a Coast Guard dockside examiner be an active-duty Coast
9 Guard member or civilian like yourself or a member of the Coast
10 Guard Auxiliary?

11 A. Yes--the answer to that is yes. Currently in my program, we
12 have five dockside examiners that are in Sector Puget Sound.
13 They are all civilian employees. In--they operate up in Seattle
14 and down to Queets River, Washington. That's their area of
15 responsibility at Sector Puget Sound. Sector Columbia River has
16 a marine safety unit in Portland. That's where Sector Columbia
17 River's dockside examiners are at, as well as the marine
18 inspection staff. And they have two civilian commercial fishing
19 vessel dockside examiners. And they have one, Mr. Kee, who is in
20 Coos Bay, Oregon, that is a satellite dockside examiner from the
21 Portland office but he actually lives in Coos Bay. He does the
22 exams down here. Marine Safety Unit Portland has qualified
23 several examiners at the stations. Those folks are--that--are

1 usually a boarding officer--active-duty boarding officer. And so
2 we have several of those in both of the operating areas of D-13.
3 Coast Guard Auxiliary members can also become qualified
4 commercial fishing vessel dockside examiner. Every safety unit
5 has several of those folks that are normally people who volunteer
6 to do that job. They're usually folks that live in a particular
7 community that we may not have easy access to. And so they will
8 get qualified, same process, attend the school, same as our
9 civilians and our military folks, and the Coast Guard Auxiliary
10 member will get qualified to do dockside exams of commercial
11 fishing vessels for the marine safety office or the sector that
12 they operate in.

13 Q. The standards for qualification for all of those categories
14 of people is the same; is that correct?

15 A. It is.

16 Q. You mentioned the MISLE program, which is a database that the
17 Coast Guard uses to enter case information activities and
18 documentation for tracking. Can you please expand on that a
19 little bit?

20 A. So when an exam is done, the dockside examiner will come back
21 to the unit and enter the examination they did in the MISLE
22 database. Now, there's a lot of different information that goes
23 into MISLE--we use the term "MISLE". For example, all boardings

1 that are done by our law enforcement folks put their information
2 in there also. So we have our people in marine safety input
3 examinations or inspections that they do into that same database.
4 So, for example, if I did an examination on a commercial fishing
5 vessel, I would make a copy--an electronic copy of the form that
6 was used to do that examination, and that form would be scanned
7 into MISLE. Also there would be a narrative put into MISLE
8 explaining what the examiner did, what the vessel had planned to
9 do as far as its operating area, and any deficiencies that were
10 found and/or corrected during that examination, and--and the--the
11 decal number that was issued to the vessel. Too, let me say that
12 often our examiners take a picture of the vessel so that we know
13 what that vessel looks like.

14 **LIO:** Yes, sir, thank you. Lieutenant Woods, please prepare to
15 display Coast Guard Exhibit 019, U.S. Coast Guard fishing vessel
16 exam forms. It's a--so this is a composite of several commercial
17 fishing vessel dockside exams. Please go to page 7, which starts
18 the form for the MARY B II. Lieutenant Woods, could you zoom in,
19 please, and just be at the top and we'll go ahead and just scroll
20 down and talk about some of this information.

21 Q. So this part of the document starts at page 7 and ends with
22 page 10. From your position in the Coast Guard district, what
23 are your expectations for the examination of the MARY B II?

1 A. I expect that Mr. Kee, who was the one that did this
2 examination, determined what the vessel was required to have and
3 then examined the vessel for compliance with the regulations
4 applicable to the vessel's operating area, and that he would have
5 confirmed that the vessel had all the required equipment and that
6 the vessel--the equipment was in serviceable condition.

7 **LIO:** Please scroll to page 10.

8 Q. Take a minute to familiarize yourself with that part. I do
9 have a question with respect to that. Can you tell us what's at
10 the top of page 10 of the section that includes bar crossings or,
11 rather, the hazardous bar plan.

12 A. Okay, so 46 CFR Part 28.265 requires certain vessels to have
13 emergency instructions aboard their vessel. This particular form
14 has been slightly modified from the national form that's used
15 across the country. And so Marine Safety Unit Portland has added
16 a few items that they want to make sure they don't forget to
17 check as it relates to some of these vessels. So you see there
18 that 28.265 specifically requires emergency instructions and
19 explains what it is that we should be looking for. So they
20 should have a station **bill**--on board the vessel. They have
21 should mayday instructions, should have instructions on donning
22 PFDs and immersion suits, what the crew should do in a man
23 overboard, a fire, abandon ship, flooding, rough weather and

1 hazardous bars. So these are all listed there to make sure that
2 they check for those particular items while they're looking
3 through the emergency instructions that are required to be posted
4 aboard the vessel.

5 Q. So would the bar crossing plan then include information about
6 what to do with steering problems or machinery problems or does
7 it address or require anything from the experience of the
8 operator?

9 A. So I think this is a good question for Mr. Kee as to
10 exactly--so there's a note here that will remind him to ask about
11 the hazardous plan. And so the specifics of that--key for him to
12 remember to ask about that--would be better asked of Mr. Steven
13 Kee.

14 Q. Okay, thank you. Does the Thirteenth District commercial
15 fishing vessel program have any input as to the development of
16 the navigational--I'm sorry, the regulated navigation area
17 related to bar crossings?

18 A. My office? Is that your question?

19 Q. Yes.

20 A. Okay, so the--the development of the nav--regulated
21 navigation areas received input from the prevention staff at
22 District 13. Regulation navigation areas is not my particular
23 responsibility as to its creation or when or how the bar should

1 be opened or closed, but I do have some understanding of--of how
2 they work and--and when they can be closed or not.

3 Q. The Coast Guard partners with other entities to enhance the
4 safety of fishing vessel crews. One of them is AMSEA, which you
5 mentioned, the Alaska Marine Safety Education Association. Could
6 we, at this point, expound a little bit on what that group does
7 and how it improves the safety of fishing operations.

8 A. Yes, ma'am. So the Alaska Marine Safety Education
9 Association is just one group that provides drill conductor
10 training and--and other survival-type training to commercial
11 fishermen as required by the regulations for vessels that are
12 required to do drills. The drills have to be done under the
13 supervision of somebody that's been trained as a qualified drill
14 conductor. And so there's--in the Pacific Northwest, for
15 example, there's the North Pacific Fishing Vessel Association in
16 Seattle that does this kind of training and the Alaska Marine
17 Safety Education Association does this kind of training. And so
18 you can go directly to those folks to get that--that training.
19 The--the difference in AMSEA is that they have a program where
20 they will qualify what are called drill instructors. And drill
21 instructors can train other drill conductors. And so what the
22 Coast Guard has done here in the Pacific Northwest is that we
23 have taken advantage of that and gotten some of our folks

1 qualified in this, qualified drill instructors. And they do
2 their training under the AMSEA umbrella and using their
3 curriculum and we'll go to, for example, some of the ports in
4 Oregon and offer the training for free or near free by following
5 the curriculum of the AMSEA--AMSEA folks. And so where the North
6 Pacific Fishing Vessel Association or the NPFVOA will do this for
7 crews and charge some minimal fee. If you're a member, it's even
8 less--of the NPFVOA. They provide this training. It's not our
9 job to get into their business. And so our examiners normally
10 stay in the more southern parts of Oregon so that they don't--
11 they don't get into the NPFVOA's business of doing these exams.
12 And they offer them in ports that don't normally get a visit from
13 some of these organizations that do this for money, if that makes
14 sense.

15 Q. I think so. So--so you said we--at Thirteenth District we've
16 taken advantage of the ability to--to get people instructor-
17 qualified so that they can train others. Were some of those
18 people civilian employees, commercial fishing vessel examiners?

19 A. Yes, they are. Our two examiners out of the Portland office
20 and Mr. Kee in Coos Bay are all qualified AMSEA instructors.

21 Q. Sir, what was the impact of the last--of--in government--
22 lapse in appropriations and partial government closure this past
23 year, 18-19?

1 A. So we were affected by the shutdown. All three of our
2 examiners out of the Portland office were furloughed, as well as
3 myself. So we were unavail--unavailable to do courtesy dockside
4 exams of commercial fishing vessels, as we would normally do when
5 they're--when a fishery was going to start. But the examiners
6 had been out earlier before the shutdown and had been offering
7 training and services to the folks before the shutdown, but--so
8 how--how it worked was we do have some military folks that were
9 not furloughed, obviously, and--and so they were doing
10 examinations only for commercial fishing vessels that had to have
11 a courtesy dockside exam, but our civilian examiners were not
12 available.

13 Q. Was there any backlog created from the lapse in
14 appropriations?

15 A. Yes.

16 Q. Can you speak to that?

17 A. It was a pretty large backlog. A lot of people wanted--they
18 were calling in to get dockside exams. They wanted to go
19 fishing. They wanted to have their equipment checked and they
20 weren't able to. And so we were gone for quite a while, at 3--I
21 think it was 3 weeks, and that's 3 weeks' worth of work that
22 didn't get done. And so as I was talking to some of our
23 examiners out of the Portland office, they were sta--were stating

1 that they were still being affected by the shutdown and trying to
2 catch up on all the different projects that they normally do.

3 Q. Thank you. Going back to the drill conductor course by
4 AMSEA, can you describe that? Do crews get hands-on training or
5 is it just classroom training? Can you describe that a little
6 bit, please.

7 A. So it's both hands-on training and classroom training.
8 Usually the morning of the first day after introductions and so
9 on, they'll start into the basic theories of like the seven steps
10 of survival and--and--and how to don certain equipment or
11 whatever. And then normally in the afternoon they're out getting
12 wet or jumping in with a suit on or they're working with the
13 damage control trainer to practice damage control techniques.
14 And so usually the mornings they try to get the--the stuff out--
15 the stuff that's--the classroom stuff done so that then they can
16 apply it in the field in the--in the afternoon.

17 Q. So it sounds like there's quite a bit of hands-on training.

18 A. There is a lot of hands-on training, yes, ma'am.

19 Q. And is there like a frequency that any crews are required to
20 take that kind of training?

21 A. So you're--you're--all right, so somebody aboard the vessel
22 is required--somebody aboard a vessel that's required to do
23 drills has to be trained--that person gets that training and then

1 they train their crews on emergency procedures for their
2 particular vessel. So once you get the training, you're good to
3 go, at least currently that's the way it is. So if you get--if
4 you go through the--for example, the AMSEA course or the North
5 Pacific Fishing Vessel Owners' Association or any of the
6 associations across the country, you're qualified to train folks
7 that are the crew or any--anybody on a fishing vessel how to
8 handle emergency aboard--emergencies aboard the vessel, man
9 overboard--there's specific things they have to do. They have to
10 know how to fight a fire, what to do in case of a man overboard,
11 what to do to abandon ship and those kinds of things. So the
12 drill conductor is the person that's trained to train his crew
13 or, for example, if I was a qualified drill conductor on a boat,
14 I could go do drills for another boat in the port if I--because
15 it's--has to be done by somebody that has that qualifications.
16 So I can--I can do that for myself, for my own boat, and I can do
17 it for somebody else if they want.

18 Q. Do you know if there's been any modification or--in--in the
19 drill conductor course for this area? Has there been any
20 addition or modification to incorporate hazardous bars or bar
21 crossings?

22 Q. No, not specifically. We do do stability training, but I
23 don't know that stability was much of an issue related to this

1 particular accident. But they do do stability training. They do
2 damage control training. I'm not familiar with any specific in-
3 depth topics related to--to the drill conductor training that
4 they get, but, again, Mr. Kee is an examiner and he is a drill
5 conductor, and that could be a good question to ask him, because
6 that's the work that they do continually.

7 Q. Thank you, sir. Does the Coast Guard provide any funding to
8 enhance the safety of fishing operations?

9 A. They--the Coast Guard headquarters does have money for that.
10 They have--they--for example, provide AMSEA on occasion some
11 money to do free drill training and develop other kinds of
12 training. Due to some recent authorization acts, the Coast Guard
13 has also come upon some money to improve safety and also
14 technology related to emergencies. And so that's handled by our
15 headquarters office. So you--if you're--if you're a training
16 entity or if you have an idea on a new item that would be safer
17 than what we currently have or a novel idea, you can submit for
18 money for development of this.

19 Q. Okay. So turning our attention to another subject that
20 directly affects the safety of commercial fishing vessels and the
21 regulations that are in place to ensure the safety of crews,
22 vessels and the environment, are there any regulations in place
23 for a small commercial fishing vessel like the MARY B II for the

1 following items? I'll identify an item and I'll ask you to talk
2 about the regulations in place or the lack of regulations in
3 place. I'm looking for just a general statement and not specific
4 citations to law or reg. So the first one is the requirement for
5 safety and lifesaving equipment. So the question is are there
6 any regulations in place for a small commercial fishing vessel
7 like MARY B II? And can you tell me a little bit about whether
8 there are regulations in place or there's a gap of regulations.

9 A. Okay, for safety equipment, there are regulations for safety
10 equipment. Primary lifesaving equipment like either a wearable
11 personal flotation device or what we call an immersion suit or
12 explorer suit. There's requirements for survival craft. Again,
13 it depends on the parameters of the vessel's operation and
14 specifics about the vessel itself. So its applicability is
15 dependent on various parameters. So, yes, there are specific
16 regulations for safety equipment for a vessel like the MARY--MARY
17 B II.

18 Q. Sir, how about for design and construction standards and plan
19 review and approval?

20 A. For the MARY B II there were no standards for construction of
21 that vessel.

22 Q. And you mentioned stability, but I don't want to just assume
23 that--that--for the size of the vessel, that it applies. How

1 about stability to ensure that a vessel doesn't capsize or
2 founder?

3 A. So the Coast Guard has no regulations applicable to the MARY
4 B II that would require the vessel to have any stability workup.
5 I mean, it's--it's good marine practice to--to construct your
6 vessel with good stability, and that would certainly be the job
7 of a marine engineer or naval architect, but the Coast Guard for
8 this particular size of vessel would not have any oversight as to
9 checking for the stability of the vessel.

10 Q. How about the material condition of the various vessel
11 components such as the hull condition or wiring components or the
12 age and condition of the engine?

13 A. So our regulations are more about helping people after an
14 accident and not before. So these vessels have to be understood
15 to be uninspected vessels. An inspected vessel that's inspected
16 by a marine inspector would look at the vessel's hull condition,
17 would look at the vessel when it was out of the water to make
18 sure that inspection was done on the exterior of the vessel and
19 interior of the vessel and all the machinery. Those are not the
20 things that a dockside examiner would specifically look at, and
21 there are no specific regulations for a vessel the size of the
22 MARY B II to be examined for material condition by a Coast Guard
23 dockside examiner.

1 Q. Thank you. So how about the fishing vessel's fitness and
2 intended service?

3 A. Again, there's no specific regulation in Part 28 related to
4 the construction of the vessel and its service, no.

5 Q. What about a determination of competence of the crew of the
6 vessel providing some type of license or certificate?

7 A. So the regulations related to uninspected commercial fishing
8 vessels is any vessel over 200 gross tons is required to have a
9 licensed master. If they have somebody assigned to the machinery
10 space as the engineer, that person has to have a chief engineer's
11 license. Any person on the watch, for example, a navigation
12 watch, would have to be appropriate licensed as a mate, for
13 example. The MARY B II was under 200 gross tons and, therefore,
14 was not required to have any licensed personnel aboard the
15 vessel.

16 Q. So for the MARY B II is there anything as far as
17 applicability for drug and alcohol testing programs to make sure
18 that these do not impair safety of operations?

19 A. So drug testing programs and those things are required by 46
20 CFR Part 16, where it specifically talks about the requirements
21 for random drug testing, pre-employment drug testing, some of the
22 other types of testing that the doctor talked about yesterday.
23 So the--that is only a vessel--only required of credentialed

1 mariners, those programs. And so if you had a commercial fishing
2 vessel that was over 200 gross tons, you'd have to have a drug
3 testing program and you'd have to do all the various testings
4 required by 46 CFR Part 16. The only applicability of drug
5 testing requirements for commercial fishing vessels are vessels
6 involved in casualty, and that's in 46 CFR Part 4, which is the
7 same chapter that you are operating under. And that requires
8 that a person involved in an accident be able to be tested within
9 2 hours of an accident. If they're not able to do that, then
10 they're required to carry, for example, alcohol test swabs aboard
11 their vessel if they go offshore so far that they couldn't get
12 back within a couple hours. And that would be something that we
13 would check for if the vessel goes that far offshore.

14 Q. So how about standards for medical fitness for the crew,
15 especially the captain or operator?

16 A. That would be a requirement for--for credentialed mariners
17 but not for vessels under 200 gross tons.

18 Q. And lastly, is there any difference between a state-
19 registered versus a documented vessel of the United States?

20 A. A state-registered vessel is any vessel under 5 net tons as
21 measured--as that measure. So if your vessel is over 5 net tons,
22 then your vessel is required to be documented with the United
23 States Coast Guard. It's important to know that tonnage is not a

1 function of weight but a function of volumetric measurement. So
2 we, as dockside examiners, when we go about our business, if we
3 see a vessel between 32 to 36 feet or more in length, we start
4 questioning whether or not the vessel should be documented as
5 opposed to state-registered, because if you do simplified tonnage
6 calculations, taking the vessel's length, breadth and depth, you
7 can easily come up with over 5 net tons if the vessel winds up
8 being, oh, around 36-some feet. So vessels less than that will
9 normally be state-registered, and those greater than that will be
10 U.S.-documented. And they are treated differently in the
11 regulations. If you look at the regulations, the regulations for
12 most vessels are divided into two sections. Section B are
13 applicability to all vessels, and Section C in Part 28 are
14 applicable to vessels--documented vessels that operate beyond the
15 boundary line. And those are additional requirements.

16 Q. Thank you. Would you like to offer any comment on any
17 initiatives that you might be aware of that the commercial
18 fishing vessel industry is working on to improve its safety of--
19 the safety of operations.

20 A. Well, we--we fully support the work that NIOSH is doing--in
21 fact, I believe you'll be talking to them--and also the work that
22 Oregon State University is doing and the participation of the
23 wives clubs in finding out, you know, where--where are the risks

1 and what can we do to mitigate those risks. So we certainly
2 support the work that both Oregon State University is doing as
3 well as our--our friends at NIOSH.

4 Q. There's a federal advisory committee called the Commercial
5 Fishing Safety Advisory Committee. Are you familiar with the
6 work that that committee does and then can you talk about how
7 they do their work and what--what issues they're currently
8 working on?

9 A. Yes, I'm familiar with them. I've attended many of their
10 meetings. They normally meet around the country, usually at
11 least once a year. These are a committee that helps the Coast
12 Guard make decisions about adoption of safety measures that we
13 might do in the future. And so those members are, for example,
14 naval architects or members of the marine insurance industry,
15 experts in safety and survival. And so they're all civilian
16 folks that provide guidance to the Coast Guard based on various
17 questions the Coast Guard has or changes they're thinking of
18 making to regulations. For example, congress had in the recent
19 authorization act--wrote legislation to require that commercial
20 fishermen have specific--specific types of training and be
21 required to take that training. And so the Fishing Safety
22 Advisory Committee took up those particular items and made
23 recommendations as to how that could be accomplished.

1 Q. And are--do we have a representative on that committee? Are
2 you a member of that committee?

3 A. So I'm not a member of the committee, but as the district
4 coordinator, we usually go there to make a presentation to the
5 committee. We talk to them about what are the issues that we're
6 having. If we have a question about a regulation or
7 applicability, we might ask their opinion on that. But the Coast
8 Guard has two--two representatives, the chief of prevention at
9 headquarters and our program manager at headquarters for the
10 commercial fishing vessel safety program. Those are the two
11 members and heads of the--the committee for the Coast Guard.
12 They actually elect their own president of the committee.

13 **LIO:** Lieutenant Woods, please prepare to display Coast Guard
14 Exhibit 039, the Voluntary Safety Initiatives and Good Marine
15 Practices Checklist and Examination Guide.

16 Q. So this is a document called the Voluntary Safety Initiatives
17 and Good Marine Practices Checklist and Exam Guide. And it's 13
18 pages long. Sir, can you talk about this guide and its intended
19 purpose, please?

20 A. So one of the things that congress had put into U.S. Code,
21 which is the law, required that certain vessels comply with
22 safety compliance requirements. In other words, rather than just
23 safety equipment, some vessels would be looked at for material

1 condition and--and so--and it had to be done by a certain time.
2 So the Coast Guard worked to establish an alternate safety
3 compliance program for vessels that were not required to be
4 classed but that were existing vessels. And so what we did--the
5 group of us did was to create an alternate safety compliance
6 program, as congress had asked us to do. We created this
7 document, which was the alternate safety compliance program. The
8 admiral in charge of the prevention division at headquarters
9 determined that until we get regulations that implement the law
10 that was established by congress, that we would change the
11 alternate safety compliance program to this voluntary initiative.
12 The idea was that we would put this out to the industry and while
13 the--the various operators were making inspections of the vessels
14 and making repairs to the vessels, if they followed these, they
15 would be in compliance with a future alternate safety compliance
16 program. So this gave them a head start to be in compliance once
17 we got regulations that would implement these--these--these laws
18 created by congress. And so until that package gets through the
19 Department of Homeland Security and the regulations are then
20 implemented, we are--we are stuck waiting for that to happen.
21 Q. Thank you. Turning our attention to the last topic and that
22 would be control measures that the Coast Guard can impose, if
23 necessary, on a commercial fishing vessel. If you're familiar

1 with any of these control measures, please talk about what that
2 measure is and then when the Coast Guard can exercise control, in
3 very general terms, captain-of-the-port orders, for example.

4 A. So if--if we find a vessel to be unsafe in some manner that
5 we are concerned about the safety of the crew, safety of the
6 vessel or the safety of the environment around the vessel, then
7 the officer in charge of marine inspection can issue--and through
8 the captain-of-the-port authority--issue a captain-of-the-port
9 order for the vessel to do any number of things that would be
10 appropriate to make the vessel safe, including tying the vessel
11 to the dock and not allowing it to operate until some--someone
12 from the Coast Guard has visited that--excuse me, visited the
13 vessel and determined that the vessel is--has been--whatever the
14 problem was has been corrected and the vessel is safe. So we--we
15 do issue captain-of-the-port orders. For that we also can--okay,
16 I'm sorry, that's captain-of-the-port orders.

17 Q. Thank you. How about--you mentioned officer in charge of
18 marine inspections. So unless you have anything additional for
19 that one--do you have anything additional for that one?

20 A. I would just--for the public, I would say that the officer in
21 charge of marine inspection is the officer that's in charge of
22 the marine inspectors and the people in the prevention program.
23 And so that person or that position works under the captain of

1 the port. So that's a specific division under the captain of the
2 port that has to do with marine issues and prevention of
3 accidents. That was OCMI.

4 Q. So if I understand correct, that's like a different
5 authority. It can be the same person, but it's a different
6 authority. Is that----

7 A. Yes.

8 Q. ----right?

9 A. That's my understanding, Yes, sir.

10 Q. Thank you, sir. So in terms of control options, what about
11 regulated navigation areas?

12 A. So the captain of the port can restrict or regulate a
13 particular area of his area of responsibility--his or her area of
14 responsibility. And so the captain of the port has the authority
15 to shut--totally shut down a port if they--if they--if he or she
16 thinks it's appropriate. That, for example, is done with our bar
17 restrictions as a regulated navigation area that we know to be a
18 problem when there's bad weather. And so they can, for example,
19 close the--the operation of vessels coming in and out of the bar
20 should certain criteria manifest itself. And so normally that's
21 done by restricting the movement of non-commercial traffic. It's
22 not our business to try to stop commercial entities from--from
23 doing what they do, but the captain of the port can shut down the

1 entire port if, for example, the SAR responses can't go into the
2 weather that exists. Then the captain of the port could shut
3 down and nobody could enter or leave a particular port unless
4 there was an emergency, a force majeure.

5 Q. Thank you. What about--as an operation patrol, what about
6 orders from commissioned officers, petty officers and warrant
7 officers of the United States Coast Guard?

8 A. I can't speak to that. Sorry.

9 Q. Knowing what you know about the loss of the MARY B II and her
10 crew, do you have any information or insights that you'd like to
11 share with this investigation?

12 A. No. What I would like to say is that--that I'd like to give
13 my condolences to the families of the vessel. I do think that
14 the work that you're doing is extremely important for us to
15 improve safety. So whatever we can learn from this, we should do
16 that. I would say that I would like to see us be able to provide
17 this training to the mariners--this additional training as--as
18 required by some of the recent authorization acts for the Coast
19 Guard, get those regulations in place so that we can provide this
20 training to the mariners. I would like to also see these
21 voluntary safety initiatives become mandatory. So I hope those
22 regulations will move forward and ultimately become enacted.

23 Q. Sir, based on your experience, do you think that injuries and

1 accidents are reported accurately or under-reported?

2 A. I'm sure they're under-reported, especially non-fatal
3 injuries. Fatal injuries, we will hear about those, but non-
4 fatal injuries, those like Oregon State has been working on, I'm
5 sure that we do not hear many of--many of them, not--not reported
6 to the Coast Guard.

7 Q. In your opinion, sir, is there anything that the Coast Guard
8 could do more to improve the safety of operation of commercial
9 fishing vessels?

10 A. Besides what I--I just mentioned and the continued work by
11 NIOSH and Oregon State University, I can't think of anything
12 additional.

13 **LIO:** Thank you. Thank you for your testimony. I have no
14 further questions. I'll see if the other members of the
15 investigation team have any follow-up questions. Lieutenant
16 Bigay?

17 **Questions by the assistant investigating officer:**

18 Q. Good morning, Mr. Hardin.

19 A. Lieutenant.

20 Q. Do you know of any work such as maybe a Coast Guard task
21 force that has been enacted to look at trends in commercial
22 fishing vessel casualties and make safety recommendations?

23 A. I don't know of a task force, per se, but we have been

1 working actively with the National Institute for Occupational
2 Safety and Health to do that analysis, to determine trends and
3 determine ways to--to mitigate risks that's been identified by
4 those. I know that the Coast Guard has the Office of
5 Investigation, and I know that they are continually doing that
6 kind of work, but I don't know if a specific task force doing
7 that work.

8 Q. Not currently but in the past, I mean, have you heard of any?

9 A. Yes, I have.

10 Q. Can you elaborate?

11 A. I can't remember its name. So back about 20 years ago, there
12 was a task force put together, can't remember its name--Living--
13 Living to Fish, Dying to Fish. So a group of experts, commercial
14 fishing vessel folks--this was before my time--got together with
15 some senior leadership to--to look at various accidents and
16 determine certain things that we could to mitigate those kinds of
17 risks. So, yes, called Living to Dish--Living to Fish, Dying to
18 Fish.

19 Q. In general terms, I know we don't have that right now for
20 you, but you're aware of that task force in general terms. Do
21 you remember some of the safety recommendations?

22 A. Not right here right now. I think in my day-to-day work I'm
23 always looking for trends of accidents and then looking for ways

1 to reduce those accidents. So I--for example, if I might--each
2 year what I try to do is to get a summer hire to work with the
3 NIOSH office in Alaska to help go through the Coast Guard's
4 database, MISLE, to take information from the MISLE casualty
5 reports and get it into the CFVIT database. That's the
6 Commercial Fishing Vessel Industry database that NIOSH runs.
7 That allows us then to easily go through the information and
8 identify, you know, like what size vessels or what location of
9 the country or what kinds of injuries or accidents are happening
10 so that we can identify ways to stop those. So that's my
11 consistent and constant job. I'm sorry that I don't remember
12 specifically what fish--Living to Fish, Dying to Fish
13 recommended.

14 Q. Not a problem. Thank you. So earlier in your testimony you
15 mentioned that there are certain--in--in the sense of having, for
16 example, a question about a fishing vessel from Florida that
17 moves to area of colder water, and you mentioned something
18 regarding being--it being the responsibility of the operator that
19 they should be aware of verifying that and reaching out to
20 examiners and making sure they're within compliance.

21 A. Yes.

22 Q. What about cases where the mariners failed to do that and--
23 and are not compliant? Do we have a way to verify that?

1 A. Yes, ma'am. So as I mentioned before, the Coast Guard--the
2 underway units will board a commercial fishing vessel at sea and
3 they'll examine the vessel for compliance with the commercial
4 fishing vessel safety regulations. If they examine a vessel and,
5 for example, find that the vessel doesn't have the appropriate
6 survival craft for the area that they're operating in, the vessel
7 would be written up for failure to comply with that. Normally
8 what would happen is--in fact, they would--if they found one
9 deficiency, they would look for any deficiency on board the
10 vessel at all. So during the at-sea boarding is the time that
11 we'd find something like that. We could also potentially find
12 that during a courtesy--excuse me, during a mandatory dockside
13 exam, where--when our examiner is on board. They would find that
14 the vessel was not appropriately outfitted with the safety
15 equipment required for the area they're going to operate in.

16 Q. Understood. So outside of us conducting that mandatory exam,
17 when you mentioned an exam done by the boarding team members
18 and--and we being able to verify this, that's--how consistent is
19 that? Is that something that happens because we know that vessel
20 came from Florida or that's just because we happened to board
21 that vessel?

22 A. It would normally be because we just happened to board that
23 vessel. Now, our dockside examiners do know the fishermen in the

1 various ports. And--and so they talk with them all the time.
2 The great thing about our examiners doing the drill course for
3 the fishermen is that really puts us in a--in a--in a different
4 environment than we're normally in. And so we're actually in the
5 classroom with them for several days. That creates an
6 interaction that we don't normally get or my examiners get out of
7 Marine Safety Unit Portland, for example, where they get to know
8 them on a--face-to-face interaction. And so then when--when we
9 have that kind of relationship with the fishermen, we learn when
10 somebody new has come into town and we can reach out to those
11 folks. So although there's no official reporting standard, if we
12 hear that somebody has come in from somewhere else--and we often
13 do--for example, we'll know if there's construction going on of a
14 vessel in another port that's going to come our way and it's
15 going to be a new vessel for our area. The dockside folks down
16 there might contact us from the port, but there's no check-in
17 process other than keeping your eyes open and listening to what
18 the fishermen have to say.

19 Q. Understood. And so you said it seems like there's many
20 layers to ensure that we have that understanding. Is that
21 foolproof or are there gaps?

22 A. There's certainly gaps. But, again, it is the master's
23 responsibility to make sure that they're complying with

1 regulations that are applicable to them. And so ultimately it's
2 the master's responsibility to ensure that they're in compliance,
3 and we will do everything we can to help them do that.

4 Q. Understood. Thank you. So earlier in your testimony you
5 mentioned that--in relation to fishing vessel examinations, you
6 mentioned that obviously fishermen, they--they want to spend
7 their time fishing and, therefore, want to minimize unreasonable
8 amounts of time spent doing exams. Does the same pressure exist
9 for industries such as container vessels, tankers, cruise ships?

10 A. Oh, absolutely. You can imagine that it could take several
11 days to do an inspection of, for example, a tank ship. And so
12 they're going to want to satisfy the--the flag state where that
13 is, that they're in compliance. So they normally hire people to
14 do that job for them or they'll have people in their company, for
15 example, an engineer that's called a port engineer. Their
16 function is to provide the Coast Guard whatever they need to
17 satisfy themselves that this vessel is in compliance with
18 whatever regulations they're--they're required to comply with.
19 So it's--it's the same thing. They like to be done and get on
20 their business of carrying freight from point A to point B.

21 Q. Understood. But--and--but you mentioned that they have some
22 assistance in being able to comply. Why the need for that
23 assistance? Does that have to do with the scope of the

1 examination and the level of the requirements?

2 A. Yes. There are myriad regulations that are applicable to all
3 these different kinds of vessels. Let's get back to commercial
4 fishing vessels. The reason that the Coast Guard, one,
5 established required safety measures for--safety equipment
6 requirements for commercial fishing vessels, depending on where
7 they operate and so on--they also created the courtesy dockside
8 examination program. And so what the--that program did was
9 assist these operators in understanding what regulations were
10 applicable to them. So it's a relatively complex thing because
11 of all the various operating parameters and can be difficult to
12 understand. "What am I supposed to have and what am I not
13 supposed to have? I'm not an expert in this; I'm a fisherman.
14 That's what I do, I fish." And--and so the Coast Guard provided
15 the voluntary dockside exam program. And the--and the reason
16 that I created the checklist generator was specifically to help
17 them understand without them having to read all the regulations
18 that are in this book and tell them just exactly what they needed
19 so that they could easily comply. And I know that many of them
20 want to comply. And so if you provide them a way to easily do
21 that, they can get the vessels ready. They don't have to ask for
22 us to come out first and then return later. They can just get
23 their list, get all their equipment on board, have the Coast

1 Guard come out, have them get their decal so they can go fish.

2 Q. Understood. Thank you, sir. Now, you mentioned those
3 courtesy checks and then some training pulse operations that--
4 that we conduct. You mentioned specifically training for
5 stability and the drills as well. Are those pulse operations or
6 trainings--is that because of the specific hazard that you've
7 identified?

8 A. Yes. As I mentioned, the Dungeness crab fishery was
9 identified--and we've known it for a long time, that this is our
10 most hazardous fishery. We were surprised to find out it was
11 more hazardous than Alaska fisheries based on the research that
12 NIOSH did, but we knew that our Dungeness crab fishery was the
13 most hazardous fishery. We had more fatalities in this
14 particular fishery than any of our other fisheries in the Pacific
15 Northwest. And so we then sent people out to help make sure that
16 operators had, one, their required equipment and, two, they knew
17 how to use it and--and how to manage potential sinking or other
18 stability issues. We just wanted to provide them with as much
19 information. We thought if we could do that, we could reduce the
20 number of fatalities, and we've--we've--have been able to do
21 that, for sure.

22 Q. Understand. Thank you. Now, given all of these concerns,
23 why are these voluntary requirements? Why are they not

1 mandatory?

2 A. Okay, one, the requirements are mandatory, and the dockside
3 exams are mandatory. So--so congress has provided us with
4 regulations to require these vessels to get these examinations.
5 But these examinations at this point are really having to do with
6 the safety equipment and not material condition. And so we
7 would--as I mentioned before, we would like to be able to look
8 further into examination of vessels to make sure it's materially
9 in sound condition. So we don't have that ability as of yet.
10 So, again, as I mentioned, these are classified as uninspected
11 vessels, as opposed to inspected vessels.

12 Q. Understood. Sir, we've heard testimony about the use of
13 ranges specifically in this local area, Newport, and the
14 different ways that fishermen communicate about those ranges and
15 how that may differ from the way the Coast Guard communicates
16 about those ranges. Within the current scope of fishing vessel
17 examinations, does the Coast Guard have a way to assess operator
18 knowledge about Aids-to-Navigation and terminology that they use
19 in the way that they communicate about these aids?

20 A. No, we do not. I am a prevention expert and not an operator.
21 So--and during our examinations we don't ask people those--those
22 specific questions.

23 Q. Understood. You mentioned just now about safety equipment

1 and focus on--on emergency and safety equipment and your desire
2 for--for the scope to be more, you know--look into machinery
3 and--and other things to prevent accidents. With that in mind,
4 once an emergency situation occurs, given the conditions that
5 fishing vessels, specifically Dungeness crab fishing vessels,
6 operate in, are there situations where emergency equipment is
7 ineffective in saving lives in the way that there's not enough
8 time to use it?

9 A. Well, absolutely, if--if something is immediate and happens--
10 for example, you wind up on a jetty, if you happen to have your
11 personal flotation device on at that time, then you'll be able to
12 utilize the safety provided by that particular piece of
13 equipment. You're not going to have time to go launch a life
14 raft. You're not going to have time to throw a marine buoy or to
15 light up a flare. So there are things that happen immediately
16 that, if you don't have whatever it is you need to survive on you
17 at the time, you're not going to have time to--to use any of that
18 equipment that we've made sure was aboard the vessel.

19 Q. Is this what informs your desire to have more measures that
20 go to the heart of preventing these accidents that will be more
21 effecting--effective in preventing fatalities?

22 A. So that certainly is the job of the Marine Inspection
23 Department. That's under the prevention envelope that I talked

1 about. And so, yes, the--prevention is more than just providing
2 safety equipment. It's preventing accidents from happening. And
3 so within the bounds that I've been given by regulation, we do as
4 much as we can to mitigate risk, but we don't have the authority
5 that we have on inspected vessels for commercial fishing vessels.

6 Q. Understood. I have two final questions. Sir, what is the
7 minimum age for someone to be a master or operator for a vessel
8 under 200 gross tons such as the MARY B II?

9 A. There is no minimum age.

10 Q. So within Coast Guard regs alone, not taking into account
11 insurance or any other state requirement, is there anything
12 within Coast Guard regs right now that prevents a, let's say, 14-
13 year-old from operating a fishing vessel?

14 A. No, not that I'm aware of.

15 Q. How about from being part of the crew?

16 A. No, not that I'm aware of. In fact, Alaska has specific laws
17 from the state talking about children workers aboard their
18 parents' vessels. So it's interesting that the state took that
19 issue on, but there's no federal oversight related to age of crew
20 members or--or operators, per se. I think some of the states
21 have that, but not federally that I'm aware of.

22 **AIO:** Understood. Thank you, sir.

23 **LIO:** Mr. Reilly?

1 **PIIC:** Lieutenant Woods, can we see Exhibit 19, page 10, please.

2 **CROSS-EXAMINATION**

3 **Questions by the party-in-interest counsel:**

4 Q. Mr. Hardin, good morning.

5 A. Good morning, sir.

6 Q. Thank you for being here.

7 A. Yes, sir.

8 Q. Thank you for your service and the important work that you
9 and your examiners are doing. I just wanted to follow up on this
10 exhibit. We'll be talking to Examiner Kee this afternoon
11 regarding how he conducted a particular inspection and what his
12 understanding of this form is, but I just wanted to make sure
13 because when Commander Denny asked you about the hazardous bar
14 plan element of this form, does District 13 or does the fishing
15 vessel safety program in general have any expectations as to the
16 scope of that part of the examination, just that annotation
17 "hazardous bar plan"? Is there any definition of what an
18 examiner should be looking into in order to check that "yes" box?

19 A. No, just local training.

20 **PIIC:** All right. Thank you, sir. Thank you, Commander.

21 **LIO:** Thank you. Mr. Hardin, you're now released as a witness
22 from this formal hearing. Thank you for your testimony and your
23 cooperation. If I later determine that this board needs

1 additional information from you, I will contact you through your
2 counsel. If you have any questions about this investigation, you
3 may contact the investigation recorder, Lieutenant Luke Woods.
4 Thank you.

5 **WIT:** Thank you, Commander.

6 **LIO:** It's now 10:34. We're going to take a 10-minute break--10-
7 minute recess. We'll reconvene at 10:44.

8 [The hearing recessed at 10:35 a.m., 16 May 2019.]

9 **[END OF PAGE]**

10

11

12

13

14

15

16

17

18

19

20

21

22

23

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 16 May 2019

4 WITNESS: BMC JASON McCOMMONS, USCG (resumed)

5 [The hearing was called to order at 10:45 a.m., 16 May 2019.]

6 **LIO:** Ladies and gentlemen, it's 10:44 and we're going to go
7 ahead and reconvene this public hearing. Please be seated.
8 We're now going to hear testimony from our next witness. This is
9 Chief Boatswain's Mate Jason McCommons, who is being recalled
10 from previous testimony. BMC McCommons, please come forward to
11 the witness table. Chief, as a reminder, you are still under
12 oath from previous testimony. So please have a seat.

13 **WIT:** Yes, ma'am.

14 **CHIEF BOATSWAIN'S MATE JASON McCOMMONS, U.S. Coast Guard, was**
15 **previously sworn and testified further as follows:**

16 **LIO:** When we broke our testimony a few days ago, Mr. Reilly was
17 in--questioning. So, sir, you may continue your questioning.

18 **PIIC:** Thank you, Commander.

19 **CROSS-EXAMINATION (RESUMED)**

20 **Questions by the party-in-interest counsel:**

21 Q. Chief, thanks so much for coming back.

22 A. Good morning.

23 Q. In this hearing, we've heard from several persons who

1 testified about their observations regarding the pre-casualty
2 behavior of Mr. Biernacki. Has anybody described those
3 observations to you?

4 A. No.

5 Q. In general, if the station receives real-time information
6 about the impairment of a person actively operating a vessel in
7 Yaquina Bay, is the station empowered to launch a ready boat to
8 investigate?

9 A. Yes, sir.

10 Q. Has something like that happened in your experience at small-
11 boat stations where you receive real-time information, sort of
12 first-person observations about the impaired capacity of a vessel
13 operator?

14 A. Yes, sir.

15 Q. 14 U.S. Code 89 empowers the Coast Guard to board a vessel to
16 ensure compliance with all applicable laws.

17 A. Correct.

18 Q. And it is illegal to operate a vessel while impaired. Fair
19 to say?

20 A. Yes.

21 Q. And your crews are trained--your boarding officers are
22 trained to recognize signs of impairment?

23 A. Yes, sir.

1 Q. The bait dock in Yaquina Bay, is that one place or are there
2 multiple bait docks?

3 A. I would say the whole port dock area is the main dock.

4 Q. The board received some compelling testimony yesterday
5 regarding the reported observation of Mr. Biernacki in a clearly
6 impaired state the morning of January 8th. Had your station or
7 the sector received a phone call maybe 5:00 or 6:00 a.m. in the
8 morning regarding a report that the operator of the MARY B
9 leaving the bait dock was acting strangely and likely under the
10 influence of drugs and was heading out to go fishing, what, if
11 any, steps would the station or the sector take?

12 A. Are you asking me if I was aware that that happened?

13 Q. No, it didn't happen. I'm saying if--if it had happened, if
14 the Coast Guard had received such a call that a commercial
15 fishing vessel operator was acting strangely and clearly under
16 the influence of drugs, what, if any, steps would have been
17 appropriate for the station to take?

18 A. Well, if the vessel was underway, we would respond
19 immediately.

20 Q. And you have the capability at the station to literally
21 respond pretty quickly.

22 A. Yes.

23 Q. Fair to say a timely call from a witness with information

1 about impairment is a lot more valuable to the Coast Guard than a
2 report 5 months later at a board hearing about an observation of
3 impairment?

4 A. I would--I would assume so.

5 Q. If your crew had boarded the MARY B that morning and observed
6 the operator was impaired, what, if any, steps would be
7 appropriate for the boarding crew to take?

8 A. Well, it--at any time we board a vessel and we--and we think
9 that there's reasonable suspicion of some type of intoxication,
10 we will return them back to port and/or the dock. We typically
11 call Oregon State Police, Lincoln County sheriff or the local
12 Newport PD to assist.

13 Q. But you would be empowered to--to at least temporarily
14 terminate the tra--transit of that vessel until more information
15 was gathered regarding the impairment?

16 A. Absolutely.

17 Q. And the type of informa--intervention, the boarding and
18 potential termination of that vessel, those were all available
19 under current authorities that the Coast Guard already has.

20 A. Any time that we--the Coast Guard station is going to
21 terminate a commercial vessel, there's thresholds associated with
22 that, and so we would have to vet those all the way.

23 Q. Sure, but you--in the meantime, you--the vessel wouldn't be

1 operating and--and continuing on its voyage. Would that be fair
2 to say?

3 A. If we suspected intoxication, that's correct.

4 Q. Now, we've been provided an instruction from the station
5 regarding vessel escorts. Are you familiar with that
6 instruction?

7 A. Yes, sir.

8 Q. And as I understand, this instruction was finalized and dated
9 January 22nd, 2019. Does that sound correct?

10 A. Yes, sir, it is.

11 Q. And the instruction has some specific guidance--internal
12 guidance for the Coast Guard here at Yaquina Bay regarding a
13 variety of issues that have to do with weather and--and vessel
14 transits. One of them is the topic of vessel escorts. Is that
15 correct?

16 A. That's included in the instruction, yes, sir.

17 Q. And the guidance that is in that document dated January 22nd,
18 is that the type of information and the type of guidance that was
19 being trained on at the station prior to January 22nd?

20 A. Yes, absolutely. If I can expand on that---

21 Q. Please.

22 A. I've been at the--the small-boat station here at Newport for
23 10 years in total, and we have always practiced what's in that

1 instruction as best practices. We've always conducted vessel
2 escorts in that manner that's in the instruction. The reason
3 that the date is showing January 22nd is we were actively in the
4 process of writing that instruction during the holidays and we
5 didn't finish it 'til the middle of January.

6 Q. Thanks, Chief. With respect to that instruction, it's very
7 detailed. I'm wondering if it has been sort of boiled down into
8 a checklist on board the vessels--available to the vessels. And
9 specifically I'm--I'm asking if there's a vessel escort checklist
10 that's available on board the Coast Guard vessels for reference
11 that incorporates this sort of more detailed information that's
12 in the instruction.

13 A. We don't currently have a checklist to operate off of that
14 are on the boats. That's all known with the coxswains and the
15 operators on the boat, and it's going to--that's going to be
16 vetted from both assets that are underway, from the mobile-1
17 that's on the hill, to the tower, to the commander representative
18 that could be back at the station. So there's--there's many
19 different layers to make sure that we're in line with asking the
20 appropriate questions and making sure that we fully understand
21 the situation when we're doing escorts.

22 Q. I see you've brought some demonstrative equipment with you.
23 Can you tell us what you brought?

1 A. We have a chart, it looks like up here, for the local area
2 and then some charting tools just in case you're going to ask me
3 some distances.

4 Q. We'll get into that in a second. On board the 52 and 47
5 you've got surface radars?

6 A. Yes, sir.

7 Q. And those surface radars are typically turned on when you're
8 conducting vessel escorts and operations in and out of the
9 jetties?

10 A. Yes, sir.

11 Q. Are those the type of radars that are equipped with the
12 capability of flagging a vessel and receiving information back
13 regarding the vessel's course and speed?

14 A. Yeah--the capability is there, yes.

15 Q. Is that capability something that's normally used maybe in
16 heavy-weather operations when there's a lot of things going on?

17 A. Not--not typically, no.

18 Q. Some testimony--well, maybe it was in the--the record
19 regarding the radio communications on channel 121 where was a
20 discussion of being sort of belted in and ready to go for heavy-
21 weather operations. Can you describe what--what that means in
22 the context of the 52 and 47, what--what it looks like inside
23 those deckhouses where the people doing the operations are

1 strapped in or however they're oriented?

2 A. Yes, sir, so anytime we're operating in heavy weather
3 conditions and circumstances like this, we communicate amongst
4 each other to make sure that we all have our proper protective
5 equipment on, such as belts, helmets, and everyone is belted in
6 and clipped in and the helmets are on properly. That--that's
7 just a form of communication that lets the other boat or lets
8 mobile-1 or the station know that we're prepared in line with
9 Coast Guard policy for heavy-weather operations. As far as the
10 orientation goes, most everybody is going to be up on the open
11 bridge, exposed to the environment. No one is going to be inside
12 the deckhouse. Everyone is outside with 360-degree views.

13 Q. And when they're strapped or belted in, does that mean
14 they're sitting down and they've got--they're--they're, in a
15 sense, affixed to a seat that helps protect them from being
16 thrown over?

17 A. No, sir, we're all standing.

18 Q. Okay, so there's a lanyard or something like that ties them--
19 I'm not sure what the belt refers to, then.

20 A. Yeah, so with the exception of the--on the 47-foot motor
21 lifeboats the coxswain is seated and has a seatbelt on and also a
22 heavy-weather belt. The belt is clipped in 90 degrees, one on
23 this side and one on that side. And on the VICTORY, there are no

1 seats. Everyone is standing and everyone is clipped into D-rings
2 that are welded on the boat, which will prevent you from falling
3 overboard.

4 Q. Do those belts also assist the people in carrying out their--
5 their performance, whether it's lookout or helms--helmsman during
6 heavy-weather vessel movements? They keep--they assist in
7 lateral movement protection?

8 A. Yeah, they basically--if you lose your footing, the belt is
9 going to catch you, so hopefully you don't fall down and injure
10 yourself and you stay in a stationary position.

11 Q. From time to time do the course of your duties take you on
12 board commercial fishing vessels, 50, 60, 40-foot vessels?

13 A. Yes, at times. Typically not in sea conditions we're like
14 that, we're not on board, sir.

15 Q. During those times when you are on board fishing vessels, are
16 many of those vessels equipped with similar sort of protective
17 equipment that would assist the people who are on the bridge
18 operating the vessel during heavy weather?

19 A. From my experience, I've never seen a commercial boat have
20 those types of capabilities. Of course it's--if they wanted to,
21 I'm sure that they could, but I've never seen that.

22 Q. When we left off the last testimony, we were--I was trying to
23 get an understanding of the distances between sort of the--the

1 waiting area outside the hazardous condition to the area inside
2 the jetty where it was less hazardous. I wanted to understand
3 that distance and I wanted to consider the question of a vessel
4 at the speed of 5 knots or 7 knots, how long it would take them
5 to maneuver that--to make that distance. Would you be able to--
6 to assist in that with the use of the--the chart?

7 A. Yes, sir. I--I went back and actually looked up and did the
8 work. So in relation to the distances we discussed that--it's
9 approximately 1800 yards from buoy number 1 to the jetty tips. A
10 vessel going approximately 10 knots is--is going to be inside the
11 jetty tips within about 5 to 5½ minutes in a--in a perfect
12 scenario at 10 knots.

13 Q. Okay. So 5--5 knots, be twice that long.

14 A. Five knots would be roughly about 11 minutes, between 10 and
15 12 minutes at 5 knots. And that's not factoring current or wind
16 or anything associated like that.

17 Q. Yeah, that's just speed made good.

18 A. Yes.

19 Q. Not necessarily what your engine is turning for. It's how
20 you're actually traveling.

21 A. Yes, sir.

22 Q. I think there was testimony and perhaps you can elaborate on
23 this, just getting inside the jetty tips, not necessarily out of

1 the hazard area, the safer area is further inside the jetty tips,
2 some distance beyond that.

3 A. That's correct. From my experience, you're not safely across
4 the Yaquina Bay bar until you're--in those types of conditions
5 until you're inside of lighted aid number 4, east of aid number
6 4.

7 Q. That's several hundred yards inside the tips? It's an
8 estimate.

9 A. It's approximately 200 yards inside the south jetty tip is
10 where number 4 is.

11 Q. I think we established the virtual location of buoy 3 is
12 about halfway between the end of the north jetty and where buoy 1
13 is, approximately.

14 A. Yes, sir, that's accurate.

15 Q. If the period of the lull on January 8th was approximately 5
16 minutes, is it fair to say a vessel doing around 5 knots, maybe
17 even a little faster, would not make the distance from buoy 1 to
18 the jetty tips during that lull?

19 A. There are so many other factors associated with that, as we
20 discussed, but--but typically speaking, a vessel traveling at a
21 slower rate will not be able to make it inside the jetty tips
22 until the next series or set comes through, from my experience.

23 Q. They're going to have to withstand at least one set--a small

1 set and a big set, at least one cycle of the really bad
2 conditions on their way in from buoy 1.

3 A. Possibly.

4 **PIIC:** One moment, Commander.

5 Q. Are you aware of any communications from any person to the
6 Coast Guard prior to January 8th, 2019 warning the Coast Guard
7 that Mr. Biernacki was impaired, was using drugs, was operating a
8 vessel under the influence of alcohol?

9 A. No, I'm not. I'd never heard of the vessel name before that
10 night.

11 Q. And since this investigation started, has--have you been made
12 aware of any notification to the Coast Guard that occurred prior
13 to January 8th about those apparent observations that the people
14 have testified to here?

15 A. I am not, no.

16 **PIIC:** Thank you, Commander.

17 **LIO:** Lieutenant Commander Foster?

18 **TA:** Good afternoon, Chief--good morning, Chief. Lieutenant
19 Woods, please display Coast Guard Exhibit 003, page 2. Chief,
20 I'm going to be putting this graphic up for the general
21 edification of the public. You should have a laser pointer in
22 front of you. If at any time to better illustrate your point--if
23 at any time to better illustrate your point, I'd like you to use

1 that laser pointer and, as before, use the display that's behind
2 me.

3 **REDIRECT EXAMINATION**

4 **Questions by the technical advisor:**

5 Q. In your experience when entering the Yaquina Bay bar in
6 breaking surf conditions, where will a current, specifically the
7 Davidson Current, begin to affect your vessel? And if he needs
8 to zoom in, let me know.

9 A. If you want to zoom in a little bit, that'd be great for the
10 public to see. Mainly between that buoy--that's okay right
11 there. So from my experience, when we're talking about the
12 along-shore current or the Davidson Current, you're going to
13 interact in the general area from inside of buoy 3 to the--within
14 the jetty tips. It's going to run typically--on the night like
15 in January, it's going to run from the south to the north in a
16 northerly direction and it's going to be crossing right through
17 the main channel. And it varies. It can shift one way or the
18 other, but typically you're going to see all that action right
19 inside of number 3 and by the jetty tips. And what that current
20 does is it--as it comes up, at some point it's going to interact
21 with the south jetty and then that current is going to hit the
22 south jetty and it's going to run westward. It's going to run
23 out to sea westward until it gets clear of the jetties. Then

1 it's going to continue north. So we've--in previous SAR cases,
2 we've dropped a life ring when things like this have happened--
3 dropped a life ring in this general area, which is--I'm pointing
4 on the south side of the south jetty. And that life ring has
5 been swept out to sea and then shot to the north.

6 Q. Is there an average approximation of how--the velocity of
7 that current?

8 A. I couldn't begin to speculate on how fast it runs.

9 Q. Is it affected by either a slack tide, flood tide or ebb
10 tide?

11 A. I'm--I'm sure it varies based off of the tidal conditions in
12 the river.

13 Q. For clarity, if you were conducting an escort and you were
14 behind a vessel off of quarters, as you previously testified,
15 what indications might you have that that vessel has--the vessel
16 you're escorting has become affected by that current?

17 A. Well, I've escorted personally--I wasn't underway that night,
18 but I've escorted many vessels across the Yaquina Bay bar during
19 my period. A lot of the time I'm going to sit off their quarter,
20 as we discussed, and typically the minute you get inside of buoy
21 number 3, you start to see the effects of wind and current,
22 because as you approach the jetty tip, they're going to typically
23 want to get naturally set to the north based off of the factors

1 that we discussed. So it's imperative that I do everything I can
2 when I'm behind the vessel to knock down a wave, absorb the
3 energy of that wave in trying to displace that wave, because
4 that's the direction where the wave is going to come from to
5 impact the fishing vessel. I've personally taken a 20-foot break
6 50 yards, 100 yards off of a fishing vessel's stern to--to
7 basically displace the wave to allow them to continue their
8 transit in.

9 Q. When you say you've taken a break, am I understanding you
10 correctly that you have allowed a 20-foot breaking wave to crash
11 on your vessel to disrupt it from hitting a commercial fishing
12 vessel?

13 A. That's correct, on the--specifically on the 52 VICTORY.

14 Q. In general--and let me know if this depends on the escort--if
15 a vessel is being escorted into port, which quarter do you sit
16 off of?

17 A. Well, that's going to be on a case-by-case basis depending on
18 the swell pattern and swell direction, wind. It varies.

19 Q. I'm just curious if you take into account when they enter
20 that current, which side you believe they're going to be set to?

21 A. Yeah, so what I would say is typically I'm going to sit off
22 their port quarter, which would put me more northerly, because I
23 know, based off of the danger areas that we discussed earlier,

1 that the main bulk of the energy is going to affect them off of
2 their port quarter. So I'm going to sit just a little bit to the
3 north of where they're at. I'm going to communicate with the
4 fishing vessel and let them know over--I don't expect a response,
5 necessarily, when you're in those situations. In the most
6 important time of the escort, a lot of the time the communication
7 between me and the fishing vessel is somewhat--I don't want to
8 say nonexistent, but I don't--I let them know what's coming and
9 how far it is and how big it is, but I don't expect a response.

10 Q. And why is that?

11 A. Because they're busy. They're driving, they're piloting,
12 they're navigating, they're communicating amongst themselves, I
13 would assume. I don't expect them to grab a radio and then reply
14 back to me, because they have other things that they're doing.
15 I'll talk to them after we get inside.

16 Q. Chief, are you familiar with the term "crabbing angle"?

17 A. Crab like crabbing a boat?

18 Q. Crabbing angle, yeah.

19 A. Well, I know what crabbing is.

20 Q. Okay. Once a vessel or both vessels enter that current, what
21 actions may need to be taken for the vessel to realign with
22 center channel?

23 A. So if--if you have current and you're fighting current,

1 meaning--when I say fighting, it's coming on your bow in some
2 fashion. So if--if the current is pushing on your starboard bow,
3 it's going to crab your vessel to port. If the current is--and
4 vice-versa. If you need to combat those conditions, you need to
5 adjust your course appropriately to make the course good over
6 ground to fight those elements. If you don't make that
7 correction, you're going to continue crabbing in whatever
8 direction that the current is pushing you.

9 **LIO:** How can you correct for that? With speed or rudder angle
10 only or both?

11 **WIT:** Both. You can do both. You can do one or the other.
12 Really, the important piece is the rudder angle. You have to
13 turn against it, and if you applied more power, that's only going
14 to help you.

15 Q. We've heard multiple testimonies, including yourself, about
16 how dark that evening was. If a person had a limited amount of
17 time, say 5 to 7 minutes, to realize that they were far north and
18 they were in that current, would they be visually able to
19 ascertain where they were in the channel in time to correct that?

20 A. I don't know. It would be difficult, especially at the sea
21 state. Anytime you go down in the trough, you lose visibility.
22 Every time you come up you get a peak at where you're at, and to
23 be able to make a course adjustment--and really that's--that's

1 part of our communication is, you know, continue to the north or
2 continue to the south, whatever the case may be, to provide the
3 mariner as much time to move in that direction.

4 Q. Chief, I'd like to turn your attention to earlier testimony
5 about escorts in general. If a vessel requests an escort, is--
6 are Coast Guard assets required to provide that escort?

7 A. If--a lot of the time, from my experience, the commercial
8 fleet isn't going to directly come out and say, "Hey, can you
9 come out here and--we need an escort." Right? What it--in real
10 time, what it really looks like is, "Hey, Coast Guard, what's the
11 current bar conditions doing?" and "because we're looking at
12 coming in". That--that, for me, is the telltale sign that we're
13 going to launch boats to get out there and be proactive so we're
14 not reactive.

15 Q. Roger, I understand. But are you required by policy or by
16 regulation to provide a Coast Guard escort?

17 A. We typically do that, yes.

18 Q. Are Coast Guard escorts considered normal station operations
19 or are they considered part of search and rescue?

20 A. We classify them as search and rescue.

21 Q. If a vessel requests an escort, under what circumstances may
22 the Coast Guard not be able to or unwilling to provide an escort,
23 if requested?

1 A. Well, if they ask is, we want to find out what their
2 intentions are. If their intentions are--our recommendation is
3 that the bar is too big or breaking consistently, then they may--
4 we may not get underway because they're not coming in. If
5 they're committed to coming in, we're going to--we'll get
6 underway.

7 Q. Please help me understand the parameters of "too big".

8 A. Seas that--20-foot range, extend beyond the limitations of
9 some of our assets at time, consistently breaking, there's no
10 lulls, there's no windows to--to cross. That's a major factor.

11 Q. Did the MARY B II specifically request an escort from Station
12 Yaquina Bay that evening?

13 A. I--I don't remember because I was--I was at home and--when
14 they called me. So I'd have to defer that. I'm not sure. I
15 know we did a bunch of investigative work, but I wasn't at the
16 station then.

17 Q. Is the Coast Guard permitted to make specific navigational
18 advice to mariners?

19 A. We do not give navigational advice to mariners.

20 Q. By policy or regulation?

21 A. Correct.

22 Q. When a vessel is being escorted, what information can Coast
23 Guard personnel pass to the mariner?

1 A. We typically let them know if their course--the current
2 course that they're on is--is good or not good, if their speed is
3 good or slow or fast, but we don't tell them to steer compass
4 courses.

5 **LIO:** So--I apologize for breaking in, but--so if a mariner is
6 going too slow to safely navigate, is it within written policy to
7 tell them to speed up?

8 **WIT:** Well, we're--we're naturally going to tell them to speed
9 up. It's--I believe in our instruction it talks about slow
10 speed, but we're--we're going to communicate that with the--with
11 the vessel.

12 Q. You previously testified that there are certain critical
13 times during a bar escort that you will maybe talk less to--or
14 expect the mariner not to communicate as much because you're
15 trying to let them focus. In the event that a mariner is not
16 going fast enough, would that--would you take that into account
17 or--help me understand--help me understand that.

18 A. Every situation is different. So I--I would want to know if
19 they're not making--maybe it's the current, maybe it's the wind.
20 I don't know. I want to--like, "Hey, sir, is everything okay?
21 You slowed down." I know that the VICTORY started backing at
22 some point, right? So the--the real question is why. I don't
23 know. It would make me want to gather some more information.

1 Q. Do you know how much----

2 LIO: What if the vessel operator told you that he needed to
3 focus?

4 WIT: Then I would just back off.

5 LIO: Thank you.

6 Q. So you alluded to this, but I'd like to get a little more
7 specific information. In your experience, when the weather is
8 rough, do commercial fishing vessels request bar reports and, if
9 so, how often?

10 A. Yeah, the commercial fleet--we typically have a great working
11 relationship with the commercial fleet. They communicate with
12 us. They ask us what the bar is doing. They tell us how long
13 they're going to be until they get to the bar. They ask what the
14 last bar report was. And then we typically respond like, "Well,
15 we'll go get underway and we'll provide you the accurate bar
16 report." As long as we have ample time to get out there and beat
17 them to it, we'll do everything we can to paint them the best
18 possible picture of what the bar is currently doing. It's
19 ultimately their decision on if they are going to cross or not.

20 Q. Do you let the mariners know that?

21 A. Do I let them know what?

22 Q. Does the Coast Guard provide mariners with the information
23 that, although the Coast Guard is there, they are under no

1 obligation to cross the bar?

2 A. Yes, from my experience, we do.

3 Q. How do you communicate that to the mariner?

4 A. If I'm going to communicate that, I'm going to say, "Sir,
5 just because we're out here gives you no obligation that you need
6 to come in across. All I ask is that you communicate your
7 intentions to me so we can plan accordingly."

8 Q. On the evening of the 8th of January 2019 are you able to
9 speak to whether that communication was given to the MARY B II?

10 A. I wasn't at the station. I don't know.

11 Q. Thank you. With respect to what the captains normally pass
12 for their intentions, can you give us an example of what
13 information might be passed to the Coast Guard from those
14 captains? You said their intentions.

15 A. Yeah, typically they're going to communicate that they're
16 going to wait a little longer, let some more water get on the
17 bar, meaning as the flood comes in they're going to--we're going
18 to poke up here--this is all, you know, common or slang, if you
19 will, "We're going to poke up and push up here and check it out a
20 little bit. We'll get back to you. We're going to turn around,
21 we're going to go back out to the entrance buoy or buoy number 1.
22 We're going to wait longer," or, "I'm going to give it another
23 half hour and then I'm going to look at it again." All these

1 things are--you know, they're communicating with us, we
2 communicate with them and then at some point they're going to
3 say, "Okay, it's looking like we're going to give it a shot.
4 Here we come." And then there's other times when they just start
5 steaming towards the bar and we call them on the radio and we
6 say, "Sir, are you currently inbound at this time?" and they'll
7 say, "Roger, roger."

8 Q. Once they begin that inbound run, is there a point of no
9 return where it's more advisable to continue across the bar
10 instead of turning around?

11 A. I would say the minute you start getting inside of buoy 3
12 area, you're pretty much committed--or just inside of 3, you're
13 pretty much committed. It's very difficult to turn around in
14 conditions like that.

15 Q. Because of danger of what?

16 A. Danger of getting hit by a wave, getting--the current is all
17 funneled down right at the jetty tips. So now you're dealing
18 with current or wind. So the minute you're inside there, it's
19 quite difficult to--to turn back around.

20 Q. Does station personnel have the authority to prevent
21 recreational vessels from attempting to cross the Yaquina Bay
22 bar?

23 A. Yes.

1 Q. What actions can station personnel take to prevent this
2 action?

3 A. Well, we have our bar broadcasts. We have our radio
4 transmissions. We have the bar lights that we mentioned on
5 Tuesday, the hazard signs, and we can even set--get a boat
6 underway and sit on the bar to--to contact any recreational boats
7 that are trying to cross.

8 Q. Would you point on the chart where the vessel would sit in
9 order to provide that warning.

10 A. Well, we--we can sit anywhere. We can sit at buoy number 7.
11 We can sit right at the jetty tips. We can sit anywhere from the
12 bridge up to the jetty tips.

13 Q. In the event someone--a recreational vessel does cross, what
14 actions are you authorized to take?

15 A. If a recreational does cross the restricted bar, we'll launch
16 an asset immediately to make contact with them, and if they're
17 offshore, a lot of the times we're going to contact them, get on
18 scene, assess the condition, make sure they have their
19 lifejackets on, verify their position, what their intentions--
20 they're doing, and then we may just keep them offshore until the
21 conditions subside and monitor them constantly and then come up
22 with a plan to get them safely back inside the bar.

23 Q. Does station personnel have the authority to prevent a

1 commercial fishing vessel captain from attempting to cross the
2 Yaquina Bay bar?

3 A. We--we do not unless it's under a captain-of-the-port
4 authority.

5 Q. Solely talking about station personnel.

6 A. We do not.

7 Q. In the event that you feel the conditions require you to
8 close the bar, can you help us understand who has to approve that
9 closure and the time of--the time it takes to get the bar closed.

10 A. So from my experience, if we're looking at closing the
11 Yaquina Bay bar, the--the duty personnel will communicate that
12 with myself or our commanding officer, and we'll have a
13 conversation. We'll assess risk. We'll look for vessels that
14 are offshore or any potential people or vessels that are--or
15 mariners that might be still out to sea. We're going to do
16 some--try to do some long-term planning and really--and really
17 plan for a closure ahead of time. What that looks like is we're
18 then going to communicate that to Coast Guard Sector North Bend,
19 that we're requesting a captain-of-the-port order be placed on
20 the Yaquina Bay bar based off of these conditions and why.
21 Sector North Bend is going to communicate that to Sector Columbia
22 River, and who--who has the captain-of-the-port authority. And
23 then that will then be funneled back down with the final approval

1 to us. I've seen it happen within 10 minutes, and I've seen it
2 take upwards of an hour.

3 Q. In the meantime, the vessels that you referenced that are
4 still offshore, do you make call-outs to them? Do you hail them
5 on the radio? Do you make any attempts to let them know you
6 intend to close the bar?

7 A. Absolutely.

8 Q. And how--what means do you usually do that?

9 A. Our best way is to identify the vessel and then reach them on
10 channel 16 VHF.

11 Q. Is that normally successful? Do most mariners monitor 16?

12 A. Yes.

13 Q. Are they required to?

14 A. Yes.

15 Q. Chief, I have a last couple of questions just based on your
16 personal experiences. Approximately how many bar escorts has the
17 station completed while you were underway with them?

18 A. Over 10 years?

19 Q. Approximately.

20 A. Hundreds.

21 Q. Do you conduct a bar escort the same way each time and, if
22 not, why or why not?

23 A. I would say, yes, we typically have one boat inside or at the

1 jetty tips and one vessel off their stern. There are some other
2 times where--more so in the summer season, where people that are
3 not familiar with the Newport bar, where we'll send out a 47 and
4 we'll lead the way, but that's mainly because they're not
5 necessarily familiar or it's their first time into Newport. So
6 we--we can supplement that in a different fashion, but I would
7 say 90% of the time we have two boats, especially in heavy
8 weather conditions. We'll conduct two-boat escorts, as we've
9 already talked about.

10 Q. To the best of your knowledge, did the MARY--did the escort
11 of the MARY B II deviate from written guidance and training on
12 how to do bar escorts?

13 A. No, not at all.

14 Q. Based on your experience and to the best of your knowledge,
15 did the escort of the MARY B II deviate from your previous 10
16 years' experience of doing bar escorts?

17 A. No, I would have done it the same way if I was out there.

18 **TA:** No further questions, Commander.

19 **LIO:** Chief, I have a few questions.

20 **Questions by the lead investigating officer:**

21 Q. You've been here a long time, right, 10 years. So do you
22 believe, based on your professional opinion, that we need channel
23 buoy number 3 for the safety of operations?

1 A. For me, the buoy 3 is--is nice to have. I know that the
2 commercial fleet doesn't necessarily like it in the wintertime
3 because they like to--to operate in certain ways with the swell
4 pattern in order to--to operate the bar, but I like buoy 3 there
5 just because it's a visual reference.

6 Q. Same question as far as do you--do you think that we need a
7 light for the north jetty, based on your professional opinion,
8 for safety of operation?

9 A. No. Would it be nice? Sure. But do I think we need one?
10 Probably not.

11 Q. How often does Station Yaquina Bay receive information about
12 the impairment of a fishing vessel operator?

13 A. Slim. Not--not all--not--not too often.

14 Q. How many reports are you aware of in the past 12 months?

15 A. Maybe--maybe one.

16 Q. We've spoken about the Davidson Current, which is a
17 powerful--powerful current that runs along the shoreline and
18 flows south to north during the winter months. Are fishermen in
19 the Pacific Northwest generally acquainted with this current?

20 A. I would say yes.

21 Q. How about professional mariners?

22 A. Professional mariners? I would say yes. Your first
23 question, was it---

1 Q. Commercial fishermen.

2 A. Yeah, I would say that they're familiar with along-shore
3 current.

4 Q. How about recreational boaters?

5 A. Probably not so much.

6 Q. During a vessel escort of the fishing vessel--of a fishing
7 vessel, how many times have you advised a fishing vessel about
8 the Davidson Current?

9 A. I would say--I would say often. You know, you're--the
10 communication--"You're getting set to the north. Know you might
11 need to come--adjust your course to the south, come to
12 starboard," things like that. It's--it's happened before.

13 Q. Do you know of any other ways that a mariner can find out
14 that information, for example, any pamphlets or--or other sources
15 of information?

16 A. I don't want to speculate, but I'm sure there--not off the
17 top of my head, but I'm sure that there are.

18 Q. Have you ever heard about "Know Before You Go: Washington
19 and Oregon Bar Conditions"----

20 A. Yes.

21 Q. ----that document?

22 A. Yes, ma'am.

23 **LIO:** Lieutenant Woods, would you actually bring up Exhibit--

1 Coast Guard 062, which is labeled "U.S. Coast Guard Guidance for
2 Mariners: Hazardous Bar and Web Page Capture". If you could
3 please zoom in on--zoom the highlighted parts.

4 Q. Chief, could you please--could you please take a look and
5 just read the highlighted part in the second paragraph. Sorry,
6 do we need to zoom it a little bit more?

7 A. No, I'm okay. Just the second paragraph?

8 Q. For now.

9 A. [Complied.]

10 Q. Can you actually, for the benefit of the public, read it out
11 loud.

12 A. Yes. Sorry.

13 "The U.S. Coast Guard National Water
14 Service..."

15 Q. Sorry--go ahead.

16 A. "...have teamed up to provide the most up-
17 to-date forecast information and sea
18 condition, observations for coastal bar
19 conditions along the Oregon and Washington
20 coast. Each port provides a local area
21 radio broadcast on 1610 AM that gives the
22 current observed weather conditions and any
23 restrictions that may be in place."

1 Q. Chief, could you please read the next highlighted portion.

2 A. "The Coast Guard and NOAA provide this
3 information to assist mariners in making
4 sound decisions for navigating safely, but
5 the safe navigation is the responsibility of
6 the vessel operator."

7 **LIO:** Lieutenant Woods, could you please go to page 2.

8 Q. Chief, would you please read the highlighted part at the top,
9 under "coast bars".

10 A. "Even on calm days, a swift ebb tide may
11 create a bar condition that is too rough for
12 small craft, any vessels under 65 feet."

13 **LIO:** And lastly, if we could go to--to the section for the
14 Yaquina Bay bar, which is page 12 of this document.

15 Q. Chief, would you please read that.

16 A. Just the highlighted portion?

17 Q. Yes, please.

18 A. "For the north jetty specifically, stay well
19 clear of the end of the north jetty, since
20 there is a danger of shoal water, breakers
21 at the extreme end. Remain in the channel
22 outbound until you have passed Yaquina bay
23 entrance. Approach lighted whistle buoy,

1 the YB buoy. This applies to entering the
2 river as well, and mariners should
3 anticipate a north to south beach current
4 during the summer months and a south to
5 north current during the winter months."

6 **LIO:** Thanks, Chief. For the record, this board highlighted
7 sections that were just displayed and read by Chief McCommons.

8 Q. So this is a source document that you were aware of that's
9 available to mariners to better understand the conditions in your
10 operating area; is that correct?

11 A. Yes, ma'am.

12 Q. So this would be considered knowledge that local fishermen
13 would have and that mariners would be expected to find for the
14 safety of their vessel.

15 A. I would assume so, yes.

16 **LIO:** Thank you. Mr. Reilly?

17 **RECROSS-EXAMINATION**

18 Questions by the party-in-interest counsel:

19 Q. Chief, you responded to a question about the frequency of
20 reports about impaired fishing vessel operators. Let me ask, in
21 your--the last year of--are you aware of any time the Coast Guard
22 ignored a report of an impaired fishing vessel operator located
23 pretty close to the station?

1 A. Commercial, no. The one I referenced was a recreational boat
2 from within the last year.

3 Q. And so my question was just to inquire. The Coast Guard
4 doesn't ignore reports when it receives it. Fair to say?

5 A. No, we're going to do our due diligence to investigate it.

6 **PIIC:** All right. Thanks again for your testimony, Chief, and
7 thanks a lot for doing the--the homework so we didn't have to
8 open that stuff up. Thanks so much. Thanks, Commander.

9 **LIO:** Thank you. Lieutenant Bigay?

10 **AIO:** Yes, ma'am.

11 **REDIRECT EXAMINATION**

12 **Questions by the assistant investigating officer:**

13 Q. Good morning, Chief. Earlier we mentioned and discussed an
14 instruction regarding station's preparation for escorts. Would
15 it be fair to say that there are variables when you're dealing
16 with specific situations that arise that you're not going to be--
17 you're not going to be able to capture within that instruction?

18 A. I would say everything is so dynamic and unless you've been
19 on the bar in those types of situations, there's--you can't break
20 out a piece of paper and follow something.

21 Q. With this in mind, if you were unable to make contact with a
22 vessel via radio, how does that impact your ability to prepare
23 for an escort?

1 A. There's a lot of unknowns. I don't know about--I don't know
2 how many people there are, don't know the status of the vessel.
3 I don't know what their normal cruising speed is. There's a lot
4 that I don't know that I want to know.

5 Q. So you're saying--so you're saying that would affect your
6 ability to prepare for that escort?

7 A. Yes.

8 Q. Chief, same question but in terms of the identification of a
9 vessel. If--we've heard from previous testimony that the MARY B
10 II, while the Coast Guard was preparing for the escort, was
11 identified through AIS as the BESS CHET, which was the name it
12 was under while under previous ownership. How would that affect
13 your preparation for an escort?

14 A. With the uncertainty as to the name of the vessel?

15 Q. Yes.

16 A. Well, I would think maybe there's more than one vessel. I--
17 then it creates some type of confusion as to who I'm actually
18 looking for. So until I can get on scene with a vessel and
19 physically see the name on their hull, I won't know who they
20 actually are. And then do I need to be looking for another boat?
21 And you alluded to the BESS CHET. So that's the boat I would be
22 looking for.

23 Q. Understand. Earlier while you were answering a question, you

1 mentioned--you said that fishermen are not going to, I quote,
2 "come out and ask for an escort". And I was wondering, in your
3 experience at this station in this area, if you know why that is.
4 A. I don't want to speculate as to why, but they're going to
5 say--if our response is, "Sir," or, "Ma'am, are you requesting
6 Coast Guard assistance?" and then they just come back and they
7 say, "Well, it'd sure be nice if you were out here," to me that's
8 a yes.

9 **AIO:** Thank you, Chief.

10 **LIO:** Chief McCommons, you are now released as a witness from
11 this formal hearing. Thank you for your testimony and
12 cooperation. If I later determine that this board needs
13 additional information from you, I will contact you through your
14 counsel. If you have any questions about this investigation, you
15 may contact the investigation recorder, Lieutenant Luke Woods.
16 Thank you.

17 It is now 11:42 and we don't have any scheduled witnesses
18 for the rest of this morning. So we are going to convene for
19 lunch a little early. We'll resume at--I'd like to stick to
20 actually an hour and maybe we can resume at 12:45. So we'll go
21 ahead and resume at 12:45.

22 [The hearing recessed at 11:43 a.m., 16 May 2019.]

23 //

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II

2 held in Newport, Oregon

3 on 16 May 2019

4 WITNESS: STEVEN KEE

5 [The hearing was called to order at 12:45 p.m., 16 May 2019.]

6 **LIO:** The time is 12:44 and we're reconvening this public
7 hearing. We're now going to hear testimony from our next
8 witness, and that's going to be Mr. Steve Kee, a Coast Guard
9 fishing vessel examiner attached to Marine Safety Unit Portland.
10 Mr. Kee, please come forward to the witness table, and Lieutenant
11 Woods will administer your oath and ask you some preliminary
12 questions.

13 **STEVEN KEE was sworn and testified as follows:**

14 **DIRECT EXAMINATION**

15 **Questions by the recorder:**

16 Q. Sir, please state and spell your full name.

17 A. Steven Kee, S-t-e-v-e-n, K-e-e.

18 **REC:** And will the counsel please state and spell your name.

19 **LCDR LEAGUE:** Jan League, J-a-n, L-e-a-g-u-e.

20 Q. Mr. Kee, please state your current employment and position.

21 A. I am a Coast Guard civilian commercial fishing vessel safety
22 examiner out of Sector North Bend as a detached office from the
23 Marine Safety Unit at Portland.

1 Q. And please state any education or training related to your
2 profession.

3 A. Presently I'm a qualified fishing vessel safety examiner.
4 I'm a drill conductor and also a marine safety instructor.
5 Previously I was a machinery technician in the Coast Guard. I
6 was a marine inspector with subjector [ph] 2, subjector K, barge,
7 dry dock and machinery qualifications.

8 Q. And do you have any professional licenses or certificates
9 related to your profession?

10 A. No.

11 **REC:** At this time I will begin my primary line of questioning.
12 Good afternoon, Mr. Kee. All of my questions are related to the
13 time frame prior to the loss of the crew and fishing vessel MARY
14 B II or BESS CHET, unless otherwise noted. If you would like to
15 take a break, please let me know. We will explore these broad
16 topic areas: the role of the Coast Guard in the regulation of
17 small commercial fishing vessels like the MARY B II, the
18 interaction you had with the MARY B II or BESS CHET and her crew
19 in the last dockside safety examination, and the interaction the
20 Coast Guard has and using the MARY B II as a platform to conduct
21 safety drills and instruction.

22 Q. Mr. Kee, when you were a marine inspector, did you ever
23 inspect wood-hulled vessels?

1 A. Very few.

2 Q. Mr. Kee, are vessels such as the MARY B II considered
3 commercial vessels?

4 A. Yes.

5 Q. Typically commercial vessel operators have a Coast Guard
6 license or credential that is issued after training and
7 examination. Do those same standards apply to commercial fishing
8 vessels similar to the MARY B II?

9 A. They do not.

10 Q. Do you know if Mr. Stephen Biernacki possessed a Coast Guard
11 or state-issued license?

12 A. I am not aware of any license that he had.

13 Q. Do you or have you ever seen a captain of a fishing vessel--
14 commercial fishing vessel that had a merchant mariner's
15 credential?

16 A. Yes.

17 Q. Is that very common?

18 A. It's not common, from my interactions with them. If they
19 have them, they typically have let them lapse because it's not
20 something that they have a reason to maintain and it's a bit
21 arduous and expensive to do so.

22 **REC:** Mr. Kee, if you can, just--we have some challenges with our
23 audio. Can you please just speak a little bit closer into the

1 mic. Thank you, sir.

2 **WIT:** Yes.

3 Q. When you interacted with Mr. Biernacki, did he make you aware
4 of any specialized training he had regarding boat handling or
5 operations for a vessel like the MARY B II?

6 A. Nothing specific other than he had mentioned that he's been
7 involved in fishing for some time. I don't recall a specific
8 number of years.

9 Q. Did he give you any specific information regarding his
10 experience?

11 A. No, nothing specific.

12 Q. When you interacted with Mr. Biernacki, do you know if he had
13 already made--had already crossed the Yaquina Bay bar?

14 A. I believe that he had. I know he had some experience there,
15 but I don't recall any details about what boat he had worked on
16 there previously. I know it was not extensive since he had just
17 come to the area recently.

18 Q. So no idea how many times he may have crossed when you
19 interacted--at the point which you interacted with him?

20 A. No, we did not discuss that.

21 Q. Sir, commercial vessels are generally subject to Coast Guard
22 inspection or third-party inspection that verifies that the
23 vessel meets rigorous standards in terms of maintenance and

1 upkeep. Do those same standards apply to commercial fishing
2 vessels similar to the MARY B II?

3 A. Inspection standards do not apply to the commercial fishing
4 vessels that we were doing--that--that particular vessels falls
5 under. It would be an examination, which is much less thorough
6 than a traditional inspection.

7 Q. Are there any third-party examinations that occur on
8 commercial fishing vessels, to your knowledge?

9 A. I know there are. Not any in my area since I've been here,
10 that I'm aware of.

11 Q. Based on your background and experience, can you explain why
12 those standards do not apply to commercial fishing vessels?

13 A. I'm not--I don't know why they have not been implemented.

14 Q. Can you please talk a little bit about your specific
15 interaction with the MARY B II and her crew in the time that Mr.
16 Biernacki was the owner?

17 A. I conducted an exam on the MARY B II with Mr. Biernacki. I
18 did not have any interaction with the crew other than the fellow
19 from New Jersey while he was participating in the follow-on drill
20 conductor course. The second crewman that was participating in
21 the course was not part of the crew during this casualty, and I--
22 I don't believe that I had any interaction with Mr. Porter
23 otherwise.

1 Q. Sir, just to be clear, when you did the exam on the MARY B
2 II, it was named the BESS CHET or was it the MARY B II?

3 A. It was in transition. The boat itself had been labeled as
4 MARY B II or marked appropriately as MARY B II, but the
5 documentation was still in process during that particular one.
6 The previous one that I had been on in Charleston, it was still
7 the BESS CHET.

8 Q. Okay, did your--but the date of this--this examination date,
9 when it was--when you were on the MARY B II?

10 A. It was November of 2018, but I don't recall the specific
11 date.

12 Q. Sir, just to follow up on a previous question that I asked
13 you regarding commercial--commercial vessel inspection standards
14 not applying to commercial fishing vessels. Do you believe those
15 similar regulations should apply to commercial fishing vessels?

16 A. That's a very broad question. That would be a specific item-
17 by-item thing that I would have to look at to answer that truly.
18 I think that, for the most part, it's--most of the vessels, when
19 they maintain--most of the owners maintain their vessels
20 appropriately without having to be told to. So I--I--it's very
21 expensive to maintain to some of the standards that inspection
22 requirements do require, but that's not to say that they're not
23 followed as a good marine practice by vessel owners of commercial

1 fishing vessels that don't require it. So I--imposing it as a
2 regulatory requirement, I don't know if it's absolutely
3 necessary. It would be line by line rather than a broad "must be
4 inspected" kind of requirement.

5 Q. What about a drug and alcohol program, mandatory drug
6 testing?

7 A. I believe that that would be beneficial, but there's already
8 post-casualty requirements for that. It's expensive to be
9 enrolled in that program, and some of the particular owners and
10 operators are financially strained by increasing limits based
11 upon more regulations that are fishing-related or vessel-related.

12 Q. Let's talk about the dockside exam that was conducted in
13 November 2018 on the MARY B II. Can you talk about how you
14 identify a vessel that you're going to do an examination on?

15 A. How I identify it? You mean as I'm walking down the dock
16 or--I'm not sure what you mean by that.

17 Q. So let's start with how--you're in the office. You make your
18 schedule for however many days ahead. How do you identify which
19 fishing vessels you're going to do an examination on? Do you go
20 into MISLE, which is our database, for the benefit of the public?
21 Kind of start from there, not just at the dock.

22 A. When an operator or a vessel rep of any type contacts us,
23 typically via the telephone, while we're in the office or

1 possibly while we're walking down the dock, if time permits, I do
2 look the vessel up in MISLE, if I have not been the one doing the
3 previous exams. If I've been the one doing the previous exams, I
4 pull out the paper files I maintain on that vessel. I review any
5 outstanding things or previous outstanding things, and I discuss
6 any changes that have come into effect since the previous exam,
7 and I inform the vessel rep at that time when we're setting up
8 the appointment. The time ahead of that conversation to when the
9 actual examination occurs is based upon availability and their
10 availability. And then we meet at the dock, whichever dock they
11 choose, whatever port they choose.

12 Q. So if I understand you correctly, the examination of a
13 fishing vessel begins with the mariner reaching out to the Coast
14 Guard on a voluntary basis?

15 A. That's correct.

16 Q. As opposed to a targeted type of identification.

17 A. Most times. Occasionally we walk the docks looking for
18 vessels that might be in need of an examination, and we offer to
19 do them at that time or set up a schedule for one in the future
20 when they have it more convenient in their operations.

21 Q. Can you talk to me about the scope of a typical dockside exam
22 on commercial fishing vessel?

23 A. Well, the scope is basically following along with the

1 examination form, ranging from required paperwork documentation
2 to looking at the safety equipment on the boat and going through
3 any other required items that they may need to have on that
4 particular vessel for their crew size and operations.

5 Q. And what portions of the vessel is this limited to in terms
6 of the deck, the pilothouse, or does it all--does it encompass
7 the whole vessel?

8 A. It's all-encompassing within the limits of what you're able
9 to see based upon where it happens to be at the time. If it's
10 sitting in the water at the dock, then you can only see so much
11 from the inside, and it doesn't involve a--an inspection of the
12 hull. It involves an examination, which are not necessarily the
13 same.

14 Q. So what, in your opinion, would be the difference between an
15 inspection of a hull and an examination of the hull when you're
16 on board on a typical dockside exam?

17 A. Well, the vessels have different requirements for how they
18 maintain the vessel, how they do any repairs on an inspected
19 vessel. For doing an examination, it's more of a visual check
20 and looking for any visual signs that there may be problems,
21 leaks or holes or deterioration that are visible more so than
22 what you would do during an inspection.

23 Q. So if you see--if you see on a fishing vessel a leak, for

1 example, you would--you would address it accordingly?

2 A. Yes, within the limitations. It would depend on what the
3 leak is. That's a pretty broad topic.

4 Q. So if you had a ~~wool~~ wood-hulled vessel and a leak below the
5 waterline, ingress of water, what--what are you limited to--you
6 said within the limitations. How--what could you do to--to
7 correct that, I guess?

8 A. Well, a leak in the hull of a wood vessel is a problem unless
9 it's possibly something where they've been in dry dock and
10 they're still waiting for the wood to swell because they just got
11 put back into the water or it could be something that the shaft
12 packing needs to be tightened or something like that. If the
13 issue is resolved, then it's resolved, and if it's something that
14 needs to be addressed, then that would be something that would be
15 addressed up the chain and potentially looking up captain-of-the-
16 port order if it's something to that degree and it warrants that,
17 but that's not the typical case. That's really an extreme
18 situation.

19 Q. And just to confirm, when you did examine the MARY B II, it
20 was just Mr. Biernacki; he was the only crew member on board?

21 A. That's correct. He did not have a crew hired at that time,
22 from what he told me.

23 Q. Was the vessel MARY B II properly documented as per the

1 federal requirements?

2 A. The documentation was still in process. So I--I can't say
3 that it had a current documentation--certificate of documentation
4 on board at the time with the new owner information.

5 Q. Did he have any--as far as you can remember, did he have any
6 evidence or proof that he had submitted the paperwork?

7 A. He did have something on board, but I don't--I do not
8 require--recall exactly what that paperwork was.

9 Q. And for the record, the name change from the BESS CHET to the
10 MARY B II, that's something that would occur after that
11 documentation had been com--completed, the COD in MISLE?

12 A. Are you referring to him changing the name, applying it to
13 the vessel, or changing----

14 Q. It went from the BESS CHET to the----

15 A. Right.

16 Q. ----MARY B II. So you said it was--it was labeled on the
17 hull of the vessel but not in MISLE. So that would be corrected
18 once the COD was completed?

19 A. The documentation center should be taking care of that, as
20 far as I understand it. They are updating the documentation
21 because the name change would be noted during the change of
22 documentation.

23 Q. I'm now going to display Coast Guard Exhibit 019, which is a

1 three-page report of your dockside examination for the MARY B II.
2 Mr. Kee, just to confirm, the MARY B II was in the water when you
3 examined it, correct?

4 A. That's correct.

5 Q. Do you typically take photos during your exams to document
6 the vessel?

7 A. I typically take a port side and a starboard side if it's
8 possible. Those are the ones that you have as these exhibits.

9 Q. Mr. Kee, if you could concentrate and think for a moment
10 about the navigation gear in the wheelhouse of the MARY B II and
11 the radio communications between MARY B II and Coast Guard
12 vessels on the day of the incident, the person talking on the
13 MARY B II's radio talked about a lot of AIS vessels on the chart
14 plotter. That doesn't make sense on the surface. Were you able
15 to see if the MARY B II had an AIS receiver or a chart plotter
16 with an AIS interface?

17 A. I know that he had a chart plotter. I do not know if he had
18 any sort of AIS interface, and I am not typically looking for an
19 AIS on a vessel that's not required to have that unless it just
20 happens to be something that I see.

21 Q. Mr. Kee, are you familiar with a type B AIS receiver, which
22 is basically a computer program with some associated hardware?

23 A. The basic knowledge. I'm not an expert, by any means.

1 Q. Did you see a laptop computer in the MARY B II wheelhouse
2 that could possibly be used as a type B AIS receiver?

3 A. I don't recall what--the equipment he had on board at that
4 time.

5 Q. Turning your attention to Coast Guard Exhibit 019, which is a
6 report of dockside inspection from your inspection on 16 November
7 2018, can you talk about your report and any deficiencies that
8 you observed. I'm going to turn to page 7.

9 A. So would you like for me just to run down the list of the
10 items there?

11 Q. Yes, please.

12 A. The first one is the ship's station license, which is a
13 pretty expensive required licensed based upon the FCC
14 requirements, and I left that as a pending item because the
15 ownership and documentation of that vessel was still pending at
16 the time, and I wanted him to everything was finalized before
17 spending the money on the radio license that requires all the
18 correct information to match up with the certificate--certificate
19 of documentation. That is the reason that is a pending item.
20 And it did need to be updated to reflect the change in ownership,
21 because that has the MMSI number that is associated with that
22 vessel and the emergency contacts for that vessel. The 225-
23 degree forward masthead light was discovered at that time. I

1 don't--it was there as a light fixture. It was a--actually a
2 stern light fixture showing 135 degrees. I don't recall if it
3 was there previously or not. This was the first time that it was
4 noticed. So I don't know if the light had been changed or if it
5 had just been not realized during previous looks at the vessel,
6 that it was actually a stern light fixture. With that design
7 that he happened to have on the vessel, it--it's a little harder
8 to distinguish without making a specific effort to distinguish
9 that. It's say to recognize it as lit from being forward, but
10 it's a little bit harder to do a quick look at it and see if the
11 side screens are in place or not. The all-around light anchor
12 light, it was--he was a single person on the boat at the time,
13 and that's something that is actually easier to repair when you
14 have someone who can toggle switches or turn power off and on
15 while there's somebody climbing the mast, and if somebody needs
16 to have something handed up or down to them, it's much easier
17 with a second person on there. The crab vessels don't typically
18 anchor. So it was more of a--when you have somebody else on here
19 that can help you get that done, they need to do so. The alcohol
20 test kits, that's something he would not need 'til he was going
21 out beyond 12 miles based upon our exam form requirements, and
22 during crabbing they don't go out more than that. And if he had
23 purchased those during that time, they would be expired before

1 the vessel was going to operate beyond 12 miles. So I allowed
2 him to delay purchasing those. They're pretty extensive--test
3 kit for something that's going to expire before you ever actually
4 need them. Provide proof of first aid and safety training prior
5 to carrying more than two people. He didn't have any crewmen on
6 board at the time, and he said that he had training, I believe,
7 but he didn't happen to have any proof at the time. And that may
8 for him have been a deciding factor on who he wanted to hire as
9 crewmen. I'm not sure. Obviously drills prior to fishing--
10 drills can't be done when you don't have a crew on board. So
11 that was something that, you know, was a pending requirement, and
12 that is a very common pending item for vessels because there's a
13 high rate of crew turnover around here and especially with him
14 being a new-to-the-area skipper. He was working to get a crew.
15 So he didn't have anybody on board. The last two items were not
16 discrepancies. Those were just notes for him to be aware of. He
17 asked that I write those down so he knew what he was required--if
18 he wanted to upgrade the examination.

19 Q. So the first six items are actual deficiencies. The last two
20 are recommendations?

21 A. Well, they're not really recommendations. They're just notes
22 to him if he intended to operate beyond 20 miles. Those--or 50
23 miles. Those were the items that he needed to upgrade or modify,

1 whatever, for his vessel with the equipment he had on board at
2 that time.

3 Q. Understood. And just for the benefit of the public, what is
4 the difference between a recommendation and deficiency? I'm
5 asking because it's on there as dockside examination notes,
6 recommendations and deficiencies. So could you please explain
7 the difference between those two.

8 A. Well, a recommendation made--well, a deficiency would be
9 something that is obviously a deficiency. It's not in compliance
10 with the regulations at that time. A recommendation might be--
11 you may consider--your ring life buoy is getting near the end of
12 its service life. I recommend that you budget for that so, prior
13 to it actually going out of its serviceability, you plan to
14 purchase a new one, but at that time it may be serviceable.

15 Q. Can you give me some examples of comments that would prevent
16 you from issuing a decal?

17 A. Any deficiency in safety equipment, especially things that
18 fall under the especially hazardous conditions, those were items
19 that are for sure going to hold up the decal.

20 Q. Can a commercial fishing vessel go out fishing from Yaquina
21 Bay without a Coast Guard decal and, if so, are there any
22 repercussions for doing that?

23 A. It's still voluntary inside of 3 miles. So any commercial

1 fishing vessel can leave the port anytime they want without one.
2 If they choose to go beyond 3 miles without a current decal, they
3 still have 5 years from the time the last one was previously
4 issued, even if the decal is expired. And the repercussions
5 would be the difference in items that may be checked during a law
6 enforcement at-sea boarding beyond the--the items in blue on a
7 4100F form. Those are open for being checked during a boarding.
8 And depends on whatever policy happens to be in place, if it's
9 going to be noted on the 4100F form as a citation or--it depends
10 on the deficiency that kept that vessel from obtaining the decal
11 in the first place and what the repercussions would be.

12 Q. Yes, sir. Can the Coast Guard order a commercial fishing
13 vessel to stay at the dock for any reason?

14 A. Yes.

15 Q. Can you give an example from your experience of the Coast
16 Guard restricting a fishing vessel from getting underway?

17 A. Not having proper survival craft on board to meet the
18 intended area of operations or crew size.

19 Q. Turning our attention to the movement of vessels like the
20 MARY B II, who would be the person that would train or
21 familiarize someone like Captain Biernacki on the bar conditions
22 and any restrictions?

23 A. There's no requirement for anyone specifically to train

1 anyone to operate a commercial fishing vessel.

2 Q. I'm going to display Coast Guard Exhibit 003, Yaquina Bay--
3 Yaquina bar crossing handout, one page, two-sided. Mr. Kee, we
4 are displaying that information pamphlet, which is Coast Guard
5 Exhibit 003, a two-sided color handout, and it provides very
6 important information for mariners operating out of Yaquina Bay.
7 Are you familiar with this pamphlet?

8 A. I have seen it.

9 Q. Do you know who produces it?

10 A. No, I'm not sure, actually, who put it together and prints
11 it. I don't know.

12 Q. Is this something that you or other Coast Guard fishing
13 vessel examiners would hand out to mariners when you interact
14 with them?

15 A. Not typically.

16 Q. I'm now going to display Coast Guard Exhibit 040, lifesaving
17 equipment recovered post-accident, which is 12 pages. Mr. Kee,
18 please look at Coast Guard--CG Exhibit 040, which is being
19 displayed. I'll take a minute to go through the 12 slides, which
20 shows the survival equipment recovered after the accident. This
21 equipment belonged to the MARY B II. And then I'll ask a couple
22 of questions. Mr. Kee, after the accident it was determined that
23 there were three inflatable lifejackets found. Is the vessel

1 also required to have Coast Guard type-1 lifejackets aboard that
2 are non-inflatable?

3 A. No, there's no requirement.

4 Q. Can you talk about the differences between an inflatable
5 versus a typical type-1 personal flotation device as to
6 lifesaving qualities?

7 A. I think that they both are very comparable for the lifesaving
8 qualities, although I would--in most circumstances, I would say
9 the inflatable is probably more likely to be worn. So therefore
10 it would be more likely to actually save a life, but they're both
11 very similar in what they actually do and how they perform. They
12 just have different flotation.

13 Q. The MARY B II had exposure suits aboard, and the accident
14 happened in winter where lower body core temperature, which is a
15 condition called hypothermia, would lead to death. In the Alaska
16 Marine Safety and Education Association or AMSEA class drill
17 conductor, do you talk about the situation where a person would
18 put on an immersion suit or exposure suit instead of just an
19 inflatable lifejacket?

20 A. Yes, we do.

21 Q. Can you talk about a situation where one would be more
22 appropriate than the other?

23 A. Anytime someone in cold water has to abandon their vessel,

1 then obviously the immersion suit is the better choice, but
2 having the flotation of any kind is better than nothing, but we
3 would--the immersion suit is what's required of the vessels in
4 this area, and actually Mr. Biernacki was showing a good-faith
5 effort to be safe as far as providing the lifejackets that are
6 not typically seen on a lot of the commercial fishing vessels in
7 this area because they aren't required because the immersion
8 suits meet that requirement.

9 Q. Can you talk a little bit about the drill--drill conductor
10 training? On the radio calls with the Coast Guard, Mr. Biernacki
11 mentioned that they were drill instructors. I believe that he
12 was responding to the training he had volunteered for in early
13 November for the AMSEA class, which provides marine safety
14 training. Can you give us some examples of that, please.

15 A. Well, the drill conductor course is to train individuals to
16 actually run crews through the required drills for commercial
17 fishing vessels, and that's to train them from a universal aspect
18 not specific to their vessel. It's to train them to understand
19 the requirements of the safety equipment, the requirements of the
20 drills, to understand how to set up a drill itself, and a lot of
21 people take the class as a safety equipment class, but the drill
22 conductor course is designed to train individuals to be drill
23 conductors, to run crews through drills. I'm not sure if I

1 answered your question.

2 Q. Can you talk a little bit about Mr. Biernacki's participation
3 in the drill conduct training.

4 A. During the class Mr. Biernacki was definitely open for
5 sharing his own stories and experiences and involved in the
6 class.

7 Q. Did he talk about any specific examples that you could
8 provide for us?

9 A. I don't remember the specific details. I do remember that he
10 did share some stories. As an instructor, you tend to remember
11 when somebody is taking class time, but I don't remember his
12 specific stories.

13 Q. Did it seem like Mr. Biernacki had quite a bit of experience
14 with lifesaving techniques, from what you observed in the
15 training?

16 A. I guess I would have to say that he seemed that he was taking
17 the class to refresh his memory, not to learn everything from the
18 beginning, and he had had similar training in the past. That was
19 the reason that he wanted to be refreshed on it, because he
20 believed in the material that was taught during class.

21 Q. Mr. Kee, did you receive any other relevant information about
22 the operation of the MARY B II that may be related to this
23 accident?

1 A. No. Nothing that I can recall.

2 Q. And may I ask, sir, is there--is there anything--any ideas
3 you have of things that the Coast Guard can do to prevent future
4 occurrences such as this one?

5 A. I think there's an opportunity to provide better education on
6 the bar crossing hazards, especially for people that are not from
7 this particular area. I don't know if it's something that should
8 necessarily be a regulatory requirement, but getting the
9 fishermen to take time out of their busy schedules when they're
10 preparing to work, getting the gear ready, getting their vessels
11 ready, trying to find a crew that's safe and adequate to work
12 with, it's hard to--it's hard to get the crews or the operators
13 away from their livelihood to come sit in something that a lot of
14 them have experience doing, whether these particular ports or
15 other ports. They feel that they're not necessary sometimes.
16 Perhaps making something mandatory or at least providing the
17 opportunity to interact more with maybe the surfmen at the
18 stations or other mentor fishermen from the area or something to
19 that effect, different commission members, things like that, but
20 I don't know that it should be mandatory.

21 Q. Are bar crossings something that are typically discussed
22 during a dockside fishing vessel exam?

23 A. I personally don't discuss it regularly, as most of the

1 skippers here have been fishing in and out of the ports for
2 decades or they were born locally here and they were raised with
3 a family boat or they've come here and they've been here for some
4 time by the time that they are actually running a commercial
5 fishing vessel. For someone such as Mr. Biernacki, that
6 particular thing--we had just recently discussed, when he took
7 the class, referencing his--you know, the exam and that item on
8 the exam form, it was a matter of--we had just gone through all
9 of the required items for emergency instructions. So I didn't
10 specifically drill down to any specific emergency instruction
11 items during that exam.

12 Q. Are bar crossings discussed at the AMSEA trainings?

13 A. Only as a matter of noting that that's a required emergency
14 instruction item, but it's not in detail as far as what their
15 particular plan is to cross the bar.

16 Q. Can you tell me what--what some specific--some examples of
17 bar crossing plans would be, some of the--some of the critical
18 requirements that you know of?

19 A. Well, there's really not a specific requirement. The CFR has
20 "such as" type examples, but things that would make sense would
21 be to secure the vessel for rough sea conditions to keep water
22 from coming in, ~~meaning~~ **manning** secure hatches or doors or
23 hatches, scuttles, whatever may apply, making sure that the crew

1 is ready and alert and awake, ready to respond to something, and
2 deciding if they're going to have lifejacket off or on or where
3 the crewmen are going to be during what part of the evolutions.
4 So it's--I don't really know what else they need to do. It's a
5 very vessel-specific---

6 Q. Earlier you said that if a vessel was officially going to be
7 going down or sinking, that's when, if they were in cold water,
8 they would want to put on the immersion suits. Do you think
9 that's something that should be part of a bar crossing plan,
10 potentially donning immersion suits?

11 A. I would think that that's not very advisable, actually,
12 during a bar crossing situation, especially if someone is going
13 to be inside. If they're inside, where they typically would be,
14 then it's a--an entrapment hazard.

15 **REC:** Mr. Kee, thank you for your testimony. I have no further
16 questions. Commander?

17 **LIO:** Lieutenant Bigay?

18 **AIO:** Yes.

19 **Questions by the assistant investigating officer:**

20 Q. Good afternoon, Mr. Kee. Earlier you--you mentioned drug and
21 alcohol testing in terms of implementing such programs being an
22 expense. Is that correct?

23 A. Correct.

1 Q. Is it expensive to have a drug and alcohol program
2 implemented for a commercial small passenger vessel that is
3 inspected by the Coast Guard?

4 A. Is it expensive? Is that what you're asking? Well,
5 expensive is really relative to whoever is paying the bill.

6 Q. Is there an expense?

7 A. Is there an expense? Yes, there is.

8 Q. Do those requirements exist for such commercial small
9 passenger vessels?

10 A. Yes, they do.

11 Q. Earlier you mentioned post-casualty drug and alcohol testing.

12 A. Yes.

13 Q. Obviously referring to testing that's conducted after an
14 incident, depending on whether that incident requires it,
15 correct?

16 A. Correct.

17 Q. If someone is under the influence of drugs and alcohol and
18 operates a fishing vessel and the person's impairment causes a
19 marine casualty, does post-casualty drug and alcohol testing
20 prevent any fatalities from happening?

21 A. I'd say anything like that is--it keeps you--people honest.
22 I don't think that having something post-casualty prevents
23 anything, necessarily, because if someone chooses to not go get

1 tested, then they receive a fine, basically, but there's no--
2 there's not necessarily a repercussion because there's no proof
3 that they were under the influence at that point.

4 Q. Understand. Mr. Kee, Mr. Woods went over some requirements
5 regarding the--excuse me, the exam that was conducted in November
6 time frame of 2018. Within that there was a pending requirement
7 to conduct drills.

8 A. Correct.

9 Q. Prior to fishing.

10 A. Correct.

11 Q. And understandably that was written that way because the
12 operator at the time did not have a crew to conduct those drills
13 with.

14 A. Yes.

15 Q. Is it an expectation, then, that once the crew was hired,
16 that those drills will be conducted prior the vessel getting
17 underway?

18 A. Yes.

19 Q. And going back to the difference between a recommendation and
20 a deficiency, I just want to be clear, if that wasn't done, is
21 that a non-fulfillment of a Coast Guard requirement?

22 A. If they don't do the drills, then that is being non-compliant
23 with the federal regulations, yes. Are you referring to my

1 specific requirement or the requirement in general to do the
2 drills?

3 Q. Correct, so there was a requirement to conduct the drills
4 prior to fishing. If that doesn't happen, if--if the operator
5 goes fishing with a crew that was hired but does not do the
6 drills prior to fishing, is that a non-fulfillment of the
7 requirement?

8 A. That's correct.

9 Q. You mentioned that Mr. Biernacki, the operator of the MARY B
10 II, was showing a good effort in terms of having redundancy with
11 his lifesaving equipment.

12 A. Yes.

13 Q. What other things did you notice that he was doing to improve
14 safety and the readiness of his crew?

15 A. Well, all of the safety equipment on board was new, because
16 the previous owners apparently had removed the safety equipment.
17 So everything was new and up to date. He had bought the
18 lifejackets that are really not a requirement since the immersion
19 suits meet the lifesaving requirement for that. He took the
20 drill conductor course. He had us do an exam. He had his new
21 crewmen both come take the class, which, during that time, is not
22 necessarily the most opportune time, when there's a lot of gear
23 to be worked and he's trying to get a new vessel established into

1 a pretty active fishery. So he was, you know, putting himself
2 through the class and he put his two crewmen through the class at
3 the same time he was trying to ready his vessel and spend the
4 money on excess safety equipment as well.

5 Q. Thank you. Regarding this theme of, you know, having a crew
6 and getting the crew ready to--to go out fishing--and I'm sorry,
7 I know you probably alluded to this in answering a question from
8 Mr. Woods, but can a master of a fishing vessel such as the MARY
9 B II go out to sea by himself?

10 A. Yes.

11 Q. Is there a length of time that that's allowed for?

12 A. No, there's really no requirement. They have to maintain a
13 watch, lookout. So however long they feel they can safely
14 maintain a lookout while they're operating the vessel is their
15 limitation, but there's no legal time cutoff.

16 Q. Understood. But there's a--there's an expectation that
17 there's a lookout, correct?

18 A. That is a requirement, yes.

19 Q. So if I had a fishing vessel and it was just to understand
20 the requirement and I wanted to go out to sea for a week, just
21 myself as the operator, that's allowed?

22 A. Technically, yes, as long as you're able to maintain a
23 lookout. I know that's not possible, but you're asking if it's

1 legal. It technically is.

2 Q. Understood. Just--just so that we can understand, so legally
3 it's allowed; however, you--you just said it's not possible. Are
4 you alluding to the fact that if you're out for a week and you're
5 just yourself, it's hard to maintain a lookout?

6 A. I would--for me, personally, I would never be able to
7 maintain an adequate lookout for a week without being able to
8 sleep, unless I find somewhere I can safely anchor my vessel.

9 Q. And just for the benefit of the public, what is--what do we
10 mean by a lookout? What is the technical definition of a
11 lookout?

12 A. Well, I don't have the specific reference in front of me, but
13 someone up and about that's looking around for other contacts or
14 hazards.

15 **AIO:** Okay. Thank you, Mr. Kee.

16 **LIO:** Sir, I have some questions.

17 **Questions by the lead investigating officer:**

18 Q. So in the beginning of your testimony, you mentioned your
19 experience in the Coast Guard, your professional experience and
20 that you're a marine inspector, and you listed out some of your
21 qualifications. So it seems to me that you have extensive
22 knowledge, having inspected both inspected passenger vessels and
23 non-inspected passenger vessels--uninspected passenger vessels.

1 Based on your testimony, is it fair to say that the scope of the
2 inspections are much narrower for uninspected passenger vessels?

3 A. That's correct.

4 Q. What is your approximate fleet size? What is your area of
5 responsibility?

6 A. The area of responsibility is, on the south end, Brookings
7 and all the way north to Newport. That's shared with MSU
8 Portland. As far as the actual numbers, I--I would just be
9 guessing. I don't know a number, and it changes. It's pretty
10 fluid.

11 Q. Perhaps a couple hundred? Is that fair?

12 A. I would say so.

13 Q. So that's a lot of area to cover and quite a few vessels and
14 it's dynamic, is what I'm hearing you say.

15 A. Correct.

16 Q. Would you be able to go and check--if you were to write a
17 requirement for conducting drills prior to fishing, would you
18 necessarily be able to go and check that yourself, be physically
19 present to check that?

20 A. I could.

21 Q. For all of the fishing fleet, perhaps?

22 A. For all of the fleet in person, it would be very challenging.
23 That's--we're not required to witness a crew running through

1 drills. So it would be a matter of taking someone's word for it.
2 There's--we can inquire through questioning to find out if they
3 actually did do the drills, or we can question the crew on board
4 and look for differences in answers, but as far as me physically
5 going to each and every boat that may have a pending "needing to
6 do drills before you go fishing" type deficiency is--is--that's
7 very chall--a very good challenge to do so.

8 Q. Understand. So do you--have you, in the past, experienced
9 that when you wrote a deficiency such as that, do you ask for
10 fishermen to call you--call you back to let you know that they
11 did it or is there any kind of protocol that's established for
12 that?

13 A. It varies depending on what time of season it is, if they're
14 going to have a crew in the--in the future, if they're going to
15 be very busy right away, such as the very first couple weeks of
16 crabbing. That's--I typically wouldn't go bother them with
17 something like that. If I'm not on furlough, as was the time in
18 January, I would typically be in the port and I would stop by,
19 perhaps walking the docks while I'm there for a different
20 vessel's exam. Typically if it's something that someone can send
21 me a photo, text or an e-mail and explain that it was corrected
22 and it didn't require interrupting their schedule to set up an
23 appointment with me or another examiner to verify that, "Yes, I

1 have this piece of equipment," or something that's easily seen,
2 that's a pretty routine way to correct a deficiency as well.

3 Q. Thank you. Are there--so you've been in the--you've been in
4 this AOR, you've been working as a commercial fishing vessel
5 examiner for how many years, again? Refresh my memory.

6 A. I started this job in September of 2012.

7 Q. So you're familiar with--obviously you're familiar with the
8 water temperature and weather and the characteristics. Do you
9 believe that--that--that simply a--just a lifejacket, a PFD is
10 adequate for--adequate protection against hypothermia if somebody
11 were to be in the water--in these waters for let's say more than
12 10 minutes? Is that sufficient?

13 A. For more than 10 minutes? The person would be cold, but they
14 wouldn't necessarily have hypothermia within that short amount of
15 time, but it's--everything is relative. Depends on the person's
16 physical condition, what the situation is, how the seas are, were
17 they hurt going in, but in general it's--it's not ideal, but it
18 is adequate to allow another vessel to retrieve the person, even
19 if they've gone into hypothermia, as long as they're still alive.
20 The main thing is for them to be floating, to be able to be
21 picked up by another vessel or their own vessel turning around to
22 come get them.

23 Q. I noted that you--when you were giving your testimony

1 earlier, you said that--you said that you knew that he was--that
2 Captain Biernacki was new to the area and that paperwork was
3 switching over. Would that notation that he was a new operator
4 in the area--did that give you any kind of thoughts?

5 A. Not specifically, because he did have other experience for
6 some time on other vessels but not specifically--no, I didn't
7 specifically think a whole lot about it.

8 Q. Is there any kind of requirement for you to notify--is there
9 any written policy or regulation that you know of that requires
10 you as a commercial fishing vessel examiner to notify other--
11 either Coast Guard entities or other regulatory bodies like Fish
12 & Wildlife of a new operator?

13 A. No.

14 Q. You mentioned a required emergency instruction item earlier
15 when you were talking about the section in the dockside
16 examination sheet. Do you check those emergency instructions?

17 A. We check that the vessels have them on board.

18 Q. So do you--do you just verbally talk them out, like you ask
19 the master of the--the operator of the vessel what they would do
20 in case of a bar crossing or in case of an emergency or do you
21 actually request to see physical paperwork?

22 A. We request to see the actual paperwork. It may or may not be
23 required to be posted. So we're--it's more of a paperwork check.

1 Then we've recently started getting more into the actual
2 conversation about these things. I did not specifically have a
3 bar crossing conversation with Mr. Biernacki.

4 Q. Sir, do you recall if you--if you got to see anything in
5 writing for an emergency instruction plan?

6 A. He had the AMSEA template booklet that we provide.

7 **LIO:** Okay, thank you. Mr. Reilly?

8 **PIIC:** Mr. Kee, thank you for being here. Thanks for your
9 service. I don't have any questions.

10 **LIO:** Mr. Kee, you're now released as a witness from this formal
11 hearing. Thank you for your testimony and cooperation. If I
12 later determine that this board needs additional information from
13 you, I will contact you through your counsel. If you have any
14 questions about this investigation, you may contact the
15 investigation recorder, Lieutenant Luke Woods. Thank you again.

16 It's currently 1:45. We'll take a 10-minute recess. We'll
17 reconvene at 1:55. Thanks.

18 [The hearing recessed at 1:46 p.m., 16 May 2019.]

19 **[END OF PAGE]**

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II

2 held in Newport, Oregon

3 on 16 May 2019

4 WITNESS: CWO THOMAS MOLLOY, USCG

5 [The hearing was called to order at 3:16 p.m., 16 May 2019.]

6 **LIO:** It's now 3:15 and we're reconvening this public hearing.

7 We'll now hear from our last witness of the day, and that's going

8 to be the Commanding Officer of Station Yaquina Bay, Boatswain

9 Tom Molloy. Boatswain Molloy, please come forward to the witness

10 table and Lieutenant Woods will administer your oath and ask you

11 some preliminary questions.

12 **CHIEF WARRANT OFFICER THOMAS MOLLOY, U.S. Coast Guard, was sworn**
13 **and testified as follows:**

14 **DIRECT EXAMINATION**

15 **Questions by the recorder:**

16 Q. Please state and spell your full name.

17 A. Thomas, T-h-o-m-a-s, Molloy, M-o-l-l-o-y.

18 **REC:** And will counsel please state and spell your name.

19 **LCDR LEAGUE:** Jan League, J-a-n, L-e-a-g-u-e.

20 Q. Please state your current employment and position.

21 A. I'm the commanding officer of Coast Guard Station Yaquina Bay
22 in Newport, Oregon.

23 Q. Please state any education or training related to your

1 profession.

2 A. I have a 100-ton merchant mariner credential for nearcoastal,
3 and I'm also trained as a 52-foot motor lifeboat surfman, 47
4 surfman and on eight different boat types and I have reached 21
5 different qualification levels on those boats.

6 **REC:** Thank you. At this time I will turn it over to Commander
7 Denny.

8 **LIO:** Good afternoon, Boatswain Molloy. Thank you for appearing
9 today at this hearing. Sir, we're going to explore a couple of
10 different broad topics today. We're going to talk a little bit
11 about your background and experience as a surfman and commanding
12 officer Coast Guard Station Yaquina Bay. We're going to talk a
13 little bit about escort--vessel escorts at Yaquina Bay, Oregon,
14 and then we're going to talk particularly about January 8th,
15 2019, particular focus on the escort and subsequent active search
16 and rescue activities for the fishing vessel MARY B II. We're
17 going to talk a little bit about your professional assessment of
18 the bar, tidal conditions, time of year, vessels that use that
19 waterway and also talk about the capabilities of the Coast Guard
20 47-foot and Coast Guard 52-foot motor lifeboats. And then we'll
21 talk about the Coast Guard's mission, risk evaluation and
22 mission-risk mitigation strategies for bar crossings and similar
23 operation. For the benefit of the public, please stay away from

1 using Coast Guard acronyms with the exception of the acronym for
2 search and rescues, SAR. We'll use this term throughout the
3 testimony.

4 The Coast Guard has prepared a hearing exhibit that combined
5 the Coast Guard Station Yaquina Bay communications audio
6 recordings, communications transcript, as well as data from the
7 Oregon State University's X-band marine radar to facilitate
8 understanding of the events that happened that night. We've
9 provided that exhibit to you in advance so that you could speak
10 clearly to the moment-by-moment events that took place on the
11 evening of January 8th, 2019. That exhibit is Coast Guard
12 Exhibit 038, and it's entitled "Critical Communications". It
13 should show up on your screen, and there's also a binder, should
14 you prefer to use that.

15 **Questions by the lead investigating officer:**

16 Q. I'd like to follow up on some of the questions that
17 Lieutenant Woods asked you just a few minutes ago. Can you
18 describe in a little bit more detail your background and
19 experience as it relates to your duties as commanding officer of
20 the--of this station.

21 A. So I've been in the northwest for the last 19 years. I
22 joined the Coast Guard from Panama City Beach, Florida. My first
23 tour was on the--on board COAST GUARD CUTTER POLAR STAR. I

1 transferred from there to Station Seattle and first certified as
2 a coxswain on a 41-foot motor utility boat. Then I went to
3 Station Tillamook Bay and certified as a surfman, went to Cape
4 Disappointment following that and became the executive petty
5 officer and certified as a 52 surfman. From there I went to the
6 COAST GUARD CUTTER FIR and worked all the Aids-to-Navigation from
7 the Straits of Juan de Fuca to Chetco River, including all the
8 bar entrance buoys. And then I got the commanding officer job
9 here at Station Yaquina Bay.

10 Q. And so at your current unit, how many people are you
11 responsible for?

12 A. Fifty active duty, 12 reserves.

13 Q. And how many vessels are you responsible for?

14 A. Four.

15 Q. Would you mind listing them.

16 A. The 52-foot motor lifeboat VICTORY, two 47-foot motor
17 lifeboats and a 29-foot response boat.

18 Q. For the benefit of the public, would you please describe what
19 a surfman is. I think that many in the public don't understand
20 that, and I think it would be very beneficial to explain what
21 that means.

22 A. Surfmen date back to the U.S. Lifesaving Service. I'll start
23 there. And the importance of that is the heritage. So surfmen

1 are leaders within the community. The surfmen at Yaquina Bay,
2 for example, have been around since 1896. There's a famous one
3 sitting behind me, Master Chief Tom McAdams, who ran thousands of
4 case for the Coast Guard. I think Master Chief McAdams is a
5 perfect representation of the surfman, because people still know
6 who he is and he's been out of the Coast Guard since 1977--1977.
7 We are certified to operate boats in seas--currently--and this
8 has changed over the years, but currently the highest
9 qualification level would be seas of 35 feet, surf of 25 feet and
10 winds of 50 to 60 knots.

11 Q. Okay. So aside from the vessels that you have available to
12 conduct operations at Station Yaquina Bay, what other assets do
13 you have to employ when preparing to assist a vessel about to
14 cross a dangerous bar, aside from those vessels?

15 A. We have a government vehicle that we would use to get a bar
16 report from what's commonly known as Chicken Point. I think
17 you've already addressed that location. We have a Coast Guard
18 tower. And other than that, we have--the Coast Guard employs
19 helicopters. Those are not under my command, but those are
20 available if I--with a phone call or a radio transmission.

21 Q. I'd like to draw your attention to the--to late in the
22 afternoon, early evening of January 8th, 2019. Can you tell me
23 about the vessel escort operations your crews conducted up until

1 the safe escort of the fishing vessel LAST STRAW. We'll omit the
2 story of the MARY B II for just a moment or two.

3 A. Around last light, the bar conditions were 4 to 6, I believe.
4 I think you have that, 4-to-6-foot. Is that correct? So at last
5 light bar report, the OOD reported that and stated there was a
6 number of vessels still offshore and that they were not concerned
7 with the bar conditions and they thought that it would be easy
8 for everyone to cross. The first vessel across was the LISA
9 MELINDA. And as they were crossing, they called us and told us
10 that our bar report was not accurate. So we got underway
11 immediately to get an accurate bar report. Once on scene, the
12 STAR SHADOW was crossing as we got out there and, communicating
13 with the LAST STRAW, they requested a formal escort.

14 Q. Can you tell me more?

15 A. So we talked to the LAST STRAW on radio, give him the
16 standard brief as far as saying, "The safe navigation and
17 operation of your vessel is your responsibility. You're not
18 obliged to cross just because we're out here. How many people do
19 you have on board?" We gathered all the information, made sure
20 that the plan was understood. LAST STRAW has crossed the bar
21 numerous times. Told him we'd stay out of his way. Our mission
22 out there when we're doing that is to assist by virtue of if
23 anyone was to fall overboard. We can call out series of waves

1 behind the boat that they may not normally be able to see at
2 night. We can jump in and grab them and put them in tow if they
3 become disabled on the bar. So that's why we're there.

4 Q. So did the--the fishing vessel LAST STRAW--ended
5 successfully. That was a safe escort. And they did it without a
6 tow, and were there any problems with that?

7 A. No, Commander, it was a routine rough bar escort. We took a
8 position behind the vessel. So I was on the 52-foot motor
9 lifeboat VICTORY, and the 47 was inside the tips. And so we
10 escorted the LAST STRAW in. They made a port-to-port passing
11 with the 47 and continued on their way to the pier.

12 Q. During that evolution with the LAST STRAW, do you believe--
13 based on your observations, was there--were there a lot of
14 communications with the LAST STRAW, between Coast Guard assets
15 and the LAST STRAW?

16 A. There was a standard amount of communications as they were
17 approaching bar. Standard questions were asked. The captain
18 didn't have any questions that he asked us. And then once an
19 escort begins, it's best to keep the communication to a minimum
20 other than us reporting the series, talking about lighting off
21 flares. And the reason we do that is because you could easily
22 distract someone as they're trying to cross the bar.

23 Q. Okay. I'm going to shift gears just a little bit. We've

1 heard testimony that's used chart 18581.

2 **LIO:** Lieutenant Woods, please pull up Coast Guard Exhibit 006
3 called "Details and Warnings Chart 18581, Yaquina Bay and River"
4 and please zoom--zoom in on the cautions. That's good right
5 there, maybe a little bit out.

6 Q. Boatswain Molloy, would you please tell me what it says there
7 on page 1.

8 A. "Caution. The entrance channel to Yaquina
9 Bay is subject to change. Strangers should
10 not attempt to enter without a pilot."

11 Q. Okay. Do you think that that statement is accurate as far as
12 the level of risk?

13 A. It's the same statement that is in Coast Pilot and it refers,
14 under my understanding, to a stranger in that a foreign
15 commercial vessel. So I wouldn't say that it's--I would say it's
16 consistent is what I would say.

17 Q. Would that--you have a 100-ton nearcoastal license. So if
18 you were seeing that on a chart, would that give you pause?
19 Would you at least--what would you think of that?

20 A. Well, I would consider the fact that--first, I, even as the
21 commanding officer of Station Yaquina Bay, have my limitations
22 and that I probably should call the local Coast Guard station or
23 not attempt to cross the bar if I'm in doubt. However, to my

1 knowledge, there is no pilot in Yaquina Bay.

2 Q. With the bar at Yaquina Bay closed or restricted, how would
3 you actually stop a vessel from entering or leaving the jetties--
4 if it was closed or restricted?

5 A. Call them on the radio, employ our boats to chase them down
6 and educate them.

7 Q. When you escort a vessel, do you provide any cautions or
8 warnings to the operator of the vessel?

9 A. Yes, ma'am.

10 Q. Can you please explain that to me.

11 A. So in accordance with the Coast Guard addendum to the
12 National Search and Rescue manual, there's several required
13 phrases that we use, one of them being that they're responsible
14 for the safe operation and navigation of their vessel. Another
15 is to ask them how many people are on board. Off the top of my
16 head, I'm not sure I'm going to hit all of them, but I would also
17 say that, you know, telling them the proposed manner of the
18 escort and then what channel they can reach us on and then ask--
19 anytime we converse with a mariner on the radio, in accordance
20 with that manual as well, we are required to ask them to put on
21 lifejackets.

22 **LIO:** Okay. Lieutenant Woods, please put up Exhibit--Coast
23 Guard--Coast Guard Exhibit 009, composite photos of the BESS CHET

1 and the MARY B II and please show slide 4.

2 Q. Boatswain Molloy, for your reference in answering the next
3 questions, I'm putting up the image behind me of the MARY B II.
4 Looking at all the factors that influenced the MARY B II, can you
5 please talk about the potential risks, from your experience of 19
6 years, when you look at a vessel of--in that picture. Do you
7 believe that based on the environmental conditions--what are the
8 risks associated with a vessel of the size, age and construction
9 of the MARY B II?

10 A. If you were to compare the MARY B II with many of the other
11 commercial fishing vessels that are crab fishermen, I think that
12 you would notice that those are purpose-built for rough seas and
13 the MARY B II has a very low freeboard on the bow. I would want
14 a higher freeboard, for example. And being wooden construction
15 obviously. That's all.

16 Q. So those are potential risks for you when you look at that
17 vessel objectively.

18 A. Yes, it's an older vessel. So I would--it definitely--when I
19 see the picture of this vessel on AIS and I'm about to go out and
20 escort it, I think to myself, well, that's--that's going to need
21 an escort.

22 Q. If you had been given information about a potential line in
23 the propellor or the rudder, would that be of concern to you?

1 A. Yes.

2 Q. Please explain.

3 A. It could cause the MARY B II to lose propulsion on the most
4 dangerous part of the transit, the bar. So, sure, you could go
5 offshore and run around for 3 days with a line in your screw, but
6 the one place where it's the most important to have 100% vessel
7 reliability is on the bar.

8 Q. As a prudent mariner, would that be information that you
9 share with the Coast Guard--if you were acting under your license
10 as a prudent mariner, would you share that information if you had
11 a line in your vessel?

12 A. Yes.

13 Q. What about the factor of the deterior--deteriorating weather
14 forecast for the bar? Is that a potential concern for you that
15 you consider amongst everything in your decision making?

16 A. Yes, that's a common reason to be in a higher phase of the
17 Coast Guard search and rescue phases.

18 **LIO:** Lieutenant Woods, please prepare to display Coast Guard
19 Exhibit 03, "Critical Communications", with the projector and
20 sound on and up.

21 Boatswain Molloy, we'll now turn our attention to the time
22 when the MARY B II left the crabbing grounds and came up to a
23 position near the entrance of the Yaquina Bay bar where your

1 vessels VICTORY and Coast Guard 47266 were waiting to conduct a
2 night escort mission in deteriorating bar conditions. We've
3 created this presentation, like I said, and I'd like to show you
4 this presentation slide by slide, but I'd like for you to tell us
5 the story as it--as it happened. I may have some follow-on
6 questions after you describe what's happening slide by slide.

7 Advance the slide, please.

8 Q. Boatswain Molloy, let me know if you need us to zoom in.

9 A. And you would like me to read----

10 Q. Once you familiarize yourself--well, yes, I'd like for you to
11 describe what we're seeing on this slide. For the benefit of the
12 public, also, all the times are, as mentioned before, listed in
13 universal coordinated time, which is UTC. So the first entry on
14 this page modified to Pacific Standard Time is 9:46 p.m. standard
15 time--belay my last. Boatswain Molly, can you tell me what the
16 Pacific Standard Time would be for that?

17 A. For 0400, that would be----

18 Q. 041--first----

19 A. Were we in daylight savings time?

20 Q. Plus----

21 A. So 2200 or 10:01 at night, p.m.

22 Q. So for clarification--I think our math might be slightly off.

23 A. Oh, 8:00 p.m.?

1 **LIO:** Give me one minute.

2 [Pause to confer.]

3 **WIT:** Yes, 10:01 p.m.--8:01 p.m., sorry. It's the military time
4 throwing me off.

5 **LIO:** No worries.

6 Q. Okay, so can you please explain to us what's happening here
7 in the slide.

8 A. We're trying to call the BESS CHET.

9 Q. Okay. So we is who?

10 A. So it looks like the 47266 is receiving a bar report for the
11 latest--I'm sorry, a buoy report for the latest stonewall buoy,
12 but the station is doing call-outs, trying to find who the last
13 vessel that we can see on the horizon is. So we can see a vessel
14 down by Seal Rocks. We can see their sodium lights, and we knew
15 that--we suspected that they were going to be coming back to the
16 bar.

17 Q. So then what happened?

18 A. Well, we did not have--they did not hail us and they did not
19 answer the radio. So we returned to the station and dressed down
20 and secured from our bar escorts for the evening. I was
21 expecting that maybe they were just heading south and going into
22 Coos Bay since we did not actually have the BESS CHET logged out
23 in our logs either.

1 Q. Okay. So what did you do as the CO when you were back at the
2 station? What did you do with respect to that vessel?

3 A. Well, so after we had determined that we could not reach
4 them, I went to my office and started to dress down and I was
5 getting ready to go home. Probably around this time the OOD
6 approached me and we gathered up the other boat operators and--or
7 officer of the day, excuse me, and gathered up the other boat
8 operators and determined that we--it was, in fact, the MARY B II.
9 BM2 Dozier then relayed to us some details after talking with the
10 captain about his experience level, where he was from, how many
11 people were on board, and that they were, in fact, coming back to
12 Yaquina Bay. And so after looking at the AIS snapshot, the
13 picture of the--the MARY B II--and we looked around the room at
14 it--we decided that it was prudent to get back underway.

15 Q. You mentioned that the OOD told you about his experience. Do
16 you know where she got that information?

17 A. She spoke with him via cell phone.

18 Q. Was the experience level part of the decision making based on
19 her interaction with him or a comment made by LAST STRAW which we
20 heard about in previous testimony?

21 A. So the LAST STRAW had mentioned it, but I didn't take too
22 much credence--it was said, but I wasn't--it didn't fully concern
23 me, but it definitely was a line of thought, actually, when--when

1 BM2 Dozier did bring up that he said he's from the East Coast and
2 that he was a capable mariner. But that--you know, that
3 experience level, the--combined with the sea state is, as far as
4 I see, right out of the Coast Guard addendum to the National
5 Search and Rescue manual. That's someone that we should have
6 cause for concern.

7 **LIO:** Okay. Let's advance the slide, please. Play audio.

8 [Audio was played.]

9 Q. So then--so then what happened? What did we hear here that--
10 that was informative to you?

11 A. We heard how many people on board were on the MARY B. We got
12 the correct name. We established radio communications. We
13 determined when he was going to be back to the bar and that he
14 was going to make 6½ knots.

15 **LIO:** For the benefit of the public and the record, we had some
16 technical difficulties with the sound. So we're going to go
17 ahead and play that audio again and we're going to make sure that
18 it's--it's heard. Play it again, please.

19 [Audio was played.]

20 **WIT:** I think also the fact that he called the Yaquina Bay bar an
21 inlet--is it on?

22 **LIO:** No, I--press--okay, press the mic again. Okay, good.

23 **WIT:** I think it's also important to notice that he--he referred

1 to the Yaquina Bay bar as an inlet.

2 Q. As an experienced mariner, what is--why is that--why does
3 that pique your interest?

4 A. On the West Coast we commonly refer to every entrance going
5 up and down the coast as a bar, and on the East Coast it's--or in
6 the Gulf Coast they refer to it as inlets.

7 **LIO:** Okay. Lieutenant Woods, don't display but prepare to
8 display Exhibit--Coast Guard Exhibit 030, which is entitled "Surf
9 Considerations". Boatswain Molloy, if at any point you want to
10 us that presentation that talks about different waves and
11 periods, please feel free to do that, but at this point I'd like
12 to cue up slide 2 with a short video that describes waves and can
13 describe the--a vessel entering the Yaquina bar in heavy seas.
14 So slide 2, play the video.

15 [Video was played.]

16 Q. Boatswain Molloy, can you explain what we are seeing here?

17 A. That's the fishing vessel EXCALIBUR crossing the Yaquina Bay
18 bar.

19 Q. Is that a local vessel?

20 A. Yes.

21 Q. Do you know, off the top of your head--well, her size is 65
22 feet in length, as it says here. Can you explain what's

23 happening as far as what we're seeing, like how we're not seeing

1 most of her? Can you explain what we're seeing?

2 A. Well, so the EXCALIBUR, I'll first point out, is a purpose-
3 built vessel for the northwest. It's got a very--you can't
4 really tell from the pictures, maybe, but it's got a 12-foot
5 freeboard, I would say, on the bow. In crossing the Yaquina Bay
6 bar it looks like--and it could be the direction, but there was
7 some waves--sloughing waves on the stern, spilling into the
8 channel. And the EXCALIBUR was--looked like on the back of a
9 wave, which is where I would want to be, not on the front, coming
10 in--coming into the bar.

11 Q. Would you say--being out there that night on January 8th,
12 2019, would you say that the conditions wave-height-wise were
13 similar? Would you concur with that?

14 A. No.

15 Q. Okay. Please explain.

16 A. This day looks like it's got about 15 to 20 knots of--of wind
17 on it and it looks probably like it was a sea state--I think
18 you've already had this explained, but I would say it's not a
19 round swell--or square was maybe the term used--in that it--it
20 looks like there's more chop than the night the MARY B II
21 capsized. So the night of the MARY B II, we had a building
22 swell. So that's--earlier in the day it was 4--4-to-6-foot, very
23 flat and calm bar. We have a deep bar. And every--so when we

1 got out there, every 30 or so minutes there was a large series
2 coming through. In between it was flat.

3 Q. So 30, you said, 3-0?

4 A. I'd say every 30 minutes there was a--and that's common
5 throughout the entire Pacific. Every 30 minutes you'll have a
6 big set come through. In between you may have a couple of false
7 series or smaller series, but the big sets that break in the
8 channel--and they can break all the way across if it gets big
9 enough--and that's usually indicated also by the interval, I mean
10 the seconds. So 12 feet at 18 seconds is a very large interval.
11 It probably wouldn't even break on the Yaquina Bay bar.
12 Eighteen-foot, twenty-foot at 18 seconds, I think, is what it got
13 up to that night. That has the chance of eventually breaking on
14 the Yaquina Bay bar.

15 **LIO:** Okay. Let's go back to Exhibit 03. Can you put it in
16 PowerPoint mode. There we go. And advance the slide, please.
17 Play sound.

18 [Audio was played.]

19 Q. Boatswain, can you explain to us what happened during this
20 part of the night?

21 A. We were then getting ready to get underway. So that's BM1
22 Harris. He was--took over as the officer of the day so that BM2
23 Dozier could get underway on the 47 for some experience with

1 another one who--the petty officers. And so now we're talking to
2 him, just determining, making sure what speed he can make. It's
3 a pretty standard communication interchange between a Coast Guard
4 station and a fishing vessel.

5 Q. And mobile-1 asked the operator of the MARY B II what the
6 capability of the vessel was in terms of max speed. Why does the
7 Coast Guard ask that question?

8 A. We'd like to know how fast they can get into the bar.

9 **LIO:** Let's advance to slide 5, please. So we've seen a video of
10 this in earlier testimony, but this is an overview of the
11 evolution of the MARY B II's escort in and all the way up to
12 shortly after the casualty. Can you play?

13 [Video was played.]

14 **LIO:** Okay. Please advance the slide. In the interest of the
15 public's understanding, can you explain what information you were
16 conveying to the operator of the MARY B II at 9:46 local time?

17 Boatswain, I'm going to go ahead and let Mr. Woods play the
18 audio.

19 [Audio was played.]

20 Q. So again, Boatswain, please explain what information you're
21 passing or conveying to the operator.

22 A. Commander, that's my standard verbiage I use for any escort.
23 It both reminds the mariner that they are responsible and that

1 I'm not out there to--in an escort, which is somewhat of a
2 misnomer. I'm not directing them how to get in the bar. That's
3 the reminder. I'm not directing you to how to get in. I'm here
4 to assist you. I'm going to light some flares off. So it's kind
5 of like setting our plan in motion for how we, as the Coast
6 Guard, are going to interact with them. At the same time, if
7 they chose not to cross--and I don't want to pressure them into
8 that--then we will stay out of their way.

9 Q. So you communicated to the Coast Guard--the Coast Guard's
10 plan, like you said, to the operator. So why--tell me why the
11 VICTORY was going to ride in on the MARY B II's stern.

12 A. The District 13 SAR plan has pretty explicitly said that
13 that's where escorting vessels will take position.

14 Q. And what does that do?

15 A. So the VICTORY is a 77,000-pound boat. It's heavier than--so
16 it's 3 feet longer than our--5 feet--sorry, can't do math--5 feet
17 longer than the 47-foot motor lifeboat, but it is almost double
18 the weight. So when you encounter some waves that are going to
19 stand up and break in the mid-channel, much like we saw when the
20 EXCALIBUR was crossing the bar, you can drive into that and help
21 mitigate and displace that energy with the VICTORY. You can also
22 do it with the 47, although it doesn't work as well because the
23 47 is a planing-type hull that rides on top of the water. The

1 VICTORY is a displacement hull. So it sits deeper in the water.

2 Q. That's a lot of information.

3 A. I know.

4 Q. So in layman's terms, you're riding on the stern to do what
5 for the MARY B II?

6 A. I'm calling out the series. I'm illuminating the bar behind
7 him so that--because otherwise they won't be able to see what's
8 coming. And I'm there in case something stands up and wants to
9 break behind them; we will take it for them.

10 **LIO:** Okay. Please advance to slide 7. Play audio.

11 [Audio was played.]

12 Q. Boatswain, can you explain, please **sir**, what that--what you
13 were passing as far as information.

14 A. I was passing more of the same from what I had mentioned in
15 the last slide, just our plan, continuing the plan. This is me
16 actually telling him that we're going to launch illumination
17 flares, where we're witnessing the breaks as we're coming across,
18 and that the best part of the channel is straight up the middle.

19 Q. There are a couple terms that you used here that I would need
20 to clarify for the benefit of the public. What is the pinnacle?

21 A. It is the extension of the south reef that almo--if you have
22 a chart you can pull up, you can see it on the chart. So it--it
23 touches the channel.

1 Q. Would you like us to pull up a chart?

2 A. Sure.

3 **LIO:** 004, please.

4 Q. While waiting for that to pull up, can you talk to me about
5 the hill? What's the hill?

6 A. Chicken Point.

7 Q. So why do you pass this information? Is it to make sure--
8 is--does it have to do with common operating picture?

9 A. Yes, Commander, I think that it does. The--the plan is, you
10 know, having a good plan going into this is usually a recipe for
11 success.

12 **WIT:** Right there.

13 Q. So--so what you're pointing to right there with the laser
14 pointer is the pinnacle. And then can you point out the hill
15 again?

16 A. [Complied.]

17 Q. Thank you. And that's where mobile-1 was, right? Is that
18 corr----

19 A. Yes.

20 **LIO:** Okay. So let's go back to 038, please. And let's advance
21 the slide to slide 8, please. Play the audio.

22 [Audio was played.]

23 Q. So this is at 9:57 local time. Can you explain what's

1 happening here, Boatswain?

2 A. So we arrived to buoy 1 on the VICTORY, basically did a half
3 of a turn around buoy 1 to get out of his way and he was--had
4 passed us, once we got turned around, and looked like he was
5 making his run in.

6 Q. When--before that--so before he started making his run in,
7 did he wait a couple of sets to observe the sea series?

8 A. Commander, he would have been out there before we got on
9 scene. So he was actually at sea. So he had a better idea,
10 frankly, of what was the series. I wouldn't be able to tell you
11 if he had waited, because I didn't track the vessel's movements
12 before he got to the bar.

13 Q. Okay.

14 A. I was concentrating on crossing the bar.

15 Q. So at this point what are you expecting as far as the MARY B
16 II's speed? What are you expecting for him to make as he moves
17 in?

18 A. So, Commander, he--when we initially talked to him, he said
19 he was 5.4 miles and he was going to be at the bar in about an
20 hour or so. I thought he'd make 5 to 6 knots. He also
21 advertised his maximum speed I think 7 knots. So I was looking
22 for 6 knots, 5 to 6 knots coming in.

23 Q. So when you--when you formulated your plan and your assets

1 for timing the series and the lulls, was that information
2 important to you in formulating a plan?

3 A. Commander, yes, it was. So you always want mariners to cross
4 in between series. So when we had crossed the bar--the 47 beat
5 us out to the--to the tips that evening and they had sat there
6 for I think probably 12 minutes, to the point I don't think they
7 believed us when we said there was actually breaks on the bar.
8 It was that flat. Then when we got on scene, as soon as we got
9 there, it came in and we called the series out. After that it
10 flattened right back off. So with the crew on the VICTORY, that
11 is absolutely something that we plan, to cross the bar during a
12 lull.

13 Q. And to your recollection, was the plan that you passed for
14 the MARY B II based on that concept of crossing during a lull?

15 A. Yes.

16 Q. Okay. You--I believe that you mentioned watching the buoy
17 right up there. What--what does that mean? Can you explain
18 that, please?

19 A. So that buoy--I'm not going to give you the technical data on
20 it, but it has a 15-foot height of eye. So when I'm sitting
21 within one wave length of that buoy and I lose the light on top,
22 I know that I'm looking at a 16-foot wave. When we arrived at
23 the buoy, it was static in the water, like there was no waves.

1 So we were well--I'd say 3 to 5 minutes into the--into a 30-
2 minute lull.

3 **LIO:** Okay. Let's advance to slide 9, please.

4 **PIIC:** Commander, did we hear that correct? It was a 30-minute
5 lull? I heard 30. I may have misheard it.

6 **WIT:** Yes, I'd say 30--30-minute lull with a series in between,
7 but for a major series of big, you know, 16-to-18-foot seas and
8 breaks, 30 minutes.

9 Q. So there's no audio to this one. So please take a look at
10 that. For the benefit of the public, it's roughly the same time,
11 at 9:57 p.m. The VICTORY and the CG47266 have a series of back-
12 and-forth communications, which are mostly between the two Coast
13 Guard escort vessels. Boatswain Molloy, based on what's written
14 here, it seems that you are concerned about the MARY B II coming
15 in slow.

16 A. I was informing the 47 that he was coming in slow and that he
17 had half an out--outrigger out. So I found that to be a sign of
18 not running a tight ship, but we were mid-channel at this point,
19 going right in the middle of the flat.

20 Q. Did the vessel slow down from a speed that you previously
21 observed that she could make?

22 A. So he was--he stated that he made 6 knots--was going to make
23 6 knots back to the bar. So I think the timeline here, he

1 actually ended up making, from buoy 3 to the tips, 4 knots. So
2 it felt slow and I would have liked to have been going a little
3 faster. It seemed maybe it--if my memory serves me correctly,
4 that he was turning back and forth a little bit more than--than
5 he needed to be. He should have just stuck it on the back of a
6 wave and followed that one right in, and we seemed to be doing a
7 little bit of fishtail motion, which caused him to be a little
8 slower. So maybe he was turning for 6 knots, but he wasn't doing
9 it through the water.

10 Q. Okay. So you're commenting here about him not riding good in
11 the water. Can you read that, please.

12 A. It says,

13 "Go ahead and start pulling up a lot of
14 them. This guy is not riding good in the
15 water, like he's not a very stable boat.
16 He's got one outrigger halfway out. And we
17 had a dud 127."

18 So he had one outrigger out. There was no bird or stabilizer.
19 It wasn't in the water. He just had one pole hanging out.

20 Q. So I know you said that that--you were thinking that that was
21 make sloppy housekeeping.

22 A. Uh-huh.

23 Q. Were you concerned at all about that being related to

1 stability or were you concerned that MARY B II was making
2 sluggish because there might have been water from the hull--in
3 the hull from a leakage of the wooden hull? Was there any
4 concern like that? Did that--any of that turn through your mind?

5 A. No, Commander, this is almost exactly what I anticipated to
6 happen with a vessel of this construction and someone who is
7 unfamiliar with the area, to be not--I mean, the boat was stable,
8 but I guess I kind of expected it. So it was more informing the
9 47 that this is what was going on.

10 Q. Do you recall which outrigger it was, port or starboard
11 outrigger?

12 A. Port outrigger.

13 Q. Do you think that a partially deployed outrigger could cause
14 a distraction for the crew of the MARY B II or affect its
15 stability?

16 A. It didn't appear to me that way.

17 Q. In communicating with the 47266, you referenced 3 in the
18 context of timing to put up illumination flares. Just to be
19 clear, we're referring to the Aids-to-Navigation that's charted
20 as buoy 3?

21 A. That's correct.

22 Q. So both of the Coast Guard vessels talked about reference--
23 about referenced--what is the significance of the point in the

1 waterway with reference to--with respect to bar crossings? I'm
2 sorry, the referenced buoy.

3 A. It lets me know how much further I have to go.

4 Q. And how far is that?

5 A. About a half a mile.

6 Q. And how do you guys know that? Like how do you know where
7 that buoy is? What are you using on your boats to recognize that
8 spot?

9 A. A chart plotter.

10 Q. Okay. So, Boatswain Molloy, that--that channel buoy number 3
11 is a seasonal buoy. We've heard that multiple times, and we know
12 that it wasn't on station that night. Can you explain why it's a
13 seasonal buoy? Why does it get reestablished and disestablished
14 every year?

15 A. It gets--so I actually have seen the buoy folder for that
16 particular buoy, being that I was an officer on the FIR. It gets
17 washed off of station and has repeatedly ended up on the north
18 beach of Yaquina--so inside the north reef, an area hard to get
19 to and extract it, costly. So being--making it a seasonal buoy,
20 there would have been a--I assume a waterway management survey
21 that was conducted to determine that they could remove it and
22 make it seasonal. That's an assumption. I don't know for sure.
23 I've never seen the plans.

1 **LIO:** Okay. Let's advance to slide 10, please. So this is at
2 10:00 p.m. Can you play the audio.

3 [Audio was played.]

4 Q. So you would have heard that transmission. What was
5 happening here?

6 A. I don't know. I don't even know if I heard it. We may have
7 been discussing something else on the 47, frankly--or the 52.

8 Q. Hearing it now, what was--what was BM2 Dozier conveying to
9 the operator of the MARY B II?

10 A. She's calling out where she sees breaks in the bar or waves
11 on the bar.

12 Q. And why is that important to convey to the operator of the
13 MARY B II?

14 A. Keeping the communication lines open and letting them know
15 what we're seeing. We're his eyes on the bar.

16 Q. And why is the 47266 marking the center of the channel?

17 A. Well, it's--first of all, so that the MARY B II knows where
18 they are. They had their blue light on. Otherwise, you know,
19 the MARY B II is running in with halogen lights on, you know, big
20 bright 100,000-candle-power lights. So he can see pretty well in
21 front of him. It's important for BM2 Dozier to be in the middle
22 of the channel for her own safety. Actually it was BM2 Wilson--
23 for his own safety because that's the deepest part of the

1 channel.

2 Q. And the blue light is on so that they're marking it as a--as
3 a point of reference; is that correct?

4 A. That and so that they don't get confused for something else.
5 It's hard to see navigation lights at sea, especially when your
6 eyes have adjusted to your own sodium lights. So when you look
7 out on the horizon, you may not be able to determine what's--the
8 boats that are not running with halogen lights, like the 47 motor
9 lifeboat.

10 Q. Is it common practice in this area for fishing vessels to run
11 with their halogen lights----

12 A. Yes.

13 Q. In your professional opinion, would a Coast Guard lighted
14 buoy--lighted tower similar to light 4 on the south jetty,
15 marking the north jetty, would that have provided a visual
16 reference point for both your Coast Guard vessels and the MARY B
17 II that night?

18 A. Yes.

19 Q. Was the Coast Guard 47266 the only vessel in the entrance of
20 the channel?

21 A. Yes.

22 Q. Boatswain, what's their--what's the 47266's approximate air
23 draft?

1 A. Commander, could you repeat that?

2 Q. Yes. What is the--the air draft for the 47266--approximate
3 air draft? I----

4 A. Oh.

5 Q. ----know it probably depends based on fuel limit.

6 A. So it's a 14-foot height to eye--18-foot for the buoyancy
7 chamber--18 foot, 6 inches to the top of the buoyancy chamber and
8 the radar. So where everyone is standing is 14-foot. Is that
9 what you're asking, what the freeboard is?

10 Q. Well, I'm trying to figure out if--if the 47266 being there
11 could possibly block the visibility of the entrance ranges.

12 A. Negative. I was standing at 5'8" on the VICTORY and I could
13 see them clearly. That's why you see that we go directly up the
14 center of the channel.

15 Q. Thank you. Could there have been other vessels or
16 obstructions blocking the clear view of the entrance range
17 lights, do you think?

18 A. No. I was using those to navigate.

19 **LIO:** Okay, thank you. Please, let's advance the slide to 11.

20 Play the audio.

21 [Audio was played.]

22 Q. So at this point it's still 10:00 p.m. Did you hear these
23 transmissions, Boatswain?

1 A. I did.

2 Q. Can you talk to me a little bit about what was happening both
3 on the 52 and what was happening overall?

4 A. I was confused, first of all, why his AIS would be going off.
5 The second thought went into my head--is this the approximate
6 position of where we are when the radio broadcasts are being
7 made?

8 Q. Other slides will have insets that have the--the point by--
9 minute by minute. So let's assume that it's not, because it's
10 hard to tell on the chart. But you guys are definitely making
11 the approach and, at this point, you have----

12 A. Yes, so the 47266 passed exactly what I would expect to pass,
13 and that's that you should not go to the north. You should stay
14 in the middle of the channel.

15 Q. So why--what does the dumping ground? She referred to the
16 dumping ground.

17 A. So if you look at those dotted lines, those are old dredge
18 spoils. But I've also heard the dumping grounds referred to as
19 the location where you get dumped over along the north reef
20 there. The reef--you can see the contour and the depth curves
21 there. So you see that it breaks--if I can----

22 Q. Please.

23 A. ----use this pointer here.

1 Q. Yes, please use the pointer.

2 A. See these contour curves?

3 Q. Yes.

4 A. It breaks there. So you want to avoid that.

5 Q. Okay. So at approximately 10:00 p.m. the operator of the
6 MARY B II makes what is believed to be the second to last radio
7 communication, and that is, "Yeah, I got you guys all right. Let
8 me pay attention here because so many vessels here, now I got
9 my--I got AIS going off on my plotter here, clogging it up."

10 Could that radio call refer to the Coast Guard vessels and the
11 lighted tower 4, which is equipped with AIS, with an automated
12 identification transponder and a range scale set for chart
13 plotter display?

14 A. It could, yes.

15 Q. Can you think of any other explanation as you were--you and
16 the--meaning the VICTORY and the 47266 were the only vessels in
17 close proximity at the time of bar crossing?

18 A. No. I don't know why his AIS would be up. He's got his AIS
19 going off clogging it up--I mean, most mariners have been at sea
20 with dozens of vessels around them and I don't think that's
21 something I'd be concerned with.

22 Q. So what came to mind when you heard that comment, that
23 transmission over the radio?

1 A. First, confusion and then the desire to let them pay
2 attention and cross the bar, as he intended to do so from what he
3 said. So basically only call out what was necessary after that.

4 **LIO:** Okay. Let's advance to slide 12, please.

5 Q. So at this point it's about 10:01 p.m. local time and there
6 was conversation between the VICTORY and the Coast Guard 47266.
7 Please talk about this slide in reference to "3" and in terms of
8 how the Coast Guard escort was going to proceed.

9 A. Well, right up the middle of the channel.

10 Q. Okay.

11 A. So we should be--the reason we're calling out right now, I
12 think, is--or the 47 is calling us is to determine when they
13 should light off a flare.

14 Q. Had that been your plan for--to light--for the 47266 to light
15 off a flare when you got to approximately 3?

16 A. Yes.

17 Q. And that's to illuminate the bar; is that correct?

18 A. That's correct, for 36 seconds.

19 **LIO:** Let's advance to slide 15, please.

20 Q. Boatswain, can you explain to me what's happening here?

21 A. Well, this is where we're actually at number 3 and it looks
22 like we're in the lull. So we're committed.

23 Q. So for the benefit of the public, can you please talk about

1 the lull, and I would ask that you look at Exhibit 030, surf
2 considerations, perhaps to display the--to describe for your
3 explanation of what a lull is.

4 A. Can you pull that up, please?

5 **LIO:** Lieutenant Woods, please pull up 030. So just advance
6 forward and Boatswain will stop you.

7 **WIT:** I'm not sure that the lull is going to be in here.

8 Q. Well, could you explain to us with--using the waves where--
9 how a lull happens.

10 A. Well, so waves are formed when wind acts upon the surface of
11 the water and it moves the--the particular layer of water. And
12 the stronger the winds, the longer the duration and the larger
13 the fetch will determine how bigger waves form. As small waves
14 are formed, they bump into bigger waves and then they carry that
15 energy. The small waves catch the big waves and then keeps--
16 exponentially it's bigger and bigger and bigger. This doesn't
17 happen uniformly across the entire Pacific Ocean. It happens in
18 waves of up to seven to ten waves in a series. In between
19 those--and usually this is why the interval matters, because as
20 those waves are formed, you know, at the 1-to-2-second mark they
21 all group together and then 18 seconds is going to mean a much
22 longer distance between, first of all, the wave length of crest
23 to crest but also of the amount of energy that was built for that

1 one set. There's the equivalent in the lull. So there's a much
2 larger lull, and that's what we'll normally find when we have
3 favorable winds and a larger interval with even a big swell
4 height. So I think the swell height that evening was supposed to
5 build to 20-foot. And so that's a very large series, but it's 18
6 seconds. So that's why I say 30 minutes because--and that's a
7 guess. I mean, it's dark. So 30 minutes is kind of where we had
8 it timed.

9 **LIO:** Okay. So let's go back to 038, please, and back to slide
10 13, please.

11 Q. Based on the image that we're going to put back up, the MARY
12 B II was in the vicinity of--it looks to me like just outside of
13 buoy 3. That's approximate distance. So we talked about that
14 being about half a mile; is that right?

15 A. Yes.

16 Q. Did you have any concerns at this point that they were not
17 going to make the jetty tips, they were not going to make the
18 crossing before the next series of waves?

19 A. I knew it would be close, but I wasn't concerned. We were in
20 the middle of the channel.

21 **LIO:** Okay. Let's advance to slide 14, please.

22 Q. So as you can see, there's an inset with orange--orange--that
23 indicate 1 minutes--1-minute interval and that's 10:03. Can you

1 tell me what's going on here?

2 A. Well, I know that--so I was operating the radio and I was the
3 other surfman on board the boat. BM1 Todd Gormley was driving.
4 He was complaining about having to back down. So I didn't
5 actually look and know that we were going 2 knots, but I knew we
6 were going slower than we had wished.

7 Q. So what was your thought process, and was your concern
8 growing at this point?

9 A. Yes, absolutely. I mean, here comes--the series is coming.
10 We have guessed how long it's going to take. It's dark. But
11 we're mid-channel. So we're good.

12 **LIO:** Okay. Let's go ahead and advance to 15. Thank you.

13 Q. Boatswain, can you tell me what's happening in--in this set
14 of communications, starting with 1, then 2, 3 and 4.

15 A. Just that he's going as fast as he can. The 47 calls us
16 back and asks us where we are. We say we're 10 yards inside the
17 3, and that was at--I'm not sure about the time stamps you have
18 here. So maybe that was at 2205.

19 **LIO:** Okay. So let's advance to slide 16. Play the audio.

20 [Audio was played.]

21 Q. So when you say "16-foot are building up behind you", tell me
22 what you're telling him.

23 A. Sixteen-foot swell.

1 Q. Can you talk about the two comments here in the slide?

2 A. I--I told him that there was a 16-foot swell behind him and
3 47 said they were going to go ahead and launch off another 127,
4 so another illumination flare.

5 Q. Are you having any concerns based on the information being
6 passed and them saying that it's their last illumination flare?
7 Do you recall having any concerns?

8 A. Oh, they had more below, but, yeah, sure, I had concerns that
9 was their last one, but honestly, I mean, where we are in the bar
10 right there, we only need one more. We're 2 minutes away from
11 being inside the tips and we're in the middle of the channel.

12 **LIO:** Okay. So let's advance the slide--advance the slide,
13 please.

14 Q. Boatswain, tell me what's happening here. It's still 10--so
15 it's 10:05 at this point. Can you tell me what's happening?

16 A. The 47 is calling out that it's the end of the lull. They're
17 starting to see the set show back up at the tips and a bigger set
18 is coming in after that. And they say if he's not going to make
19 it in from there, might want to think about going back bow into
20 the seas--would be better or just trying to push all the way in.
21 So none of this is being broadcast to the MARY B II. And then
22 we're--I say "stop", like we're actively working this right now.

23 Q. And so tell me why you did that. What's happening around you

1 that--that you needed them to stop communicating at the moment?

2 A. We are--if you look, we're the same distance right there from
3 being in safe water as we are the jetty tips--our width apart.

4 So the jetty tips are 300 yards apart. We're 300 yards from
5 being where we need to be, like we're there. If we turn around
6 now, we're going to be in the series, and I don't know how big it
7 is because it's dark.

8 **LIO:** So let's--let's advance the slide, please. Play the audio.

9 [Audio was played.]

10 Q. Boatswain, can you tell me what's happening at this point?

11 It's 10--it's 10:05 at this point, through our best records.

12 What's--what's happening here? Can you describe it for me?

13 A. You know, honestly when I see this picture and I see our
14 position on the bar, I realize that although there was a set
15 coming, we're not in the middle of the channel anymore. We're
16 right where I don't want to be. We're on the edge of the
17 channel, on the north side. So what I thought was the set could
18 have been the same waves that had been breaking there all night
19 long. I'm letting him know that that's the set. I am--you know,
20 the 47 and the MARY B II are answering the radio. So everyone
21 knows what's going on. Everyone is getting ready.

22 Q. And we heard audio back fro the operator of the MARY B II.

23 So what does that mean when he says what he said?

1 A. He means he understands and that he knows there's a set
2 coming. I'll also point out that that set, if I remember
3 correctly--and I think I do--that it was not breaking. I can
4 just see--I could see waves at buoy number 1 because I am
5 starting to lose sight of the light, like I mentioned, on top of
6 the buoy. That's what--how I know there's a set coming in
7 between illumination flares.

8 Q. Did you observe any indication through any ship maneuvering
9 that the MARY B II was reacting to the incoming series of waves?

10 A. No.

11 Q. Through any increase of speed?

12 A. Not that I recall.

13 Q. So the only thing that you observed, the only thing that you
14 had was that he acknowledged your radio transmission; is that
15 correct?

16 A. Yes.

17 **LIO:** So let's advance to slide 20. Please play the audio.

18 [Audio was played.]

19 Q. So that was a little bit hard to hear, but can you please
20 tell, for the benefit of the public, what was being said?

21 A. So the 47266 is relaying to the MARY B that it's the
22 beginning of the smaller set and that it's coming in right now.

23 Q. So why does she say smaller set?

1 A. Because she can tell that it's not breaking where we had seen
2 earlier in the evening on our way out. It broke on both
3 pinnacles. And, you know, you can see the breaks from quite a
4 ways out. So--when they actually do break. So when I say 16-
5 foot, it's not breaking. I'm looking at the swell. They have to
6 be a little closer to discern a swell from a break.

7 Q. Do you recall that night if there were--there was any kind of
8 pattern to the series?

9 A. It was what I would consider a ground swell. So it was--
10 yeah, you'd have a smaller set first. You have a big lull, small
11 set and then what we call a cleanup set, which is--cleanup set is
12 the big--big set that comes through, and they're normally **rare**
13 and far apart.

14 **LIO:** Okay. Let's go ahead and advance the slide to 21. Okay,
15 play.

16 [Audio was played.]

17 Q. Boatswain, can you explain what's happening in this slide?

18 A. So the MARY B, as you can see on the chart, was--was north in
19 the dumping grounds. And so we're behind him. That's how I
20 know, because at this point I'm looking at it stack up behind me.
21 And when you get close to the tip of the jetty, the--so this part
22 I remember--I'll never forget. I remember it specifically
23 because it wasn't so much that I knew I was three boards to the

1 north; it was that I could see the jetty. And it was directly in
2 front of them. And there's--it's like seeing a shark and being
3 in the water. And then, you know, just telling him, "Hey, you're
4 three boards north." Maybe--you know, in my mind, maybe he
5 thought that he was--maybe he couldn't see the jetty. I don't
6 know what I was thinking. I needed to tell him to come to
7 starboard, and I think that's the first time that evening that I
8 actually gave him any direction to steer, because he was in
9 imminent danger.

10 **LIO:** Thank you, Boatswain. So slide--the Coast Guard needs to
11 state for the record that the actual position of the MARY B II
12 can't be precisely determined and that the positions are derived
13 from the shore-side expanded marine radar at Oregon State
14 University.

15 Q. So you explained that you followed and appeared to try to
16 call the MARY B II with this urgent information. What were you
17 hoping that would happen at this point, that the MARY B II would
18 do?

19 A. At least get back in the channel.

20 Q. And what was your assessment of the situation at the moment
21 from the standpoint of the escort mission?

22 A. The MARY B II--it almost appeared as if he'd taken all way
23 off and we were staring at the jetty. We--there was nothing we

1 could do.

2 **LIO:** Please advance to slide 22.

3 We're going to go ahead and take a 5-minute recess. It's
4 4:34. We're going to take a 5-minute recess. We'll reconvene at
5 4:39.

6 [The hearing recessed at 4:35 p.m., 16 May 2019.]

7 [The hearing was called to order at 4:40 p.m., 16 May 2019.]

8 **LIO:** Okay, it's 4:39 and we're reconvening the public hearing.
9 We were--before the 5-minute recess we were about to discuss
10 slide 22.

11 Q. Boatswain, can you explain what's happening here?

12 A. So this is after the MARY B II capsized. They did not wash
13 into the channel. So even--I think I had known that at this
14 point, but the 47266 indicates that he's on the north side of the
15 jetty. I requested a helicopter from AIRFAC--or Sec North Bend,
16 who controls the AIRFAC. That's the air facility.

17 Q. I'm sorry to belabor the point, but I think it's important to
18 get it on record. What do you recall seeing that night as far as
19 the MARY B II and how the series hit, what happened to the MARY B
20 II?

21 A. So the series that hit the MARY B II was--is on the tip of
22 the north jetty. I--I--when you get that close to the tip of a
23 jetty in seas that big, you can hear the rocks moving. So I

1 remember a couple things specifically. One is him coming to
2 starboard and me having hope and then him coming all the way back
3 around and looked like he wanted to square up to come back out to
4 sea. I could see his halogens, and he squared up at the tip of
5 the north jetty and faced down all the series that was coming
6 over in that area at that time. So he was well north of the
7 channel in a position where waves commonly break and you can see
8 rock when they sock the water off the tip of the jetty and the
9 exposed reef. Totally capsized, went end for end and then I--you
10 know, where he went, it went dark. So he was our--we had light
11 and then we had none. So we were on the bar without any lights.
12 Yeah, so that was--that was it.

13 Q. Okay. So what happened after the lights of the MARY B II
14 went out? What happened on board the 52-foot VICTORY?

15 A. So BM1 Gormley was--you know, he was basically saying, you
16 know, "Boatswain, what do we do? Do we--what do we do? What can
17 we do?" You know, like, we can't go over there because he was
18 inside the tip of the north jetty and we're watching, you know,
19 16-foot breaks suck up into the jetty. If you want to go to the
20 visuals of a plunging break, which is the most dangerous type of
21 break to encounter, we can go to that slide and just the---

22 **LIO:** Lieutenant Woods, please go to 030 and, Boatswain, would
23 you just direct him on which slide you want.

1 **WIT:** Go back. So go up to maybe slide 10, 8. So spilling--
2 let's go back. So spilling--you saw the EXCALIBUR crossing the
3 bar. You know, it looks like a big day. He's crossing the bar
4 and there's these spilling-type breaks. They basically don't
5 break the entire wave length. They spill from the top down. So
6 you'll have a 16-foot wave and the top 8 feet of it are white
7 water, you know, if that's--it's not a very powerful wave,
8 although dangerous.

9 Then go to the slide before--yeah, right there. So that
10 looks like a picture of the famous surf spot in Hawaii called
11 Pipeline. Sudden decrease in depth, for example, at the tip of a
12 jetty, this is the kind of wave you see. It sucks all the water
13 out in front of it, and it will break from the top to bottom
14 with, you know, an 8-foot wave that pounds per square inch is
15 like getting crushed by a wall that's a couple thousand pounds.
16 So very powerful, extremely dangerous, impossible for us to go
17 inside and render any kind of assistance into the north reef. So
18 through my head I think at that point in time it was dark. There
19 was silence on the radio for a period of time. We ended up
20 pushing back inside. I switched out and I pushed back out,
21 because I, you know, was hopeful that maybe they got sucked back
22 outside, because the way currents sometimes will work along
23 jetties, they may pull you out. So I pushed back out onto the

1 bar to--and then, you know, even to the north just to see if we
2 could see anyone.

3 Q. And did you?

4 A. No.

5 Q. Boatswain, what was the Coast Guard 47266 doing at this
6 point?

7 A. It's looking along the north jetty, on the inside, for
8 survivors. So, for example, what I would hope for in this tragic
9 situation would be that--the DOUBLE EAGLE, when it sank, I was on
10 scene in Tillamook back in 2010 or 11, and the boat got crushed
11 and ripped in half by a plunging break. The pilothouse washed
12 into the channel and the rest of the boat washed into the--the
13 beach, but they washed close enough to the 47 where they were
14 able to pull them out. So the 47 was searching alongside the
15 jetty trying to look for any kind of survivors or anyone that had
16 been pulled into the channel. The current was coming in. So you
17 would hope that that would be what would happen.

18 Q. Can you explain how the personnel at the Coast Guard station
19 responded under your direction?

20 A. We threw everything we had at it. We had BM1 Harris up on
21 the hill. He's one of my most trusted surfman at the station.
22 He was rallying the crew. He called in our expert, Chief
23 McCommons, who, you know, would have done anything we asked. I'm

1 sure that he wasn't excited that he got kind of thrown into the
2 communication center, but we're--he's the reason we have most of
3 the logs we have. The 47 continued searching and--and so did the
4 52. And then the helicopter--you know, the helicopter, when it
5 launched from the air facility, they--whenever they go into a
6 hover--I probably shouldn't even comment on a helicopter because
7 I don't know much about them, but it was not a very safe
8 evolution for them either in those seas--that sea state,
9 especially to deploy a rescue swimmer to recover one of the
10 mariners.

11 Q. So there were three persons on the MARY B II, and the boat
12 appeared to--to sink after it capsized. Can you continue to lay
13 out what the Coast Guard did in the active part of the search and
14 rescue mission?

15 A. So we did a barrier search of the jetties. The VICTORY--we
16 pushed offshore in the VICTORY. At that time I took the true set
17 when we were crossing back across the bar, and that broke all the
18 way across the channel. It was the first wave we'd actually seen
19 of that size that evening. It was also very dark. So that made
20 it--in light of what we'd just seen, I think tensions were high
21 on board the boat. We went offshore and we assessed the risk.
22 We saw the helicopter come in. We vectored them in to the north
23 side, where we knew the--the MARY B II had most likely washed.

1 Once we reached them and got them that information and they were
2 actively searching and had started to discover debris and the
3 shore party had started to let off 127 illumination flares, we
4 made the decision to come back in across the bar on the VICTORY.
5 And then we proceeded to help search the--the jetty and then--
6 yeah.

7 Q. Briefly, can you explain where the crew was finally located
8 and what was the status at the time of location?

9 A. All three--all three mariners were discovered deceased on the
10 north beach under Chicken Point.

11 Q. Thank you. My final area of questions relates to bar
12 conditions that you experience at Yaquina Bay bar. Describe the
13 conditions at the bar in terms of seasons. Is the weather better
14 or worse during winter months?

15 A. Consistently we have larger waves and more intense winds and
16 storms during the winter months. During the summer the wind
17 shifts to the northwest direction and seas are choppy and
18 smaller.

19 Q. How often do you observe dangerous conditions at the bar?

20 A. So we have a log for that. I'm going to have to estimate
21 that it's probably about 100 days a year we log conditions that
22 are--meet the requirements for designation as a surf station,
23 which is seas greater than 8 feet in a federally regulated

1 channel. So our--I'm sorry, surf conditions greater than 8 feet.
2 So we have surf on the bar that can be dangerous for commercial
3 vessels probably five times a year and the rest of the traffic,
4 180 days a year. Recreational boats are one of my--my biggest
5 concerns.

6 Q. Is entry into and through a dangerous bar at night more
7 dangerous than entering at daylight?

8 A. Yes.

9 Q. Can you explain why?

10 A. It's dark. That's the best way to describe it. Everything
11 that you see during the day you don't see at night. You get
12 confused of where you're going. It's kind of like being in the
13 fog. I guess the fog would be worse. Then the fog and darkness
14 is terrible. But, yeah, it's--dark, you're using Aids-to-
15 Navigation to navigate. It's dark in your pilothouse. So you
16 can't find things when you need them. You may not know where
17 your crew is all the time.

18 Q. Do tidal conditions influence the size and character of the
19 surf, waves at the bar?

20 A. Yes.

21 Q. Is it generally worse on an ebb, flood or slack?

22 A. Ebb.

23 Q. Looking at your vessels, why is a 52-foot motor lifeboat

1 found only at West Coast surf stations?

2 A. So there were only four 52-motor lifeboats ever built. They
3 were built in Curtis Bay, Maryland, for deep-water bars, towing,
4 and they can handle, with steel construction and just being--you
5 know, the VICTORY has been around since 1956. So built to last,
6 good steel, cyber-proof, I guess you could say, because the only
7 thing they have is two 671s and there's no electronically
8 controlled engine module that speaks to another thing. It's
9 basically from the helm to the engine. It's not like the new
10 boats we have, fly-by-wire and wireless controls, things like
11 that. And those are things in surf that make it much more
12 reliable.

13 Q. Does the Coast Guard identify the risks associated with bar
14 crossing operations?

15 A. Yes.

16 Q. Can you explain the process on--on how you do that?

17 A. Well, so it would start in--you know, you mean with regard to
18 escorts or do you mean in--in general with bar operations?

19 Q. Let's start with bar, just in general.

20 A. Policy tells us the standards and then you go out there and
21 see it. So you know it's dangerous. Then you have other
22 mariners coming in that may be unfamiliar, maybe in the fog, may
23 be disoriented, it might be night, maybe have some sort of engine

1 malfunction or casualty, and those are things that normally when
2 you're not on a rough bar would still give you cause for concern.
3 So when you're on a rough bar, it's--the risk is even greater.
4 The way we mitigate those risks as a Coast Guard is we have
5 instructions, you know, Commandant-published manuals and risk
6 assessment tools that help us determine when it's appropriate to
7 cross the bar and the plan for doing so.

8 Q. You mentioned recreational boats are your base worry. So
9 recreational boats and uninspected passenger vessels can be
10 restricted from crossing the bar and, at times, prohibited from
11 crossing the bar. Are there times that you think the same
12 restrictions should be placed on commercial fishing vessels or
13 commercial vessels like fishing boats, rather?

14 A. I think that that is a question that is best answered through
15 surveys and reaching out to the public to find out what they
16 want. My opinion as someone that doesn't want to see anyone get
17 hurt ever is probably not the best-qualified opinion to--I also
18 want economy. And so if we try to restrict the bar to commercial
19 fishing vessels like we do recreational boats, you could shut
20 down entire ports. Tillamook would be the first one I would--I
21 was there for 5 years. It breaks at the tip during the summer
22 every day. So I would--I would like to withhold my opinion on
23 that, I think.

1 **LIO:** Okay. Thank you for your testimony and for going through
2 our exhibit. Do other--do any other members of the investigation
3 team have any follow-on questions? Lieutenant Bigay?

4 **AIO:** Good afternoon, Mr. Molloy. Lieutenant Woods, would you
5 please go back to slide 20.

6 **Questions by the assistant investigating officer:**

7 Q. Mr. Molloy, I would just like to clarify one thing.

8 **AIO:** Sorry, the previous exhibit, Exhibit----

9 **LIO:** 03----

10 **AIO:** ----30.

11 Q. There's a box there that's labeled VICTORY and it says "wind
12 in your mic". I'm--just want to clarify what--what is meant by
13 that. Is that something that the VICTORY stated or is that
14 something that's been told to the VICTORY and who--who is that
15 directed to?

16 A. If you listen to the transmission from the 47266, ma'am, you
17 can hear that it's garbled. So they're probably holding it out
18 in the open instead of shielding it, which is common. So if
19 there's even 5 knots of wind and you're talking with your mic
20 exposed to the wind, you can--they're on the open bridge of the
21 47-foot motor lifeboat. They're exposed. If you hold it, you
22 know, in the wind, it will--it makes this garbled broadcast.

23 Q. I understand. So the wind in your mic is something that

1 someone from the VICTORY relayed to the 47 to make them aware of
2 this.

3 A. That's correct.

4 Q. Just for clarification, when--in that slide it seems like at
5 that time the 47 was attempting to let MARY B know some sort of
6 information; is that correct?

7 A. That's correct.

8 Q. Do you know if, after the "wind in mic" situation, that was
9 relayed again?

10 A. We'd have to go the next slide, maybe, and see.

11 **AIO:** Lieutenant Woods, when you can, please go to the next
12 slide.

13 **WIT:** I think he did. Is that the very next slide after the
14 "wind in your mic"? Okay, so that's 21? So it doesn't look like
15 it. It looks like the next transmissions were informing the MARY
16 B II that they were well north of the channel.

17 Q. Mr. Molloy, also just a point of clarification for the
18 public, earlier in your testimony there was an exhibit, Coast
19 Guard 066, where there was a section of chart. It was shown by
20 Commander Denny. And that section warned--it said stranger--
21 warned strangers from attempting to cross the bar without a
22 pilot.

23 A. Yes.

1 Q. And I'm just wondering as a point of clarification, do you
2 know what is meant by "pilot"? It is an actual----

3 A. Yes.

4 Q. ----professional Columbia River bar pilot as in an
5 association or is it like an experienced mariner?

6 A. No, I think that what is meant there is professional pilot.
7 I could be mistake on this, but it--there's people in the room
8 that could answer it for me, but--as I've only been here 2 years,
9 but I'm sure many years ago there were actual pilots in and out
10 of Yaquina Bay and, in fact, there are still pilots in and out of
11 Coos Bay. So Coos Bay pilots may come up here if there was a
12 vessel--a foreign vessel, maybe a--larger than a commercial
13 fishing vessel. We're talking about commercial vessels that are
14 going to be engaged in coast-wise trade with timber. Those guys
15 had pilots.

16 **AIO:** Understood. I just wanted to clarify.

17 **LIO:** Mr. Reilly?

18 **CROSS-EXAMINATION**

19 **Questions by the party-in-interest counsel:**

20 Q. Good afternoon, sir. Thanks for being here. Thanks for your
21 service. In the aftermath of this event did you have an
22 opportunity to prepare a sort of detailed statement in a
23 contemporaneous fashion to--to capture your observations?

1 A. Yes, sir.

2 Q. Can you in general just describe what that--how long that
3 statement was and who it was provided to.

4 A. Three pages, I believe. Do you have it here? Is my
5 statement available?

6 **LIO:** Your Honor statement is not an exhibit. So, no, it's not.

7 **PIIC:** Yeah, I'm not asking to see it. I just----

8 **WIT:** Okay, I just wanted to give you an accurate number. I
9 think three pages. It probably took me a week to prepare it.

10 Q. Did you have an opportunity to review that statement before
11 your testimony here to sort of refresh your recollection?

12 A. No, I had the opportunity, but I actually used the critical
13 communications because that helps jog my memory.

14 Q. Have you had a chance to review the radio log, the
15 transcription of the radio communications?

16 A. Yes, sir, it's in the PowerPoint.

17 Q. So you're talking about Exhibit 38 where there's some
18 embedded communications. Did you have a chance to review Exhibit
19 8, which is a more comprehensive radio log?

20 A. Yes, sir.

21 Q. Fair to say that was accurate and complete when it was
22 prepared?

23 A. Well, unfortunately during this case, the entire computer

1 system that we operate on decided to do an update. So as far as
2 the exact accuracy of it, I think that it is as close as we can
3 possibly get after it dumped everything. So after the case we
4 had all these logs prepared. It all got dumped, and it was
5 recreated from handwritten notes.

6 Q. When the radio log was initially prepared, in my mind I
7 envision somebody actually listening to some reported
8 conversations and transcribing them.

9 A. Actually the watch-stander is writing down everything that's
10 being said as it's happening into an electronic log. And then
11 you can also, if you don't hear something correctly or you need
12 to go back and correct logs later--luckily the system would have
13 been--that's how we have the audio--was intact. So simply the
14 handwritten portion or the electronic portion was lost; however,
15 the update didn't--didn't get rid of the audio. So we were able
16 to go back and recreate it from that.

17 Q. All right, and so fair to say the--the Exhibit 8 we have,
18 which is the comprehensive audio log, reflects what you would
19 hear if you actually listened to the communications that were
20 captured electronically.

21 A. Yes, sir.

22 Q. Fair to say you had some knowledge of Mr. Biernacki's
23 experience level as an operator vis-à-vis this--this particular

1 port in advance of the escort operation?

2 A. No.

3 Q. Were you privy to any communications from the LAST STRAW
4 regarding Mr. Biernacki's experience level?

5 A. Yes.

6 Q. And I think your testimony was that there was some
7 communication with--between Petty Officer Dozier and Mr.
8 Biernacki over the phone that probably supplemented that
9 information?

10 A. Yes, I thought she referred to a personal contact with Mr.
11 Biernacki, not with--yes, so I did--my understanding was that he
12 was not from Newport.

13 Q. Did your understanding of his experience level in any way
14 cause you to be extra vigilant or depart from your ordinary
15 escort procedures?

16 A. No, those--that actually dictates our--our escort procedures.

17 Q. Back to the LAST STRAW, there's a comment in the radio log
18 at--it's at 355, which is 7:55, where the LAST STRAW is
19 reporting--and I think it's to the VICTORY--I'm not sure if you
20 were on board the VICTORY at the time--something to the effect of
21 the LAST STRAW almost broached on its entrance into the--across
22 the bar.

23 A. I don't think the LAST STRAW broached. I think he got picked

1 up in the face of a wave. Broaching may mean he turned 5 degrees
2 more than he intended, but that looked like a pretty clean
3 entrance to me. He did say thank you and he really liked the
4 flares, is basically the conversation I remember.

5 Q. All right, thanks. Exhibit 38, the--the PowerPoint with the
6 inserted text and vessel positions doesn't go all the way back to
7 9:47, but the 9--as far as the--position-wise, but the 9:47
8 statement from Mr. Biernacki is something to the effect of "I'm
9 going to be waiting out here to observe a couple sets". Do you
10 remember something like that?

11 A. I don't remember it, but I did read it. And so without
12 having the timeline here in front of me, I think that he was
13 certainly capable of--he was out there. He came in with the
14 sets. So it's perfectly reasonable to assume he knew what was
15 going on, he knew there was a big set out there. He'd been out
16 there for a day--full day.

17 Q. So the direction he was coming from would have provided him
18 the information he needed as he approached the--the bar to have
19 an appreciation for the timing issue.

20 A. So I think so, because you're looking at the buoy the whole
21 time coming towards the bar, and as you see that buoy dip and
22 disappear and, you know, as you feel the conditions on the boat
23 and you can see the white--you know, when it does break on the

1 bigger series on the reefs--the outer reefs, that will give you
2 an appreciation for how big the bar is, to me.

3 Q. In reviewing the communications on channel 121, in that
4 period before the MARY B II arrived, there's a lot of discussion
5 between mobile-1 and the units about timing, and what I gathered
6 from that was that there was a sequence of a lull, a small set
7 and then a big set. Is that familiar language to you?

8 A. That's accurate.

9 Q. The relative timing that appeared to be conveyed in the
10 communications of channel 121 was of a repetition over maybe 14
11 minutes where there'd be a period of lull, a small set and a big
12 set. Does that ring a bell?

13 A. I think that what we were seeing--and this is just my
14 experience being that I have probably the most time, you know,
15 out on boats--is that you have that--that set of 14 minutes that
16 you think is the big set. And then the real big one comes in 30
17 minutes. So if we said that there was back-to-back sets at 14
18 minutes, that's not accurate. It did not break in the channel
19 every 14 minutes. We were watching it come in and stand up and
20 look scary and then back off. When that big set came in, that
21 was about every 30 minutes.

22 Q. If you can recall--and by point of reference, the capsizing
23 occurred it looks like around 10:06, 10:07 time frame--when was

1 the--the big set? When did you experience the big set?

2 A. When I went back out to look for people.

3 Q. Was that a few minutes after--after that?

4 A. Maybe 10 minutes. I called it on the radio as well and said,
5 "We just took breaks in center channel."

6 Q. All right, so there would have been--I guess waves are
7 variable, right? These periods and sizes are going to be--are
8 going to vary.

9 A. So at this point this evening, I'm judging by buoy, a flare
10 that lights off for 36 seconds. I think we let off--total over
11 the night, we left off 19. So that includes both escorts and
12 after. So 19 total. So I'm seeing the bar at this point for 2
13 minutes and watching the buoy, seeing sets break and, you know,
14 I'm experiencing that, but that was not every 15 minutes. We
15 didn't encounter any breaks during the--the escort of the MARY B
16 coming in. So we--we had good timing. We had good timing.

17 Q. Did you lose sight of the MARY B at any time prior to the
18 capsizing?

19 A. No.

20 Q. There were still waves and swells and troughs?

21 A. Yes.

22 Q. The vessel is going up and down.

23 A. Yes. We didn't lose sight of it, no. We were pretty much

1 one wave length behind him during the entire escort. You can see
2 in the mockups where we're weaving back and forth. That's us
3 trying to displace energy of anything that's coming up behind
4 him. That's what it does. You move your wake back and forth and
5 it throws the energy of those waves, the uniformity that causes
6 the power, to dissipate.

7 Q. What would be the approximate distance of that one wave
8 length?

9 A. I was 100 yards, maximum, behind him, I would assume. I
10 didn't measure. That's my best guess.

11 Q. With his halogen lights on, were you trying to use a
12 spotlight or anything like that or just relying on his lights?

13 A. No, we were trying to be invisible behind him. We were
14 letting him know--I mean, obviously we're letting off flares and
15 that's giving, I assume--it's giving us but I assume it's giving
16 him, if he has someone facing back, the ability to see behind
17 him. And then, you know, trying not to be in his way.

18 Q. Did you see any crab pots on deck?

19 A. You know, I don't recall that, but I would think because it
20 was mid-season--because haul day had already occurred. I don't
21 remember seeing----

22 Q. Yeah, I'm just asking for a recollection.

23 A. I--I don't recall seeing any.

1 Q. When you were conducting the escort, did you see any persons
2 on deck?

3 A. No.

4 Q. Was the door to the house closed?

5 A. I don't recall.

6 Q. Do you recall being able to see into the house from behind?

7 A. No, because his halogens were so bright you don't really--
8 once he passes you, you lose it for a little while. It takes 20
9 minutes to get good night vision back. So I couldn't see inside
10 of his--that detail.

11 Q. Stationed on his port quarter at 100 yards, fair to say you
12 could not see movement inside the house that you could attribute
13 to any person.

14 A. No, I couldn't.

15 Q. And fair to say, based on all the testimony we have, no one
16 knows what went on inside that house from the time of the last
17 communications approximately 2 minutes prior to the capsizing.

18 A. That's correct.

19 Q. At the 9:47 mark on the radio transcript, in one of your
20 extended communications with him before the escort commenced, you
21 said something to the effect that you would inform him of the set
22 timing.

23 A. Uh-huh.

1 Q. Would the set timing that you intended to inform him relate
2 to the--the size of the set and the--sort of the timing between
3 the sets?

4 A. Negative. Just when it was approaching.

5 Q. So, for instance, in the immediate--right around that
6 10:05:30 time, you informed the captain, you know, "We've got a
7 small set coming," or words to that effect. That was you
8 fulfilling that statement that you were going to provide him with
9 the timing.

10 A. Yeah, and that's correct. And I believe I said, "I'll let
11 you know what I see behind you, and the hill will let you know
12 the timing." So the hill has got a watch going. They probably
13 are keeping a 15-minute timeline. So as soon as that first 15
14 minutes comes by, I'm like, okay, that was the first set. Then
15 if it comes a second time and we're still in the bar, then I know
16 we're about to be in trouble.

17 Q. The--obviously the complete transcript will--will tell the--
18 the whole story. Do you recall the hill or the 47 providing any
19 specific advice to the MARY B about timing?

20 A. I--I do not recall specifically, but I believe BM1 Harris,
21 who was on the hill, had--had reached out and said something, but
22 I'm not certain.

23 Q. All right, we'll be able to look at the transcript of that.

1 With respect to the wave action experienced at the 47 and at your
2 specific location after the MARY B, you would agree that you were
3 experiencing differing--the same wave at different times, the
4 same action at different times?

5 A. Yes.

6 Q. So if the 47 was making an observation about what was going
7 on at their location, your vessel may be experiencing something
8 very different.

9 A. Yes.

10 Q. When the 47, at a couple points in the radio transcript, was
11 conveying wave information, were they--over radio on channel 22,
12 were they conveying the wave information at their location or the
13 wave information at your location?

14 A. Their location.

15 Q. At 9:55 the 47-footer stated, "Once this bigger series goes
16 through, I think that would be the best time for him to come in."
17 And this was a communication on channel 121. So this was just
18 between the Coast Guard units monitoring 121. Do you recall
19 that? We can--and please open Exhibit 8. This is a 9:55 entry
20 from the 47 footer. Mr. Woods has been kind enough to project
21 that as well.

22 A. Sure. So your question is--is did the 47 say it was a good
23 time to come in?

1 Q. No, I think their statement was, "Once this bigger series
2 goes through, I think that would be the best time for him to come
3 in." Is that advice that--what did that advice, if any--mean to
4 you, if anything?

5 A. That it's a good time to cross the bar because we're in the
6 lull.

7 Q. At 9:54 you had reported in your position that you were at a
8 lull. Fair to say? "We are in good lull..."----

9 **LIO:** Lieutenant--Lieutenant Woods, could you scroll down,
10 please, to the next page.

11 **WIT:** Yes, that's what we said.

12 Q. That reflected your observations from your position out
13 near--closer to buoy 1 although not exactly at buoy 1. Fair to
14 say?

15 A. You know, I don't know where I am at this point in time as
16 far as the timeline goes. It would be helpful to have it on the
17 chart. If you're telling me that we're at buoy 1 at that time,
18 that we're in a lull and he started going, that's--that's
19 correct.

20 Q. Well, I don't want to put any words in your mouth. I'm
21 looking at the VICTORY entry for 9:54----

22 A. Yes.

23 Q. ----"Were in good lull out here at 1." So----

1 A. Oh, okay.

2 Q. ----just--I'm just thinking to myself that means buoy 1.

3 A. Yes, you're right.

4 Q. I'm just trying to understand 2 minutes later the 47-footer,
5 roughly a mile east of you, is saying, "Once this bigger series
6 goes through, I think that would be the best time for him to come
7 in,"--and this is an internal Coast Guard communication. Did
8 that mean anything to you? I'm not sure what she might have
9 meant by "bigger series".

10 A. Well, I think the other important thing to remember about the
11 47 is that they hadn't been out there earlier with the LAST
12 STRAW. So what they were calling and what I was calling were two
13 different things, as well as I have--on our boat we had two
14 surfmen with two decades of experience, more maybe. On the 47
15 there was 1 year of surf experience and--or 2 years total. So I
16 wasn't--I trust my surfmen, I trust my people, but they hadn't
17 been there earlier. That was--so if they were calling a 14-foot
18 series--go underneath them, they didn't say it was breaking, then
19 you can--it's pretty round and easy to get across.

20 Q. All right, and if the--57 you observed over the radio on
21 channel 2 that it looked like the MARY B was going ahead and
22 making the approach. At minute 57.

23 A. Sorry, there's three entries for that. I'm working my way

1 through it.

2 Q. "We're..."----

3 A. Yeah, we're----

4 Q. ----"...holding off on your stern here."

5 A. Yup, that is--that's accurate.

6 Q. So it had been in a lull for 3 minutes. They're starting to
7 go in. In an ideal world would you have wanted them to start
8 earlier to take better advantage of the lull?

9 A. In an ideal world I would have wanted them to come in in
10 daylight.

11 Q. In the ideal world that was presented to you at 9:54 that
12 evening, would you have preferred that they were taking advantage
13 of that lull?

14 A. Well, I guess I would answer your question and say that I
15 would prefer that they would take advantage of the lull, yes.
16 And whether that was the lull or not, I can't be certain.

17 Q. Right. Can an AIS system be set to alarm based on the
18 proximity of a nearby vessel?

19 A. Yes.

20 Q. So if the relative movement of your vessel and the MARY B II
21 was such that it was setting off alarms on the MARY B II, might
22 that account for the reference to the AIS in the transcript?

23 A. There's really no way I can know that without knowing the

1 system.

2 Q. But it's certainly a possibility that a--a nearby vessel,
3 depending on the--the receiving vessel's settings, could initiate
4 an alarm depending on the relative movement?

5 A. I'm not an expert on AIS systems. I've operated on 225-foot
6 buoy tenders and polar ice breakers and 47s and I've never had my
7 AIS clog up. So I have no idea what he meant by that.

8 Q. In between the time the escort started at or about 9:56,
9 where you observed him commencing the approach, and the last
10 communication at 10:05:30, was the MARY B II responsive to your
11 requests for communications?

12 A. I think that the radio record reflects that. I--I try to
13 keep communications at a minimum after the first contact and
14 basically allow them to reach out to me unless I'm passing
15 information that I feel is important for them to know and I do
16 not, you know, ask for or request any kind of affirmation after
17 that. So, for example, when I say, "Hey, there's swells off your
18 stern," I don't expect him to be like, "Okay, I see them." But
19 he did. So he was--he was pretty communicative on the radio at
20 that time.

21 Q. The wind that you heard on the mic, that was accompanying the
22 47-footer's communication immediately prior to that on channel
23 22?

1 A. Yes.

2 Q. Sir, everybody who's--who's taken that--that chair and so far
3 and throughout this hearing are folks who abhor the possibility
4 that there's a mariner out there or commercial fisherman who
5 might be operating a vessel while impaired. It seems a pretty
6 universal sentiment, which is certainly not surprising. Yet
7 multiple people who have testified here have testified about
8 behavior that was observed or Mr. Biernacki on the docks in the
9 vicinity of the vessel that--that they understood to--to evince
10 that he was--he was impaired. We also heard compelling testimony
11 from somebody yesterday about a person at the bait dock early in
12 the morning of January 8th, the date of this event, who vividly
13 described an impaired person who was leaving to go fishing. Now,
14 in our communities people readily report drunk drivers. You've
15 probably seen news reports of pilots being taken off airplanes
16 when they're observed to be impaired. In your experience, is
17 there a reason that people who are aware of an impaired fishing
18 vessel operator would be resistant to reporting that operator to
19 the appropriate authorities?

20 A. Yeah, I can't think of any, sir. It saddens me to hear that,
21 frankly. Newport is a very clean fishing community, as far as
22 I'm--I know. I'm surprised by that.

23 Q. Fair to say the--as far as you know, the Coast Guard would

1 welcome a report from an observer, from a witness who can--who--
2 who can provide real-time information about the impairment of
3 somebody operating a vessel in your neighborhood?

4 A. I can say that the entire crew at Station Yaquina Bay has
5 advised for action for anything, any sort of law enforcement
6 action that would be needed to keep the public safe. So we would
7 respond to that like we would for search and rescue, immediately,
8 because that person could hurt someone on the water.

9 **PIIC:** All right, thank you, sir. Commander.

10 **LIO:** Thank you. I have some follow-on questions for you.

11 **REDIRECT EXAMINATION**

12 **Questions by the lead investigating officer:**

13 Q. Both crews of--both--both the crews of the 47 and the VICTORY
14 were providing advice to the MARY B II as she made her approach.
15 At 10:00 p.m. Captain Biernacki said, "Yeah, I got you guys all
16 right. Let me pay attention here." When a vessel master says
17 something like that to you, what do you take it to mean?

18 A. That we are--if we were to continue doing what we're doing,
19 we're going to cause a distraction.

20 Q. So how did that change for future communications?

21 A. I'm not sure where that point was when he said that. I
22 remember that I turned to BM1 Gormley and--he said that his AIS
23 was clogged up and I was confused and so was he. But I think at

1 that point we were still mid-channel. So it didn't change much
2 of anything, because we hadn't had anything coming in from behind
3 us. After that I did see a set come. So we started reporting,
4 as we had planned and had briefed him that we would do, that we
5 had some waves coming up on our stern.

6 Q. Speaking of AIS, do you remember ever seeing an AIS signal on
7 your VICTORY'S electronic display that night?

8 A. No, the electronic display for the VICTORY for AIS is inside
9 the enclosed pilothouse. We do not have the integrated radar--
10 sorry, AIS chart plotter.

11 Q. At the beginning of your testimony you stated that it's Coast
12 Guard policy not to give commands to vessels you provide escorts
13 to. Specifically the District 13 search and rescue plan and the
14 Coast Guard SAR addendum----

15 A. Uh-huh.

16 Q. ----and the boat manual provide such regulations. At 10:06
17 you directed the MARY B II to come to south and come to starboard
18 multiple times. Why did you deviate from Coast Guard policy?

19 A. Imminent danger. So the one time you can deviate from that
20 policy--and the policy itself states if a mariner is in imminent
21 danger, then you can offer them courses to steer. Plus I--I
22 mean, time stopped at that point. We were looking directly at
23 the jetty. It--to me, it looked as if he was starting to turn to

1 port. And so I took action.

2 Q. Boatswain Molloy, would you do that again?

3 A. Absolutely. The difference would be that I would--at any
4 point in this I would ask for the crew to jump overboard in the
5 channel and I would pick them up out of the channel.

6 Q. Boatswain Molloy, did the actions of the Coast Guard that
7 night--did they--did they deviate from any other escort?

8 A. I'm sorry, can you repeat the question?

9 Q. Did the actions that the Coast Guard followed that night
10 deviate from other escorts?

11 A. No. No, Commander.

12 Q. Was the 47266 following written policies with respect to the
13 amount of information--amount and type of information it was
14 passing over the radio?

15 A. I don't have the written policy in front of me, Commander,
16 and I'd have to review all those records, but I would--I would
17 assume that every action that the--and I know, whether or not it
18 was written or not, it was the right thing to do, and I would
19 insist that they do it exactly the same way if they were ever to
20 do it again. And we did do it again several weeks later. We
21 escorted another vessel across the bar in darkness, same--
22 actually worse conditions and had a better outcome. So---

23 **LIO:** Lieutenant Bigay?

1 **Questions by the assistant investigating officer:**

2 Q. Boatswain Molloy, were you aware of the interactions or
3 involved with the escort of the LAST STRAW?

4 A. Yes, I was the surfman on board the 52. I drove for that
5 escort.

6 Q. Can you please describe the communications with the operator
7 of that vessel and compare and contrast in terms of the frequency
8 with the escort for the MARY B II.

9 A. There was actually no difference, I would say. The LAST
10 STRAW was--it comes in and out of the bar quite a bit. So I gave
11 him the standard spiel, and he--you know, "Roger, roger," and
12 when he stated--you know, he did, I think, talking about hanging
13 out. So there was more conversation before he crossed the bar
14 than there was with the MARY B II, maybe, but really during the
15 escort, no different, calling out the series, telling him we're
16 going to illuminate the bar and then where we're going to be.

17 Q. Do you recall, before crossing the bar, what that
18 conversation was? You said there was a little bit more
19 conversation.

20 A. Well, he was the last in line for the four big boats that
21 came through. So LISA MELINDA, MISS SUE, if I'm not mistaken--
22 either MISS SUE or MISS SARAH, STAR SHADOW and then the LAST
23 STRAW came through. So we were just, you know--he was telling us

1 what conditions he was seeing and we had more of a dialogue, I
2 think, about him sharing what he was seeing than maybe we had
3 with the MARY B II.

4 Q. Did he ask you questions at any point?

5 A. I don't remember him asking any questions, no.

6 Q. Earlier, Mr. Molloy, you made reference to the operator
7 calling the bar an inlet, and you associated this with being
8 something that mariners in the East Coast do. On--would a
9 mariner with extensive experience sailing in the East Coast--
10 would--would this fact be cause for confusion in a situation
11 where there needs to be a sudden correction to south, which might
12 lead him to turn to port to go south instead of turning starboard
13 to go south?

14 A. Ma'am, I'm from the Gulf of Mexico. I've sailed up and down
15 the East Coast before I ever came to the West Coast. It never
16 changed my right from my left or changed the magnetic direction
17 of north and south. So I think he had problems--maybe had a
18 compass in the pilothouse as well. I don't know if that was ever
19 determined, but that would be a, you know, pretty quick way of
20 determining which way north was.

21 Q. So your assessment is that, no, no confusion.

22 A. I wouldn't be confused.

23 **AIO:** Understood.

1 **Questions by the lead investigating officer:**

2 Q. Boatswain, to your knowledge, after the accident, did any
3 station personnel see the MARY B II on AIS equipment on the night
4 of the accident?

5 A. I'm sorry, after the accident?

6 Q. If you--after you talked to them and you had a chance--did
7 you find out if any of the crew had seen the MARY B II on AIS
8 equipment?

9 A. Neither boat would have been look--our AIS equipment on both
10 boats is inside the enclosed bridge. So neither the 47 nor the
11 52 has the capability to broadcast the signal up to the open
12 bridge, and no one is going and moving inside the boat on a rough
13 bar escort.

14 Q. So for clarification for me, you said earlier that you
15 mentioned AIS pictures of the MARY B II. So can you clarify for
16 me where those AIS pictures came from, what--what context was
17 that in.

18 A. There's an app, and on the app you can pull up any--you can
19 pull up Coast Guard boats or whatever. That's the AIS app. So
20 it shows you real time where your boats are. So you click on it
21 and it will pull up a picture of that boat.

22 Q. I have one last question unless Mr. Reilly has a question.
23 Boatswain, back to being a licensed mariner, if you were being

1 escorted into the Yaquina Bay bar by Coast Guard assets on your
2 own vessel, would you want them to call out information both
3 behind you and in front of you to give you good situational
4 awareness?

5 A. Yes.

6 Q. Is there--do you have any recommendations or thoughts on how
7 the Coast Guard can improve the safety of fishing vessel
8 operations?

9 A. Commander, I'm glad you asked that question, and I think
10 that--that there is the need for outreach--public outreach and
11 find out if the community in Newport or in the Pacific Northwest,
12 for that matter, thinks that there be changes that should be
13 made. Changes like that were made after the sinking of the TAKI-
14 T000 and other tragedies that have happened up and down the
15 Oregon coast. It's how we got bar restrictions. It's how we
16 have, you know, the need for lifejackets and bar crossing plans.
17 So those things I don't think should be decided in a bubble, and
18 I don't, frankly, have an opinion because I'm only going to be
19 here for another year and then I transfer. So--the one thing I
20 will say is that the ATON constellation--that's a survey and it's
21 something that we could change on the Yaquina Bay bar, possibly
22 make that different. Once again, I'm leaving it up to the men
23 and women in Newport, Oregon.

1 **LIO:** Boatswain Molloy, you're now released as a witness from
2 this formal hearing. Thank you for your testimony and
3 cooperation. If I later determine that this board needs
4 additional information from you, I will contact you through your
5 counsel. If you have any questions for this investigation, you
6 may contact the investigation recorder, Lieutenant Luke Woods.
7 Thank you.

8 The time is 1739. There's one matter of record that I need
9 to just pass. Earlier in several testimonies we mentioned a
10 Yaquina Bay instruction which was referenced and discussed. The
11 Coast Guard will add that into the record as Coast Guard Exhibit
12 067.

13 So, again--so now the time is 5:40 and that was our last
14 witness. This hearing will reconvene at 8:00 a.m. tomorrow,
15 Friday, May 17th, 2019. Thank you.

16 [The hearing recessed at 5:41 p.m., 16 May 2019.]

17 **[END OF PAGE]**

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 17 May 2019

4 WITNESS: SCOTT GIARD

5 [The hearing was called to order at 8:00 a.m., 17 May 2019.]

6 **LIO:** Good morning. This hearing will come to order. Today is
7 Friday, May 17th and the time is 8:00 a.m. We are continuing at
8 Newport City Hall, Newport, Oregon.

9 I am Commander Karen Denny, United States Coast Guard, and
10 the executive officer of Coast Guard Marine Safety Unit Portland,
11 Oregon. I'm the lead investigating officer for the Thirteenth
12 Coast Guard District's formal investigation into the events
13 leading to the loss of the fishing vessel MARY B II and the loss
14 of three lives, and I am the presiding official over these
15 proceedings.

16 The Commander of the Thirteenth Coast Guard District, Rear
17 Admiral Throop, has convened this investigation under the
18 authority of Title 46, United States Code Section 6301, and Title
19 46, Code of Federal Regulations, Part 4, to investigate the
20 circumstances surrounding the sinking of the commercial fishing
21 vessel MARY B III--MARY B II with the loss of three lives on
22 January 8, 2019 while attempting to cross the Yaquina Bay bar and
23 enter the port of Newport, Oregon during the hours of darkness.

1 I am conducting the investigation under the rules of 46 CFR
2 Part 4.

3 The investigation will determine, as closely as possible,
4 the factors that contributed to the incident so that proper
5 recommendations for the prevention--prevention of similar
6 casualties may be made, whether there is evidence that any act of
7 misconduct, inattention to duty, negligence or willful violation
8 of the law on any part--on--on the part of any licensed or
9 certificated person contributed to the casualty, and whether
10 there is evidence that any Coast Guard personnel or any
11 representative or employee of any other government agency or any
12 other person caused or contributed to the casualty.

13 I have previously determined that--that the party in
14 interest was going to be designated in this investigation, and
15 that party in interest is MARY B II LLC, owner of the MARY B II.
16 The MARY B II LLC has legal counsel. Mr.--Mr. Reilly?

17 **PIIC:** Good morning, Commander. I'm Chris Reilly, Nicoll, Black
18 & Feig, here on behalf of fishing vessel MARY B II LLC. Thank
19 you.

20 **LIO:** This party has a direct interest in the investigation and
21 has demonstrated the potential for contributing significantly to
22 the completeness of the investigation or otherwise enhancing the
23 safety of life and property at sea through participation as a

1 party in interest.

2 All parties in interest have a statutory right to employ
3 counsel to represent them, to cross-examine witnesses, and to
4 have witnesses called on their behalf.

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

12 These proceedings are open to the public and to the media.
13 I ask for the cooperation of all persons present to minimize any
14 disruptive influence on the proceedings in general and on the
15 witness in particular. Please turn your cell phones and other
16 electronic devices off or to the silent or vibrate mode. Please
17 do not enter or depart the hearing room except during periods of
18 recess. Flash photography will be permitted during this opening
19 statement and during recess periods.

20 The members of the press are of course welcome and there is
21 an area set aside for their use in the proceedings. The news
22 media may question witnesses concerning the testimony that they
23 have given after I have released them from these proceedings. I

1 ask that such interviews be conducted outside of this room.

2 Since the date of the casualty, the Coast Guard has
3 conducted substantial evidence collection activities and some of
4 that previously collected evidence will be considered during
5 these proceedings.

6 Should any person have or believe that he or she has
7 information not brought forward but which might be of direct
8 significance, that person is urged to bring that information to
9 my attention by e-mailing accidentinfo@uscg.mil and, during the
10 hearing, e-mail MARYBII--that's M-A-R-Y-B-I-I--.uscg@gmail.com.
11 Thank you.

12 We will now call our first witness of the day. We will now
13 hear testimony from our fir--first witness, Mr. Scott Giard,
14 District 13. Mr. Giard, please come forward to the witness table
15 and Lieutenant Woods will administer your oath and ask you some
16 preliminary questions.

17 **SCOTT GIARD was sworn and testified as follows:**

18 **DIRECT EXAMINATION**

19 **Questions by the recorder:**

20 Q. Sir, please state and spell your full name.

21 A. My name is Scott Giard, S-c-o-t-t, G-i-a-r-d.

22 **REC:** Will the counsel please state and spell your full name.

23 **LCDR LEAGUE:** Jan League, J-a-n, L-e-a-g-u-e.

1 Q. Mr. Giard, please state your current employment and position.

2 A. I am employed by the United States Coast Guard Thirteenth
3 District in Seattle, Washington. I'm a search and rescue program
4 manager and a SAR mission coordinator.

5 Q. Please state any education or training related to your
6 profession.

7 A. My training related to my position is specific to the Coast
8 Guard. It's numerous in nature.

9 Q. And do you have any professional licenses or certificates
10 related to your profession?

11 A. I do not.

12 **REC:** At this time Lieutenant Commander Foster will begin her
13 line of primary questioning.

14 **TA:** Good morning, Mr. Giard. Thank you for appearing here
15 today.

16 **WIT:** Good morning.

17 **TA:** Mr. Giard, you've prepared a slideshow in preparation for
18 your testimony today. I will ask Lieutenant Woods to display
19 that, Coast Guard Exhibit 053. Mr. Giard, I will ask you to
20 pause at each slide and allow me to ask questions before moving
21 on to the next slide as you move through your presentation.
22 There should be a laser pointer in front of you. Momentarily
23 there will be a laser pointer in front of you. If at any time to

1 better illustrate your point you would like to motion or
2 highlight something on your slide, please do so on the screen
3 behind me for the benefit of the public. Lieutenant Woods,
4 please advance to slide 2.

5 **WIT:** Hi, good morning. I just wanted to start by giving an
6 overview of kind of how the Coast Guard organizes the search and
7 rescue system here in the Thirteenth District, also kind of give
8 background on why we do what we do and statutes that require us
9 or give us kind of the backbone for what we do in the search and
10 rescue mission. Ultimately the reason why we conduct search and
11 rescue--the United States Coast Guard conducts search and rescue
12 is to prevent death or injury to persons and losses of property.
13 That's kind of the day-to-day on why we do what we do. That
14 comes from kind of four different areas in 14 U.S.C.

15 14 U.S.C. 2 outlines the primary Coast Guard missions, all
16 of the primary Coast Guard missions. One of them is search and
17 rescue and essentially tells us that we need to develop and
18 maintain a search and rescue program.

19 14 U.S.C. 88 tells us that we have the authority federally
20 to engage in the search and rescue mission and to perform all
21 acts necessary to rescue and aid persons and protect and save
22 property.

23 93 gives us the authority to essentially have facilities to

1 house the search and rescue program, lets us buy boats, run
2 helicopters, spend money, et cetera.

3 And then 674 mandates that we, at our small-boat stations,
4 have at least one ready boat crew. What that means is 24/7
5 there's a boat and a crew at each of our Coast Guard boat
6 stations that is ready and willing and able to take the call for
7 any kind of search and rescue case.

8 Then there's a whole bunch of other documents that kind of
9 frame how the search and rescue program works, how the policy is
10 laid out. And it's sort of large hierarchy that kind of starts
11 with some international documents by the International Maritime
12 Organization and the International Civil Aviation Organization,
13 which are kind of ad hoc offshoots of the United Nations. They
14 create an international search and rescue manual. Then the
15 United States writes a search and rescue plan. It's called the
16 U.S. National SAR Plan. Then there's a document that is a source
17 policy document called the National SAR Supplement, which is
18 created by the National Search and Rescue Committee. And then
19 each of the SAR components, including us, the Air Force and a few
20 other components, have addendums to that National SAR Supplement.
21 And that's what that Coast Guard addendum is. That's kind of our
22 Coast Guard source document, top-level search and rescue policy.
23 Of note, that does establish what heavy weather and surf is in

1 the Coast Guard in general, not just here in the Pacific
2 Northwest. We do have surf and heavy-weather operations kind of
3 all over the place that we operate. It also designates the
4 requirement for the need of surfmen in certain instances. So
5 that's where that kind of starts and where that policy comes
6 from. Then lower levels of policy just continue to build on
7 that.

8 Then the next kind of level policy down is the Seattle
9 search and rescue plan or the Thirteenth District search and
10 rescue plan. They're kind of--that's a colloquial name. Each
11 search and rescue region in the Coast Guard--there are nine--has
12 a plan that supplements the Coast Guard addendum with policy that
13 has to do with the area in which--that's specific to the area.
14 So the Seattle SAR plan establishes policy for Oregon and
15 Washington. The Seattle search and rescue region does also
16 encompass the states of Idaho and Montana. The Seattle SAR plan
17 gets into a little bit more specific when it comes to hazardous
18 bar escorts and the standbys. It also is the source document
19 that mandates heavy--hazardous bar escorts and standby missions
20 as a search and rescue mission, not just as a task. So we treat
21 those as a SAR case, not just as a kind of thing we do daily.

22 **Questions by the technical advisor:**

23 Q. Sir, and for clarity, can you help us understand why that is

1 not, as you said, something we do day to day. Why is that
2 considered search--a SAR mission?

3 A. We've designated it as a search and rescue mission partly
4 because of the importance of it, to not only us but also to the
5 customer, who is the general public and commercial fishermen that
6 we serve. There's also a high level of risk that's associated
7 with it. And we find that when we make things more formal, like
8 as a SAR mission instead of just a task, we're able to provide
9 and do better risk assessments and risk management. Then our
10 crews know that it's a priority instead of just maybe something
11 else that they need to do in addition to their primary duties.

12 **TA:** Thank you, sir. No further questions on this slide.

13 **WIT:** So this is a little busy. There's two sides to this. On
14 the left side is just kind of the basic how the Coast Guard is
15 organized here in the northwest. The general chain of command is
16 the--actually we'll start at the bottom. We're here in Newport.
17 So there's two Coast Guard units here in Newport. One is Station
18 Yaquina Bay, where Boatswain Molloy is the CO. And we have an
19 air facility here at the Newport airport. Those units are
20 subordinate units to a larger unit in North Bend, Oregon called
21 Sector Air Station North Bend. And then that is organized then
22 up to District 13. District 13 is the command that oversees all
23 of the subordinate commands in the Thirteenth District. Then the

1 next slide will show kind of a better--a map of kind of what that
2 looks like.

3 On the right-hand side is how we organize for the search and
4 rescue mission specifically. There's two sides to that web. It
5 starts at the top. The SAR coordinator is designated by the
6 National SAR Plan. Each search and rescue region has a SAR
7 coordinator. Ours is Rear Admiral David Throop. He's
8 responsible for the organization and support of the entire search
9 and rescue system that the Coast Guard provides. And then
10 essentially there's kind of four levels to how we run SAR. So
11 when we get a call comes into one of our command centers, they
12 hear it over the radio and they coordinate the response. Their
13 boss is what we call a SAR mission coordinator. SAR mission
14 coordinators either at the district or at the sector are kind of
15 the top-level checks and balances. They're responsible for
16 making sure that each search and rescue mission is carried out in
17 accordance with policy and that we're doing everything we can to-
18 -to bring people home. Then above that, everybody has a
19 supervisor. So either the sector commander or, in the case of
20 the district, the district chief of response kind of oversees the
21 search and rescue mission and then also holds another authority,
22 which we call suspension authority or the official acting for
23 suspension, which is essentially when we don't find what we're

1 looking for. Sometimes that happens where we're searching for
2 someone or something and we don't find it over a certain period
3 of time. We have to stop eventually. So that person is also
4 designated to assist in making decisions, actually is the person
5 that makes the decision on when we stop searching. At the very
6 bottom there, those are--that's kind of the pointy end of the
7 spear. Those are all the people that go out and actually do the
8 search and rescue mission out in the water.

9 So there's a lot of connectors and pieces to it. The reason
10 why--it may look complicated, but it's actually very well
11 organized--is for the checks and balances purpose. We want to
12 make sure that everyone is doing the right thing within policy,
13 we're putting everything we can at it, as well as managing risk,
14 and it takes a lot of people to do that.

15 Q. Sir, for clarity, when a station has a case, for example, you
16 had set that the next level up would be kind of providing
17 oversight. Does that happen the next morning or is that a
18 continual process or--help us understand how much oversight and
19 when it's happening for a case.

20 A. Right. So on the onset of a case, there is a lot of
21 oversight. When a unit receives a report of distress and the
22 Coast Guard responds, it doesn't--our response is not precluded
23 by a bunch of people figuring out that there's something going on

1 and then needing to know or do something about it. The on-scene
2 coordinators and the search and rescue responding units are
3 empowered with the ability to respond. That's why we have them
4 there. It's why they're trained the way they are. So if Station
5 Yaquina Bay gets a call for a person in the surf on Nye Beach,
6 they're going to go and respond and the helicopter is going to go
7 and respond and then the search and rescue organization will then
8 kind of come together, brief each other and then figure out the
9 best way forward.

10 **TA:** All right, thank you. No further questions on this slide.

11 **WIT:** This is the organization of the entire district. So this
12 is the Seattle search and rescue region. What's omitted is the
13 states of Idaho and Montana. We don't do a whole lot of search
14 and rescue in those states, but we do have federal responsibility
15 in certain instances for the states of Idaho and Montana. We are
16 organized into kind of four areas for search and rescue. We have
17 three sectors, one out of Seattle called Sector Puget Sound, one
18 that's headquartered in Astoria, Oregon, Sector Columbia River,
19 and then one in North Bend, Oregon called Sector North Bend, who
20 is responsible for the area that we are sitting in right now.
21 The area west, that big area where it just says "search and
22 rescue region" we also responsible for. It goes about 900 to
23 1200 nautical miles offshore of the Washington and Oregon coasts,

1 ends down around Crescent City, California, about 1200 miles
2 offshore. So if anything--anybody is in peril out in that way,
3 we'll also respond.

4 The inset is how Sector north Bend is organized. So towards
5 the top is where we're at. They have Station Yaquina Bay and Air
6 Facility Newport. All the little red dots are the Coast Guard
7 stations throughout the entire district. And then the little
8 helicopter icons are where we have air facilities or air
9 stations. We have two air--we have an air facility in Newport as
10 well as a Coast Guard air station in North Bend.

11 **TA:** No--no further questions on this slide.

12 **WIT:** So this is a pictograph of the types and actual available
13 assets and search and rescue capabilities for this area
14 specifically. So if there were a case that came up today here in
15 Newport, these eight search and rescue assets, in addition to the
16 command center, are ready and available 24 hours a day to respond
17 to search and rescue missions here in--in Newport. The ones on
18 the left-hand side are what Boatswain Molloy and Petty Officer
19 Dozier have here at Station Yaquina Bay, a 52-foot motor
20 lifeboat, the VICTORY, a couple of 47s and a 29-foot response
21 boat. On the right-hand side are our Coast Guard aircraft.
22 Closest is that MH-65-D Dolphin here in Newport at the airport,
23 just--just south of town. In Astoria we have MH-60T Jayhawk

1 helicopters, which could be down here in 1 hour if we needed
2 them. Then we have C-27J Spartan fixed-wing aircraft. They're
3 actually in Sacramento, California. They're our closest fixed-
4 wing aircraft. They're about 3 hours away. And then depending
5 on the time of year and the day and the patrol schedules, the
6 Coast Guard also employs and 87-and-110-foot patrol boats. One
7 is permanently stationed in Coos Bay, but they patrol various
8 areas. They don't just patrol around their home ports. And
9 depending on specific times of year, there's usually one of those
10 around, with the exception of the winter. The 87s don't go
11 offshore generally in the wintertime just because they're just
12 not as capable in the seas. That's why we have the lifeboats.
13 And then again we have four command centers, one at each of the
14 sectors and then a command center combined with a rescue
15 coordination center in Seattle that support all search and rescue
16 missions here in the district.

17 Q. Sir, we've heard testimony that the lapse in appropriations
18 that was in effect during 8 January 2019 had affected some other
19 offices that employed civilians. To the best of your knowledge,
20 were any offices or the assets that you just mentioned affected
21 by the lapse in appropriations?

22 A. They were not. All of our civilian watch-standers, including
23 myself, in the search and rescue program at the operational units

1 are excepted. The search and rescue mission is an excepted
2 mission and was operating at 100% during the shutdown.

3 **TA:** Thank you, sir. No further questions on this slide.

4 **WIT:** So the Coast Guard employs a lot of sensors and different
5 electronics and systems to help us in running search and rescue
6 cases. On the first left--here I'll use the pointer. So these--
7 these three [indicating] actually depict AIS. So the Coast Guard
8 owns AIS transceivers in the Pacific Northwest. The green shaded
9 areas are where we generally report that we have AIS coverage.
10 It's called nationwide AIS. It's Coast Guard-owned, but it's not
11 the only type--it's not the only way that AIS is received on the
12 shore. Other nodes exist through commercial entities, other
13 government agencies that feed the nationwide AIS system. This is
14 a snapshot of kind of a typical day of AIS coverage. So I forgot
15 to mention this little red area here [indicating] kind of
16 centered on Newport. So we actually don't have an AIS--a Coast
17 Guard-owned AIS transceiver here in the Newport area. We
18 advertise that there is potentially a gap in nationwide AIS
19 coverage on the central Oregon coast, but I took a snapshot of
20 the AIS coverage, and this bounded area basically is this box
21 here [indicating] and it actually does show that we actually have
22 really good coverage. The yellow vessels there are through
23 nationwide AIS, and the blue vessels are from another service

1 called satellite AIS. Above our heads many satellites have a
2 sensor on board that have the ability to pick up AIS signals from
3 vessels and actually--they receive that signal and then trans--
4 transport it back down to the ground and then it's fed into land-
5 based systems that have the ability to display AIS. It's a
6 redundancy system. It also covers areas offshore where
7 terrestrial AIS signals are harder to be received.

8 Now on the right-hand side is our Coast Guard radio
9 coverage. So we have very good radio coverage in the Thirteenth
10 District, with the exception of some of the eastern reaches of
11 the Columbia and Snake River system, which does not affect this
12 area. We have a number of high sites along the coast that pick
13 up VHF/FM radio signals as well as digital selective calling
14 systems, all in the VHF/FM range, to include distress signals on
15 121.5 megahertz. The--the depiction on the left-hand side is
16 kind of where the high sites are, and then this red area is its
17 expected coverage. So the darker areas of red show where there's
18 more than one antenna that actually covers the area. And Newport
19 has excellent radio coverage. This also does not include the set
20 of radios that are at the station, which would be in addition to
21 this radio coverage, but in my opinion, the Coast Guard has
22 excellent radio coverage here. And--and the radios actually are
23 only designed to reach about 25 miles offshore, and we actually

1 have many recorded instances of being able to hear vessels
2 engaged in the albacore tuna fishery up to 150 to 200 miles
3 offshore.

4 Q. Sir, I--I'd like to ask a couple clarifying questions. Going
5 back to what you discussed about AIS, is the information that's
6 displayed, is that a continuous feed or how often is that
7 information captured and relayed to someone who might be trying
8 to find a boat?

9 A. Depends on the receiver on land as to how--how often it
10 updates. Generally it's real time. Many of our--our laten--
11 latency is very low when it comes to receiving AIS signals. Most
12 of the AIS transmitters on the boats themselves are continuously
13 putting the signal out, and our shore stations are continuously
14 receiving them. We do have the ability to notate if it is time-
15 late for some reason. Sometimes a vessel might turn off their
16 AIS for a time for maintenance or for whatever reason, to recycle
17 batteries or something, and then turn it back on. We would have
18 the ability, like, say if we clicked on this boat here, to see
19 its--a bunch of information about it, whatever is plugged into
20 the--the vessel's AIS system. It'll give its name and et cetera,
21 but it'll also tell us the last time that that signal was
22 received. Satellite AIS does have some latency to it.
23 Sometimes--kind of usually in the 15-minute realm but up to kind

1 of hours depending on if the satellites are picking it up or not.

2 And then actually I forgot to mention this middle bit. This
3 is a system that is run by NOAA, the National Oceanographic and
4 Atmospheric Administration. It's called VMS, the vessel
5 management system or voyage management system, and it is on board
6 fishing vessels for essentially fisheries management, but in the
7 search and rescue community we are one of the users that are able
8 to use that data in the event that we find out that a vessel is
9 in distress. It's very--it's an AIS-like system. It's a
10 commercial off-the-shelf system that NOAA uses. It's in addition
11 to any kind of AIS equipment that would be on board, and not all
12 fishing vessels are required to have it, but I do not have the
13 expertise to know exactly which vessels are supposed to have it
14 or not.

15 Q. Are you aware of whether the MARY B II, also referred to in
16 certain databases as the BESS CHET, had an AIS signal?

17 A. I am not aware that they were transmitting on AIS the night--
18 at all at any point, but I do know that they were transmitting on
19 VMS as the BESS CHET.

20 Q. Are there restrictions placed on how a vessel's position
21 obtained by VMS is usable by the Coast Guard?

22 A. Yes. NOAA has very strict rules on the usage of voyage data
23 out of VMS, and it's specific to fisheries management and

1 enforcement and search and rescue. So even within the Coast
2 Guard there are folks--any folk--any person outside of those two
3 mission areas wouldn't even have access to that data at all. So
4 we--we actually fill out a user agreement that goes to NOAA and
5 then we personally are able to receive the feeds for VMS on the
6 systems that we use. So we have a couple of different systems
7 where we can view this data, and it's actually personal to us and
8 we're not allowed to share it with other people outside of those
9 mission areas.

10 Q. During the events and the days surrounding the lapse in
11 appropriations up to the evening of this accident, are you aware
12 if there were any significant interruptions or issues with these
13 systems?

14 A. There were----

15 Q. To the best----

16 A. Yeah, there were no----

17 Q. ----of your knowledge.

18 A. ----interruptions, to the best of my knowledge.

19 Q. Okay. I'd like to talk a little more specifically about
20 rescue 21. You gave us a great overview of the coverage. Can
21 you now speak to what the Coast Guard uses that for with specific
22 reference to communications and how the Coast Guard captures any
23 radio transmissions?

1 A. Yeah, so there's--on these radio towers that are placed kind
2 of from Rocky Prairie down at the California border all the way
3 up through the entire system, each of these towers has seven
4 radios on it of--for use in various ways. So we have the ability
5 to listen to more than one radio channel at a time. We do have
6 continuous receivers on channel 16 and then they provide us more
7 transceivers so that we can also talk to multiple vessels and
8 aircraft at the same time. All of the coastal sites also have
9 what is called direction-finding capabilities. So they can shift
10 that radio to specific frequency, and when somebody transmits on
11 that frequency, on our system a line of bearing shoots out and
12 points in the direction of where that signal is coming from.
13 It's fairly reliable. And then we also have the ability to
14 receive digital selective calling messages, which is a distress
15 and safety system that allows mariners just--from recreational
16 boaters all the way up to professional mariners to send us
17 messages essentially from distress messages to normal messages,
18 letting us know various reasons why we would need to--like if
19 they're in distress, they can hold a little red button on their
20 VHF radio and it sends it to us. There's a continuous alerting
21 capability within rescue 31 for that. All of our sites are--are
22 listened to by a radio operator. We call them a communications
23 unit watch-stander at our sectors. Sectors have one or two of

1 those depending on how many high sites they're listening to. And
2 that person's sole job is to sit and listen to the radios and
3 answer those. We use the radios not only for distress
4 reporting--so anybody can go onto channel 16 and--and talk to the
5 Coast Guard directly. There's somebody listening, as well as we
6 maintain radio guards and communications with all of our Coast
7 Guard assets when they're out either on patrol or in a search and
8 rescue mission or the helicopters are out flying. Anytime
9 they're actively engaged or underway or airborne, we maintain
10 radio guard with them. So we talk to them every--every so often
11 to make sure that they're doing okay and kind of figure out if
12 they need anything. Is there anything else?

13 Q. And just for the sake of public understanding, why are these
14 tuned to pick up on channel 16?

15 A. So channel 16 VHF, FM 156.8 megahertz is the distress and
16 hailing frequency. It is to be used solely for the purpose of
17 getting a hold of someone when you're in a distress situation.
18 So many recreational mariners as well as most commercial mariners
19 keep one of their radios on channel 16 not only to let them
20 know--let us know that they need help but to also help each other
21 when they hear somebody's in distress.

22 Q. Are you--are you familiar with deteriorating bar or some kind
23 of inclement weather broadcast that Coast Guard stations and

1 sectors put out?

2 A. Yes.

3 Q. What channel do they put those out on?

4 A. They generally put them out on channel 22A, which is 157.1
5 megahertz. Our sectors put out what's called the regularly
6 scheduled marine information broadcast or RMIB. Generally it
7 goes out about twice a day, and it puts out general information
8 about the weather that's happening for that 12-hour period, any
9 Aids-to-Navigation or other things that the Coast Guard thinks
10 that the mariner needs to know about that might not be working,
11 as well as they have the ability to continuously put out the
12 deteriorating bar reports or any other weather warnings that the
13 sector deems the general boating public would need to know about,
14 and that is in addition to NOAA weather radio. So this system is
15 available to anybody with a radio, and it's in addition to the
16 NOAA weather broadcast. So we put out a lot of the same
17 information that NOAA does on our regularly scheduled marine
18 information broadcast as well as any other kind of weather
19 updates that we decide to put out.

20 Q. To the best of your knowledge, sir, is VMS continually
21 updated or does it have a similar lag as you annotated before
22 with AIS?

23 A. It is similar to AIS. It's generally fairly up to date, but,

1 again, there's system parameters that have...there is some latency
2 to it.

3 Q. And for anything being picked up on rescue 21 on channel 16,
4 is there a time lag or will that radio transmission come in real
5 time?

6 A. So they all come in real time. Our radio operators, when
7 they're sitting in their voice booths, have multiple different
8 speakers that they're able to hear the radios coming across. So
9 they can actually hear multiple mariners talking at the same time
10 on different radios at the same time. Sometimes that get--that
11 gets a little hard to listen to, and if we need, for some reason,
12 to clarify a call or recall specific verbiage that was said over
13 the radio because maybe more than one radio was going off at the
14 same time, all of our radios and telephones in our command
15 centers and rescue coordination centers are recorded. On rescue
16 21 it's--it's an internal system that records every single second
17 of every conversation over the radio and is archived. Then we
18 have a similar system that is separate from rescue 21 that
19 records all of our telephone lines in our command centers. We do
20 that for the purpose of record keeping and for making archives as
21 well as just recalling information that--command centers and
22 radio rooms can become very distracting very quickly when things
23 are going--a lot of things are going on at once. So we have the

1 ability to go back and listen to things again if we need to, and
2 those are all archived as well.

3 Q. And for clarity, sir, which level of the Coast Guard that you
4 talked about before has access to see all this information, as in
5 does the station, does the sector----

6 A. Yeah.

7 Q. ----does district----

8 A. So the district coordinates all VMS snapshots. We do have
9 the ability to share those with our subordinate units at the
10 sectors or the stations or the cutters. We regularly do that for
11 search and rescue and the other missions that we can use VMS for.
12 The sectors control and have access to rescue 21 as well as the
13 stations have a console at each of their stations that has
14 limited control of the radio sites that are in their area, and
15 all of our units have the ability to access AIS data at their
16 unit. That's from the district all the way down. Every
17 operational Coast Guard unit has the ability to log in to various
18 systems and bring up AIS feeds.

19 **TA:** Thank you, sir. After your presentation I'd like to--
20 after--I'd like to bring up the VMS data that we were made
21 available and just ask you a couple questions about how to
22 interpret that.

23 **WIT:** Okay.

1 **TA:** But for now we'll continue with your presentation.

2 **WIT:** So the title on this slide is incorrect. It should say
3 SAROPS and SARSAT. SAROPS is search and rescue operations. It
4 is--that's on the right-hand side here. It is a suite of
5 software that is housed in a GIS software that the Coast Guard
6 uses for planning search and rescue searches. It is a very
7 complicated and very capable set of tools that the Coast Guard
8 has developed over many years and actually continuously updates.
9 It allows us to do a multitude of tasks. I'll go over a couple
10 of those.

11 First is--is just basic mapping. So it's based in our GIS
12 software. It allows us to put an unlimited amount of base maps
13 on there, from nautical--Raster nautical charts, electronic
14 nautical charts, aeronautical charts, satellite views. We have
15 the ability to overlay real-time weather, real-time currents,
16 historical currents, winds. We have the ability to put other
17 different overlays. We can draw on them. We can annotate
18 whatever we want on--on the charts.

19 The--another function is the SAROPS function itself, which
20 is how we plan and execute searches and drift search objects. So
21 a search object is, quite simply, a fishing vessel or a person or
22 any--anything in the suite that we have. There are around 100
23 individual different types of objects that our software can

1 drift--simulate its drifting through the water. So if we get a
2 call of a vessel that, say, is out of gas off of Newport and
3 they're 5 miles offshore, I have the ability to take the
4 particulars of that vessel, put it into the system, run it
5 through a set of scenarios and parameters and assumptions and
6 then what it'll do is it'll take and--it'll take the weather and
7 the current and the--a few other parameters and simulate how that
8 object will drift in the water over time. So in that instance
9 we'd want to know if, for instance, in a specific amount of time,
10 when that vessel might run aground because they're disabled.
11 Maybe the station is running another case in another area and we
12 need to buy some time. We can say, yeah, over that 3 hours, that
13 vessel is going to not come anywhere near shore. There's nobody
14 in distress on board. The software has the ability to simulate--
15 simulate things like that. It essentially is unlimited in the
16 amount of ways that we can simulate objects drifting through the
17 water. We can't simulate--currently we can't simulate people
18 walking on--on the shoreline. We can't simulate things that are
19 on land. We just--the physics of the software really take into
20 account the actual water itself moving and the weather and the
21 current and the wind moving those objects around on the water.
22 So---

23 We can take that data of where we think something is going

1 to drift to and then we have the ability through a semiautomated
2 process of developing search and rescue patterns or a search and
3 rescue plan in the system. So what we do is we take what we have
4 available to us, like a helicopter and a boat. It's all specific
5 to different types of helicopters and boats and cutters and
6 airplanes. Say we have a 65 helicopter from Newport and a--and
7 the 52' VICTORY available to us and I have 2 hours of time for
8 both of those. Put those parameters into the system and it'll
9 give me what the system thinks is the best way to use those when
10 we're looking for something.

11 So on the left-hand side is the initial drift. So the--the
12 colors here is what we call a probability grid. When we do a
13 drift, it drops--it drops 5,000 particles in the water. It
14 simulates 5,000 particles. Each one of those particles has the
15 exact same probability, through the software, that that object
16 might be there over time. So the different colors just mean that
17 there are more than--that there's--there's a denser amount of
18 particles in a certain area. So this is actually the drift for
19 the MARY B II. When we drifted it, we used the initial--the last
20 known position or datum was the EPIRB or kind of the last place
21 that they saw the vessel at the end of the jetty. So we used
22 that as our center point and then we gave it a little bit of
23 error, which is why there's kind of these concentric circles, but

1 each one of the--each one of these colors represents a density of
2 particles where there could be a person in the water. So then
3 what we do is we overlay these--these triangles. Each one of
4 these triangles is actually a search pattern. There's three of
5 them together called a sector search. What we do is we just
6 overlay those over the area and the helicopter actually drives
7 through this area looking for whatever we're looking for, in this
8 case the persons on board the MARY B II.

9 That's probably the easiest way for me to describe all that.
10 I know that's a lot of information. There is some other things.
11 So the--these little arrows is actually what the current was for
12 that specific area for a very specific time. I actually don't
13 have the time slider on here, which would actually tell us where
14 we are in the drift. So we have the ability to simulate over a
15 period of time where these particles are going to move. You can
16 actually animate it to see that they'll go from like one area to
17 another over time. This is just a snapshot. This is just a
18 screenshot of 1 second of one part of the search there. I think
19 that's about all for SAROPS.

20 And then on the--the right-hand side is another system the
21 Coast Guard takes part and runs. It is called search and rescue
22 satellite. The COSPAS--it's called COSPAS/SARSAT. COSPAS is
23 actually an acronym, but it's in Russian and I don't know how to

1 say it, but it means search and rescue satellite in Russian. So
2 it's basically a set of three different constellations of
3 satellites in space at different levels that continuously listen
4 for satellite--satellite distress beacons. There are three
5 different types of satellite beacons that the system listens for:
6 EPIRBs, which is emergency position-indicating radio beacon,
7 which are primarily used on maritime vessels. The MARY B II did
8 have an EPIRB on board, and the picture on the top is actually a
9 system overlay of what we received in our computer system from
10 the EPIRB itself. It also picks up ELTs, which are emergency
11 locator transmitters, which are primarily used in aircraft, and
12 PLBs, which are personal locator beacons, which are just a
13 handheld emergency beacon that can be used in any matter of
14 mobility. A lot of hikers--they were originally designed for
15 hikers to use, but now a lot of people take them on planes and
16 cruise ships and just with them. All of our Coast Guard search
17 and rescue professionals carry a personal locator beacon on them
18 when they're on mission as well.

19 So essentially when an EPIRB is activated, it goes up to a
20 satellite in space. That goes back to an antenna on the earth's
21 surface, and then that gets forwarded to a rescue coordination
22 center. All that happens in less than 30 seconds. It's
23 completely automated. No human touches that signal until it

1 actually is received at a rescue coordination center, pops up on
2 our screen. All the EPIRBs are mandated to be registered. So
3 that registration information comes up on our screen and then we
4 start our command center's work to try to find out why that
5 emergency beacon is going off. If we can't immediately determine
6 that the emergency beacon is--has been activ--accidentally
7 activated, then we launch a Coast Guard asset to--to find out
8 what's going on with that.

9 Q. Thank you, sir. I have a couple of follow-up questions to
10 some of that information. You stated that the EPIRB was mandated
11 to be registered. Was this properly--was the one for the MARY B
12 II properly registered?

13 A. The MARY B II's EPIRB was registered. There were a couple of
14 anomalies in the registration, but that would not--I don't think
15 that--it would have precluded us--had the EPIRB been our initial
16 source of distress communication, I don't think it would have
17 precluded us from--from responding. The vessel--and what I'm
18 speaking to is the vessel was registered as a sailboat instead of
19 a fishing vessel, and I--sometimes when you're filling out the
20 registration, which is online in a NOAA system, there's a lot of
21 parameters that you--you have to select. And so there is a mast
22 selection and that's under the sailing vessel area. And I think
23 that with the outriggers being on the board, it--mast was

1 selected, but he--whoever registered it also registered it as a
2 sailing vessel. But all of the particulars--the most important
3 information on the registration is the emergency contact
4 information, and that all was there.

5 Q. And just to clarify, when you say you have to register, is
6 that a Coast Guard person, a vessel owner, a vessel operator?
7 Who registers their--their EPIRB?

8 A. The beacon owner.

9 Q. Okay. So what you told us about search and rescue optimal
10 planning system or SAROPS, it sounds like being able to have the
11 proper information that describes the vessel is important to
12 being able to tell how it might react in the water and waves and
13 all that. We have heard testimony that there was some initial
14 confusion as to the proper identity of the MARY B II due to it
15 still being registered in several databases as the BESS CHET.
16 Can you give me a little information about how--more
17 specifically, Coast Guard personnel use information contained in
18 MISLE or things like this and how that might affect our ability
19 to identify, communicate with and at times conduct search and
20 rescue for that vessel.

21 A. Yeah, so ultimately when the information that we receive or
22 is presented to us initially is either incorrect or outdated,
23 what it does is just slows the process. What I mean by that is,

1 in this case, it actually didn't slow the process very much
2 because the vessel was not in distress when we found out that it
3 was the BESS--that it was--between the MARY B II and the BESS
4 CHET. But the only information that we had for the vessel we
5 received from VMS--the watch-stander at Sector North Bend
6 received was on VMS, and he's got a very long tenure as a search
7 and rescue professional, and he was able to take the information
8 from VMS, i.e. the official number of the boat, and cross--cross-
9 reference that in a couple of different databases. And when he
10 finally was able to get that into MISLE, he was able to find out
11 that the official number for the BESS CHET was the same as the
12 official number for the MARY B II. He was able to do that
13 quickly. Under pressure or, you know--I think if the information
14 wasn't correctly registered on the EPIRB, and that was the first
15 time we were able to get it, that could potentially slow down our
16 response. There are many times that EPIRB registrations are
17 incorrect or outdated. This one was not. This one was up to
18 date. It was very recently updated before this case happened,
19 and that certainly is a best practice. But, yeah, so what
20 happen--when we receive that information and it takes us
21 basically just man-hours to try to figure out the difference in
22 naming conventions or different ways to figure out where we need
23 to start. When the information is correct on the onset, we tend

1 to have a little bit easier time doing that research and figuring
2 out what's going on.

3 Q. Whose responsibility is it to update the AIS information of a
4 vessel?

5 A. It's the owner of that specific piece of equipment.

6 Q. Okay, so it wouldn't have been another personnel, another
7 entity entering information, similar to what I asked you about
8 the EPIRB?

9 A. No, it's--it's similar to the EPIRB except that the
10 information on the AIS receiver--trans--transmitter is actually
11 on the boat. The EPIRB is registered through a registration
12 process through NOAA. It's a computer or a paper registration
13 service that then goes into a--into a specific system. The--the
14 information on AIS is actually on the transmitter itself. I do
15 not know what the process or the--registration process is for VMS
16 data.

17 **TA:** No further questions on this slide.

18 **WIT:** Okay. The next two slides are--have kind of already
19 previously been presented. This is just a depiction of the
20 seconds before the--what we call the--the distress time. So the
21 search and rescue case for the MARY B II escort is--the search
22 and rescue system has three phases that we operate in:
23 uncertainty, alert and distress. And uncertainty is--means we

1 have a lot of apprehension. We maybe know that something may be
2 happening, but we're not fully confident that anyone is actually
3 in distress. But our feelers are up and we're actively working
4 to try to figure out if it's something or not. When we're in
5 alert, we know that there is a situation that could potentially
6 immediately turn to distress. So we are geared up. We're out
7 there. We're actively either searching or we are--we're actively
8 out there prosecuting a search and rescue mission and/or our
9 command centers are doing immediate research to find out if we
10 need to do more. And then there's distress finally. That's when
11 we--when we know that people's lives or property is in danger,
12 actively in danger, and so the escorts we operate in alert--
13 that's why they're out there. It's a preventative SAR mission.
14 So they're ready and alert to respond in the event that something
15 happens, and that's exactly what we were doing that night. And
16 so the--the SAR case went from the alert phase to the distress
17 phase when we noticed that the MARY B II capsized. And you can
18 just go to the next slide.

19 So immediately what happens is then we go into the distress
20 phase, and this is kind of a depiction of--of what happens over
21 the period of about 2 hours. BOSN Molloy contacted Sector North
22 Bend, kind of officially putting us into--into the distress phase
23 and calling for a helicopter. The EPIRB, in my opinion,

1 automatically deployed and started immediately going off. The--
2 the people on the beach saw it. It has a strobe on it. So
3 they're able to see that. The life raft deployed, likely also
4 automatically, from its--from its housing. And we started
5 searching. So these are those same search patterns kind of
6 loosely depicted here on this chart of what the helicopter was
7 tasked with that night. It's sort of these concentric circles
8 that they go through, and they constantly fly through the middle
9 here [indicating]. So say the helicopter starts right here
10 [indicating]. They continuously fly through the center period
11 here, because that's where we--the highest probability of trying
12 to find somebody was, and that's what was the last known position
13 of the vessel. It's called a sector search. Once the helicopter
14 got airborne and on scene--that was about 20 to 25 minutes from
15 the airport--they started talking to the ground party and
16 immediately located the life raft, lowered the swimmer to the
17 life raft. There was nobody in the life raft. So they started
18 moving on. They relocated the EPIRB, which they thought might
19 have been a float light from a lifejacket or something like that.
20 It wasn't. Shortly after that is when the helicopter crew
21 located Mr. Lacey in the water. They lowered the rescue swimmer
22 down and they conducted a hoist of him. The rescue swimmer--the
23 conditions were of such where they couldn't even recover Mr.

1 Lacey into the helicopter itself. So the rescue swimmer actually
2 did what's called a grip hoist and he essentially bear-hugged Mr.
3 Lacey from behind, held onto him and then they brought him into
4 the shore and transferred him to EMS. Shortly after that Mr.
5 Porter was recovered on the beach by a ground party, and at the
6 same time, the vessel's cabin was located kind of simultaneously
7 by the beach party and the helicopter. It was decided by the
8 helicopter crew that it was just too--the seas were too big, the
9 surf was too large for them to lower the rescue swimmer and put
10 him inside of the cabin. The ground party did say that they
11 noticed that Mr.--I didn't know at the time who it was, but Mr.
12 Biernacki was inside the wheelhouse. Our ground party--beach
13 rescue party went out and tried, at that point, to recover Mr.
14 Biernacki from the wheelhouse. Due to sea states and the
15 breaking wave action and the movement of the actual wheelhouse
16 itself on the beach, it was determined that it was not safe at
17 that point in the tide cycle to recover Mr. Biernacki. At that
18 point, having known that they had accounted for all three people,
19 the search and rescue evolution or mission was--the actions of
20 the search and rescue mission were suspended, meaning that we
21 sent all of our vessels and helicopters home for the night. We
22 knew that everybody had been accounted for and there was nobody
23 out there actively needing to be rescued, and it was deemed by

1 our search and rescue mission coordinator down at North Bend and
2 on-scene folks of the ground party and fire department that they
3 would attempt to recover Mr. Biernacki from the wheelhouse in the
4 morning. That's what--that's what did occur. They got back out
5 there at first light. A joint crew between the Coast Guard and
6 the Newport Fire Department were able to extricate Mr. Biernacki
7 from the wheelhouse and transfer him to--to the morgue.

8 Q. Mr. Giard, throughout the week we've heard testimony with
9 regard to the action on the part of Sector North Bend and Station
10 Yaquina Bay. Based on your experience and your level of
11 familiarity with the facts of the case, in your opinion, did
12 Coast Guard assets take proper and effective action based on
13 current policies?

14 A. Yes. In my opinion, I think the Coast Guard did everything
15 in accordance with policy that night, did everything they could
16 to try to rescue these--these men, and it actually did affirm
17 some of the--some of the actions that were--that happened that
18 night, and risk management decisions that were made by the boat
19 crew and the helicopter crew kind of affirmed some of the
20 assumptions that the Coast Guard makes as far as what we want our
21 crews to do with risk management. Very sound decisions were
22 made. For example, not going north of the north jetty after the
23 vessel capsized. Those decisions are not easy to make, but they

1 are--unfortunately have to be made under very short timelines,
2 and decisions like that and not lowering the rescue swimmer with
3 the potential for him to be trapped in the--in the wheelhouse
4 affirms that we're doing the right thing as far as training and--
5 and policy. The right policies and training are in place to make
6 sure that we're not putting our crews at undue risk, but we also
7 were able to respond in a very timely manner due to the fact that
8 we were out there doing the escort mission. So the reason why we
9 were able to respond quickly is because of the escort mission.
10 If we weren't--if we hadn't escorted the MARY B II that night and
11 the MARY B II had decided to cross the bar, it is likely that our
12 first notification of them being in distress would have been
13 their EPIRB that night. And we wouldn't have been there as fast
14 as we--as we were. So I think that--unfortunately--and search
15 and rescue crews take this mission very personally. We--we
16 respond as--as if our brothers and sisters are out needing to be
17 helped. So it pains us when we aren't able to rescue people.
18 But I'm happy to say that we were out there doing everything we
19 could to rescue these men and that the search and rescue system
20 was operating at--at 100% that night.

21 **TA:** Thank you, sir. Lieutenant Woods, please display Exhibit
22 38, slide 11. Mr. Giard, for the benefit of the public, I am
23 bringing up a slide that will contain a radio transmission. I

1 will play the transmission and then I will ask you some questions
2 about it.

3 [Audio was played.]

4 Q. Mr. Giard, we are trying to ascertain different understanding
5 of what Mr. Biernacki may have been alluding to when he talked
6 about his AIS being clogged up. As you heard, Mr. Biernacki
7 expressed concern with the number of contacts or something
8 pertaining to his chart plotter and AIS clogging it up. Given
9 that there were only three vessels underway that evening, can you
10 discuss what other contacts or what other things may have been
11 present on the MARY B II's AIS plotter? And can you speak to the
12 possibility that it may have been AIS contacts from vessels
13 moored in the nearby marina.

14 A. I can't say specifically that vessels in the nearby marina
15 might have been, quote, "clogging" his AIS up, but I have owned a
16 vessel of my own in the past and had a chart plotter with AIS on
17 it, and there are settings that you can set to alarm in certain
18 parameters. So there may have been parameters set on his AIS
19 receiver or his chart plotter, which are often connected
20 together, that were alarming or something else might have been
21 happening on his screen. I've listened to this particular
22 recording a number of times, and that's the best that I can come
23 up with for why that might happen.

1 **TA:** Thank you, sir. Lieutenant Woods, please display the Coast
2 Guard Exhibit--the VMS data, page 1.

3 Q. Mr. Giard, I'd like to ask for your interpretation of the
4 information we can glean from this information. Specifically
5 I'll take--I'll give you a moment to familiarize yourself with
6 the data.

7 A. Okay.

8 Q. Are we able to ascertain from this data the speed that the
9 MARY B II was making throughout the day or throughout these
10 points?

11 A. I don't--I don't think you can ascertain speed based on this
12 information. The data looks to have gaps. I think if--if there
13 was--if this depiction had a regular interval, say every 30
14 seconds or minute there was a position plotted with a time stamp,
15 you could ascertain speed based on time, speed and distance, but
16 I--I don't think that you can ascertain time based on this
17 because of the kind of infrequency of the--of the plot.

18 Q. In your experience, is this infrequency of the plotting
19 normal for VMS feeds in this area?

20 A. Yes.

21 **TA:** No further questions. Thank you for your time, Mr. Giard.

22 **LIO:** Lieutenant Bigay?

23 //

1 **Questions by the assistant investigating officer:**

2 Q. Good morning, Mr. Giard.

3 A. Good morning.

4 Q. We don't have to go to it, but there was a slide that you
5 showed that had--excuse me--that had a number of search and
6 rescue units and assets. It had a number of boats and
7 helicopters. Can Coast Guard buoy tenders conduct search and
8 rescue?

9 A. Yes with a caveat. The primary mission of our Aids-to-
10 Navigation units is Aids-to-Navigation. There is one Aids-to-
11 Navigation unit in Sector North Bend's AOR. It's in Coos Bay.
12 They have a couple of small Aids-to-Navigation boats. But we
13 also do have two Aids-to-Navigation cutters stationed in our
14 district, one in Astoria, the ELM, which is actually currently in
15 dry dock in Maryland, and the HENRY BLAKE, which is in Everett.
16 We use buoy tenders and Aids-to-Navigation team boat units as
17 vessels of opportunity. So if they're the only unit available,
18 they have minimal training to be able to conduct lifesaving
19 operations, and our cutters have the ability to be on-scene
20 coordinators, but that's not their primary duty. But we have
21 employed the use of ATON units in the past for search and rescue
22 missions.

23 Q. Thank you, sir. You mentioned a complement of Coast Guard

1 units, which included stations, sectors and district. Do you
2 know who has the authority to close the bar to vessels coming in
3 and out in the area of responsibility of Sector North Bend?

4 A. Yes. The ability to close the bar to all vessels rests with
5 the captain of the port for Sector Columbia River, which is
6 located in Warrenton, Oregon.

7 Q. And when you say all vessels, does that apply to commercial
8 and specifically fishing vessels?

9 A. So when the--when the bar is--has a captain-of-the-port
10 closure on it, it is due to sea state or risk not allowing any of
11 our Coast Guard resources to cross. So that's the only time we
12 close it is so that--we aren't able to respond. So, yeah, any
13 vessel from a merchant vessel to a recreational vessel, all sizes
14 in between, including commercial fishing vessels, would not be
15 able to transit the bar at that time. And that's because we're
16 not able to effect rescue of those persons if they were to have a
17 SAR case or go in distress on the bar.

18 Q. Just for the sake of clarification, understanding you
19 mentioned Sector Columbia River. So under those circumstances
20 that you mentioned, that would also apply to deep drafts in that
21 area as well.

22 A. Yes, all vessels.

23 Q. You remember providing an example of when the last time that

1 happened was, what the circumstances---

2 Q. Yes. So it happens generally in the winter months of October
3 to May. I don't know the last--the deep-water bars, which are
4 Coos Bay, Newport, the Columbia River and Grays Harbor, are the
5 bars that have 52s. Those bars are very, very infrequently
6 captain-of-the-port-closed because we have the 52s. The 52s
7 allow us to effect rescues in the most adverse conditions that
8 the Pacific generally can put up to the Coast Guard. Captain-of-
9 the-port closures happen more often on smaller bars, for example,
10 like the Umpqua River bar or the Tillamook bar, because of the
11 way that the bar is set up and with those units not having 52s to
12 be able to respond, they have to close more frequently when the
13 weather is bad. But I would say probably captain-of-the-port
14 closures--I don't have the numbers off the top of my head; we do
15 keep track of those numbers--maybe 10 or 15 times a year
16 throughout the entire district. The regulated bars go all the
17 way up to the Quillayute River to the north.

18 Q. So you mentioned the decision being dependent on the cap--the
19 capability of certain assets to be able to respond.

20 A. Yes.

21 Q. Does the capability--does the capability of an asset to
22 respond or the availability of that asset to respond always
23 translate to an actual--does that always translate to an

1 effective rescue, the fact that you have the capability?

2 A. Can you rephrase that question? I'm not sure exactly what
3 you're trying to ask there.

4 Q. Yes. So you mentioned the decision of whether or not to
5 close the bar lies on whether that unit has an asset that is
6 capable of effecting a rescue----

7 A. Right.

8 Q. ----under whatever conditions. Does the availability of that
9 asset meant that the rescue is going to be effective under all
10 conditions?

11 A. That's sort of a complicated question. The effects--the--how
12 effective we are at actually conducting a specific Coast Guard
13 mission at the time has a multitude of variables. So just
14 because the bar is unrestricted and not closed doesn't mean that
15 the rescue isn't going to be really hard or we're going to make
16 it--or the rescue is going to be successful. So what we're
17 saying by leaving the bar open is that we have the ability to
18 respond and we have the assets available to effect that response,
19 but there is never a guarantee that we're going to be successful.

20 Q. Understand. Do the tools you have available allow you to
21 obtain a number of how many SAR cases were effected or happened
22 during a certain period of time?

23 A. Yes.

1 Q. When that data is obtained, is there a way to discern what
2 the--what type of vessel required--what type of response it was,
3 whether it was a fishing vessel versus a deep draft versus a
4 swimmer in the water, for example?

5 A. Yes.

6 Q. How often is that--is that data that is pulled at a certain
7 frequency that--that is analyzed by the Coast Guard?

8 A. Yes. So we have--it's continually analyzed. Part of my
9 responsibility in the search and rescue program is to, at the
10 request of anyone within the Coast Guard or outside of the Coast
11 Guard, to look at trends and to look at data and analyze the--the
12 analytics to--to see what we're--whatever the end result we want
13 to have is. There's--there's program goals which are essentially
14 mandated by congress, and those are updated quarterly by our
15 headquarters office. There's various measures, but there's
16 probably 50 or 60 different measures that we can use for the
17 search and rescue mission: amount of--percentage of lives saved,
18 percentage of property saved, types of cases over a specific
19 amount of time. There's a lot of data that we can use and then
20 there's a lot of way we--ways that we can measure and analyze
21 that data for whatever purpose we decide to do for it. But we do
22 look at it--if we see that there's a trend in a certain area or
23 if a specific leader in the Coast Guard decides that he wants--he

1 or she wants to know more about a specific type of mission, the
2 data is continuously available and it's very easy to run
3 analytics on--on that kind of data.

4 Q. So if--if we wanted to discern how many search and rescue
5 cases in an area were tied to a specific type of commercial
6 fishery, we would be able to---

7 A. Yes.

8 Q. Sir, you mentioned an alarm parameter that's tied to the
9 chart plotter system or that can be. In the sense that--in the
10 context that this was brought up was that it could have
11 contributed to the comment made by the operator of the MARY B II.
12 Is there a specific number for the--for the contacts that alarm
13 that would be deemed distracting?

14 A. I don't know how I would answer that. I think it depends on
15 the parameters that are set and the person's--I don't know, it's
16 a very dynamic question. There's a lot that goes into that.
17 Being on board a vessel even in calm conditions is very
18 complicated. Anything that can distract the operator/owner from
19 operating the vessel is--makes operating that much more
20 difficult. So I can't say that a specific number of specific
21 type of sound or a specific anything would be--you know, have a
22 level of distraction, but there are--there are a lot of
23 distractions when you're operating vessels. And even a small

1 thing like a radio going off or an AIS alarm going off can
2 contribute to that.

3 Q. Understood. So just to elaborate on that, it would--you say
4 that even one contact alarming would--could potentially be
5 distracting. Is that fair to say?

6 A. Yeah, I think every operator is different, but anything that
7 could potentially distract an operator could contribute to that
8 person's ability to safely operate the vessel.

9 **AIO:** Thank you, Mr. Giard.

10 **LIO:** Mr. Giard, I just have a few questions for you.

11 **Questions by the lead investigating officer:**

12 Q. When you talked about the software during your presentation
13 and you talked about it accounting for water movement and you
14 showed the screenshot there, would you say that that software
15 accounts for water movement in areas like the north jetty at 100%
16 accuracy?

17 A. No. The information that the software uses to simulate water
18 movement comes from various what we call environmental data
19 servers. Those environmental data servers all have different
20 sources. So a lot of the information that we use in those
21 environmental data servers is a combination of real-time
22 information and historical data that's kind of averaged over
23 time. So each of them has a resolution on how finite the data is

1 in specific areas. I have not analyzed the area say between the
2 jetty tips on like how--how much data there is in that area. We
3 have a kind of standard for how much infor--how much EDS data--
4 environmental data server information is required for each run of
5 the software, but because the coastlines and the jetties are so
6 dynamic and different and can even shift, I would say that the
7 data that we provide in our system is great but not 100%
8 accurate.

9 Q. Thank you.

10 A. We do have the ability to verify some of the accuracy through
11 some other tools and validation tools that we do sometimes. And
12 actually Boatswain--actually Chief McCommons alluded to a very
13 simple way of doing that by like throwing a life ring overboard
14 and seeing the way that that actually drifts. And we can take
15 that data with the software and validate whether--whether or not
16 the software is drifting the same way as say a life raft or a
17 life ring.

18 Q. Okay. So how do you know--you told a very compelling search
19 and rescue story, meaning you were able to relay the sequence of
20 events very well. How were you able to obtain that information?

21 A. So as the SAR specialist on staff, one of my duties is,
22 whether I am on--taking calls or not is to stay up to date on all
23 matters search and rescue within the Seattle search and rescue

1 region. So on the morning--the morning after this tragedy
2 happened, during my normal course of my morning, checked in with
3 the watch at the rescue coordination center, got a download of
4 the information and, as a matter of regular--my regular duties, I
5 review all SAR cases that happen within our district and spend a
6 little bit more time on cases where there is either--people are
7 actually rescued or if they are lost. I just--I go through the
8 cases and review them based on the Coast Guard's actions, and--
9 and that--what that does is it allows me to answer questions of
10 leadership and other government agencies when it comes to how
11 we're operating as a Coast Guard.

12 Q. Thank you. Mr. Giard, could you explain the policy for next-
13 of-kin notifications after an incident like this.

14 A. Okay. Yes, so the next-of-kin notifications are a duty of
15 the person exercising ACTSUS, active search suspension authority,
16 within the Coast Guard, but when we are not suspending a case
17 there's still a person designated to suspend cases. It's that
18 person's duty to ensure that notifications are made. It's kind
19 of a nuance in the policy. The ACTSUS policy was essentially
20 made to notify next-of-kins of persons that remain unaccounted
21 for, but it also applies when we do have subjects that are--we do
22 find during the course of a case that are deceased. A case like
23 this, that authority rests with the sector commander, and in this

1 area the sector commander of Sector North Bend is responsible for
2 ensuring that the next of kin are notified. That doesn't mean
3 that he has to personally conduct next-of-kin in-person
4 notifications, but he's charged with making sure that somebody
5 does that. We generally, as a practice, either do that ourselves
6 or work with the state or county--state police or county
7 sheriff's officials within a jurisdiction to ensure that in-
8 person or sometimes over-the-phone next-of-kin notification is
9 completed.

10 Q. Do you know the disposition of next-of-kin notifications, how
11 that happened in this case?

12 A. I am not intimately familiar with the details of how the
13 next-of-kin notifications were completed. I have only read that
14 Sector North Bend coordinated with the Oregon State Police on
15 next-of-kin notifications being conducted, but I do not have
16 firsthand information on how or when they were completed.

17 Q. In general, are there any factors or things that can delay
18 next-of-kin notification?

19 A. Generally next-of-kin notifications are most often delayed
20 due to us needing to find out who the next of kin is. That
21 oftentimes is difficult. We have many tools available to us
22 within the Coast Guard to try to help determine who people are or
23 who their families are, but sometimes that process is difficult.

1 Being--if we don't know someone was married or divorced or if
2 their family is alive or where they live or their address--it's--
3 it's a very complicated process. That's why oftentimes we turn
4 to local or state law enforcement officials--have a much easier
5 way of gathering that information than the Coast Guard does.

6 **LIO:** Mr. Reilly?

7 **PIIC:** Thank you, Commander.

8 **CROSS-EXAMINATION**

9 **Questions by the party-in-interest counsel:**

10 Q. Good morning, sir.

11 A. Good morning.

12 Q. Thank you for your service and thank you for being here this
13 morning. In the aftermath of this incident did the Coast Guard
14 conduct any sort of internal investigation or inquiry into the
15 performance of the search and rescue actions in this matter?

16 A. Yes. The--the Coast Guard is--has not completed any matter
17 in which we have done an internal review of the case. That is
18 being completed. It has not concluded. We have a process which
19 is outlined in international policy that's deemed a case study.
20 It generally looks at the performance of the search and rescue
21 system. It doesn't necessarily look at specific actions as to
22 how people completed them but as--the purview of a case study is
23 over the entire system and how the system is performing and how

1 the system can be improved. That's the kind of scope of the case
2 study. It's not an investigation. It's not punitive in nature.
3 It's not assigned to an investigator. It's assigned to a search
4 and rescue professional to take a look at and oftentimes just
5 validate some of the positive things that the search and rescue
6 system is completing and that also helps us kind of find any
7 places where we can, across the board, improve either policies or
8 communications within the entire Coast Guard. So, for example,
9 if something like a good risk management decision was made, that
10 can be documented and then that can be promulgated to the entire
11 search and rescue system, not just within the United States Coast
12 Guard but all of our other state and federal partners, to improve
13 the overall health of the search and rescue system.

14 Q. Would you agree, in order to foster potential improvements,
15 such an inquiry has to be candid as well if there were any
16 shortfalls in the process?

17 A. Yes.

18 Q. Will eventually a written report be prepared as a result of
19 that inquiry?

20 A. I believe so.

21 Q. Would this board have any access to such a product or is it
22 an internal product only?

23 A. There is a product, a letter, that accompanies many SAR case

1 studies that comes from Coast Guard leadership that gives an
2 overview of some of the aspects of the study themselves, and
3 oftentimes those are made public.

4 Q. I want to turn your attention to the EPIRB issue. When the
5 rescue coordinators--coordination center in Seattle receives an
6 EPIRB notice and they know they've already got an open rescue
7 underway, what, if anything, is done with the information that's
8 on any sort of EPIRB registration form?

9 A. If there is already an active search and rescue case for say
10 a person or vessel associated with a specific EPIRB that's going
11 off, generally the standard steps for notification that an EPIRB
12 is going off are--don't take place, because those are just kind
13 of initial actions on trying to figure out if we need to respond
14 or not. So oftentimes we use the data that the EPIRB is giving
15 us for searching purposes, mostly. We generally don't use--we--
16 you know, like there--there's emergency contract information on
17 the beacon itself. If we already know that a case is happening,
18 we don't oftentimes call that person as a matter of practice.
19 Sometimes we do, sometimes we don't, but we do use the data that
20 we are receiving from the beacon to help us plan our searches.

21 **PIIC:** Lieutenant Woods, could you bring up Exhibit 40 and turn
22 to page 4. I'd like to only display the top half for the time
23 being, if that's possible. I only say that because there's some

1 unredacted phone numbers on the bottom of that.

2 Q. Perhaps, sir, you can open up Exhibit 40 that you have in
3 your notebook in front of you if you want to consult the bottom
4 half.

5 A. Sir, was that page 4?

6 Q. Page 4.

7 A. Okay, got it.

8 **PIIC:** Can you zoom in just to the top half, please.

9 Q. Looking at this form, can you confirm that the checkmark
10 under "power" is for a fishing vessel?

11 A. It does say that, yes.

12 Q. Recreational vessel is not checked for this--this particular
13 vessel, correct?

14 A. Correct.

15 Q. So upon receipt of the 406, when you get notice that there's
16 an EPIRB going off, it's accompanied with the information in the
17 registration form.

18 A. Correct. It's not this exact form that we receive. It's a--
19 it's in a different format.

20 Q. But the data is the equivalent data.

21 A. Yes.

22 Q. So fair to say sometime around--after 10:00 p.m. on the
23 evening of January 8th, you have the contact information--again,

1 you can look at the bottom of that form for a Mrs. Anderson. And
2 Mrs. Anderson was also identified on that form as the vessel
3 owner. Is that fair to say?

4 A. Yes.

5 Q. Knowing that a vessel is in distress and knowing that the
6 Coast Guard is actively working a search and rescue case
7 involving a particular vessel, what, if any, policies does the
8 Coast Guard have in place regarding notifications to a vessel
9 owner that there's been a casualty?

10 A. I do not believe that there is a specific Coast Guard policy
11 that requires notification of a vessel owner of a distress case
12 other than that of next-of-kin notifications. We--so the rescue
13 coordination center receives this and then would likely take this
14 information and send that to whoever is designated as the search
15 and rescue mission coordinator for that specific mission. And
16 the search and rescue mission coordinator for the MARY B II case
17 was a member at Sector North Bend.

18 Q. With--you mentioned the difficult sometimes under certain
19 circumstances of actually identifying who the next of kin are.
20 Would a vessel owner be a--a potential source of valuable
21 information to identify the next of kin of crew members on board
22 that vessel owner's vessel?

23 A. Yes.

1 Q. With respect to distractions at night in the vessel, would
2 you agree that, like driving, the use of a cell phone and texting
3 during critical operations can be distracting?

4 A. Yes.

5 Q. Do you agree with the general proposition the Coast Guard is
6 not required to undertake a rescue?

7 A. Yes.

8 Q. Would you agree with the follow-on proposition that if the
9 Coast Guard undertakes a rescue, it's required to do so in a
10 competent manner?

11 A. Yes.

12 Q. There was testimony yesterday--I understand--I think you were
13 present--in which the commanding officer of the station talked
14 about using an application on his personal phone in order to pull
15 up a picture of the fishing vessel in question. Does the fact
16 that he was able to pull up that information from the AIS
17 application on his phone--does that instruct you or provide you
18 information on the likelihood that the AIS from that vessel was
19 transmitting? Just likelihood.

20 A. Yes.

21 **PIIC:** Can we go back to Coast Guard 38, page 11.

22 Q. Would you agree, looking at this slide, that subsequent to
23 the conversation that is articulated in the slide, the MARY B II

1 and the Coast Guard 52 both made their way back to center
2 channel?

3 A. Yes.

4 Q. Given that you heard testimony yesterday from the persons
5 responsible for communications on the 47 and the 52-footer, that
6 in the aftermath of this particular conversation they didn't
7 change or leave out any particular communications to the MARY B
8 II and given the fact that the MARY B II did find its way back to
9 the center of the channel, is there any particular relevance to
10 this particular communication and what ultimately happened after-
11 -in the subsequent track?

12 A. So let me just clarify what you're trying to say. When the
13 47 told them that they don't want the MARY B II to work too far
14 north, you're saying at that point the vessel had already worked
15 its way back to center channel?

16 Q. No.

17 A. Okay.

18 Q. Subsequent to this--to this conversation, the vessel followed
19 those instructions----

20 A. Okay.

21 Q. ----and found itself back in the center channel, right?

22 A. Correct.

23 Q. Both the commanding officer and Petty Officer Dozier

1 testified that, as a result of what Mr. Biernacki stated on the
2 radio, they didn't change their communications or the things that
3 they wanted to communicate to him over the next interval. Do you
4 remember that testimony?

5 A. Yes.

6 Q. We spent a half an hour or so at this hearing on this slide.

7 A. Yeah.

8 Q. And this particular communication. Is there any particular
9 relevance of this communication here in what happened really 7
10 minutes later?

11 A. It's hard to say. I don't know.

12 Q. Do you have any knowledge of how the Coast Guard National
13 Vessel Documentation Center processes title change paperwork?

14 A. Very basic understanding of--of that.

15 Q. Would they be the entity that updates MISLE when a vessel
16 title has been processed?

17 A. I believe so.

18 Q. Do you have any knowledge in delays at the National Vessel
19 Documentation for title processing during the fall of 2018?

20 A. I do not know.

21 Q. Do you remember an event occurring--it made national news,
22 something to the extent--effect that federal employees were laid
23 off?

1 A. I am very intimately familiar with that.

2 Q. Do you have any knowledge of whether the sort of furlough
3 process would have affected the processing times at the National
4 Vessel Documentation Center for title processing?

5 A. I don't recall hearing whether they were affected by the
6 shutdown or not.

7 Q. If a vessel owner, through a title broker, timely submits the
8 paperwork to the National Vessel Documentation Center in the
9 aftermath of purchasing a vessel, is there anything that vessel
10 owner can do to speed things along that you're aware of?

11 A. Not that I'm aware of.

12 **PIIC:** Thank you, Commander.

13 **REDIRECT EXAMINATION**

14 **Questions by the lead investigating officer:**

15 Q. Mr. Giard, in the case of a death, is there a best practice
16 with respect to next-of-kin notifications, specifically is there
17 a preference for an in-person notification or a telephonic
18 notification?

19 A. In general practice, we, as the United States Coast Guard,
20 generally prefer in-person notifications. That's so that we can
21 facilitate sharing of information and provide details and a lot
22 of the--probably similar to the public's--I didn't get to see
23 them when I was talking about SAROPS, but there's a lot--we talk

1 about a lot of things that the general public generally doesn't
2 have a full understanding of. So we like to do that in person.
3 But a lot of--many times that is not able to be facilitated due
4 to time or distance or things like that.

5 Q. So then the Coast Guard will then try to employ other
6 agencies--I believe you said law enforcement agencies--to
7 facilitate that?

8 A. Yes.

9 Q. In your experience, do next-of-kin notifications--are they
10 instantaneous or do they take some measure of time?

11 A. They generally take a measure of time. We try to make some
12 sort of attempt or having somebody else make an attempt to make
13 an initial notification and then we try to--the--the follow-up on
14 that can oftentimes take some time due to the kind of immense
15 amount of data they want to employ to the family of the person
16 who was lost.

17 **LIO:** Mr. Giard, you're now released as a witness at this formal
18 hearing. Thank you for your testimony and cooperation. If I
19 later determine that this board needs additional information from
20 you, I will contact you through your counsel. If you have any
21 questions about this investigation, you may contact the
22 investigation recorder, Lieutenant Luke Woods. Thank you.

23 **WIT:** Thank you.

1 **LIO:** It's now 9:51. We're going to recess for 10 minutes.

2 We'll be back on the record at 10:01.

3 [The hearing recessed at 9:52 a.m., 17 May 2019.]

4 **[END OF PAGE]**

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
held in Newport, Oregon
on 17 May 2019

WITNESS: LCDR SCOTT McGREW, USCG

[The hearing was called to order at 10:02 a.m., 17 May 2019.]

LIO: It's now 10:02 and we will--we are reconvening this public hearing. We'll now hear testimony from our next witness, which is Lieutenant Commander McGrew from District 13. Lieutenant Commander McGrew, Lieutenant Woods will now administer your oath and ask you some preliminary questions.

LIEUTENANT COMMANDER SCOTT MCGREW, U.S. Coast Guard, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the recorder:

Q. Sir, please state and spell your full name.

A. It's Scott, S-c-o-t-t, McGrew, M-c-G-r-e-w.

REC: Will the counsel please state and spell your name.

LCDR LEAGUE: Jan League, J-a-n, L-e-a-g-u-e.

Q. Sir, please state your current employment and position.

A. I am a lieutenant commander in the U.S. Coast Guard, and I am the deputy chief of enforcement and fisheries program manager for the Thirteenth District.

LIO: Could you please speak--just move the mic closer to you.

1 You can adjust the little neck thing. Just----

2 **WIT:** Okay. Is that better?

3 **LIO:** Yes.

4 **WIT:** Okay.

5 Q. Sir, please state any education or training related to your
6 profession.

7 A. I have a master's degree in marine affairs from the
8 University of Washington, focus on fisheries management. I'm a
9 certified surfman in the Coast Guard.

10 Q. And do you have any professional licenses or certificates
11 related to your profession?

12 A. I do not.

13 **REC:** At this time I will turn it over to Commander Denny.

14 **LIO:** Good morning, Commander McGrew. Thank you for appearing
15 today at this hearing. If you need to take a break at any time,
16 please let me know. I'd like to follow up on some of the
17 questions Lieutenant Woods asked you in the beginning.

18 **Questions by the lead investigating officer:**

19 Q. How many years have you had assignments where you've had
20 experience with surf station?

21 A. I would say 9 years total.

22 Q. And have all that been at the Pacific Northwest area?

23 A. All with the exception, I guess--I would add to that, I spent

1 3 years in North Carolina, where I oversaw nine stations,
2 including two surf stations on the East Coast.

3 Q. So the first topic we'd like to explore with your testimony
4 is a general overview of how the Coast Guard interacts with the
5 waterway in Yaquina Bay specifically with respect to from
6 offshore to the actual area inside the harbor entrance. Can you
7 explain what a na--what a regulated navigation area is, and can
8 you give some historical background?

9 A. Sure. So a regulated navigation area is a broad term used in
10 waterways management that can cover all sorts of areas. Specific
11 to the coast of the Pacific Northwest and Yaquina Bay, the Coast
12 Guard has established permanent regulated navigation areas due to
13 hazardous conditions that exist on coastal river bars. There was
14 a time prior to these regulated navigation areas being in place
15 that the Coast Guard restricted recreational traffic on these
16 bars under Coast Guard boarding officer authority, meaning that
17 you had to have a Coast Guard boarding officer on scene that--
18 that restricted recreational traffic. The Thirteenth District
19 felt strongly enough about the benefits of **restricting**
20 recreational traffic on coastal river bars that they went and
21 established these permanent regulated navigation areas, which
22 allow the captain of the port to quickly turn on and turn off
23 restrictions to recreational and inspected commercial passenger

1 vessels and trigger some additional requirements for inspected
2 small passenger vessels and commercial fishing vessels.

3 **LIO:** Lieutenant Woods, please display Exhibit 004. I'd like for
4 you to please zoom in to the area that's approximately above the
5 compass rose and below the south jetty. Zoom in, please, to the
6 magenta-colored words. A little bit more.

7 Q. So if you can see it on your screen, is that the marking that
8 would let a mariner know that they are transiting or operating in
9 a regulated navigation area?

10 A. Yes, ma'am. So the--there's a note that says "regulated
11 navigation area" and then lists the 33 CFR 165.1325 where the
12 actual geographic coordinates are listed in the CFR and then, if
13 you notice, this magenta hashed line out towards buoy 1--and
14 there will be another line going in towards shore. And then
15 there was another one shoreward by the Yaquina Bay Bridge that
16 outlines the actual geographic extent of the regulated navigation
17 area.

18 **LIO:** Lieutenant Woods, could you pull up Coast Guard Exhibit
19 026. I believe it's page 3. Just zoom in on that, please.

20 Q. Is this the pictorial that you were describing as far as
21 regulated navigation area?

22 A. Yes, ma'am.

23 **LIO:** So, Lieutenant Woods, can you go to page 1 of the same

1 document.

2 Q. So what we have here is--in Exhibit 026, which is a--a NOAA
3 Coast Pilot 7--it's an excerpt of pages 436 and 437. Could you
4 please read the highlighted area under the word "Coast Guard".

5 A. "The Coast Guard has established Yaquina Bay
6 entrance regulation navigation area warning
7 sign (44°37'29" N, 124°03'27" W) at the
8 Coast Guard station on the north side of the
9 river at Newport. The sign is 22 feet above
10 the water and diamond-shaped, painted white
11 with an international orange border with the
12 words 'rough bar'. The sign is equipped
13 with four quick-flashing flights that will
14 be activated when the bar is restricted to
15 recreational and uninspected passenger
16 vessels. Vessel operators are cautioned,
17 however, that if the lights are not
18 flashing, it is no guarantee that sea
19 conditions are favorable."

20 Q. That's good. Thank you. So--so while it specifies that
21 it's for recreational vessels and uninspected--I'm sorry,
22 uninspected passenger vessels, do you believe that that's a tool
23 that any mariner can use?

1 A. Yes, ma'am, it's still communicating that there are hazardous
2 conditions present on the bar.

3 Q. So is the Coast Pilot a tool that you would expect any
4 mariner to have at their disposal to get to know the area that
5 they're operating in?

6 A. Yes, ma'am, the Coast Pilot is just that. It's what someone
7 is supposed to use to familiarize themselves with the area.

8 Q. So that's what the Coast Guard--so--so the chart and the
9 Coast Pilot are two examples of how the Coast Guard disseminates
10 information about regulated navigation areas. Are there any
11 other tools?

12 A. The regulated navigation areas are published in the Code of
13 Federal Regulations. The Coast Guard also broadcasts conditions
14 pertaining to inside the regulated navigation area on VHF/FM
15 radio, on 1610 AM. So you can tune to it on your local radio
16 station. And then they employ various other forms of rough bar
17 warning signs.

18 Q. So who supervises or manages regulated navigation areas of
19 the bars on the Oregon Coast Guard? Is that Thirteenth Coast
20 Guard District waterways? Who supervises that?

21 A. The Coast Guard Thirteenth District waterways management
22 branch has programmatic responsibility for all waterways
23 programs, regulated navigation areas falling under that.

1 Specifically responsibilities for the regulated navigation areas
2 falls to the captain of the port who covers that geographic area.
3 So for the vast majority of the coast it would be captain of the
4 port, Sector Columbia River. For the bar at Quillayute River it
5 would be the captain of the port at Sector Puget Sound.

6 Q. Is there a Coast Guard Thirteenth District policy that I
7 could turn to that explains how all the harbors with bars or
8 specific harbors are managed with respect to bar restrictions or
9 closures?

10 A. There is language in the Thirteenth District standard
11 operating procedures that says captain of the ports will delegate
12 responsibility for restricting recreational and uninspected
13 passenger vessels to the commanding officer or officer in charge
14 that's exercising authority over--over the areas within their
15 area of responsibility. So in the case of Yaquina Bay, the
16 captain of the port at Sector Columbia River will, in writing,
17 designate the commanding officer of the station responsible.

18 **LIO:** Okay. Lieutenant Woods, please display Exhibit 001, slide
19 8.

20 Q. What we're going to be looking at is photographs of
21 electronic signage with other--with bar restriction or closure in
22 Yaquina/Newport harbor. So these are some of the things that you
23 were talking about, for the benefit of the public, the signage

1 documentation talking about bar restrictions and regulated
2 navigation areas. Does the Coast Guard maintain those electronic
3 signs?

4 A. Yes.

5 Q. Commander, do you--do you have knowledge of if they were
6 working properly on the evening of January 8th, 2019?

7 A. I do not.

8 Q. You do not have knowledge.

9 A. I can't say for certain.

10 Q. Understood. I'm just making sure that I didn't misunderstand
11 your answer. Let's shift--I'm sorry, go ahead.

12 A. I would just say that--so the LED sign that you're looking at
13 is different than the rough bar diamond and flashing light. So
14 the rough bar diamonds with flashing lights you'll find at other
15 Coast Guard locations in the Thirteenth District. Those are also
16 in the light list and, if they were extinguished, there would be
17 a local notice to mariners. It would be documented that they
18 were extinguished, because they're treated like any other Aids-
19 to-Navigation--a non-lateral Aids-to-Navigation. I can't say for
20 certain how we treat the LED sign board, because we don't have
21 those in all of our locations.

22 Q. Shifting gears just a little bit, what is the Coast Guard's
23 definition of a restricted bar like at Yaquina Bay? Is there a

1 Coast Guard definition?

2 A. Restricted--the term "restricted bar" would be a bar that
3 we're restricting what vessels can cross, and that is pertaining
4 to recreational and uninspected commercial passenger vessels. So
5 we would--if we determine that hazardous conditions exist, we
6 will set restrictions on a bar based on vessel length. So
7 there's a couple ways to determine how hazardous conditions
8 exist. There's, one, a formula that's the length of the vessel
9 divided by ten plus the vessel's minimum freeboard, and that
10 would give you a wave height that would generally be considered a
11 hazardous condition. What is more predominantly used is the next
12 paragraph, which talks about based on your professional
13 experience, taking into consideration currents, wave type, kind
14 of all the other factors that you determine a hazardous condition
15 exists.

16 Q. Do you know if guidance in terms of policy for the Coast
17 Guard's management of bar crossings is contained in any
18 commandant instruction or publication or perhaps the marine
19 safety manual or any other Coast Guard directive?

20 A. I don't know of any guidance on restrictions or kind of the
21 governance of hazardous bars anywhere other than in Thirteenth
22 District policy.

23 Q. For the safety of life at sea, the Coast Guard will provide

1 escorts for vessels under certain conditions, right? So please
2 talk about what the escort policy for Coast Guard District 13 is.

3 A. So there's a few--a few different policies. Are you asking
4 specific to this scenario or in general?

5 Q. Maybe briefly in general and then more specifically to this
6 case.

7 A. Okay, yes. So there's a couple instances. Very often we
8 will receive requests for an escort, and our posture and guidance
9 in the Thirteenth District SAR plan is to treat vessels
10 requesting an escort as--as a search and rescue case. So we'll--
11 we will launch and go undertake that. There's also very often
12 scenarios where you have restricted a bar to recreational
13 vessels, let's say of 26 feet. And so the vessel--recreational
14 vessel less than 26 feet can't cross the bar. Now you have
15 worsening conditions offshore and a bunch of 22-foot vessels that
16 want to come in. The--the--in that scenario it's going to be
17 better to bring them in than to leave them out in worsening
18 conditions. So on a case-by-case basis we will escort those
19 vessels in across the bar that would otherwise be restricted to
20 their ability to operate. When it comes to commercial fishing
21 vessels, the district's guidance--so a couple things. Pol--
22 policy-wise, an emergency situation is a vessel in the surf--in
23 the District 13 search and rescue plan it's listed as an emergent

1 situation. So our operational guidance, which comes in various
2 forms--so you'll find some of it in the SAR plan, some of it in
3 the District 13 standard operating procedures under chapter 4,
4 like emergency communications. You'll find it in the
5 commander's--like operational planning directive and then also in
6 specific mission tasking. So over the overarching guidance is
7 for our folks to be proactive when there's vessels potentially
8 operating in the surf, that we would want them standing by, and
9 to escort vessels when we have vessels operating in the surf--
10 we're considering that in our SAR policy an emergent situation.
11 So the other piece to all of that, I think, that's important to
12 acknowledge is that we're continually updating our bar reporting
13 and what the conditions are. So if you're the commanding officer
14 of a unit and you know that you're going to have boats crossing
15 the bar at night in deteriorating conditions, you want to provide
16 an accurate bar report that we're broadcasting out over the
17 radio. So there's a lot of reasons kind of from various, like--
18 they come from various policies and various guidance, that our
19 boats are on the bar in--in a scenario like this. Whether or not
20 to engage in escort, there's no specific policy that tells them
21 that you--when you have to do that. We tell them how to do it,
22 but there's nothing that says "you shall do this".

23 **LIO:** Lieutenant Woods, please exhibit Coast Guard Exhibit 026,

1 which is a screen capture of the National Weather Service
2 Portland, Oregon bar. Go to the page with the picture. So I
3 think you have--go--you know what, just go back to black screen
4 for a second.

5 Q. In earlier testimony we talked about a camera that's
6 available for--that shows kind of the--the weather and there is
7 information that's updated hourly, we were told. It's a NOAA
8 website, but it's Coast Guard cameras. Are you familiar with
9 that?

10 A. I am.

11 Q. Is that a tool that is available for mariners as well as the
12 Coast Guard to use to ascertain the weather conditions?

13 A. It is, yes, ma'am. That--I failed to mention during my
14 various ways that we communicate bar conditions that they're also
15 posted on that website. And so you'll have the most current
16 Coast Guard bar report alongside whatever visual image is coming
17 from the--the bar camera.

18 Q. Can you describe the camera's capabilities and constraints?

19 A. The camera is--so----

20 Q. If you don't know, that's okay.

21 A. No, so, I mean, they're daylight only. So you're not getting
22 a nighttime image, at least not a usable nighttime image. So
23 they don't have any infrared capabilities. The picture is not

1 the best, and they're--depending on the bar, they're set up
2 relatively far away. So Yaquina Bay's is looking kind of down
3 from an elevated location. Cape Disappointment is 220 feet above
4 the water. So you're not always getting the--the--you can't get
5 exact wave heights from the picture, but you can certainly tell
6 if the bar is breaking.

7 Q. Thank you. I'm going to shift gears just a little bit.
8 Could you talk about what you would expect to be in the contents
9 of a bar crossing plan.

10 A. I don't have any intimate knowledge of bar crossing plans.
11 They're only required for T and K boats, and they're--they're
12 used for--inspect the small passenger vessels. So the OCMI is
13 the person who is seeing those, the person doing the inspection.

14 Q. Commander McGrew, you were--you were commanding officer and
15 you're familiar with safety of--and fishing vessel regulations;
16 is that correct?

17 A. That is correct.

18 Q. The current CFR provides certain Coast Guard personnel the
19 authority to direct vessels operating in RNAs; however, there's
20 Coast Guard policy that prevents giving directions to vessels
21 navigating the area unless they're in extremis. Can you provide
22 insight into the--the difference between the regulations and the
23 Coast Guard policy?

1 A. So the--I'm not--I don't know exactly what Coast Guard policy
2 you're referring to. I'm assuming it is in--like in the Coast
3 Guard addendum to the National Search and Rescue Manual, it talks
4 about not providing courses to steer. I think that's different
5 than telling someone that--when you're providing someone a course
6 to steer over the radio and why we're prohibited from doing that
7 type of thing is, one, we don't know what their exact position
8 is. We may be operating remotely from them or not right next to
9 them. So we can't confirm where they're at to then give them a
10 course to steer to a point, like someone is lost in the fog and
11 we're going to give them a course to steer coming in. The other
12 thing that we don't know is we don't know the deviation on their
13 specific boat, can't see their deviation table. So we're not
14 going to be able to calculate a good compass course for them to
15 steer. I think the difference in--when you're operating inside a
16 very confined regulated navigation area and you're providing
17 someone like a recommendation on "this side of the bar is better"
18 or, you know, "we would recommend that you come this way or come
19 that way" or, on some of the large bars, like--I'm most familiar
20 on the Columbia, there's certainly like a better side, like the
21 north is way better than the south right now. I think that's
22 very different because we have eyes on and we're on scene with
23 the person and we're providing them information based on--we know

1 exactly where they are, and we also kind of caveat all of that
2 very clearly that the safe operation and navigation of your
3 vessel is your responsibility. So I don't know what other
4 policy, I guess, would--would say that we're not supposed to do
5 that. So I--I'm only able to think off the top of my head the
6 Coast Guard addendum to the National Search and Rescue Manual.

7 Q. That was--that was just fine, thank you. Do you know if--if
8 you know, please answer. How does the Coast Guard collect
9 feedback on a waterway like Yaquina Bay so that the Coast Guard
10 can more effectively and, most importantly safety manage--safely
11 manage the waterway?

12 A. I think two things. One, a harbor safety committee would be
13 a venue for something along the lines of waterways safety, and
14 then the formal process would be a WAMS, which is a waterways
15 process for reevaluating kind of the ATON constellation.

16 Q. But would that be--do you know if that would be the method
17 used to evaluate the effectiveness of regulated navigation areas?

18 A. No. I don't know. I don't--I--I don't think that a WAMS
19 would be that venue. I think a WAMS would be an opportunity to
20 comment on just the ATON.

21 **LIO:** Lieutenant Commander McGrew, those are all the questions
22 that I have for you at this time. Do any other members--do any
23 other members of the investigation panel have any questions?

1 [No response.]

2 **LIO:** Mr. Reilly?

3 **CROSS-EXAMINATION**

4 **Questions by the party-in-interest counsel:**

5 Q. Commander, thanks for being here. Thanks for your service.

6 You have a background in operations in the Coast Guard?

7 A. I do, operations from shore-based stations.

8 Q. And in the course of that, fair to say you have at least a
9 general familiarity with the--the laws that the Coast Guard
10 enforces that relate to the operation of small commercial fishing
11 vessels?

12 A. Yes.

13 Q. Do you know enough about fishing in general to opine whether
14 crab fishermen need to bait in order to go out crab fishing?

15 A. Yes.

16 Q. So--so without bait the crab fisherman can't go crabbing.
17 Fair to say?

18 A. You could go crabbing. I don't know that you would do very
19 well.

20 Q. You can't effectively go crabbing.

21 A. Yes.

22 Q. Are you aware of any laws that the Coast Guard enforces that
23 prohibit the operator of a bait dock from providing bait--selling

1 bait to a vessel operator who's clearly impaired?

2 A. No.

3 Q. The reason I ask, various states have passed laws for the
4 purpose of preventing drunk driving by prohibiting bartenders
5 from serving drinks to people who are clearly impaired, clearly
6 drunk.

7 **LIO:** Mr. Reilly, I'm having trouble understanding the relevance
8 of your line of questioning.

9 **PIIC:** I'll tie in.

10 **LIO:** Soon.

11 **PIIC:** Yes, ma'am.

12 **LIO:** Thanks.

13 Q. Are you aware of any laws that the Coast Guard enforces that
14 would prohibit a fuel dock from selling fuel to a vessel operator
15 who is clearly impaired?

16 A. No.

17 Q. Similarly, does the Coast Guard enforce any laws related to
18 the receipt of fish at a--you know, a fish processing facility
19 shoreside when the vessel operator who's bringing in the fish is
20 clearly impaired?

21 A. No.

22 Q. Are you aware of any statutory authorities that allow the
23 Coast Guard to hold persons other than the impaired operator

1 responsible, at least in part, for failing to alert authorities
2 about the impairment?

3 A. No.

4 Q. In this case there was a report that was brought to the board
5 concerning apparent impaired behavior by the operator of the MARY
6 B on the morning of January 8th that was observed by somebody at
7 the bait dock. I think we all agree that operation of a
8 commercial fishing vessel while impaired, that's clearly a
9 violation of U.S. criminal code?

10 A. Yes.

11 Q. Are you aware of anybody in the Coast Guard who has opened up
12 any investigation regarding that--information about that
13 particular vio--violation of the code, that particular violation
14 by that fishing vessel operator being impaired on that morning?

15 A. I don't--could you repeat the question? I'm not sure----

16 Q. Are you aware of the Coast Guard having an investigation of
17 the potential criminal conduct of that vessel operator on that
18 morning?

19 A. Are you asking did we--I'm not sure we had knowledge of that
20 at the time. So I don't know of anything, no.

21 Q. If there is a report of impairment of a commercial fishing
22 vessel operator, given your background in the enforcement of--of
23 laws that apply to commercial ves--vessel operators, would it be

1 best to receive that report firsthand from the person who--who
2 made the observations or is okay for a law enforcement agency to
3 take the secondhand report of such an observation?

4 A. We would take the information from whoever we received it
5 from.

6 Q. In the course of following up and investigating a potential
7 violation of the U.S. criminal code, would the Coast Guard--would
8 the best practice be to interview the person who actually made
9 the observation?

10 A. When you use the terminology "investigate", I'm not a Coast
11 Guard investigating officer, and I don't--I don't have intimate
12 knowledge of the investigatory side of commercial vessels. I
13 would tell you that, as a Coast Guard boarding officer, we
14 wouldn't issue a notice of violation for operating under the
15 influence from a first or a secondhand report. We would actually
16 have to conduct a boarding, observe the master of the vessel,
17 conduct field sobriety tests and a chemical test or one of those
18 two before we would issue a notice of violation on the Coast
19 Guard operational side of things. I can't speak for any
20 investigative steps that would be taken from a first or
21 secondhand report.

22 Q. So the Coast Guard would actually have to have on-scene
23 presence evaluating with the trained eyes of a Coast Guard person

1 in order to reach a conclusion that a particular operator was
2 impaired?

3 A. I don't know what would be taken on the marine safety side of
4 things through an investigating officer, but for the Coast Guard
5 to--for a Coast Guard boarding officer to issue a notice of
6 violation for operating under the influence, we would conduct a
7 Coast Guard boarding. So we'd have to be on scene with the
8 individual.

9 **PIIC:** Thanks, Commander. Thank you, Commander.

10 **REDIRECT EXAMINATION**

11 **Questions by the lead investigating officer:**

12 Q. So based on your operational experience, in cases similar to
13 the one described by Mr. Reilly, would the Coast Guard have a
14 tool to be able to engage with other law enforcement entities to
15 best leverage assets to determine impairment?

16 A. Yes, so I think in the scenario he outlined, if the Coast
17 Guard was notified, we would, in all likelihood, launch our
18 assets and conduct a boarding of the vessel. Oftentimes in this,
19 you know, time of the year, doing that at sea may--it may be
20 difficult based on weather conditions. So another option would
21 be to work with state or local law enforcement to conduct that
22 boarding dockside.

23 **LIO:** Lieutenant Commander McGrew, you're now released as a

1 witness from this formal hearing. Thank you for your testimony
2 and cooperation. If I later determine that this board needs
3 additional information from you, I will contact you through your
4 counsel. If you have any questions for this investigation, you
5 may contact the investigation recorder, Lieutenant Luke Woods.
6 Thank you.

7 **WIT:** Yes.

8 **LIO:** We're going to take a quick 5--3-minute--3-minute recess
9 and then we'll reconvene at 10:40.

10 [The hearing recessed at 10:38 a.m., 17 May 2019.]

11 **[END OF PAGE]**

1 U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
2 held in Newport, Oregon
3 on 17 May 2019

4 WITNESS: CWO THOMAS MOLLOY, USCG (recalled)

5 [The hearing was called to order at 10:43 a.m., 17 May 2019.]

6 **LIO:** It's now 10:42 and we'll reconvene the public hearing. So
7 during the break there was a conversation that was had between
8 the Coast Guard and party in interest. We are going to go ahead
9 and make a slight change to the schedule and recall Boatswain Tom
10 Molloy, commanding officer of Station Yaquina Bay as--for a point
11 of clarification. So, Boatswain Molloy, will you please come to
12 the witness table. Boatswain Molloy, we are--we are not going to
13 swear you in. You are reminded that you are still under oath for
14 this. Please sit down.

15 **CHIEF WARRANT OFFICER THOMAS MOLLOY, U.S. Coast Guard, was**
16 **recalled, previously sworn and testified further as follows:**

17 **DIRECT EXAMINATION**

18 **Questions by the lead investigating officer:**

19 Q. Boatswain Molloy, you discussed the use of the cell phone to
20 determine AIS locations. Were you using that phone the evening
21 you were operating the 52-foot motor lifeboat?

22 A. No.

23 Q. Is it common for use of a cell phone while operating Coast

1 Guard assets?

2 A. Absolutely not.

3 Q. When did you use the AIS app that you referred to?

4 A. At the station.

5 Q. Whose phone was it?

6 A. The OOD brought the phone in, which she had already pulled up
7 the picture and showed me the picture of the BESS CHET.

8 Q. So when you say the picture, you're talking about the picture
9 of the vessel versus an AIS image.

10 A. There was no AIS track or image. It was simply the name had
11 been searched in that app and you can swipe and pull the pictures
12 up. So it was a picture of the physical vessel.

13 Q. So to be clear, the MARY B II was not displaying AIS that
14 evening.

15 A. Not to my knowledge. I'm not sure how we found out the name
16 of the vessel. That was one of the recommendations I had was to
17 look in AIS and contact Sector North Bend and find out who was
18 still out. So somehow they figured out what vessel it was. I'm
19 still not certain on how that was done.

20 **LIO:** Thank you. Mr. Reilly?

21 **CROSS-EXAMINATION**

22 **Questions by the party-in-interest counsel:**

23 Q. Thanks for being here, sir. There was some testimony, I

1 think--it may have been by Petty Officer Dozier--regarding keep
2 track of the--the fishing vessels as they went out of the harbor,
3 sort of--sort of logging the names. Is that a familiar practice
4 to you?

5 A. Yes, sir.

6 Q. And I think there was testimony that the BESS CHET had not
7 been a vessel that had been logged as leaving.

8 A. And that's correct. We had that vessel down on the outgoing
9 log as the MARY B II, and the BESS CHET was the AIS, as you know.

10 Q. And so without having to pull it up here, if there is
11 references in the radio traffic log regarding an AIS
12 identification of a vessel that--the lights that are out on the
13 horizon, that speaks for itself regarding the Coast Guard's
14 ability to figure out who that vessel was. Fair to say?

15 A. So what I would say is that I never personally looked at AIS
16 to determine what vessel it was or the position. So I actually
17 don't know whether or not it was operating correctly or
18 reflecting an accurate position. Judging by the slides that I've
19 seen, I suspect those were gained from some sort of radar or AIS
20 signature.

21 **PIIC:** Thank you so much, sir. Appreciate it. Thanks,
22 Commander.

23 **LIO:** Thank you for your cooperation, Boatswain Molloy. Our

1 intention was to ensure the record was accurately reflected on
2 what took place. So we appreciate you coming back on--back to
3 the witness table.

4 Mr. Reilly, do you need a minute to prepare your witness
5 prior to----

6 **PIIC:** No, ma'am.

7 **LIO:** Boatswain Molloy, you're now re-released as a witness from
8 this formal hearing. Thank you for your testimony and
9 cooperation.

10 **[END OF PAGE]**

11

12

13

14

15

16

17

18

19

20

21

22

23

U.S. Coast Guard Marine Casualty Board ICO loss of MARY B II
held in Newport, Oregon
on 17 May 2019

WITNESS: MARY ANDERSON

LIO: Mr. Woods, go ahead and swear her in.

MARY B. ANDERSON was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the recorder:

Q. Ma'am, please state your full name and then spell your full name.

A. Mary B. Anderson, M-a-r-y. B is my middle initial.
Anderson, A-n-d-e-r-s-o-n.

Q. Ma'am, please state your current employment and position.

A. I am the managing member of fishing vessel MARY B II LLC.

Q. Please state any education or training related to this position.

A. None.

Q. Please state any professional licenses or certificates related to your position.

A. None.

REC: Thank you. At this time I will turn it over to Commander Denny.

LIO: Good morning, Mrs. Anderson. Thank you for appearing today

1 at this hearing, and on behalf of the investigation team, we'd
2 like to extend our deepest and sincerest condolences for the loss
3 of your son, Mr. Stephen Biernacki, and his crew at sea. I know
4 that this has been very difficult for you. So if you please
5 take--if you need to take a break at any time, please let me
6 know. For the record, during the course of your testimony we'll
7 refer to Mr. Biernacki as Captain or the operator. And most of
8 the questions will be asked to you from your position as managing
9 member of MARY B II LLC, as opposed to your position as his mom.
10 I would like----

11 **WIT:** Before we--before we start, I would like to express my
12 condolences as well to Malaika and to his family, to Denise and
13 the Porter family and of course to my family. Thank you.

14 **LIO:** Also a matter of administration, Mr. Reilly, would you
15 please, for the record, state and spell your name.

16 **PIIC:** Chris Reilly, C-h-r-i-s, R-e-i-l-l-y.

17 **LIO:** Thank you. Mrs. Anderson, I'd like to follow up on some
18 questions Lieutenant Woods asked you at the beginning of your
19 appearance.

20 **Questions by the lead investigating officer:**

21 Q. Do you personally have any marine experience?

22 A. I respectfully request that you speak up a little bit more
23 because your voice is low for me.

1 Q. Is this better?

2 A. Somewhat.

3 Q. Okay. Do you personally have any marine experience?

4 A. Commercial, no. Recreational, yes.

5 Q. Have you made any trips on a vessel with your son, Mr.
6 Stephen Biernacki, or your son, Mr. Dennis Biernacki?

7 A. No.

8 Q. Neither commercial fishing or recreational.

9 A. That's correct.

10 Q. Is there a document that explains your role with the fishing
11 vessel MARY B II LLC other than the purchase agreement, such as
12 articles of incorporation or the established of a limited
13 liability corporation?

14 A. Yes.

15 **LIO:** Mr. Reilly, we'd like for you to please provide that to the
16 investigation. And we can call it the next exhibit.

17 Q. Mrs. Anderson, can you please explain or give a description
18 of your role in that document.

19 A. I am the managing member.

20 Q. Can you describe that, please.

21 A. That's the way the description is on the form.

22 Q. So what does that mean?

23 A. You manage the business end of the company.

1 Q. So you were the owner or managing member of the commercial
2 fishing vessel MARY B II at the--at the night of the accident; is
3 that correct?

4 A. Yes.

5 Q. Mrs. Anderson, when did you begin looking to acquire a
6 vessel?

7 A. Are you referring to this particular vessel or other vessels?

8 Q. Well, were you--this vessel first. We'll start with that.

9 A. Approximately 1 month before the purchase.

10 Q. Were there other vessels that you were looking at acquiring
11 prior to that?

12 A. My captain was looking into other vessels.

13 Q. What other vessels have you purchased?

14 A. Commercial, none.

15 Q. So you've never been an owner or partially an owner or in any
16 way connected to any other commercial fishing vessels.

17 A. That's correct.

18 Q. So there was never--you were never involved with another
19 vessel called the MARY B.

20 A. No.

21 Q. So back to the BESS CHET/MARY B II, please talk about how you
22 identified the vessel for purchase and why you decided to
23 purchase it.

1 A. The identification came from Steve. I decided to purchase it
2 because it was a good business opportunity.

3 Q. Was your LLC in existence prior to searching for the vessel
4 or was it created for the purposes of purchasing the MARY B II?

5 A. It was because we were buying a vessel.

6 Q. You mentioned that it was a good business opportunity. What
7 about the MARY B II was a good business opportunity?

8 A. I don't understand the question.

9 Q. Why were you seeking to purchase a commercial fishing vessel?

10 A. Say that again.

11 Q. Why were you seeking to purchase a commercial fishing vessel?

12 A. I feel like I completed that answer.

13 Q. Okay, we'll move on. Where was the vessel at the time that
14 you identified it for purchase?

15 A. I believe it was in Toledo.

16 Q. You decided to purchase the vessel, and you indicated that
17 Mr. Biernacki was the one who identified it for you. Did you get
18 any input on selecting the vessel from him, and what was that
19 input?

20 A. The input was he felt it was a stable vessel. He looked it
21 over, and I agreed.

22 Q. Were those the criteria that you gave as the managing member
23 in selecting a vessel for purchase?

1 A. I'm not sure I understand that question either.

2 Q. Do you have any--did you have any criteria that you gave to
3 the operator as he was looking for potential vessels for
4 purchase?

5 A. I trusted his judgment because of his 30-some years'
6 experience.

7 Q. When you decided to purchase the MARY B II, what was the name
8 of the vessel at the time?

9 A. BESS CHET.

10 Q. And prior to the purchase, did you have the vessel, which was
11 called the BESS CHET, surveyed or appraised to determine the
12 material condition of the vessel or her equipment?

13 A. There was an existing survey in place.

14 Q. Do you recall when that survey had been completed?

15 A. The information is in the paperwork that we submitted. I
16 don't have it on the top of my head.

17 Q. Does--does the 2016 survey sound about right to you?

18 A. I'd have to look it up.

19 Q. Did you personally look at that survey?

20 A. Yes.

21 Q. And what were you assessing in that survey?

22 A. General information.

23 Q. Information?

1 A. Whatever it was saying, I read it.

2 Q. So as a managing member for a limited liability corporation
3 that's going to own a vessel, what kind of things were you
4 assessing that survey for?

5 A. Whatever my--whatever Steve felt was important, I accepted
6 his opinion.

7 Q. I understand that you relied on the advice of the operator to
8 determine the ability to--the material condition of that vessel
9 and in your--and that factored into your determin--into your
10 determination to purchase or not purchase a vessel, correct?

11 A. Yes.

12 Q. Is it fair to say that his word was the primary determiner of
13 any of your decisions?

14 A. No.

15 Q. Can you elaborate on that?

16 A. Financial position, if it was available, I would purchase it.

17 Q. Would you say that your decision making primarily relied on
18 Mr. Biernacki's experience and recommendation for seaworthiness
19 of the vessel?

20 A. That plus my financial condition.

21 Q. Mrs. Anderson, we've heard in earlier testimony that the
22 captain used a marine sealant or caulk on the hull because the
23 vessel had a leak. When did you become aware of that?

1 A. The day that it was discovered.

2 Q. Can you elaborate on that?

3 A. Steve immediately bought epoxy. So it would have been either
4 the same day or the day prior.

5 Q. Same day or day prior to what?

6 A. The--the purchase of the epoxy. That--that's also documented
7 in the paperwork that you have.

8 Q. For the benefit of the public, can you please tell us when
9 that was?

10 A. We'd have to look it up. If you'll give us a minute.

11 Q. Okay. I could have located it a lot faster if I had my
12 folders. These were folders that were submitted to you, but it
13 was in there. I saw it this morning. Please bear with us.

14 Q. Mrs. Anderson, is the folder that you just referred to nearby
15 or present?

16 A. We are looking at it right now.

17 **PIIC:** Do you have the documents provided pursuant to the
18 subpoena available? Those are the documents--she saw it this
19 morning in here.

20 **WIT:** It was--it was--epoxy purchased from England Marine--that's
21 what we're looking for. I just saw it this morning, and this
22 folder I'm not as familiar with, but my folders I would have been
23 more familiar with.

1 **LIO:** Are your folders readily available?

2 **WIT:** These were the same ones, but I just knew where they----

3 **PIIC:** Commander----

4 **WIT:** ----what file folder they would have been in.

5 **PIIC:** Commander, we--we provided documents pursuant to a
6 subpoena. I haven't had a chance to look through anything other
7 than the documents provided pursuant to a subpoena. So we won't
8 be able to provide any other documents today other than the
9 documents that were provided pursuant to subpoena.

10 Q. Ma'am, maybe we can address this a different way. Did
11 Captain Biernacki ever indicate to you when that leak--to your
12 recollection, about what month was that?

13 A. I'm not sure if it was late December or the first day or two
14 in January, but it was in that approximate area.

15 Q. So Mr.--so did Captain Biernacki tell you that he was going
16 to make the purchase of that caulk or sealant?

17 A. Absolutely. He asked me if he could--no, he didn't ask me.
18 I gave him permission to--to do whatever you need to do to repair
19 it, and he purchased the epoxy from England Marine. And that's
20 what--the invoice we were looking at.

21 Q. Did he indicate to you what needed to be repaired?

22 A. Yes, he said he was satisfied with the repair.

23 Q. No, ma'am, the question was did he tell you what needed to be

1 repaired? What was the damage he'd indicated to you?

2 A. I recollect there were some slats in the wood hull that had
3 some leaks.

4 **LIO:** Mr. Reilly, we've been searching for the document as well.
5 We just found it. So, for the record, it was January 4th. It
6 was--what was purchased was Splash Zone epoxy, 2-quart kit.

7 **WIT:** That sounds correct.

8 **LIO:** Thank you, ma'am.

9 **PIIC:** Is that already one of the exhibits, by any chance?

10 **LIO:** We'll just double check that. Lieutenant Woods, could you
11 please double check. Mr. Reilly, if it isn't, would you have an
12 objection to us making it an exhibit?

13 **PIIC:** No objection.

14 **LIO:** Okay, we'll use the next number.

15 Q. So, Mrs. Anderson, so we know that it around January 4th
16 Captain Biernacki purchased epoxy from Englund Marine, and it was
17 to repair, to your knowledge, some leaking slats in the--in the
18 vessel.

19 A. Yes.

20 Q. Did he at any point describe to you the extent of the leak?

21 A. Minimal.

22 Q. So what does minimal mean to you?

23 A. Minimal. I don't know how else to say it.

1 Q. Okay. Like a seep or actively dripping?

2 A. I can't answer that because I did not physically see it.

3 Minimal means not much.

4 Q. Did--did Captain Biernacki ever directly tell you that he had
5 run aground previous to the leaking?

6 A. No.

7 Q. Did you or Captain Biernacki, who was going to operate the
8 vessel, have any reservations about purchasing the vessel built
9 in 1957 that was of wooden construction to operate in the Yaquina
10 Bay area?

11 A. Say that again.

12 Q. Did you or Captain Biernacki have any reservations about
13 purchasing a vessel built in 1957 that was of wooden construction
14 in order to operate in this area, in the Yaquina Bay area?

15 A. No.

16 Q. When you made legal arrangements to purchase the BESS CHET,
17 were there any conditions or issues with the material condition
18 of the vessel?

19 A. No.

20 Q. And how did you know that?

21 A. I don't know how to answer that question.

22 Q. Was it because of your review of the survey and you felt
23 confidence that that was still applicable to the vessel? Was

1 there any kind of--what was your decision making in purchasing
2 the vessel and then--as to the original question, did you just
3 take it as is, no changes, nothing at all?

4 A. I felt like I was complete with that last answer I gave you.

5 Q. So why was it at the port of Toledo?

6 A. Pardon me?

7 Q. The port of Toledo--it had work done?

8 A. From my knowledge, that's where Clint Funderburg--
9 Splunderburg--I think is his name--that's where it was.

10 Q. So there were no discussions between you and the previous
11 owner with respect to any work being done while the vessel was at
12 the shipyard?

13 A. Correct.

14 Q. Was there any agreement about any of the safety equipment or
15 any other equipment that would either be sold with the vessel or
16 without the vessel?

17 A. I don't recall that at all.

18 Q. Did the vessel come with safety equipment or did it not?

19 A. I don't recall.

20 Q. Let's talk about how you obtained insurance for the vessel.
21 Was that a requirement for ownership?

22 A. Yes.

23 Q. What were the limits of the insurance? Is--is--are there

1 limits?

2 A. I took the recommendation of the broker.

3 Q. We understand that you were initially denied insurance by the
4 insurance company, Brown & Brown, previously known as John
5 McKnight Insurance. Were you ever given reasons for that denial?

6 A. Did not know there was a denial.

7 Q. Did you get denied coverage by any insurance company?

8 A. Not to my knowledge.

9 Q. So the broker of which you spoke of who gave you the advice
10 for your insurance on the vessel was the only company that you
11 applied for to insure the vessel?

12 A. There were a few names that were offered, and I chose Mr.
13 Salo, I guess is his last name.

14 Q. Offered by whom?

15 A. I couldn't tell you. I--I'm not familiar with a lot of
16 people's names around here.

17 Q. Was it the previous owner that gave you advice on who to get
18 insurance from? How did you----

19 A. I----

20 Q. ----come to be with----

21 A. I really don't remember how that happened.

22 Q. So in general terms as a managing member, you have visibility
23 on what coverage there was in the insurance. Can you explain,

1 for the benefit of the public, what that covers? For example, if
2 a--if a crew person is hurt, does the insurance cover that?

3 A. Under the liability portion.

4 Q. So if a vessel has a collision or was involved in a
5 collision, does the insurance cover that?

6 A. The pages were very lengthy. I would have to reread. I
7 don't remember every detail.

8 Q. So when you say that you chose a specific insurance, just
9 help me understand, that means that you didn't just continue the
10 insurance that was on the vessel prior to its purchase, right?

11 A. I had no idea what insurance was on the vessel prior.

12 Q. Who handled the insurance--who handled the purchase of the
13 insurance for MARY B II LLC?

14 A. We were interviewed by Mr. Sallow both--he interviewed me, he
15 interviewed Steve to find out about his experience.

16 Q. That individual--what was the individual's name, meaning the
17 interviewer who interviewed you and Mr. Biernacki?

18 A. Mr. Sallow, I believe.

19 Q. Okay. And what organization is he with?

20 A. I believe he--it's his agency.

21 Q. Okay. Who paid for the insurance?

22 A. I did. The company--the LLC paid for it.

23 Q. Mrs. Anderson, as the--as the managing member of MARY B II

1 LLC, is it important that you know about the condition of your
2 boat?

3 A. Yes.

4 Q. Why?

5 A. To find out if it's insurable.

6 Q. Are there any other reasons?

7 A. Pertaining to insurance, no.

8 Q. How about pertaining to other reasons?

9 A. I already completed that answer with you. I took the word
10 for--that--from the survey, from my son, who inspected it.

11 Q. I was more asking you in terms of the more general sense,
12 like over time, not just in order to make the decision for
13 purchasing a vessel. So after your purchase of the vessel, is it
14 important for you as a managing member of the MARY B II LLC to
15 know about the condition of your boat?

16 A. It's important that I relied on the confidence that I had
17 with Steve because he was so experienced.

18 Q. Last question on insurance. The insurance agent that you
19 talked to at the meeting, what questions did he ask you?

20 A. He mainly asked me to--what my name, address was, phone
21 number, the purchase of the vessel, what it cost, and wanted to
22 speak with Steve for his experience, and that was about the
23 extent of our conversation.

1 Q. Do you know--did--you said that he also spoke with Mr.
2 Biernacki. Was that in your presence?

3 A. No.

4 Q. Did Mr. Biernacki ever tell you about what he spoke to the
5 individual with--about?

6 A. Experience.

7 Q. And--and one more question. It's your testimony that, to
8 your knowledge, you never met with or spoke to a Ms. Mona Holmes
9 [ph] of Brown & Brown Insurance concerning the MARY B II?

10 A. I don't recall that name at all.

11 **LIO:** Lieutenant Woods, please display Coast Guard Exhibit 005.
12 It's the survey that's dated 2016. We'd like to focus on the
13 navigation equipment. So go to page 26, and at the bottom of the
14 page is titled "piloting navigation and electronics".

15 Q. Mrs. Anderson, in the navigation section there is a
16 description of a chart plotter. During the accident
17 communications Mr. Biernacki says that there are AIS targets on
18 the chart plotter. From what we've been able to determine, that
19 make and model could display information if the vessel was fitted
20 with the piece of electronic equipment called automatic
21 identification system or AIS. Mr. Funderburg, from whom you
22 purchased the vessel, stated there was no AIS equipment on the
23 vessel. Do you know if that was added to the vessel after you

1 acquired it?

2 A. The captain, in my knowledge, used AIS on other vessels, and
3 it was probably his choice to put one on this vessel because he
4 was used to it.

5 Q. Did the captain tell you that he purchased any electronic
6 equipment for the MARY B II?

7 A. Yes.

8 Q. Did he give you specifics?

9 A. We bought a new VHF. That invoice was also submitted to you.

10 Q. So understood that you submitted documentation about the VHF.
11 Did Mr. Biernacki purchase an AIS, to your knowledge?

12 A. I believe, if I understand it, it was an app.

13 Q. Okay. Just to--just to clarify, we are looking at the
14 documents--when we looked at these documents, we didn't see any
15 documentation for purchase of an AIS or any AIS equipment. So
16 I'm just trying to confirm that there was some--if purchased or
17 not.

18 A. I--I don't have that information. I don't know.

19 Q. Okay, thank you. You provided the investigation
20 documentation for purchases of the vessel, as you've stated
21 several times. Some of that is an exhibit. Are there any other
22 records for purchases for the vessel that you have not provided
23 this investigation?

1 A. Everything was submitted.

2 Q. Do you know why your captain may have--was telling the Coast
3 Guard about targets of AIS on the chart plotter?

4 A. No, I don't.

5 Q. As the managing member of the MARY B II LLC and the owner of
6 the MARY B II, did anyone talk to you about the condition of the
7 boat in terms of the hull, the rigging or equipment prior to the
8 accident?

9 A. No.

10 Q. And just to be clear, I'm--I'm attempting to ascertain
11 whether you knew if the--the boat was in good condition and that
12 confidence was maintained throughout.

13 A. I was confident.

14 Q. Did anyone talk to you about removing the outriggers while
15 engaging in crabbing fisheries to improve the stability of the
16 vessel?

17 A. No.

18 Q. Did the operator ever tell you of any intention to remove the
19 outriggers at a future date?

20 A. No.

21 Q. There has been testimony that on the accident day there was a
22 line or rope in either the propellor or the rudder at some point
23 in the day. Were you aware of that during the accident day as

1 the managing member of MARY B II LLC?

2 A. That was never confirmed there was a rope.

3 Q. Did the operator ever communicate to you that there was any
4 kind of problem with the vessel?

5 A. No.

6 Q. Did you, as the managing member, have set expectations with
7 your operator about what was to be communicated in terms of any
8 changes to the material condition of the vessel or if there were
9 any problems?

10 A. Yes. I think I understand your question.

11 Q. Can you expound on that?

12 A. If there was something that Steve felt I needed to know, he
13 would get in touch with me, and that's the way we have always
14 communicated.

15 Q. So as a managing member, you--that's how--that's the
16 expectation that you set for your operator, that it was whenever
17 he wanted to contact you about a problem that he saw as a
18 problem.

19 A. We did not like to communicate frequently unless necessary.
20 He did not like to be interfered with when he was focused.

21 Q. Can you provide an example of a problem that he communicated
22 with you concerning--about----

23 A. Nothing while on board.

1 Q. So did he communicate with you about the caulk? Did he tell
2 you in advance of purchasing it?

3 A. Yes. We talked about that. I thought my answer was complete
4 on that.

5 Q. It just seemed different than what you said about him not
6 communicating any----

7 A. No, on--while he was at sea.

8 Q. Did he communicate to you that the vessel grounded in
9 December?

10 A. No.

11 Q. How about in January?

12 A. Pardon me?

13 Q. How about in January?

14 A. No.

15 **LIO:** Lieutenant Woods, can you please display Exhibit 040, which
16 is the combined document for purchases of safety and survival
17 equipment. Zoom in, please.

18 Q. Mrs. Anderson, we're going to turn our attention to
19 lifesaving, survival and safety equipment. MARY B II LLC
20 provided information to this investigation on the purchase of
21 lifesaving, survival and safety equipment like immersion suits
22 and a--an electronic radio position indicating beacon, an EPIRB,
23 and a new VHF radio, as you mentioned, as well as helm alarms and

1 other items. Can you talk about why you invested in those items
2 for those vessel?

3 A. I have to read this because--if I'm to answer this question.
4 Steve told me these were necessary, and that's why we got them.

5 **LIO:** Lieutenant Woods, can you scroll---

6 Q. This is a multipage document. If there is anything in this
7 document that you would like to refresh your memory to discuss
8 perhaps the reason that you chose to invest in those items for
9 the MARY B II.

10 A. I'm not sure I understand that question.

11 Q. I'm just trying to provide you an opportunity to--to tell
12 this investigation board why you invested in the boat--we've
13 heard testimony that the safety equipment was--was above and
14 beyond what industry standard is, and is that----

15 A. If Steve felt they were important, then I went along with his
16 judgment.

17 Q. Did you make the arrangements or pay for the items for the
18 MARY B II?

19 A. Are you referring to this particular invoice that you showed
20 me?

21 **LIO:** Mr. Reilly, we have an exhibit binder that we can provide
22 so Mrs. Anderson can look through it and refresh her memory.

23 **WIT:** I paid for everything through the company.

1 Q. Mrs. Anderson, what was your expectation of your vessel's
2 operator as far as communications to tell you what the needs of
3 the vessel were, and did you need to approve every purchase prior
4 to its purchase?

5 A. I authorized him to buy what he felt was necessary for gear,
6 for safety equipment, whatever Steve felt was necessary.

7 Q. Is it fair to say that he had a blank check to make necessary
8 purchases?

9 A. Some items, if they were more than say like a small purchase,
10 he always called me and said, "I'm buying something," and if it
11 was like several hundred dollars, he would always bring it to my
12 attention. I can't give you a specific--it's just that whatever
13 was in the invoices, I did authorize.

14 Q. So when you had conversations with Captain Biernacki, was
15 there--not looking for specific dollar amount, but you said
16 several hundred dollars. So you had set that expectation that
17 below a certain amount he was free to purchase as needed and
18 above a certain amount he needed to consult with you.

19 A. He didn't consult with me directly that--well, let me
20 rephrase that. Steve wanted to have everything necessary to
21 operate this business. He felt like it--it was--he felt like he
22 needed to just let me know he was spending the funds to provide
23 what he needed.

1 Q. Did you ever deny any purchases?

2 A. No.

3 Q. Again, for the record, we heard that--we heard from the Coast
4 Guard vessel examiner that the equipment that you had on board
5 the MARY B II was in excellent condition and went above industry
6 standards. Does that make sense given that--what you knew about
7 Captain Biernacki?

8 A. Steve was very conscientious as a crewman, as a captain, and
9 that was the way he was.

10 Q. I'd like to shift gears and talk about crewing of the MARY B
11 II for the voyage on January 8th, 2019.

12 A. Say that again.

13 Q. I'd like to talk about the crew for the vessel of the date of
14 the accident. Please talk about what you know about how the
15 operator of the vessel and the crew were identified to work on
16 the MARY B II leading up to the accident.

17 A. I hired my son, Steve, to be a captain because he was a
18 veteran fisherman for 30-plus years and I trusted his abilities.
19 I gave Steve full authority to put whatever crew on that he felt
20 was--was--that he wanted.

21 Q. As a managing member, can you--did you have any expectations
22 of your operator, who you gave authority to hire people--did you
23 set any expectations as far as hiring of people?

1 A. I felt--no, I shouldn't say I felt. I knew Steve would pick
2 the best person that he could.

3 Q. Were there any criteria or limitations that you communicated
4 to the operator----

5 A. No.

6 Q. ----in regard to hiring?

7 A. No.

8 Q. Mrs. Anderson, do you know what a crew agreement is?

9 A. Yes.

10 Q. Can you describe what is contained in a crew agreement?

11 A. The crew agreement was the one that was taken off of the
12 website that was--was the most common one that the fishermen were
13 using.

14 Q. Can you describe what's contained in it?

15 A. Expectations.

16 Q. Like what?

17 A. I'd have to read it because I don't have it to memory.

18 Q. Just off the top of your head, what do you recall?

19 A. I recall that gear work was expected and there was a whole
20 list of things that would be expected. I'd have to read it
21 because I don't--I don't have it committed to memory. When all
22 this took place, it was several months ago. So I don't have it
23 committed to memory.

1 Q. Did you--did you help write it or did you have any input on
2 it?

3 A. I--I took it--that that was the most common contract that the
4 fishermen were using and it was developed by the website that it
5 came from.

6 Q. Do you have a copy of that crew agreement with Mr. Biernacki?

7 A. Did I have--yes.

8 Q. Do you still have it?

9 A. All of the agreements were lost at sea.

10 Q. Do you recall the website that you used?

11 A. It's in the--it's the most standard one and it's part of the
12 exhibits.

13 **PIIC:** In our subpoena response we provided the Oregon State
14 University--I think it was--F-L-I-P-P is the first part of the
15 website name, and that was the page--the standard agreement that
16 the company was using.

17 **LIO:** Thank you. We'll--we'll seek to find that.

18 Q. Do--do--are you aware of--if Mr. Biernacki executed crew
19 agreements with the other crew members on the vessel?

20 A. James Lacey, yes. Josh, no.

21 Q. And why is that?

22 A. Steve told me that Josh was going to be on the boat for 1
23 week and they both agreed they were not going to have a contract.

1 **LIO:** Mr. Reilly, just a note, I'll ask Mr. Woods to please seek
2 out the information regarding the crew agreement. Thank you.

3 **PIIC:** I think it was--the document that was provided was an
4 image like a photograph that contained that--the contract--I mean
5 the website image.

6 Q. Mrs. Anderson, we are aware that--that the vessel was
7 offshore crab fishing out of Yaquina Bay, Oregon. Did that type
8 of fishing have any commercial pressure in terms of getting out,
9 getting the crab and getting them to dock to sell?

10 A. I can't answer for that because I--I personally wasn't there.

11 Q. Did the operator communicate any urgency to have the vessel
12 ready in order to execute fishing operations?

13 A. Everyone that I was aware of in his conversation were all
14 trying to get their vessels out on opening day.

15 Q. Did the operator ever describe anything to you about a sense
16 of urgency on his part to get the vessel underway and involved in
17 fishing operations?

18 A. Not--nothing more than just being there on opening day like
19 everyone else.

20 Q. Were you present during the beginning of the season?

21 A. No.

22 Q. Were you present shortly before the beginning of the season?

23 A. Yes.

1 Q. Can you describe your observations of what you saw of the
2 operator and/or his crew in preparing for the--the crabbing
3 season.

4 A. They were preparing gear.

5 Q. Can you describe that, please.

6 A. No.

7 Q. Is there a reason----

8 A. I was not at the warehouse watching them wrap the gear.

9 Q. Ma'am, to your knowledge of--of crabbing operations, what--
10 what is your general knowledge? Can you tell the board what your
11 general knowledge is of crabbing operations?

12 A. Crabbing was introduced to me through the Discovery Channel
13 series on the Dungeness Cove--I guess--I think that was what they
14 called it.

15 Q. Okay. One more question about crew agreements. To your
16 recollection, was there any mention--mention on the prohibition
17 of drugs or alcohol?

18 A. That was--that was on there, yes. I--that was like a typical
19 thing on the list, if I can remember correctly.

20 Q. So, ma'am, as the managing member, was your expectation for
21 the operator and his crew to not have drugs and alcohol on the
22 boat at all or while operating the vessel?

23 A. I had--excuse me--expectations that there were--would be no

1 alcohol or drugs on the boat, yes.

2 Q. Looking at the captain of the MARY B II, Mr. Steve Biernacki,
3 we're well aware that you're his mother and you noted about his
4 seagoing career. We'd like for you to talk about that and focus
5 specifically on his actual captaining a vessel as a person in
6 charge, and I'd like for you to please talk about this experience
7 and background.

8 A. Well, we could be here for days because he started fishing at
9 16 years old. And so it would be really--it would really be hard
10 to cap--capture everything because it's--he started when he was
11 so young. He was 16 and.

12 Q. Well, let's try to--we're trying to figure out if--we're
13 trying to ascertain Mr. Biernacki's experience level,
14 specifically on if he worked in rough weather or worked out of
15 areas where there was a dangerous waterway like the Yaquina Bay
16 bar. Can you talk to us about those specific experiences?

17 A. Again, through the years it was--I cannot give you anything
18 totally specific except for he did fish through seven hurricanes,
19 including the "Perfect Storm".

20 Q. Had your son ever talked to you about bar crossings or any
21 significant weather in Barnegat Inlet, New Jersey?

22 A. I can't recall specific things regarding that right now.

23 Q. Did he ever talk to you or relay information about any bar

1 crossing or significant weather crossing in any other port on the
2 East Coast?

3 A. He fished so many places on the East Coast, I--I can't re--I
4 can't remember. It's just been--he's been fishing like for 35
5 years. I can't--I can't go back that far in time. I--I can't
6 remember.

7 Q. Okay, no worries. Did he ever discuss any--any tactics or
8 practices or procedures on how he handled a vessel in rough
9 weather?

10 A. Focus.

11 Q. What do you mean by that?

12 A. Pardon me?

13 Q. What do you mean by that?

14 A. Paying attention, being aware.

15 Q. To what?

16 A. Of surroundings, whatever is confronting him. That's the way
17 I would interpret it.

18 Q. Did Captain Biernacki ever become too focused?

19 A. I don't know how I could answer that, because if I'm not
20 there present, how can I really interpret what that would be
21 like, because I could be focused--I don't know if you're focused,
22 I don't know if you are or you. So you--I really can't answer
23 that.

1 Q. Did Captain Biernacki ever talk to you about bar crossing or
2 significant weather that he ex--was experiencing in Yaquina Bay,
3 Oregon, and did he ever tell you that was different?

4 A. We did not discuss that.

5 Q. Did he ever mention any concerns about operating your vessel
6 across the Yaquina Bay bar in winter conditions?

7 A. No.

8 Q. Did you have any concerns about the different weather in the
9 Pacific Northwest?

10 A. I never thought of any differentiation.

11 **LIO:** Mr. Reilly, we're reaching near the lunch hour. I just
12 wanted to ask if you or your client may need a break in order to
13 do anything, because we are reaching lunch hour and I think we're
14 going to go over. We can break or we can push through.

15 **PIIC:** We'd like to proceed if that's convenient for the board.

16 **LIO:** Yes.

17 Q. So I'm going to shift gears for a second. You've been
18 answering these questions as--as a managing member of MARY B II
19 LLC, but I want to ask you this next question as a mother. When
20 Mr. Biernacki first got to the Pacific Northwest and experienced
21 the conditions of the Yaquina Bay bar and ports, did he ever talk
22 to you about his experience and how that's different than
23 Barnegat?

1 A. No, he really didn't, and I don't remember ever having that
2 kind of conversation with him.

3 Q. Did he ever talk about how big the waves were or how foggy it
4 was or did he ever mention bar restrictions?

5 A. No. No, I--no, we really didn't get into talking about that
6 because I just--I just took it, you know, that--when we were
7 together, mainly we would talk about just family stuff, you know,
8 how--how I was feeling or--or, you know, what Randy was up to or
9 stuff like that. It was like--it was like family stuff.

10 Q. Did you ever tell him that you were worried about him or
11 that--that you wanted him to be safe?

12 A. We prayed--I prayed, every time he went out, for protection,
13 because I--I believe in the power of prayer.

14 Q. Switching back to your role of the managing member of MARY B
15 II LLC, did he ever talk to you about posting a lookout at the
16 rear door to call out approaching waves as being different than
17 what he'd experienced operating out of Barnegat or offshore on
18 the East Coast?

19 A. No.

20 Q. Did you ever inquire with the operator as to he was--what his
21 confidence level was as he got familiar with operating in this
22 new area?

23 A. I don't recall a conversation like that.

1 Q. And the topic never came up indirectly?

2 A. Not--no, I--I don't remember anything like that to be coming
3 up.

4 Q. Looking just as Mr.--just at Mr. Biernacki as the operator of
5 the commercial fishing vessel, how did you know that he had the
6 skill and competency to operate the MARY B II in winter weather
7 offshore of the bar of Yaquina Bay?

8 A. We didn't talk about anything with Yaquina Bay, but with all
9 the winters that he has fished in and hurricanes and ice on the
10 boat and all kinds of conditions that were inclement weather on
11 the East, I--it never occurred to me that it was going to be much
12 different. So we didn't really talk about, you know, anything
13 like that specifically at all.

14 Q. And to be clear, are you aware if Mr. Biernacki held any type
15 of certification or license relating to the operation of a vessel
16 like the MARY B II?

17 A. Yes.

18 Q. Please explain.

19 A. He was--he has an operator's permit--license with NOAA, which
20 was always required on the East Coast, and he always kept it
21 active and he had it--had it in--in an active status on this
22 coast. I just found out through some of the other interviewers
23 that that's not even required here. He did--he had drill

1 instructor and safety certificates updated all the time and
2 worked--and did that. So I know that for sure.

3 Q. So when deciding, as a managing member of an LLC and deciding
4 to purchase this vessel to operate here, did you ever read about
5 this port or----

6 A. No.

7 Q. You never took a look at or examined Coast Pilot or a
8 pamphlet or anything that would describe the operating
9 environment here?

10 A. No.

11 Q. Do you know if Mr. Biernacki did?

12 A. I can't answer that.

13 Q. Would you, as a mana--managing member, have an expectation
14 that your operator familiarize himself with the operating
15 environment that he's going to operate in?

16 A. I would anticipate to say yes, but I don't know if he did or
17 not, because I didn't ask him because I didn't even know about
18 them.

19 Q. Ma'am, we're going to--we're going to take a moment and look
20 at human factors related to the operation of a commercial vessel.
21 Did Mr. Biernacki have any previous experiences where the use of
22 alcohol or dangerous drugs--where that was indicated, like
23 vehicular or marine accidents?

1 A. Say that again.

2 Q. Did the operator of your vessel have any previous--previous
3 incidences [sic] where the use of alcohol or dangerous drugs was
4 indicated, for example, vehicular or marine accidents?

5 A. Yes.

6 Q. Please explain.

7 A. You just stated it, did he have it, and I said yes.

8 Q. Please tell us what those were.

9 A. DUI.

10 Q. When did he get his DUI?

11 A. Let me think. It's been quite awhile ago. I want to say
12 probably around--maybe between 2010 and 2012 or 13.

13 Q. And that DUI was a result of what?

14 A. Pardon me?

15 Q. Was there an accident that precipitated that DUI?

16 A. Yes.

17 Q. What happened during that accident?

18 A. I wasn't present at the time.

19 Q. Do you have any knowledge of what happened at that accident,
20 whether or not you were present?

21 A. From my recollection, he ran into--had a--had a rear-end--
22 rear-end fender bender.

23 Q. Were there injuries as a result of this accident?

1 A. No.

2 Q. What were the result of that DUI, meaning suspension of
3 license or monetary fine or jail or----

4 A. I--according to whatever the rules and the laws are, that's
5 probably what happened.

6 Q. So you don't have any knowledge of that?

7 A. Not directly, no. Not really directly.

8 Q. So Mr. Biernacki never told you.

9 A. Oh, yeah, he told me he had a--an accident and it resulted in
10 DUI.

11 Q. Did he indicate to you any description of the consequences
12 that he received?

13 A. Yes.

14 Q. Were there any other occasions that he lost his license?

15 A. Yes.

16 Q. Please describe that.

17 A. Well, as a result of a DUI you automatically lose your
18 license.

19 Q. How long did Mr. Biernacki lose his license for?

20 A. I don't know the exact amount of time.

21 Q. In addition to the DUI, were there any other occasions in
22 which he lost his license?

23 A. When he was much younger, I--you know, I don't have

1 everything--you know, after he became an adult an we didn't live
2 on the same coast, I don't know everything that took place at
3 that time.

4 Q. When did you leave New Jersey--was he still in New Jersey and
5 you left New Jersey?

6 A. I left New Jersey around 1961, I believe, or may--no----

7 Q. Just to be clear, the reason I'm asking is to get an
8 understanding of if you can speak to the knowledge of local
9 vessels in the area.

10 **PIIC:** May I have a moment, Commander?

11 [The witness conferred with counsel.]

12 **WIT:** I'm trying to figure out when I left New Jersey. Somewhere
13 around 1978.

14 Q. Okay. So are you--to your recollection, did he have an
15 active--active driver's license at the time of the accident?

16 A. Yes.

17 Q. Do you recall what state?

18 A. California.

19 Q. Okay. So what about--we talked about previous instances with
20 use of alcohol and dangerous drugs. What about--what about the
21 use of dangerous drugs? Were there any instances where the use
22 of dangerous drugs was indicated, where he was charged with
23 anything?

1 A. God, he was much younger then. It was not anything that was
2 recent.

3 Q. Do you recall the recency of his interaction with drug use?
4 Ma'am, you can take your time. Please just think about it.

5 A. I'm going to guess about the year 2000, that I can remember.

6 Q. And what were the circumstances behind that?

7 A. I wasn't in the East Coast at that time. I just know that it
8 happened.

9 Q. Was any information ever relayed to you about the
10 circumstances of the incident?

11 A. Not particular circumstances that I can recall because it was
12 like 20 years ago.

13 Q. So for clarity's sake, prior to the accident, the last time
14 you had knowledge that Captain Biernacki used illicit drugs--that
15 your son used illicit drugs was in the year 2000?

16 A. I--I don't know a whole lot about his life when I--he wasn't
17 living near me.

18 Q. How often did you speak to Mr. Biernacki?

19 A. After 2010, when my husband died, we communicated very often.

20 Q. How frequently is very often?

21 A. Every day. He moved in with me.

22 Q. So he moved in with you and you talked every day, but you
23 cannot speak to the particulars of the incident of his past with

1 drug use.

2 A. No.

3 Q. Did you ever see signs of drug use?

4 **PIIC:** Objection. Is there a time frame on that?

5 **LIO:** Okay, I will clarify that.

6 Q. So did you ever see any evidence of drug use while he lived
7 with you and then within the last 5 years?

8 A. No.

9 Q. Does that include marijuana?

10 A. Marijuana he did smoke, he told me that. Yes, he did.

11 Q. Did you ever observe Mr. Biernacki smoking marijuana?

12 A. No, because he knew that I didn't like the smell.

13 **LIO:** We will note that for the record that--that while--that
14 marijuana, while prohibited by federal standards, is authorized
15 and approved to be used in the state of Oregon.

16 Q. Mrs. Anderson, were you aware of any boating accidents
17 involving Mr. Biernacki?

18 A. Are you referring to the--the January 8th incident?

19 Q. Of any other boating accidents involving Mr. Biernacki prior
20 to the MARY B II accident.

21 A. Yeah--yes.

22 Q. Please describe the details of those boating accidents and
23 his involvement with the boating accidents.

1 A. The only one that I know about was the LORI L was beached,
2 and what I know about it was they were--they were coming back
3 from a--a long-range trip and most of the people were taking
4 turns on watch and the person that was on watch also fell asleep
5 and the boat then got beached. And he said to me he was ticked
6 off about it because the guy fell asleep, but because he was the
7 captain, that made him responsible.

8 Q. Did he indicate to you who was supposed to be on watch?

9 A. No.

10 Q. Did he indicate if he was supposed to be on watch?

11 A. He was not supposed to be on watch at that time.

12 Q. Do you know if there were alcohol and/or drugs associated
13 with that accident?

14 A. I could not tell you. I have no idea.

15 Q. Were there any other accidents involving vessels that your
16 son was involved in?

17 A. That's the only one that I know of.

18 Q. Are you aware if Mr. Biernacki was terminated from employment
19 because of that incident?

20 A. No, he was not.

21 Q. As the captain of that vessel, did he take any action? Did
22 he fire any crew members?

23 A. I can't answer that. I don't know.

1 Q. To go back to the role of managing member of the LLC that
2 owned the MARY B II, how did you ensure that drug and alcohol--
3 drugs and alcohol were not used on board your vessel?

4 A. I specifically felt that he was trustworthy and that it
5 wouldn't happen.

6 Q. How did you ensure that alcohol would--would not be used
7 while operating the vessel?

8 A. I feel like I just answered that question the best I could.

9 Q. Did you set any expectations for your operator to ensure that
10 there were no drug or alcohol use on board the vessel?

11 A. He got the test kits that were available for--that were
12 required, too, you, but he got them.

13 Q. Do you know why he got them?

14 A. Yeah, it was part of what he was required to do and so he
15 did.

16 Q. Do you know if he had the training to use them if needed?

17 A. If it was in the training program, then I would have
18 confidence that he knew how to use them.

19 Q. As the vessel owner did you explicitly tell Captain Biernacki
20 that drugs and alcohol were not permitted on board the vessel?

21 A. Yes.

22 Q. As a follow-up, if--if any crewman consumed alcohol, how did
23 you ensure this would not impact the safety of operations on

1 board the vessel?

2 A. I would confront the situation first to find out what--what
3 was happening.

4 Q. So was there an expectation for Mr. Biernacki to inform you
5 on those issues?

6 A. Oh yes.

7 Q. And what would you do if he informed you that there was an
8 issue?

9 A. I answered that completely, I feel.

10 Q. I don't. Would you terminate employment? Would you----

11 A. Yes.

12 Q. If you knew that there was alcohol use on board and you would
13 terminate employment, would that include Mr. Biernacki?

14 A. Yes.

15 Q. Did that have limitations? Was that only on board the vessel
16 or when operating the vessel or not at all?

17 A. Free time is free time, but work is work.

18 Q. To support operations of the MARY B II, did Captain Biernacki
19 drive a motor vehicle?

20 A. I--I'm sorry, what was that?

21 Q. Did he drive a motor vehicle?

22 A. Yes.

23 Q. As we've discussed before, you ensured that newer and better

1 safety and survival equipment was on board the vessel. What
2 steps did you take to make sure that the crew was well rested and
3 that fatigue did not impact the safety of operations?

4 A. I was not there personally. I can't answer that.

5 Q. So you had no hand in ensuring that fatigue was not a problem
6 or that was just left to the operator; is that correct?

7 A. Everybody has, you know, requirements for their own being,
8 like I can get along with 5 hours' sleep sometimes or 8 hours'
9 sleep, sometimes no sleep. I--I can't really answer that.

10 **PIIC:** One moment, Commander.

11 [The witness conferred with counsel.]

12 **PIIC:** We're ready to proceed.

13 Q. Is it fair to say that you, as the owner, were not involved
14 in ensuring the health of the crew, that you left that up to the
15 master of the vessel?

16 A. The health of the crew--I don't know how to answer that.

17 Q. Did you take any steps at all to ensure that your son was
18 getting enough rest and proper substance--sustenance to ensure
19 his safety?

20 A. I can't answer that. I don't--I don't even know how to
21 answer that. How could I assure anything? I can't answer that.

22 Q. Turning to the physical condition of the crew, how were you
23 assured as to any latent medical conditions for the crew that

1 might suddenly impact the safety of the crew at a critical time,
2 for example, epilepsy, heart conditions or a host of adverse crew
3 medical conditions?

4 A. I was aware of no conditions to preclude work.

5 Q. And that's both for Mr. Biernacki and the rest of the crew?

6 A. I don't know anything about the crew.

7 Q. Is that because you set an expectation that you didn't need
8 to know the particulars about the crew or----

9 A. No, I--I really didn't know the--enough to sit down and ask
10 them, "Do you have any conditions?"

11 Q. Do you know if the operator of the vessel had a physical?

12 A. No.

13 Q. Do you know if the operator of the MARY B II had any medical
14 conditions that might compromise a voyage?

15 A. None to my knowledge.

16 Q. Did Mr. Biernacki have any issues with speech, hearing or
17 eyesight?

18 A. Say that again.

19 Q. Did Mr. Biernacki have any issues with speech, hearing or
20 eyesight?

21 A. Eyesight, I think he wore reading glasses--maybe not reading
22 gla--I'm not sure, but I know he--he wore glasses, not--he never
23 needed them for--for everything, but he did have a pair of

1 glasses. Hearing, he did have trouble occasional, more so than
2 other times, because his eardrum, I think he told me, was blown
3 out one time by just vibrations and loud noises that were on the
4 boats. You said--did you say speech?

5 Q. Yes.

6 A. That used to be--that used to be kind of a joke. If he took
7 his teeth out, he could slur all over time, and we would tease
8 each other and I'd say, "Go put your teeth in," and he'd go,
9 "Yeah, yeah, okay, Mom," you know, that type of thing. So, yes,
10 he--his speech was very slurred or sometimes not as slurred, but
11 it always showed up when he didn't have his dentures in.

12 Q. Did Mr. Biernacki often operate throughout the day without
13 his teeth in?

14 A. A lot of times he did because his gums would be sore.

15 Q. Did Mr. Biernacki have a full set of dentures or----

16 A. Full set.

17 Q. On both top and bottom?

18 A. Yes.

19 Q. Ma'am, your--your son was 50 years old. I am--can you please
20 explain what the problem was that he had a full set of dentures.

21 A. It started out when--I believe when he was really young--and
22 I can't remember how old he was. He was too young. He was in a
23 car accident and it broke his front teeth, and so he--he didn't

1 go to the dentist that often and so, when it came time to do
2 something about it, he decided to have his teeth extracted
3 because it started out with his having front teeth broken and--
4 and then they got--kind of got decayed and decided to get
5 dentures.

6 Q. Mrs. Anderson, was the operator prescribed any medications?

7 A. No. Not to my knowledge, no.

8 Q. Were you familiar with his primary medical provider or health
9 history?

10 A. Steve was not a doctor-goer.

11 Q. Did the MARY B II LLC create or distribute any instructions,
12 policies or procedures for the crew of the MARY B II to follow,
13 for example, frequency of safety drills or accident reporting
14 procedures?

15 A. Whatever was in the drill instructor course, that would be
16 what I would have confidence that he would follow.

17 Q. I understand, but my question was did you create or
18 distribute any instructions or policies or procedures?

19 A. No.

20 Q. Did you write down any expectations that you had for the
21 operation of the MARY B II?

22 A. No.

23 Q. Does that include your expectation for drug and alcohol--for

1 your drug and alcohol policy?

2 A. I didn't write anything down for expectations. This just was
3 unfolding.

4 Q. Mrs. Anderson, were you involved in hiring decisions at all?

5 A. No.

6 Q. Were you involved in payment of crew members or Mr.
7 Biernacki?

8 A. Yes.

9 Q. And you did that under the auspices of the limited liability
10 corporation?

11 A. Yes.

12 Q. Did Mr. Biernacki ever talk to you about why he hired Mr.
13 Porter?

14 A. I covered that before.

15 Q. Can you refresh my memory?

16 A. Josh said he would help him for a week. He was familiar with
17 the block and thought that would be a good asset for the boat and
18 he was a--and he fished for many years. I don't know how many.

19 I'm going to say probably--I think Denise mentioned like 25, 30

20 years. I don't recall, but--and he was both a crewman and a
21 captain here in Newport. So he was very familiar with this area.

22 Q. So you were comfortable with--with that decision because--can
23 you explain why?

1 A. Because he was experienced.

2 Q. Did Captain Biernacki ever give you any more particulars in
3 his discussion of Mr. Porter's knowledge of the waterway?

4 A. Only that they had fished together for about 20 years in the
5 East Coast.

6 Q. With Mr. Porter?

7 A. No----

8 Q. Oh, sorry, Mr. Lacey?

9 A. I thought you said Mr. Lacey.

10 Q. I apologize if I did. I meant Mr. Porter's----

11 A. Oh.

12 Q. ----knowledge of the waterway.

13 A. Say that again, then.

14 Q. Did Mr. Biernacki ever give you any particulars or more
15 details about his hiring of Mr. Porter and his knowledge of the
16 waterway? Did he ever tell you details of Mr. Porter's knowledge
17 of the waterway?

18 A. Not of the waterway except for he was experienced in this
19 area.

20 Q. Do you know if Captain Biernacki ever took Mr. Porter's
21 advice?

22 A. This might be a little bit lengthy, which I don't really wan
23 to get too lengthy, but he--he said to me that he would take the

1 advice of any fisherman in this area and didn't want to reinvent
2 the wheel, because they were familiar and he would listen.

3 Q. Had you ever met Mr. Porter or his family?

4 A. No.

5 Q. Did you--did you know Mr. Lacey prior to your visit--prior to
6 this crabbing season opener?

7 A. No, I did not.

8 Q. Would you, as the managing member of the MARY B II LLC--would
9 you have had contact information, like emergency contact
10 information, for these individuals?

11 A. I had contact information for Malaika. I don't recall
12 contact information for Denise.

13 Q. So had you been contacted, you would not necessarily have
14 been able to contact every crew member's family in the event of
15 an emergency.

16 A. I--I'm sure that I could be resourceful.

17 Q. Do you know if Mr. Biernacki gained any knowledge to operate
18 this vessel, the MARY B II, in winter conditions in Yaquina Bay,
19 Oregon? Did he work here previously seasons?

20 A. His first season was 216--2016, I mean.

21 Q. Do you have any more details on that?

22 A. No.

23 Q. Mrs. Anderson, you've been here for the entirety of the

1 proceedings and we've played radio communications on the night of
2 the accident. Can you positively identify that the voice on the
3 radio for the operator of the MARY B II was Stephen Biernacki?

4 A. Absolutely. I know that's my son's voice.

5 Q. As the owner of the vessel, when you became aware of the loss
6 of the vessel, did you attempt to contact any of the next of kin
7 of the crew members?

8 A. Malaika called me to tell me what happened. I had no contact
9 from anyone until I found out from her, and that was the next
10 day.

11 Q. And you found out the next day through what agency?

12 A. Medical examiner's chaplain came to the door of my home.

13 LIO: Thank you for your testimony. I have no further questions
14 at this time. I'll now see if other members of my investigation
15 team have follow-up questions. Lieutenant Woods?

16 **Questions by the recorder:**

17 Q. Good afternoon, Mrs. Anderson. You stated earlier that Mr.
18 Biernacki sailed through seven hurricanes and the "Perfect
19 Storm". Do you, as the managing member, think it is prudent for
20 a mariner to operate in those conditions not once but eight
21 times?

22 A. Being a long-range fisherman, sometimes it happens and you
23 don't really know when a hurricane is coming and you do your best

1 to be prepared and be ready, whatever hits.

2 Q. Did Mr. Biernacki have a current state-issued driver's
3 license?

4 A. He had a California license.

5 **LIO:** For the formality of this proceeding, please maintain
6 silence except for the witness. Thank you.

7 Q. Mrs. Anderson, do you think that there should be a mandatory
8 drug testing program for commercial fishermen?

9 A. It's probably a good idea.

10 **REC:** Thank you.

11 **LIO:** Lieutenant Bigay?

12 **AIO:** Thank you, Commander.

13 **Questions by the assistant investigating officer:**

14 Q. Ms. Anderson, you mentioned you--you did not have any
15 information or were not provided any information about the MARY B
16 II ever having an incident where it grounded. Had the operator
17 of the vessel communicated to you that the vessel grounded, as
18 the managing member associated with that vessel, what actions
19 would you have taken?

20 A. I would've expected Steve to have it evaluated.

21 Q. Would you have taken any additional actions, ma'am?

22 A. I don't know because I don't know what the extent of it--of
23 what it would be.

1 Q. Understood. As the managing member associated--owner
2 associated with a commercial fishing vessel, did you know what
3 incidents are considered to be reportable marine casualties?

4 **LIO:** I apologize, we're going to figure that noise out. Please
5 continue.

6 **WIT:** I--I don't understand the word "casualties" because I don't
7 know if that's--I--can you identify what "casualties" mean.

8 Q. Yes, ma'am, I can clarify. There are certain incidents or
9 accidents that happen that are, per U.S. regulations, considered
10 to be reportable marine accidents, sometimes called--accidents,
11 sometimes referred to as casualties. Per the regulations, that
12 also applies to commercial fishing vessels. Therefore, I'll
13 rephrase my question to make it more clear, and I apologize. Do
14 you--do you know what incidents are considered to be reportable
15 marine accidents that are due to be reported to the Coast Guard
16 under U.S. regulations?

17 A. I don't know a specific type of accident; however, something
18 that would require medical necessity would be one.

19 Q. Do you know which accidents require drug and alcohol testing
20 to be conducted after the accident?

21 A. I don't understand that question.

22 Q. Ma'am, there are some--some of those accidents, after they
23 occur, they require, by law, to have post-accident or post-

1 casualty drug and alcohol testing. As the managing member or
2 owner associated with the vessel MARY B II, do you know which
3 types of accidents require post-accident drug and alcohol
4 testing?

5 A. No.

6 Q. Ma'am, you mentioned alcohol testing kits that were purchased
7 to be on board the MARY B II, correct?

8 A. Yes.

9 Q. What were those for?

10 A. Just as the description says: testing.

11 Q. Right. Testing to be conducted when?

12 A. I don't know that answer.

13 **AIO:** Okay. One second, ma'am.

14 **WIT:** It's a little chilly.

15 **AIO:** Oh. I'm feeling it over here as well. Ma'am, I think
16 Lieutenant Woods fixed the issue and we're going to hopefully
17 start getting warm soon.

18 Q. So in regards to--to those kits, I'm not going to belabor the
19 point. I understand that you said you're not sure when they were
20 due to be used for, but--so my question is, then, why were they
21 purchased?

22 A. It was a requirement, to my knowledge.

23 Q. Understood. But you weren't sure what the requirement was

1 intended for.

2 A. [No response.]

3 Q. Sorry, I can clarify if--if that's needed, ma'am.

4 A. [No response.]

5 Q. Ma'am, if I may, I would like to backtrack to the time frame
6 where the vessel, the MARY B II, was being purchased. As the
7 owner, did you require any sea trials or request any sea trials?

8 A. I did not.

9 **LIO:** Did Mr. Biernacki, to your knowledge?

10 **WIT:** I recall that there was a sea trial, but I'm not positive.

11 **LIO:** Do you recall about what time of year that happened?

12 **WIT:** October, because that's when we bought it.

13 **LIO:** Previous to the purchase or before you made the agreement
14 to purchase it, then?

15 **WIT:** I don't know the dates. I wish I could be more specific.
16 I just don't know the dates.

17 **LIO:** That's okay. Thank you.

18 **AIO:** Thank you, ma'am.

19 Q. Ma'am, you mentioned that the operator of the vessel never
20 communicated to you that there was any issue with a line in the
21 propellor.

22 A. No.

23 Q. Did he ever communicate to you a phone call to a local diver

1 whose services include removal of such lines or assistance with
2 any other components of the hull?

3 A. No.

4 Q. Ma'am, we've heard testimony about the proactive nature of
5 the attitude towards purchasing safety equipment and even the
6 participation in the FLIPP program, which, if my memory doesn't
7 fail me, it's the Fishermen-Led Injury Prevention Program. With
8 those extensive measures taken to respond to any emergency, were
9 any measures taken to prevent any accidents? And by that I mean
10 maybe situations where you would be looking at vessel stability,
11 the readiness of the crew, operations under heavy weather, drug
12 and alcohol-free environment.

13 A. I relied on the confidence that I had with Steve.

14 **LIO:** Ma'am, along the same lines, concerning the sea trials, did
15 Captain Biernacki ever take--did he take the boat out to sea
16 during the sea trials or just up the river?

17 **WIT:** No, he did take the boat out to sea.

18 Q. Ma'am, you mentioned that you weren't present at certain
19 times to be able to answer some questions that were specific to
20 aspects of the operations. What measures did you have in place
21 to be able to provide proactive and effective support in case the
22 operator wasn't able to let you know that he needed something?

23 A. Anyone that was on board with Steve I'm sure--no, how can I

1 say I'm sure because I can't be sure of anything--what somebody
2 else would do, but I would hope that they would have contacted
3 me.

4 Q. Understood. So the other crew members on board would let you
5 know. Are you aware that they had your contact information?

6 **PIIC:** I'm going to object to the question. I think it just
7 slightly misstated my client's testimony.

8 **AIO:** I can clarify.

9 **LIO:** Please do clarify.

10 Q. Ms. Anderson, did you have contact information for the other
11 crew members on board the MARY B II?

12 A. I answered that question already. I had Malaika's phone
13 number.

14 Q. Understood. Thank you for refreshing my memory. I'm sorry,
15 I didn't recall that. So not Ms. Porter's----

16 A. No.

17 Q. ----information?

18 **LIO:** But, Lieutenant, your question was different. Was it--it
19 was did the crew members have Mrs. Anderson's number, if I
20 understood your question correctly. Did they have Mrs.
21 Anderson's number? Wasn't that your question?

22 **AIO:** Yes, Commander, I was--I was going to get there, but
23 please----

1 **LIO:** Ma'am, do you know if they had your phone number?

2 **WIT:** Malaika had my number, because she's the one that notified
3 me that the boat was down.

4 **LIO:** Do you know if Ms. Porter had your number?

5 **WIT:** I'd never met Mrs. Porter. I have no idea.

6 **LIO:** As a managing member of MARY B II LLC, was that your
7 expectation, to have that information for the crew members?

8 **WIT:** It happened so quickly, that he hired Josh, that I was
9 transitioning to go back to Southern California.

10 **LIO:** So you were in the Newport area when the hire happened; is
11 that correct?

12 **WIT:** Yes.

13 **LIO:** And you did not get the contact information while you were
14 local in the Newport area.

15 **WIT:** No, huh-uh.

16 **LIO:** Go ahead, Lieutenant.

17 Q. Ma'am, we've--we've talked about the extensive experience
18 that Mr. Biernacki had operating vessels, and we've touched on
19 the extensive local knowledge that Mr. Porter also had while
20 operating vessels. I would like to know if you, as the managing
21 owner of the vessel, knew how receptive Mr. Biernacki, as an
22 operator, was to--to receive advice or feedback or guidance from
23 crew members who also had extensive experience.

1 A. Very open.

2 Q. Ma'am, with--with that in mind, did he seek advice from the
3 previous owner of the vessel?

4 A. I don't know if he did or not.

5 Q. Ma'am, you mentioned his ability to navigate during inclement
6 weather, including mention of a few hurricanes. Do you know if
7 he ever left port after a hurricane or adverse weather was
8 already announced by the National Weather Service?

9 A. Safety was paramount for him. I have confidence that he made
10 selections that were good.

11 Q. I understand. Thank you. But you--you don't know whether he
12 left port after adverse weather had been forecasted.

13 A. Personal information, no.

14 Q. Any other type of information?

15 A. I--I can't answer--he had so many trips. I would have--I
16 would never remember every trip that he had. I mean, he fished
17 for like 35 years.

18 Q. I understand, ma'am. To the extent that you can answer. I
19 understand----

20 A. Okay.

21 Q. ----that you can't recall anything but----

22 A. Thank you.

23 Q. ----or--I mean every situation, but to the extent that you

1 can. Ma'am, briefly we discussed the operator's--having to wear
2 dentures and you mentioned that it contributed to slurred speech
3 sometimes.

4 A. No, mostly all the time.

5 Q. Okay. When talking to a person or interacting with a person
6 while he did not have good dentures, would the other person
7 talking to him notice the lack of dentures?

8 A. I can't answer what somebody would notice or not.

9 Q. Would you notice?

10 A. I would because I know him.

11 Q. Finally, Ms. Anderson, did you require drug and alcohol
12 testing of the operator and the crew before the start of the
13 season?

14 A. No.

15 **AIO:** Thank you.

16 **LIO:** Mr. Reilly?

17 **PIIC:** One moment, Commander.

18 **LIO:** Mr. Reilly, sir, do you--would you and your client like to
19 take a break?

20 **PIIC:** Commander, we don't have any follow-up questions.

21 **LIO:** I do have two follow-up questions.

22 **Questions by the lead investigating officer:**

23 Q. When did a representative from the Coast Guard contact you

1 about the accident from January 8th?

2 A. No one from the Coast Guard contacted me as managing member
3 or next of kin.

4 Q. So the question was when were you contacted by a
5 representative of the Coast Guard?

6 A. Never.

7 **PIIC:** In the immediate aftermath or subsequent later in the----

8 **LIO:** Subsequently.

9 **PIIC:** ----inquiry?

10 **LIO:** Subsequently.

11 **PIIC:** Including later in January.

12 **WIT:** Oh, in January when I came back the second time to clean
13 out Steve's trailer and his belongings, I was asked to come in to
14 have a talk, which turned into be what I considered to be an
15 interview afterwards.

16 **LIO:** So----

17 **WIT:** And that was about 2 weeks or maybe more.

18 Q. So there were no telephonic contacts with you from a member
19 of the Coast Guard at all?

20 A. Not to notify me about anything except for could I come in
21 for--just to talk about it, and I--and I believe that was like
22 the end of January, sometime around 28th of January, 29th,
23 somewhere in that neighborhood.

1 **LIO:** Mr. Reilly, can we take just a recess in place. Could you
2 approach for a second.

3 **PIIC:** Yes, ma'am.

4 [The hearing recessed at 12:55 p.m., 17 May 2019.]

5 [The hearing was called to order at 12:57 p.m., 17 May 2019.]

6 **LIO:** Lieutenant Bigay, could you please refresh Ms. Anderson's
7 memory with respect to communications post-casualty with--with
8 respect to any contact that you have had with her after the
9 casualty of her----

10 **AIO:** Understand.

11 **Questions by the assistant investigating officer:**

12 Q. Ms. Anderson, do you recall at about a time frame of maybe 3
13 days after the casualty having a conversation with--with me--I
14 would have said, "I'm Lieutenant Theresa Bigay"--over the phone?

15 A. Oh, wait a minute. I think there--I think I recollect
16 something like that, but I--I think I recollect that.

17 **AIO:** Commander, may I----

18 **WIT:** Oh, but it couldn't have been--I--vaguely I remember that.
19 I think I was in such a state of shock at the time that I don't
20 remember what was said, but I do remem--I do recollect that.

21 **AIO:** I understand.

22 **Questions by the lead investigating officer:**

23 Q. Mrs. Anderson, we've discussed Mr. Porter and, to a degree,

1 Mr. Lacey. Can you just touch on Mr. Lacey one more time. Are
2 you aware of his experience level?

3 A. If I was aware of what?

4 Q. His experience level.

5 A. Only that I know that Steve told me they worked together for
6 about 20 years on the East Coast and, to me, that means
7 experience. No specific----

8 Q. So no specific experience, to your knowledge, with West Coast
9 fishing.

10 A. This was his first encounter in the west, to my knowledge.

11 Q. To your knowledge, were there any other crew members prior to
12 Mr. Porter's employment?

13 A. Not on the--not on the vessel.

14 Q. Ma'am, do you recognize the name Charles Donnelly?

15 A. No.

16 Q. Ma'am, my final question is did Mr. Biernacki ever relay to
17 you, either as your son or as the operator of your vessel, about
18 him seeking out advice or seeking any opportunity to learn about
19 the waterway or the fishing grounds to better prepare himself to
20 have successful operations as a fisherman?

21 A. I know he joined the Fishermen's Association there. I think
22 it was called the Fishermen's Association--I don't know exactly.
23 But I attended one meeting with him there in Newport where there

1 was probability about 30 fishermen--crab fishermen.

2 Q. And what do you recall seeing there?

3 A. I think, if I recall, they said it was a confidential
4 meeting. So if that--if my recollection is correct, they--they
5 discussed various things that I don't know how to say, if that's
6 what they--if I recollect that that was supposed to be a
7 confidential-type meeting that they gathered together--but he
8 attended.

9 **PIIC:** Commander, may I briefly----

10 **LIO:** Yes, please, Mr. Reilly.

11 **PIIC:** ----inquire? If there is some sort of confidential
12 agreement here, I'd be concerned if my client was breaching
13 confidentiality. So let me just double check.

14 **LIO:** Thank you.

15 [The witness conferred with counsel.]

16 **PIIC:** Commander, apparently there was some information passed at
17 that meeting of a proprietary nature regarding the product, the
18 crab and the costs involved, and I--I'd be concerned if my client
19 was asked--that would seem to me to be the confidential element.
20 I'd ask if we can steer clear of that----

21 **LIO:** Sure.

22 **PIIC:** ----in this line of questioning. Thank you.

23 **LIO:** Sure, absolutely.

1 Q. I'm more specifically looking at, at that meeting what did
2 you observe of Mr. Biernacki as far as seeking out additional
3 information to make him as successful as possible, seeking out
4 advice from other fishermen?

5 A. He listened very attentively and made sure that I wasn't even
6 whispering to him. He just said, "Shh, I want to listen."

7 Q. So you know of now other opportunities that--that Mr.
8 Biernacki sought out advice from other entities, organizations,
9 mariners, to learn the operating environment.

10 A. I can only assume that there's a lot of dock--dock talk and
11 people share information. So I--I can't be--you know, I can't
12 say I know for sure.

13 Q. Mrs. Anderson, do you have any opinions on anything that
14 would make the fishing vessel--fishing industry safer?

15 A. That's a broad subject. I think wherever--whatever topics
16 seem to be of importance, then that could maybe be pursued.

17 Q. So you individually, what topics are important to you?

18 A. Camaraderieship [sic], for one, awareness, understanding
19 safety, understanding electronics, gear and equipment. That's
20 coming off the top of my head.

21 **LIO:** Okay. Thank you. Mr. Reilly, so we're--we're quite over
22 on our schedule. So I wanted to ask for your input on recessing.
23 I think we're--we're about to release Mrs. Anderson. So before I

1 recess us, do you have any input on lunch or proceeding through?

2 **PIIC:** We're available at the board's convenience, Commander.

3 Whatever works best for you.

4 **LIO:** Okay. Mrs. Anderson, you are now released as a witness at
5 this formal hearing. 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 through your
8 counsel. If you have any questions about this investigation, you
9 may contact the investigation recorder, Lieutenant Luke Woods.

10 It is 1:07 p.m. And we're going to take a 30-minute lunch
11 recess. We're going to go 30 minutes. And so we'll reconvene at
12 1:37.

13 **WIT:** Can I make one closing statement? It'll be brief. It
14 doesn't have to be really on the record.

15 **REC:** I was going to say, ma'am, we're going off the record;
16 however, we will provide you an audience to--to make a brief
17 statement.

18 **WIT:** I just want you to know that my son had so much respect for
19 the Coast Guard, and I want you to know that I am truly grateful,
20 from the bottom of my heart, everything that you guys have done.
21 Even though this was a very tragic thing, thank you so much.

22 **LIO:** Thank you. It is 1:08 and we are off the record.

23 [The hearing recessed at 1:09 p.m., 17 May 2019.]