

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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In the matter of: *

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MARINE BOARD OF INVESTIGATION *

INTO THE SINKING OF THE *SCANDIES ROSE* *

ON DECEMBER 31, 2019 *

*

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Edmonds Center for the Arts
Seattle, Washington

Friday,
February 26, 2021

APPEARANCES:

Marine Board of Investigation

CAPT GREGORY CALLAGHAN, Chairman
CDR KAREN DENNY, Member
LCDR MICHAEL COMERFORD, Member

Technical Advisors

LT SHARYL PELS, Attorney Advisor
KEITH FAWCETT, Technical Advisor

National Transportation Safety Board

BARTON BARNUM, Investigator in Charge
PAUL SUFFERN, Meteorologist

Parties in Interest

MICHAEL BARCOTT, Esq.
Holmes Weddle & Barcott
(On behalf of Scandies Rose Fishing Company, LLC)

NIGEL STACEY, Esq.
Stacey & Jacobsen PLC
(On behalf of survivors Dean Gribble and John Lawler)

Also Present

LT IAN McPHILLIPS, Recorder

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P R O C E E D I N G S

(8:00 a.m.)

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3 CAPT CALLAGHAN: It is 0800 on February 26th, 2021, and this
4 hearing is now in session. Good morning, ladies and gentlemen.
5 I'm Captain Greg Callaghan, United States Coast Guard Chief of
6 Prevention for the 11th Coast Guard District. I'm the Chairman of
7 the Coast Guard Marine Board of Investigation, and the presiding
8 officer over these proceedings.

9 The Marine Board has established a COVID mitigation plan to
10 comply with federal, state, and local requirements. As a result,
11 no members of the public will be permitted to view this hearing in
12 person. The Board will receive witness testimony through a hybrid
13 of in-person, virtual, and telephonic means. Members of the Board
14 have been spaced out far enough at the main table to remove their
15 masks while seated to maximize clarity and minimize disruption.
16 Members are to place masks back on at any time when leaving the
17 table and whenever approached by another person. I ask that
18 anyone who is unable to maintain social distancing please keep
19 their masks on unless actively speaking into the microphones.

20 Due to the extensive technology used to support this hearing
21 and the potential for unanticipated delays or challenges, I ask
22 that you please be patient with us in the event of any
23 disruptions.

24 The Commandant of the Coast Guard has convened this Board
25 under the authority of Title 46 U.S.C. Section 6301 and Title 46

1 C.F.R. Part 4 to investigate the circumstances surrounding the
2 sinking of the commercial fishing vessel *Scandies Rose* with the
3 loss of five lives on December 31st, 2019, while transiting in the
4 vicinity of Sutwik Island, Alaska. There were two survivors.

5 I would like to take this opportunity to express my
6 condolences to the family and friends of the five crewmembers who
7 were lost at sea. I note that many of you are watching this
8 hearing on livestream due to the COVID restrictions in place, and
9 we appreciate you doing so.

10 Upon completion of the investigation, this Marine Board will
11 submit its report of findings, conclusions, and recommendations to
12 the Commandant of the United States Coast Guard. Other than
13 myself, the members of this Board include Commander Karen Denny
14 and Lieutenant Commander Mike Comerford. The legal counsel to
15 this board is Lieutenant Sharyl Pels. The recorder is Lieutenant
16 Ian McPhillips. Coast Guard technical advisors to this board are
17 Mr. Scott Giard and Mr. Keith Fawcett. This board's media liaison
18 is Lieutenant Commander Scott McCann.

19 The National Transportation Safety Board is also
20 participating in this hearing. Mr. Bart Barnum, Investigator in
21 Charge for the NTSB's *Scandies Rose* investigation, is here with
22 us, along with Mr. Paul Suffern.

23 Witnesses are appearing before the Board to provide valuable
24 information that will assist this investigation. We request that
25 all members of the public be courteous to the witnesses and

1 respect their right to privacy.

2 The members of the press are welcome to attend virtually, and
3 provisions have been made during the proceedings to allow the
4 media to do so. The news media may question witnesses concerning
5 the testimony they have given after I have released them from
6 these proceedings. I ask that any such interviews be conducted
7 with full consideration of the COVID mitigation procedures that
8 the Marine Board has established.

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

19 The Marine Board planned this two-week hearing to examine all
20 events related to the loss of the *Scandies Rose* and five
21 crewmembers. The hearing will explore crewmember duties and
22 qualifications, shore-side support operations, vessel stability,
23 weather factors, effects of icing, safety equipment, the
24 operations of the vessel from the past up to and including the
25 accident voyage, and survey imagery of the vessel in its final

1 resting place. The hearing will also include a review of industry
2 and regulatory safety programs, as well as the United States Coast
3 Guard Search and Rescue activities related to the response phase
4 of the accident after notification that the *Scandies Rose* was in
5 distress.

6 The Coast Guard has designated parties in interest to this
7 investigation. In Coast Guard marine casualty investigations, a
8 party in interest is an individual, organization, or other entity
9 that under the existing evidence or because of his or her position
10 may have been responsible for or contributed to the casualty. A
11 party in interest may also be an individual, organization, or
12 other entity having a direct interest in the investigation in
13 demonstrating the potential for contributing significantly to the
14 completeness of the investigation or otherwise enhancing the
15 safety of life and property at sea through participation as party
16 in interest.

17 All parties in interest have a statutory right to employ
18 counsel to represent them, to cross-examine witnesses, and have
19 witnesses called on their behalf. Witnesses who are not
20 designated as parties in interest may be assisted by counsel for
21 the purpose of advising them concerning their rights. However,
22 such counsel are not permitted to examine or cross-examine other
23 witnesses or otherwise participate in the investigation.

24 I will now read the list of those organizations and
25 individuals whom I've previously designated as parties in

1 interest: Scandies Rose Fishing Company, LLC, represented by
2 counsel who are here in person today; crewpersons Mr. Dean Gribble
3 and Mr. John Lawler, represented by counsel who are appearing
4 virtually today; Mr. Bruce Culver, currently not present at this
5 time.

6 The Marine Board will place all witnesses under oath. When
7 testifying under oath, a witness is subject to the federal laws
8 and penalties for perjury for making false statements under Title
9 18 U.S.C. Section 1001. Penalties could include a fine up to
10 \$250,000 or imprisonment of up to five years or both.

11 The sources of information to which this investigation will
12 inquire are many and varied. Since the date of the casualty, the
13 NTSB and Coast Guard have conducted substantial evidence
14 collection activities, and some of that previously collected
15 evidence will be considered during these hearings. Should any
16 person have or believe he or she has information not brought
17 forward but which might be of direct significance, that person is
18 urged to bring that information to my attention by emailing
19 uscg.scandiesrosembi@gmail.com. This email address will be
20 continuously monitored.

21 Mr. Barnum will now say a few words on behalf of the NTSB.

22 MR. BARNUM: Thank you, Captain, and good morning. I'm Bart
23 Barnum, Investigator in Charge of the National Transportation
24 Safety Board's investigation of this accident. The Safety Board
25 is an independent federal agency which under the Independent

1 Safety Board Act of 1974 is required to determine the cause or
2 probable cause of the accident, to issue a report of facts,
3 conditions, and circumstances relating to it, and may make
4 recommendations for measures to prevent similar accidents.

5 The NTSB has joined this hearing to avoid duplicating the
6 development of facts. Nevertheless, I do wish to point out that
7 this does not preclude the NTSB from developing additional
8 information separately from this proceeding if that becomes
9 necessary.

10 At the conclusion of this hearing, the NTSB will analyze the
11 facts of this accident and determine the probable cause
12 independent of the U.S. Coast Guard. At a future date, a separate
13 report of the NTSB's findings will be issued which will include
14 our official determination of the probable cause. If appropriate,
15 the Safety Board will issue recommendations to correct safety
16 problems discovered during this investigation. These
17 recommendations may be made in advance of the report.

18 In addition, on behalf of the NTSB, I would like to offer my
19 deepest condolences to the families and those affected by this
20 tragic accident. Thank you.

21 CAPT CALLAGHAN: Thank you, Mr. Barnum.

22 I have updated the schedule now posted on livestream on the
23 Coast Guard media site to update Mr. Culver's testimony time, now
24 scheduled for next Thursday at 1300.

25 Yesterday, we heard from a representative of the Coast

1 Guard's Marine Safety Center regarding its review of the stability
2 instructions issued for the *Scandies Rose*. We also heard from
3 several fishermen who had sailed on board the *Scandies Rose* or had
4 close contact with the vessel before the incident.

5 Today, we will continue to explore this topic by hearing from
6 additional fishing vessel captains, as well as experts in Alaska
7 fisheries regulations from the Alaska Department of Fish and Game,
8 National Marine Fisheries Service, and the Coast Guard.

9 At this time, we will now to go to recess and resume at 0830.

10 (Off the record at 8:09 a.m.)

11 (On the record at 8:30 a.m.)

12 It is now 0830, and this hearing is now back in session. We
13 will now hear from Captain DeLaurentis.

14 Captain DeLaurentis, Lieutenant McPhillips will now
15 administer your oath and ask you some preliminary questions.

16 (Whereupon,

17 DANIEL S. DeLAURENTIS

18 was called as a witness and, after being first duly sworn, was
19 examined and testified as follows:)

20 LT MCPHILLIPS: Please be seated. Please state your full
21 name and spell your last name.

22 THE WITNESS: Daniel Scott DeLaurentis, last name spelled
23 D-e-L-a-u-r-e-n-t-i-s.

24 LT MCPHILLIPS: Please identify counsel or representative if
25 present.

1 THE WITNESS: None present.

2 LT MCPHILLIPS: Please tell us what your current employment
3 position is.

4 THE WITNESS: Current employment is I'm the captain of the
5 fishing vessel *Ruff N Reddy*.

6 LT MCPHILLIPS: What are your general responsibilities in
7 that job?

8 THE WITNESS: Captain, running the vessel, overseeing
9 operations, and taking part in the fishing industry.

10 LT MCPHILLIPS: Can you briefly tell us your relevant work
11 history?

12 THE WITNESS: My relevant work history -- now, my current age
13 is 43. I started fishing at 18 for a vessel, *Silver Spray*, based
14 out of Kodiak, Alaska, for 14 years. Stepped away from that and
15 began running the *Ruff N Reddy* in 2000 -- summer of 2009 to
16 current. Commercial fisherman since 18.

17 LT MCPHILLIPS: Thank you. What was your education related
18 to your position?

19 THE WITNESS: High school education.

20 LT MCPHILLIPS: Okay. Do you have any professional licenses
21 or certificates related to your position?

22 THE WITNESS: No professional licenses, no, sir.

23 LT MCPHILLIPS: Thank you, Captain. Captain Callaghan will
24 now have follow-up questions for you.

25 THE WITNESS: Okay.

1 CAPT CALLAGHAN: Thank you, Captain DeLaurentis. And just
2 for the record, I just want to make it known that you're appearing
3 today from Marine Safety Detachment in Kodiak, Alaska, just to
4 help facilitate your testimony. So thank you very much, sir. And
5 I'm going to go ahead and pass it over to Commander Karen Denny
6 for questions.

7 Commander Denny?

8 CDR DENNY: Thank you, Captain, and thank you, Captain
9 DeLaurentis, for making the time to be here and testify today.

10 EXAMINATION OF DANIEL S. DeLAURENTIS

11 BY CDR DENNY:

12 Q. We appreciate you attending the hearing virtually, but if at
13 any point we ask a question that you don't understand or can't
14 hear because of technical difficulties, just don't hesitate to
15 stop, ask us to repeat or rephrase the question, and we'll
16 absolutely do so.

17 Also, on this platform, we're able to share our monitor with
18 you. So if we put up exhibits, and you want us to zoom in on
19 something or you want to highlight something, please ask the
20 recorder, Lieutenant McPhillips, to zoom in. And he should be
21 able to see that, and that'll help both the Board as well as the
22 public viewing this hearing.

23 So, Captain, you talked about your work history. I just want
24 to delve in a little bit on that. Did you fish full-time, so
25 meaning, did you work fisheries both in the winter and summer

1 months, full-year around, or just certain seasons?

2 A. All year round. For my first 14 years, I was working 11
3 months out of the year, summer and winter. And now I work
4 approximately seven months out of the year, summer and winter
5 both, all through the year, rotating schedule.

6 Q. And could you run through which fisheries you've fished for?

7 A. Current or throughout those years?

8 Q. Let's go with the last couple of years.

9 A. We participate in the pot cod season, the longline season for
10 halibut and sablefish. We also tender during the summer. I
11 haven't been a part of that for the last couple of years. But
12 mainly right now is pot cod and sable and halibut fish longlining.

13 Q. Okay, thank you. So I'd actually like to go right into the
14 timeframe leading up to the accident of the *Scandies Rose*. Can
15 you walk us through, from the time you got to Kodiak, what you and
16 your crew did to get ready for the trip, when you left, and what
17 happened, all the way until you got notified of the *Scandies Rose*
18 being in distress?

19 A. Absolutely. And if you don't mind, I brought some notes. So
20 I might be looking at my notepad there, just because my memory's a
21 little foggy on some of the times, dates, and all that good stuff.

22 When we arrived to Kodiak -- we flew into Kodiak, myself and
23 crew, on the 27th of December. We immediately started loading
24 gear, pot gear, on the vessel, getting the boat ready for
25 traveling out to the Bering Sea for the cod fishery on January

1 1st.

2 We were in gear from the 27th to the afternoon of the 29th.
3 We departed Kodiak on December 29th of 2019, traveled through
4 Whale Pass into Shelikof Strait, and traveled down the Shelikof
5 Strait. We got out past Sutwik. That would have been, let's see,
6 the early morning of the 31st. We began getting weather right
7 before Nakchamik -- I'm hoping I'm pronouncing that island
8 right -- over by Chignik Bay. We began getting weather, so we
9 pulled in behind Nakchamik Island at about 5:00 a.m. on the 31st
10 and set anchor.

11 Later that night, I was downstairs in my stateroom when David
12 McDonald (ph.) -- he was the man on watch while we were on anchor
13 there at the time -- I'd say it was approximately around 11:00,
14 somewhere around 11:00 on the night of the 31st, he came down and
15 told me that the Coast Guard called our dispatch satellite phone
16 and requested that I give them a call on their landline. So I
17 went upstairs and called them on the landline.

18 When they informed me that the *Scandies Rose* was in distress
19 approximately 27 to 28 miles to the east of me and asked if I'd be
20 willing to assist the rescue effort or go to that location, I
21 declined due to weather and the conditions outside behind the lee
22 of the island. I could not travel with a load of gear. So I
23 declined on being able to assist.

24 Q. Okay. So, Captain, what we we're going to do is --
25 Lieutenant McPhillips, please put up Exhibit 23 Page 8. And

1 Captain, what we're going to put up is the AIS track for your
2 vessel from when you left Kodiak to about -- and you can see that
3 there's a text box that says the approximate location of -- the
4 approximate time of the accident. And that is your approximate
5 location. Let me know when you get that on your screen.

6 A. I can see that on the screen.

7 Q. Does that look about right based on your recollection? Does
8 that look about right for the *Ruff N Reddy's* transit?

9 A. Yes, it does.

10 Q. Okay. So, Lieutenant McPhillips, can you pull up Exhibit
11 also 23, page 7 -- sorry, 23 page (indiscernible) not 7, page 11.
12 Page 11, please. And, Captain DeLaurentis, as you said, this
13 is -- for folks that don't know the distances and the geography
14 and the layout, does this look familiar to you about what your
15 location was the night of the 31st of December? Whoops, that's a
16 little close. But that's all right. We're okay. That's good.
17 Perfect. Okay, so just like you said, approximately 28 miles from
18 Sutwik Island and the location of the *Scandies Rose*.

19 A. Correct.

20 Q. Correct, okay. Excellent. So I'd like you to tell us about
21 the weather that you were experiencing in as much detail as
22 possible from the time that you were transiting past Sutwik
23 Island, why you made your decision to anchor out on the south
24 side, on the lee side of Nakchamik Island, and the timing of that,
25 and what was going through your mind as a vessel captain.

1 A. Yes, we had excellent, excellent conditions for travel all
2 the way down Shelikof. I was awoken from my sleep there. My guys
3 were on wheel watch between Sutwik and Nakchamik, with orders to
4 let me know if were -- if we started taking any kind of freezing
5 spray. I would say we were probably 10 miles from Nakchamik
6 Island when I was awoken and told that we were -- I believe it was
7 my -- I'm sorry, I'm not great on the memory there, but I believe
8 I was woken up, had time to get up there around, I guess it was
9 probably 2:00 to 3:00 in the morning on the 31st.

10 We were starting to build a little ice on the bow, northwest
11 probably, I guess at the time, 25- to 30-knot winds. Started to
12 accumulate ice on the bow and on the rails, and a little bit of
13 spray on the pots there. So we decided to hold up on the lee side
14 in Nakchamik. I knew the weather was coming. We were hoping to
15 make it past Chignik Bay beforehand, but we knew that we had
16 either Sutwik or Nakchamik to take cover in if we didn't make it
17 that far. So we decided to anchor up, with ice beginning to
18 accumulate on the boat.

19 Q. Okay, and to be clear, so it was 0500 on the 31st of December
20 that you made the decision to anchor. About how far off the
21 island were you?

22 A. Oh, we were probably 0.15 (indiscernible) miles off island,
23 when I anchored?

24 Q. Yes.

25 A. Yes, between a tenth and 0.15 miles off land base there.

1 Q. And that's how you developed that lee?

2 A. Yes.

3 Q. Okay, excellent. Okay, and when you -- when you made that
4 decision, you said that you had already started accumulating ice.
5 To the best of your recollection, about how much ice had you
6 accumulated by the time you made that decision to take a pause and
7 anchor?

8 A. There wasn't much. It had just started to accumulate. I had
9 kind of figured it would accumulate the night before, but it
10 hadn't started. I would say maybe we had a half-an-inch on our
11 rails on the bow, and it was just starting to stick to the pots on
12 the -- on the starboard side. So not -- just a pinching of ice.
13 If we had a half-an-inch on the bow rails, that was probably
14 maximum.

15 Q. Okay. And so, moving forward throughout the 31st when you
16 guys were anchored and standing watch, you do maintain a watch
17 when the vessel is anchored, correct?

18 A. Yes, we do.

19 Q. Okay. So then do you -- what did you notice, what were your
20 observations about the ice, icing conditions on your vessel as you
21 were in the lee?

22 A. As we were in the lee, we weren't taking any spray. We were
23 in the lee of the island there. Very cold, very cold, our inside
24 was freezing up. Our windows were getting ice just from the
25 condensation, but I didn't have an outside thermometer, so I can't

1 say the temperatures. But obviously, they were below freezing for
2 sure. Snow, heavy winds, heavy gusts out of the northwest, but we
3 weren't accumulating any ice due to spray. We were in the lee of
4 the island there, so we didn't have any.

5 Q. Is it fair to say that you -- it certainly wasn't melting
6 off. You maintained. Is that a fair statement? You maintained
7 the level of ice accumulation?

8 A. Yes.

9 Q. Okay. So that night when you were woken up by your
10 crewmember, to the best of your recollection, if you could just
11 take a minute and go back, tell us again what weather conditions
12 you were experiencing around 2200 to 2300.

13 A. It was probably northwest 40. I'd say a steady northwest 40
14 windspeed, with extreme gusts that were -- we actually drug anchor
15 earlier in the day there, so we had to reposition and move closer
16 -- closer to the island, within probably a tenth, if not closer to
17 the island, to get out of some of the wind. But I'd say a steady
18 northwest 40 with heavier gusts.

19 Q. Okay, and even with that wind state, you weren't having --
20 you weren't getting freezing spray because you weren't moving
21 through the water too much. But what would you say the sea state
22 was, even in the lee?

23 A. In the lee, we only had probably -- gosh, there wasn't much
24 of a sea. I mean, it'd ripple through there, but the sea height
25 would probably be a foot to two feet. It's knocked down so quick

1 that I couldn't see -- I mean, the sea at where we were on anchor,
2 there was no big seas.

3 Q. Okay. I'd like to jump us back a little bit to when you were
4 back in Kodiak with your crew, when you arrived. Were you
5 planning on leaving on the 29th, or was there any sense of
6 urgency? You mentioned the weather, you mentioned you knew that
7 bad weather was coming, and you had planned to seek shelter if you
8 needed to. Did you know that when you got off the plane and
9 headed to your vessel?

10 A. I didn't. I had checked the weather a little bit, but until
11 we were ready to depart -- we actually had our gearwork done the
12 night before. I was in no rush to leave. I knew there was a
13 storm coming, but I hadn't actually checked the weather until the
14 previous night before I left.

15 But yes, we left a little bit earlier due to the weather
16 window that we did have. We were hoping to make it at least past
17 Chignik Bay there, then make it past that, and we figured we could
18 get in the lee of the mainland and travel the rest of the way to
19 Falls Pass. So we were trying to catch the weather window.

20 Q. Okay, and how many pots do you carry, Captain?

21 A. How many pots do I carry?

22 Q. So let me rephrase the question. What is your stability
23 report? Do you have a stability report?

24 A. Yes, I do.

25 Q. And what does your stability report allow you to carry?

1 A. On a standard load with non-icing conditions, we are rated
2 for 105 pots.

3 Q. And what were you carrying on this trip, sir?

4 A. I believe it was 88, possibly 90.

5 Q. And what was -- was there a reason that you chose to carry
6 that number versus what's allowed on your stability report?

7 A. In the wintertime, we never carry our full load.

8 Q. Could you elaborate for me? Why is that?

9 A. It's difficult in the wintertime. Usually our weather's more
10 extreme, the icing conditions. We knew that there was ice coming.
11 We had -- we can't carry 105 during icing conditions. We're rated
12 for 81 during icing, when it is icing conditions. And like I
13 said, the wintertime weather, we never -- it's usually more
14 extreme. I don't like having a big stack on and full capacity
15 during that time, even during icing conditions. It's just more of
16 a hassle for us to carry our maximum load for the guys to be
17 dealing with in bad weather.

18 Q. Okay, and I don't recall, would you mind telling me when you
19 got your stability letter done and by whom?

20 A. Stability -- oh, I don't have that on my notes. I remember
21 telling you when we talked the first time, but I was believe it
22 was Hockema Whalen and Associates that did the stability report.

23 Q. Okay.

24 A. And that was done in 2013.

25 Q. Okay, thank you. So back to when you were on board the

1 vessel. You loaded everything, and you made your decision to
2 leave a little bit earlier because of the weather, to try and beat
3 it. Were you -- were you trying to go faster? Did you go faster
4 than you normally would on a trip like this to try and beat the
5 weather?

6 A. No, we're an average seven-and-a-half-knot boat on a good
7 day, so there's no going any faster for us. We're -- that's
8 pretty much our standard speed.

9 Q. Again, back when you were in Kodiak, and you were making the
10 decision for when to leave and what to do, did you -- did you --
11 what weather tools did you use to just ascertain the weather?

12 A. I used an app, Windy app, shows the windspeed across
13 (indiscernible) Alaska, worldwide actually, and that's -- they're
14 pretty accurate for the time that I've been using them for -- I
15 don't know how many years, but they seem to be the most accurate
16 weather. Compared to NOAA, they have an actual zone forecast that
17 you can follow directly instead of a wide range like the NOAA
18 weather. So I follow the Windy app.

19 Q. Okay. How long have you been following that specific app?
20 How long have you been using it?

21 A. Well, I'd have to guess seven years.

22 Q. Are there any particular features that you like the best
23 about it?

24 A. Windspeed and the sea height, I like those two -- those two
25 features.

1 Q. Have you -- have you found that there has ever been
2 inaccuracies in that, or are you finding that, generally, that's a
3 pretty accurate app?

4 A. That is the most accurate app. I mean, no, it's not always
5 100 percent correct, but it is the most accurate weather forecast
6 that I've been around.

7 Q. Okay. Let's just shift topics a little bit about -- and talk
8 to you about icing. In general -- I lost my place -- how
9 concerning is icing to you when it starts accumulating? And what
10 do you do as a vessel master -- what are you thinking about when
11 you start seeing icing on your vessel?

12 A. I haven't dealt with a whole lot of icing in the last 10
13 years, 11 years. (Indiscernible) based around Kodiak, so we have
14 the privilege of being able to be in port and not out in the open
15 sea. So we pay attention to the weather a lot. If it's icing
16 conditions, I just -- I don't go out. We're lucky enough to be
17 able to have that (indiscernible). We have participated in the
18 Bering Sea for the past few years as far as winter fisheries.

19 Ice accumulation, I don't like it, nobody likes it. I
20 haven't had a whole lot of experience with it for the last ten
21 years. When I was a fisherman, I never liked ice. It made the
22 job difficult, hard. Makes you nervous. I mean, the boat rides
23 different. You don't want to see it on your gear. You don't want
24 to be traveling in it. It's just not a good deal. As a captain,
25 I try not to be in ice, and luckily, like I've said, I've got the

1 opportunity to be based around Kodiak and pick and choose the days
2 that we go out. So I try to avoid the icing conditions at all
3 costs.

4 Q. So you mentioned something about how it feels like it rides
5 differently. Could you describe that to us? How does it ride
6 differently when icing accumulates?

7 A. When icing accumulates, your boat's slower responsive. It's
8 got side-to-side roll, front-to-back roll of the boat, depending
9 on the accumulation of the ice of the vessels. I've only worked
10 on two vessels in my fishing career. As I said earlier, as the
11 *Silver Spray* was a big vessel, it took a lot of ice to accumulate
12 on that vessel before you could just feel the heaviness, the slow
13 response time for the vessel.

14 Q. Okay, and so to jump you back to when you made the decision
15 to seek shelter the morning of the 31st, can you describe to the
16 best of your recollection how that icing formed? You mentioned
17 the rails, but was it even, or was it one-sided? How was that?

18 A. When we started accumulating it that day, it was one-sided.
19 The ice that we did accumulate was on the starboard bow, which
20 would be the northwest side, and the starboard rail, off on our
21 pots, on the starboard side. We had no ice on our port side.

22 Q. Okay. So I'd like to take you back to that timeframe, that
23 same day, leading up to the accident of the *Scandies Rose*. Were
24 you guys able to hear things throughout the day on VHF?

25 A. We would pick up a little bit of weather, but I tried to tune

1 in to the weather there when we were headed south of the island.
2 We could pick up the weather forecast and the channels. Did I
3 hear anything on the VHF lines? We leave one on (indiscernible)
4 at all times, and no, I don't recall hearing anything on VHF, as
5 far as (indiscernible) wise.

6 Q. Okay. Did you -- did you or any of your crewmembers, to the
7 best of your recollection, because, you know, they're not here to
8 answer themselves, but did they try and reach out to other vessels
9 to find out what the weather was doing in those locations?

10 A. No.

11 Q. Did you hear the *Scandies Rose* mayday call?

12 A. I did not. I was not on watch. Like I said, David McDonald
13 was, and I questioned him to any knowledge of a mayday call,
14 because I was in shock that we didn't hear one. But there was no
15 -- we did not hear a VHF mayday call. I did not, and the person
16 on watch did not hear a VHF mayday call.

17 Q. Okay. Did you or did Mr. McDonald, to the best of your
18 knowledge, hear the Coast Guard trying to hail the *Ruff N Reddy*?

19 A. No, we did not.

20 Q. Okay, so just to be clear, the first time you guys heard
21 about the *Scandies Rose* being in distress was when you got a
22 satellite phone call from your dispatch, is that correct?

23 A. Correct.

24 Q. Okay. Could you describe to the best of your recollection
25 what that conversation went like? What did you hear? What did

1 they say?

2 A. They asked if we had heard any distress -- I believe they
3 asked if we heard any distress calls. I did not. They informed
4 me that the *Scandies Rose* was in distress approximately 27 to 28
5 miles away from us at Sutwik Island. They asked what -- I think
6 they asked what the weather conditions were onsite, because I had
7 -- they asked if we were willing to assist in any way possible,
8 and I declined. I was asked to keep a sharp lookout and report to
9 the Coast Guard if I heard or saw anything to do with this
10 accident.

11 Q. Okay. And when did you end up -- when did -- when did you
12 pull anchor? When did the *Ruff N Reddy* pull anchor and continue
13 its transit?

14 A. We pulled anchor -- we left Nakchamik Island at about
15 approximately 11:00 a.m., I believe, on the 1st of January 2020,
16 and continued transit. My times might be a little rough there,
17 but it was approximately around there.

18 Q. Okay. Captain, just to jump us back a little bit. I know
19 you said that, you know, you avoid ice accumulation or having to
20 be in icing conditions at all costs. When you have had to be in
21 those situations, what are some things as a vessel captain that
22 you could do to mitigate the negative impact of icing?

23 A. We slow our speed down. We break the ice, per se. We shovel
24 ice, we break ice off the rails, dispose of any ice that is
25 accumulating off the vessel is about all you can do. If you're

1 in -- if you need to slow down and jog or go with the weather to
2 clear the ice off the boat before it accumulates too much, we'll
3 jog with the weather, so we're in the lee of the storm and clear
4 the accumulation of ice off the boat before continuing.

5 Q. Would you ever consider throwing your pots off to get rid of
6 weight?

7 A. I have never been in that position, but yes, I would consider
8 it. Any -- by any means necessary, yes.

9 Q. Okay. Captain, thank you so much for your time.

10 CDR DENNY: Captain Callaghan, those are all the questions I
11 have at this point.

12 CAPT CALLAGHAN: Thank you, Commander Denny.

13 We'll now go to Lieutenant Commander Comerford. He's got a
14 couple questions, additional questions for you, sir.

15 BY LCDR COMERFORD:

16 Q. Good morning, Captain. Thanks for your time today. My first
17 question -- I'd like to pull up Exhibit CG 001, page 11. In the
18 upper-right corner, this is a photo that we were able to find of
19 the *Ruff N Reddy*. Could you just take a moment and describe the
20 general type of fishing vessel you have and a little bit about
21 your deck operations for fishing?

22 A. The operations that we have?

23 Q. Like, generally speaking, how are you loading pots, stacking
24 pots, the layout of your deck, in general terms, please?

25 A. The layout of our deck -- I guess I don't really understand

1 the question, how we load pots and the layout of our deck. We're
2 a house-forward boat. Our layout of the deck -- I don't
3 understand your questioning there of how we load pots.

4 Q. No worries. Maybe for clarification, are you stacking pots
5 up on the stern or down on the center deck area? Where are the
6 stacks?

7 A. We begin -- we begin stacking at the stern first. We stack
8 forward up to, normally, our crab pot launcher. I call it a crab
9 pot launcher, but our pot launcher there, we stack them up right,
10 we usually get anywhere from 35 to 40 pots on the back deck. And
11 then we continue the, what we call, haystack where we start
12 stacking them flat on top of those vertical pots that we stacked
13 horizontal there.

14 Q. With being a house-forward boat, do you see -- when you're in
15 icing conditions, do you typically see a lot of ice accumulation
16 on the pots?

17 A. Typically, no. Like I said, since I've ran the *Ruff N Reddy*,
18 I've been extremely fortunate to pick and choose my days of
19 fishing, so I have only had a very minimal of experience with
20 icing conditions on the *Ruff N Reddy*. We're able to be
21 home-ported close enough that we can skip those days.

22 Q. And I apologize, it's kind of hard for me to visualize the
23 boat a little bit. When you have all the -- say the maximum
24 number of pots on your boat, are there ways that the crew are
25 about -- are able to move about the deck, and how would they do

1 that in general terms?

2 A. Yes, we keep our stack of gear -- we'll fill the deck up,
3 depending on the fishery that we're going with. There's some
4 fisheries that we're only allowed -- like a steak (ph.) cod
5 season, we're only allowed to have 60 pots for that fishery. So
6 we keep everything behind our pot launcher and our sorting table
7 clear, so the guys have a lot of room on the front deck to move
8 about and deal with the gear.

9 If we're doing a federal season, and we haul out our -- I
10 never put the maximum amount of gear on the boat that we're rated
11 for. The most I've had on was, I believe, 100 pots at one time.
12 You have mobility on deck, and you still keep your workspaces
13 open. And they have mobility down on the deck level behind the
14 house, up to the pot launcher, and then the rest of the pots, as
15 we're setting gear or dealing with them, are up above on higher
16 level that they use for the -- they go up with the life vests and
17 maneuver around the pots on the top there. The pictures that you
18 have of our vessel there, that's during a longline operation,
19 where we would not be using pots.

20 Q. Then for your vessel, have you put -- updated your vessel or
21 installed any tools on your vessel to monitor the deck of the
22 vessel for operations or icing conditions, considering that you're
23 a house-forward vessel?

24 A. We are equipped with back deck cameras and speakers and audio
25 device, (indiscernible), et cetera. And we're booked with cameras

1 that I have a monitor screen in my wheelhouse on the starboard
2 side that I can watch the back deck through those monitors' live
3 feed.

4 Q. And then, for managing ice, when you are in those situations
5 that you feel it necessary to manage ice, you mentioned shovels.
6 Are there other tools that you use on a -- on those basis to clear
7 ice from the vessel other than shovels?

8 A. Yes. On, let's say, the back deck, for the wooden surfaces,
9 we have ice scrapers. There's the flat, metal, equipped with
10 basically a shovel handle that you can scrape the ice off. We use
11 that on the back deck. We have big rubber mallets -- we call them
12 ice breakers; I don't know the technical term, but they're big
13 rubber sledgehammers that we can break ice apart with, and then
14 the shovels that we shovel it over with. But those are our main
15 two, two utensils are the big rubber mallets that we can hit the
16 ice with to break it up with, and then we shovel it overboard.

17 Q. In your experiences, do those seem fairly adequate, or have
18 you researched new tools for ice breaking? I'm just curious your
19 perspective, if you've found other things that you considered for
20 ice breaking.

21 A. No, we've tried multiple things. I mean, back when I was on
22 a bigger crab boat, and we were in icing conditions more often in
23 the winter, we tried electric jackhammers. They weren't very
24 well. The best tools that we were able to use were those rubber
25 mallets to be able to break ice off the boat. They seemed to do a

1 pretty efficient job.

2 Q. All right. Now, slightly shifting gears here, back on that
3 voyage that Commander Denny was referencing earlier today, did you
4 feel like you could seek shelter in Sutwik Island, or did you
5 consider seeking shelter at Sutwik Island during that voyage?

6 A. I had considered it. When we were passing by Sutwik Island,
7 the weather was still very, very "cooperatible." The temperatures
8 had not dropped down to freezing spray point. Weather was still,
9 I would say, 20 to 25 north, northwest. No, I did not consider
10 Sutwik. I knew it was an option if we didn't travel far enough
11 before the storm hit, but when I arrived at Sutwik, I knew that we
12 had approximately four hours to make it to the next point of
13 shelter if we needed to. And at the time of passing by Sutwik, it
14 was very moderate weather conditions with no freezing spray. So
15 we continued on.

16 Q. Have you ever in your history used Sutwik Island as a
17 shelter, either temporary or long-term?

18 A. No, I have not.

19 Q. Whether from your experiences of looking at the charts or
20 from talking to other mariners, any perspective you have on the
21 quality of shelter from Sutwik Island?

22 A. I have talked to a few people that have taken shelter behind
23 Sutwik or used that for an anchorage spot, and yes, I studied the
24 charts, and it looked like it was an adequate, adequate place to
25 get in the lee of the weather.

1 Q. Thank you. Last question from me is your experiences with
2 weather from more of a training standpoint. Have you received
3 formal, informal, or even researched YouTube videos, user guides,
4 mentoring from cohorts on weather interpretation or weather
5 preparation for trips?

6 A. Have I received any training on that?

7 Q. Yes.

8 A. Is that what you're asking? I'm sorry.

9 Q. Yes, have you received training with regards to weather for
10 your voyage planning or mitigation of weather?

11 A. No, I have never received training. Everything I've come
12 from is hands-on experience through my years of fishing.

13 Q. And more specifically, you mentioned using the Windy app.
14 Have you sought any tutorials or guides for accessing and using
15 the Windy app functionalities?

16 A. No, no tutorials. I mean, they show you how to use it when I
17 first downloaded the app, and that -- no, just a self-explanation
18 when I downloaded that app was all that I've had for that app.

19 Q. And in your opinion, that self-tutorial or that initial
20 tutorial seemed fairly adequate to get you started in
21 understanding the Windy app?

22 A. Yes, very, very simple to use.

23 Q. Thank you for your time this morning, Captain.

24 LCDR COMERFORD: Captain Callaghan, that's all the questions
25 I have.

1 CAPT CALLAGHAN: Thank you. Thank you, Lieutenant Commander
2 Comerford.

3 BY CAPT CALLAGHAN:

4 Q. Captain DeLaurentis, do you have any -- had you had any
5 relationship with Captain Cobban at all?

6 A. Did I have relationship? We didn't know each other
7 personally. We knew who each other were through -- I had known
8 Gary, not on a personal level, but we knew who each other were.
9 One of his previous jobs, when he ran the (indiscernible), he was
10 friends, per se, fishing friends with several people that I worked
11 for, and we knew each other on a first-name basis basically, when
12 we passed by the (indiscernible). But no personal relations, no.

13 Q. Okay. Was it -- did you have any common practice with him or
14 any other captains for, you know, radio checks with each other,
15 how weather was, what you might be experiencing where you were
16 fishing?

17 A. No, not at that time.

18 Q. No? Is it common practice for folks in the industry to call
19 ahead, say, before they leave port, to vessels that are transiting
20 the same route?

21 A. Yes, it is common practice, yes.

22 Q. At any time during your transit, from the time you left
23 Kodiak, had anyone contacted you to check any conditions that you
24 had been experiencing throughout your transit?

25 A. No, not to do a weather check, no.

1 Q. Okay. Thank you very much, sir.

2 CAPT CALLAGHAN: I'm going to pass over questions to my
3 colleague over at the National Transportation Safety Board,
4 Mr. Barnum.

5 BY MR. BARNUM:

6 Q. Thank you, Captain DeLaurentis. Great testimony, a lot of
7 great information; thank you for that. I just have one follow-up
8 question on your stability instructions. In your vessel's -- the
9 *Ruff N Reddy* vessel's stability instructions, does it specifically
10 state how much icing that you can accumulate on board and still
11 remain stable?

12 A. You know, to my best recollection, no, it doesn't specify,
13 (indiscernible) specifies icing conditions. There's no set layout
14 of the accumulation of ice.

15 Q. Do you know what the regulations allow for when calculating
16 the accumulated ice?

17 A. What the regulations -- could you explain that?

18 Q. Do you know how many inches the regulations allow for when
19 calculating stability (indiscernible)?

20 A. Not off hand without looking at my stability report directly,
21 which has all the (indiscernible).

22 Q. Okay. Did I -- did I understand you correctly, did you
23 mention that in your stability instructions, it doesn't
24 specifically list how much icing that you can carry?

25 A. No, it doesn't to my best recollection, no. It just reports

1 it under general icing conditions.

2 Q. All right. Thank you, Captain.

3 MR. BARNUM: That's all the questions I have. My colleague,
4 Paul Suffern, has some questions.

5 BY MR. SUFFERN:

6 Q. Thank you, Captain DeLaurentis, for your time today and your
7 testimony. Yeah, I've just got a couple of follow-up questions.
8 You had mentioned that you used the Windy app for departure. Do
9 you use -- are you able to use it while underway, or do you check
10 other weather sources while underway, and only when you're within
11 port do you check the Windy app?

12 A. We do not have onboard satellite for internet or anything
13 like that. I have a weather app on my -- through my watchdog, my
14 BMS, I can get a weather report. But no, I check it before I
15 leave town. Usually we're not out -- I'll check the forecast for
16 a few days before I leave port, and then, if I'm in range of VHF,
17 I pick up the NOAA weather report on the VHF weather channels.
18 But no, I do not use Windy while in transit. I will call people
19 with Windy and other vessel captains and ask the weather onsite or
20 if they've gotten the forecast.

21 Q. Okay, and for the particular voyage around December 29th
22 through January 1st, did you call any captains during that voyage
23 and ask them what the Windy was showing for that timeframe?

24 A. I didn't ask what the Windy was showing for that timeframe.
25 No, I did not. I asked for a weather forecast on the -- towards

1 -- further out ahead of us, Falls Pass area, Bering Sea side. But
2 not for our general location, no, I did not.

3 Q. Okay. Lieutenant McPhillips, could you bring up Exhibit 026,
4 26? And, Captain, this will just be a picture, I'm sure, that's
5 familiar to you, using the Windy app there. On the right side of
6 the screen, or the right side of the application, there are
7 several different layers, including wind, wind gusts, temperature,
8 waves. Do you ever click those other layers over there to view
9 information? And if so, which ones do you click?

10 A. I do the wind gusts because that gives -- in my mind, shows
11 me the maximum that the wind could be. I usually find it being a
12 good average between what it's calling for onscreen for the wind
13 and the wind gusts. I kind of take an average of that. So if
14 it's saying steady wind of 30, gusts of 40, I kind of figure it's
15 going to be 35- to 40-knot winds. I do use the sea heights
16 calculation so it gives me the sea heights for the general area
17 that I'm looking at. Those are the two main ones that I look at.

18 Q. Okay, and have you ever clicked on the weather warnings tab
19 there, kind of towards the bottom right-hand portion of that list?

20 A. You know, I clicked on probably every icon on there, but I
21 don't use it. Like I said, the two that I really look for, the
22 sea heights and the wind, the wind speed and wind gusts.

23 Q. Okay. Thank you, Lieutenant McPhillips. Could you now bring
24 up Exhibit 055, 55, please? Captain DeLaurentis, this is a
25 experimental freezing spray site that the National Weather Service

1 has developed, and it shows accumulation per hour over, you know,
2 the various ranges there from Southeast Alaska all the way to the
3 Bering Sea, out 12 hours, 24 and 36 hours out. Would information
4 like this and accumulation rate be something helpful for you, as a
5 captain, to view?

6 A. Oh, I bet it could be useful, yes. I've never used anything
7 like that, but yes, any tool that's in our hands would be useful.
8 Like I said, we're not out at sea very long, so, I mean, the tools
9 that we do have at hand, like I said, Windy and just the regular
10 weather forecast as far as temperatures and NOAA weather. I've
11 never used anything like that, but yes, I can see where that'd be
12 useful if you were in an area.

13 Q. Okay, thank you, Captain DeLaurentis.

14 MR. SUFFERN: That's all the questions I have for right now.
15 Thank you.

16 CAPT CALLAGHAN: Thank you, Captain DeLaurentis. At this
17 time, I'm going to pass it, see if there's any questions from our
18 counsel representing the two survivors.

19 Mr. Stacey?

20 MR. STACEY: Thank you, Captain, and good morning, Captain
21 DeLaurentis. Thank you for your testimony. We have no questions
22 for you, sir.

23 CAPT CALLAGHAN: All right. Thank you, Mr. Stacey.

24 At this time, I'll shift over to counsel representing the
25 vessel owners, Mr. Barcott.

1 MR. BARCOTT: Thank you, Captain. I do have a few questions
2 for Captain DeLaurentis.

3 BY MR. BARCOTT:

4 Q. Captain, I'm Mike Barcott. I represent *Scandies Rose*. Good
5 morning.

6 A. Good morning.

7 Q. The fishery that you were headed out to partake in, was that
8 the Bering Sea/Aleutian Island cod fishery?

9 A. Yes, it was.

10 Q. Okay. Had you fished that fishery the year before?

11 A. Yes.

12 Q. And your vessel is over 60 feet, right?

13 A. Correct.

14 Q. What is the length of your vessel, by the way?

15 A. 80-foot overall by 30 feet wide. And to jump back there, I
16 didn't fish the winter the year before. I had fished the fall
17 season the year before.

18 Q. Okay.

19 A. In the Bering Sea. I had fished the Pacific side of the
20 Kodiak water federal fishery the year previous.

21 Q. Okay. And the way that fishery is regulated, there is a
22 quota of poundage that is allowable, and when that quota is
23 caught, the fishery shuts down, right?

24 A. Correct.

25 Q. Okay. Do you remember how long that fishery stayed open,

1 2020, the season you were headed out for?

2 A. In 2020, I believe it was shut down right around the 16th of
3 January.

4 Q. Right. Do you happen to know approximately what the date was
5 the year before when it was shut down?

6 A. I believe it was earlier -- I don't recall because I didn't
7 partake in that fishery, so I'm not real keen on that knowledge,
8 sorry.

9 Q. All right.

10 A. I know it was a short season. We were looking to a two-week
11 season or somewhere around that range.

12 Q. Right, so when you were headed out, you were thinking this is
13 going to be -- we're going have a couple weeks fishing, right?

14 A. Correct.

15 Q. Okay. I want to talk about icing for a minute. As I
16 understand it, your stability study allows you to carry 81 pots in
17 icing conditions. When would you consider -- as ice is
18 accumulating on your stack, when would you say, boys, it's time to
19 go break the ice; let's get out there and break it off? How much
20 ice does that there have to be for you to have your guys go break
21 ice?

22 A. In my mind, anything that's breakable. I mean, I would say
23 accumulation of anything more than a couple of inches. If it's
24 breakable with a sledgehammer, or you're able to shovel it easily,
25 hard to say that range and describe that well, but I would say a

1 few inches.

2 Q. Okay.

3 A. On the rails or deck level. Anything that's able to be
4 knocked off.

5 Q. Would you send your guys out to break ice if it was a
6 half-an-inch?

7 A. No, I would not.

8 Q. Okay, and when ice accumulates on your pots, does it
9 accumulate on your interior pots, the pots that are buried in the
10 stack?

11 A. Normally, it doesn't. I mean, and I have been in heavy icing
12 conditions in the years past when I was a -- just a deckhand. But
13 normally, no, it seems to be the surrounding pots. The interior
14 of the pots usually did not have accumulation on them. There
15 might be a little of spray, but usually the ice stops on the edge
16 of the boat, whatever was on the exterior.

17 Q. And on the pots that are on the exterior, does that ice
18 accumulate in the interior part of the pots, your shots of line,
19 your tunnels, and all of that?

20 A. Absolutely, yes.

21 Q. Okay. I'm just -- the *Silver Spray*. How big is the *Silver*
22 *Spray*?

23 A. The *Silver Spray* was 116 feet long by (indiscernible) feet
24 wide.

25 Q. House forward or house aft?

1 A. House forward.

2 Q. Okay. Thank you, Captain.

3 MR. BARCOTT: Those are all the questions I have.

4 CAPT CALLAGHAN: Thank you, Mr. Barcott.

5 And, Captain DeLaurentis, we have just a few more follow-on
6 questions.

7 Commander Denny?

8 BY CDR DENNY:

9 Q. Hi, Captain, again. So earlier in your testimony, you
10 mentioned that one of the ways that you could mitigate ice
11 accumulation, you mentioned the phrase jog. For the benefit of
12 the public, could you -- could you explain what you mean by that?
13 What does that mean?

14 A. Yes, when we -- we jog for multiple reasons, whether we're
15 taking a sleep time or shutting down for a day of work or bad
16 weather. Jogging is -- and we do it in calm weather also, just
17 depends on our circumstances. If we don't want to drift at sea
18 and have that time, then we'll jog. And that term is either we'll
19 jog directly into the weather and in a specific area or turn
20 around and go with the weather on our -- directly on our stern or
21 our bow, is how I used that term jog.

22 I believe how I used it before is you could jog with the
23 weather, again, a smooth ride where you're not taking waves. You
24 accommodate the speed where the waves are going with you at a
25 reasonable fashion and not breaking over your boat or bouncing off

1 your boat and spraying the boat. So if you were to jog with the
2 weather and be able to clear ice, or jog into the weather at a
3 reasonable speed where -- accommodate the speed so that you're not
4 taking waves crashing on your vessel, if that makes sense.

5 Q. It does, it actually provides a lot of clarity. Thank you
6 for that. I want to shift topics a little bit, and you mentioned
7 that you knew of Captain Cobban. Did you have any experience with
8 or have any professional interaction with any of the other
9 crewmembers that were on the *Scandies*?

10 A. His son that was on the *Scandies*, I had seen him around the
11 cannery quite often. He worked on another vessel with one of my
12 crewmembers.

13 Q. Okay. So you saw him around, but not enough to have an
14 impression of him as a fisherman. Or is that a fair statement or
15 not?

16 A. Very fair. I did not know him on a personal level as a
17 fisherman or a person.

18 Q. Okay, and did you -- did you have any work experience with
19 any other member of the *Scandies Rose* crew?

20 A. No, I did not.

21 Q. Okay. And I want you to jump back to when you were still in
22 Kodiak before the *Ruff N Reddy* departed. Where were you docked?

23 A. We were docked at Trident's dock on cannery row, the old
24 western plant.

25 Q. Could you see the *Scandies Rose*?

1 A. Yes, they were directly in front of us.

2 Q. Okay. Did you have any impressions of the vessel when you
3 were still in port? Did anything stick out in your mind about
4 either the way the crew was working or the pots were loaded,
5 anything at all?

6 A. Nothing that stood out. I know they were working hard to get
7 their gear. We were kind of working alongside of each other
8 trying to get our gear off the dock. It was snowy and a lot of
9 snow and cold and getting down there. And so we were kind of
10 accommodating working, getting our gear amongst their gear that
11 was stacked up in the cannery lot there. But nothing out of the
12 ordinary, no. They were -- they were working hard to get their
13 gear.

14 Q. Okay.

15 A. But nothing that stands out.

16 Q. Okay. Hold on one second, please.

17 A. Um-hum.

18 CDR DENNY: Captain DeLaurentis, thank you so much. I think
19 that's all the questions that I have at this time.

20 THE WITNESS: Okay.

21 CAPT CALLAGHAN: Captain DeLaurentis, Lieutenant Commander
22 Comerford's just got a couple questions for you as well, sir.

23 BY LCDR COMERFORD:

24 Q. Hi again, Captain. Over the last couple of years, have you
25 increased your landing of cod or increased your efforts for cod?

1 A. Have I increased my efforts? No, we -- I can't say we've
2 increased our efforts. If there's a season open, we're fishing
3 it. But work as hard as we can whenever we can, but no, I have
4 not increased our efforts. We acquired a Bering Sea permit so
5 that we could go over and widen our -- I don't know, just our
6 general area of operations. They have a bigger quota over there,
7 so that's about the only change in the last few years that we've
8 had is we acquired a Bering Sea permit to fish the Bering Sea
9 about three years ago. But we don't fish any harder or -- when
10 the season's open, we're fishing. That's all about all I can
11 answer for that, but we haven't increased our operations any, no.

12 Q. Have you heard discussion throughout the community or rumors
13 of rationalization of the cod fishery?

14 A. I have heard rumors of it, yes.

15 Q. Help give me a little bit of perspective. About how long
16 have those talks been circling through the community?

17 A. Oh, I would say ever since the rationalization of crab,
18 there's been rumors of someday there will be a rationalization of
19 the cod and the fishery. So I would say I've heard them for
20 approximately ten years. Or I've paid attention to them since
21 I've ran a vessel full-time. Since I've taken over the *Ruff N*
22 *Reddy* in 2009, I've kind of paid attention to those. So I'd say
23 in the past 10 years, I've heard quite a bit of talk of different
24 opinions on whether or not it should happen or is going to happen,
25 but lots of rumors. Last few years, it's been bumped up a little

1 bit, that they say they're getting closer to it.

2 Q. And you had mentioned approximately three years for the
3 Bering permit for cod, and you had seen a bigger quota in the
4 Bering. Did rationalization also -- or the thought of
5 rationalization also contribute to your decision to get the Bering
6 Sea permit?

7 A. No, not in my mind. It was a longer season. It just seemed
8 like a better opportunity, a longer-lasting season for us to
9 purchase that permit.

10 Q. Okay, thank you. And one last question, sir. What's about
11 the point in inches of ice that you find hammers or sledgehammers
12 to be effective, the rubber mallets or ice breakers?

13 A. I would say at least -- at least, if it's a steady
14 accumulation across, say, the bow, I would say it has to be at
15 least three inches before it's effective, otherwise you're just
16 kind of out there doing -- it's going to come off, but to get it
17 to break off and be efficient, I would say a few inches.

18 Q. And for clarification, so that's roughly, before three
19 inches, the tools that you have are not going to be as efficient
20 or as effective at knocking ice off. So above three inches is a
21 little bit more effective to -- or utilization of your people. Is
22 that -- is that another way to say it?

23 A. It is. I mean, if you get accumulation on your rails, at a
24 couple of inches, you can go knock that off easily. But it's kind
25 of -- it's like shoveling your sidewalk. If you have a quarter

1 inch of ice, you're not going to be out there and be able to
2 efficiently break the ice. It has to be two to three inches thick
3 before you can actually break it. So a few inches on the rail,
4 you can break easily. If you have a couple inches on your deck,
5 it'll break up easily. It's kind of, in my mind, seems useless
6 work anything below that; it's hard to remove.

7 Q. So if I were to say that the regulations right now for
8 fishing vessel stability operating in the Alaskan waters were
9 built on 1.3 inches, so 1.3 inches of ice on the horizontal
10 surfaces and only 0.65 inches on the vertical surfaces above the
11 waterline, would that be -- what would be your thoughts on that
12 related to your observations, Captain?

13 A. I would say that amount of ice would be very difficult to
14 clear efficiently.

15 Q. Does this number seem surprising to you?

16 A. Yes, it does.

17 Q. Thank you.

18 LCDR COMERFORD: Captain Callaghan, that's all the questions
19 I have.

20 CAPT CALLAGHAN: Thank you, Lieutenant Commander Comerford.
21 I just have one or two follow-up questions for you, sir.
22 Lieutenant McPhillips, can you bring up Exhibit 093, please?

23 BY CAPT CALLAGHAN:

24 Q. Captain DeLaurentis, I understand this is obviously a
25 different setup than your vessel and does not represent a picture

1 of the *Scandies Rose*, but just want to kind of have a picture here
2 representing some icing accumulation on pots. Based on your
3 experience and kind of what you talked about with regards to
4 concerns about breaking ice off pots, would icing like this cause
5 you any concern?

6 A. Yes.

7 Q. And would that be a point that you would -- you may take any
8 mitigation measures?

9 A. I would say if you have that amount of icing happening on
10 your pots, the rest of your vessel's probably getting quite a bit
11 of ice on it. So yes, I would probably mitigate that.

12 Q. Okay, sir. Thank you very much.

13 A. You, too.

14 Q. Sir, I greatly appreciate all your time, and I know we've
15 covered a lot of questions, but wanted to kind of just ask you,
16 based on your knowledge of the *Scandies Rose* and the incident, is
17 there anything that we may not have covered in our questions today
18 that you think we should have?

19 A. None that I can think of.

20 Q. Okay.

21 CAPT CALLAGHAN: Then moving on, sir. So I know you
22 mentioned that you didn't have a personal relationship with the
23 crew, but nevertheless, the loss of anyone in the fishing
24 community takes a toll on everybody, and for that, you know, on
25 behalf of the Board, we do want to recognize and send our

1 condolences -- any loss of a member of the fishing community is a
2 loss, nonetheless, and for that, we offer our condolences for your
3 shipmates out there.

4 Sir, again, want to thank you for your time today. Thank you
5 for joining us. At this point, you are now released as a witness
6 at this formal hearing. Thank you for your testimony and
7 cooperation. If I later determine that this Board needs
8 additional information from you, we will contact you directly. If
9 you have any questions about the investigation, you may contact us
10 through the investigation recorder, Lieutenant Ian McPhillips.

11 Thank you very much, sir.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 CAPT CALLAGHAN: It's now 0931. Our next witness is
15 currently scheduled to begin at 1015 this morning. If we are able
16 to begin sooner, we will update the time displayed on livestream.
17 At this time, this hearing will now go into recess.

18 (Off the record at 9:31 a.m.)

19 (On the record at 10:02 a.m.)

20 CAPT CALLAGHAN: Time is now 1002, and this hearing is now
21 back in session. We will now hear from Captain Joshua Songstad.

22 Mr. Songstad, Lieutenant McPhillips will now administer your
23 oath.

24 (Whereupon,

25

JOSHUA E. SONGSTAD

1 was called as a witness and, after being first duly sworn, was
2 examined and testified as follows:)

3 LT MCPHILLIPS: Please be seated. Please state your full
4 name and spell your last name.

5 THE WITNESS: Joshua Edward Songstad, S-o-n-g-s-t-a-d.

6 LT MCPHILLIPS: Please identify counsel or representative if
7 present.

8 THE WITNESS: No counsel or representative is present.

9 LT MCPHILLIPS: Please tell us, what is your current
10 employment and position?

11 THE WITNESS: Captain of commercial fishing vessel,
12 self-employed.

13 LT MCPHILLIPS: Thank you, Captain. Captain Callaghan will
14 now have follow-up questions for you.

15 CAPT CALLAGHAN: Morning, Captain Songstad. And so I first
16 want to thank you for joining us today, and for the record,
17 understand that you are currently underway, calling us via phone
18 today. So do want to mention that if for any reason that there's
19 an emergency on your end or anything that you need to address for
20 safety reasons on your end, please don't hesitate to let us know,
21 and we can work from there, sir.

22 THE WITNESS: Sounds good. I'll let you know.

23 CAPT CALLAGHAN: Sir, and obviously, if any technical
24 difficulties, if we do get dropped, and it's a matter of just the
25 call dropping, if you wouldn't mind attempting to call back in.

1 We'll take a recess, and we'll try and work through it with you,
2 sir. But I do want to make the best use of time, understanding
3 the challenges of the phone communications.

4 EXAMINATION OF JOSHUA E. SONGSTAD

5 BY CAPT CALLAGHAN:

6 Q. So, sir, can you tell us what your experience is as a
7 commercial fishing vessel captain?

8 A. Yeah. I guess fourth generation commercial fisherman,
9 working out of Puget Sound in Washington and all around the state
10 of Alaska. Been doing this since I was eight years old. Been
11 captain of several different types of vessels: seiners, gill
12 netters, and crab boats. (Indiscernible) since I was 16. So
13 about 30 years.

14 Q. Do you have any licenses, you know, Coast Guard licenses or
15 credentials for operating a commercial fishing vessel?

16 A. Yeah, I (indiscernible).

17 Q. I'm sorry, you broke up a little there, sir. Can you repeat?

18 A. I do (indiscernible).

19 Q. Sir, can you tell us what your background is or knowledge of
20 the *Scandies Rose* is?

21 A. I (indiscernible) on the *Scandies Rose* from 1998
22 (indiscernible).

23 Q. And so from -- can you repeat the last part, from what
24 period, the last time you were on board the *Scandies Rose*?

25 A. 2000 (indiscernible).

1 Q. Okay, sir. We're having a little bit of trouble hearing you.
2 You're just breaking in and out a little bit. So the last time
3 you were on --

4 A. 2000.

5 Q. 2000, thank you. And at that time, was there anywhere else
6 from the crew or Captain Cobban, were any of those crewmembers on
7 board at the time that you worked on board the *Scandies Rose*?

8 A. Negative. Not (indiscernible) for him, and I knew
9 (indiscernible) at that time.

10 Q. Okay, so not at the time that you worked on the *Scandies*
11 *Rose*, correct?

12 A. Yeah, the people that were involved in the incident that
13 we're discussing at this moment, I have worked (indiscernible)
14 none of them.

15 Q. Roger, you have not worked with any of them. Okay, sir,
16 because we're having some communication troubles, I really want to
17 try to take advantage of understanding -- can you talk to us about
18 where you were for the period of 26 December through 31 December
19 2019?

20 A. Yeah, let me pull my notes out here so (indiscernible)
21 points. I arrived (indiscernible) Kodiak on the 28th of December.
22 (Indiscernible) and heading for (indiscernible) on the 29th of
23 December. Arrived in Dutch Harbor on the 1st of January.

24 Q. Okay, can you tell us where you were located -- like, when
25 you were in Kodiak, where about you were when you were in Kodiak?

1 A. (Indiscernible) head up into a stall (indiscernible) working.
2 So when I arrived, the boat was in the stall, but once I arrived,
3 I moved the boat to the city dock to get groceries loaded, water,
4 things like that, to prepare for the trip.

5 Q. Okay, and at any point, had you seen the *Scandies Rose* at any
6 point while you were in Kodiak?

7 A. I saw the *Scandies Rose* as we were departing Kodiak. We were
8 passing by (indiscernible).

9 Q. I'm sorry, sir. Can you repeat one more time when you saw
10 them as you were departing?

11 A. Yeah, saw the *Scandies Rose* as we were departing on the 29th
12 at approximately 2000 hours.

13 Q. At approximately 2000 hours, is that correct?

14 A. Correct.

15 Q. And what was your basic observation as you passed by the
16 *Scandies Rose*?

17 A. As we drove by the *Scandies Rose*, myself and one of my
18 crewmates in the wheelhouse, we both worked on the boat together
19 at the same time. And we looked at the boat, and we both looked
20 at each other and said at the same time, that boat looks heavy
21 right now. Rub rails were practically in the water. The stack of
22 pots, we knew (indiscernible) pots to us. (Indiscernible) years
23 that we knew what that looked like.

24 Q. Okay. Sir, the last I got that you and one of the
25 crewmembers had said that boat looks heavy.

1 CAPT CALLAGHAN: If you don't mind, because we're having some
2 trouble, I'm going to call a quick two-minute recess just to see
3 if we can check comms with you to see if we can just get it a
4 little more clear. And then we'll come back on.

5 THE WITNESS: Yeah, let me try and call you -- let me make
6 sure I call you from a different sat phone.

7 CAPT CALLAGHAN: That'd be great.

8 So we're now going to go to a -- it's now 1011; we'll go to a
9 few minute recess here.

10 THE WITNESS: Okay.

11 (Off the record at 10:11 a.m.)

12 (On the record at 10:14 a.m.)

13 CAPT CALLAGHAN: The time is 1014. We're back in session.

14 BY CAPT CALLAGHAN:

15 Q. Mr. Songstad, sorry about that, and thank you for hanging
16 with us and trying something different so we can get some better
17 communications here. Appreciate that.

18 A. Yeah, you guys hearing me okay, now?

19 Q. Much better, sir, much better.

20 A. Okay.

21 Q. So just want to go back, we were talking about your outbound
22 transit and observations. Can you just repeat that for us?

23 A. Yeah. So as we were departing Kodiak in route for Dutch
24 Harbor, approximately 2000 hours on the 29th, we passed by Ocean
25 Beauty where the *Scandies Rose* was tied up. It was myself in the

1 wheelhouse driving, and one of my crewmembers on the other side
2 who had also worked on the *Scandies Rose* with me, we both looked
3 at the boat as we drove by and looked at each other and agreed
4 that the boat looked heavy, i.e. overloaded. Estimated about 198
5 pods on board, and the rub rails were sitting lower to the water
6 than -- than we thought it should be sitting at the dock, given
7 the current weather conditions that we knew that were coming up.

8 Q. Okay, and during your time on board, so is that observation
9 an estimate of number of pots based on your previous time on
10 board, or just from being around the vessel in the past?

11 A. Probably a combination of both. Being on board the boat,
12 though, I've taken that stack on and off that pot -- that boat
13 enough times to know what that load looks like. You know, it was
14 -- it was essentially filled up as much as it could be to still
15 have an operational deck to be able to set the pots without having
16 a top spine on it, which would have given it a 208-pot limit. But
17 the spine was not present. But that was (indiscernible) 198 pots.

18 Q. Okay, thank you. And as far as the observation, you say
19 looked heavy. Had that been a condition, you know, had you
20 ever -- when you were on board the vessel, is that something you
21 experienced when you had operated on board that vessel in the
22 past?

23 A. Yeah, we would fish with actually more gear than that aboard
24 the vessel several times during king crab over the years. And
25 that wasn't an uncommon load to take out for (indiscernible)

1 loads, given the time of year. There was no -- very little to no
2 threat of icing conditions. However, you know, it's hard to
3 speculate what it looks like from the outside when you're sitting
4 on the boat also.

5 So, you know, I couldn't tell you -- I was just a deckhand at
6 the time, so I couldn't tell you exactly how much fuel was on
7 board at the time that I was actually working on the boat, to tell
8 you -- you know, and I don't know what gear he had on the boat
9 before he left Kodiak either, so -- but it looked like, you know,
10 the load of pots was similar to what I was used to fishing with
11 when I was on that boat.

12 Q. Okay, no, and I appreciate that clarification. And so, the
13 observation that it looked overloaded, was that based on other
14 conditions that you were considering at the time?

15 A. It just looked a little more squat in the water than I would
16 have expected to see at the time. I would have -- I was surprised
17 to see the rub rail underwater. I had -- I couldn't recall
18 previously having seen that before.

19 Q. Okay, and as far as whether -- and you said you were leaving,
20 but had you noted whether or not the *Scandies Rose* was making
21 preparations to leave at that point?

22 A. Yeah, I had heard that they were leaving town right behind
23 us, and we were in a rush to get out ahead of the storm because we
24 knew it was going to get bad. It was going to get cold and
25 potentially heavy freezing spray, so we wanted to get out ahead of

1 it. So we didn't hesitate to -- we didn't stick around town to do
2 extra projects. We just loaded up our groceries and left town.

3 Q. Okay, so you said you got underway as soon as you could. And
4 where were you basing your weather forecast off of?

5 A. The weather forecasting came from the NOAA, and also from the
6 Windy app, which is, at times, more accurate.

7 Q. So you're saying it's more accurate from your experience than
8 the NOAA forecasting center?

9 A. That's correct.

10 Q. Thank you, sir. And then had you had any communication with
11 anyone on board the vessel prior to your transit or as you
12 observed the vessel at the pier there?

13 A. No, no communication directly with anybody aboard that
14 vessel. My crew had run into the *Scandies* crew at Kodiak Marine
15 while they were picking up gloves and raingear. I think that's
16 where they had picked up the information that they were going to
17 be leaving town shortly also.

18 Q. Okay, and so you had been on the *Scandies Rose*, and, you
19 know, it's your observation that the vessel was sitting pretty
20 heavy. Did it cause enough concern for you to reach out to anyone
21 on board the vessel, to kind of check in and relay that to them?

22 A. No, no. I mean, you know, that's a decision that the skipper
23 has to make for himself. He's the only person to make that call.
24 You know, that's not my -- I would feel -- I would be overstepping
25 my bounds if I did that, I believe. That's not a call that I

1 should be making to somebody. That's up to the skipper of the
2 vessel.

3 Q. Appreciate that. And you had previously mentioned that,
4 during your time on *Scandies Rose*, you hadn't worked with any of
5 the crewmembers that were on board. But from that time on, any of
6 the crewmembers on the *Scandies Rose* or Captain Cobban, ever
7 worked with them in the past or had contact with them around the
8 fishing industry?

9 A. No. No, I hadn't. I actually hadn't had any contact with
10 anybody with the exception of Gary Cobban.

11 Q. Okay, and what was your -- what kind of contact? Was it kind
12 of a casual relationship with Captain Cobban, or what kind of
13 relationship was that?

14 A. Yeah, acquaintances, you know. We work in the same industry,
15 you know, so we crossed paths quite often over the years.

16 Q. And so, obviously, you said kind of crossed paths over the
17 years and a lot of, you know, talk amongst industry. Can you give
18 us a general sense of the type of reputation that Captain Cobban
19 had across the industry as a captain and a fisherman?

20 A. Yeah, I mean, I guess he was -- he had been around a long
21 time. He had also grown up in the fishing industry as well as I
22 did. So, you know, he was well-known, well-liked, good natured,
23 good hearted, a bit of a storyteller. But I think the general
24 consensus was that he was -- he was respected, well-respected
25 within the industry.

1 Q. Okay, thank you for that. I'm going to shift a little, go
2 back to your time on the *Scandies Rose*. And can you tell us what
3 your position was when you were on board the *Scandies Rose*?

4 A. I was a deckhand.

5 Q. Okay, and at that time, what were your general observances of
6 the vessel itself?

7 A. The vessel itself was in good shape. There was a few issues
8 with some of the older steel in the starboard void area that we
9 had to address several times over the years while I was aboard
10 that vessel. And also in the area with -- they call the forward
11 lazarette, which is a dry storage area that's up below the
12 forepeak. There was -- there was occasional issues up there also
13 with fractures in the (indiscernible) from the forward tank.

14 Q. Okay, sir. And unfortunately, because we're on the phone, we
15 can't really work through exhibits with you. But can you try and
16 help us understand a little more about that space between what
17 you're calling the lazarette there, the forward lazarette, and the
18 adjoining forward tank?

19 A. Sure. So working forward to aft, you've got the bow area,
20 which is the forepeak, which is the main level, main deck level,
21 up in the bow area, which is where tools are kept, you know,
22 supplies and things like that, where the bait freezer's located.
23 Underneath that area is an open dry area which was used to
24 store -- where the hydraulic pumps were kept and where the extra
25 line for the pots was kept and buoys and just general storage for

1 the vessel. It was the only place there was real storage for
2 anything else on the boat was that area, so we always referred to
3 it as the forward laz -- some people call it the hydraulic room or
4 dry storage -- but that was located under the bow, forward peak
5 area. And that space took up the whole bow area, below the
6 waterline, up to the forward tank, which would be the number one
7 fish hold.

8 Q. Okay, so essentially, the aft bulkhead of that space shared
9 the forward bulkhead of the forward fish hold, is that correct?

10 A. That's correct.

11 Q. And so, you mentioned there's some issues there. Can you
12 talk about, now that we've kind of established the location, tell
13 us what you had observed during that time, that you described to
14 as some issues between those spaces?

15 A. So, over the years while I was on the boat, and then even
16 more so after I had left the *Scandies Rose*, but I still kept good,
17 close contact with the crewmembers and with Lafe (ph.), who owned
18 the vessel at the time; we would tie up together quite often. But
19 from the time I was on that boat and for years past, that bulkhead
20 that shared that space between the forward lazarette and the
21 number one fish tank, the welds would fail occasionally in certain
22 areas. Nothing overly catastrophic, but enough for water to be
23 seeping in if there was -- if that tank was pressed, meaning full
24 of water. So that would leak in, so you would have to go and pump
25 that tank down. You know, put a fresh patch of weld across the

1 crack or put an angle iron across it and weld that up to secure
2 that area.

3 Q. Okay, and at the time that you left the vessel, I guess
4 sometime around 2000, had that still been an ongoing issue?

5 A. Yes, yes, as far as I know, that was an ongoing issue for
6 years past. Even after rationalization, I want to say in 2005 and
7 maybe a little further -- I can't remember when they sold the
8 boat, but I do recall them working on it many times over the
9 years.

10 Q. Okay, so you had contact with the previous owner who had
11 indicated they had still been doing some of that work. But had
12 you had any contact with anyone on board following the sale of the
13 vessel that would indicate that that might still be a problem?

14 A. No, no, I had not. I had not.

15 Q. Okay, thank you. And so, to go back, you said there was also
16 some issues in that starboard void space. Can you tell us what
17 kind of issues you had experienced on board in that space?

18 A. Yeah, that space originally -- there was two hauling stations
19 on that boat when it was originally built, when it was the
20 *Enterprise*, which means that there was two pot launchers, two
21 davits, two crab blocks. And so, in that void area, there was a
22 lot of extra plumbing and hardware in that -- in that void space
23 to be able to supply both hauling stations that were once on that
24 side of the boat.

25 And so, over the years, as the -- as the metal got older and

1 (indiscernible) set in and things like that, a lot of the
2 (indiscernible) started rotting out. So the hydraulic fittings
3 that were supplying hydraulic fluid to the deck level that had to
4 go through the plate, there was a lot of (indiscernible) nature
5 happening. So there was a pretty consistent welding process of
6 fixing those, patching those spots up on the deck level and
7 underneath in that void area to keep those from rotting out, or
8 replacing the true fittings that had rotted out.

9 Q. Okay. Is any of that work, is any of that work below the
10 waterline?

11 A. You know, I think that void maybe goes right to the
12 waterline.

13 Q. Okay, and is that the same void that the -- the waste chutes,
14 do they run through that --

15 A. The shit chutes?

16 Q. Do they run through those?

17 A. Yeah.

18 Q. And so was the damage you're referring to in way of the inner
19 bulkheads, the side shell, or more in the area of these waste
20 chutes?

21 A. More of the top shell. Not the side shell, but the top, the
22 deck shell.

23 Q. And at any point when you were on board, doing -- conducting
24 any of that work in that void space, had you witnessed any
25 intrusion of water?

1 A. No, no, had not.

2 Q. Okay.

3 A. The only intrusion I did ever witness in that space, and it
4 happened several times over the years -- I want to say, you know,
5 I personally saw this happen twice, and I know that it happened
6 after I left the boat. The hydraulic lines that run in that void
7 had failed and would fill that void space up with hydraulic fluid
8 if the pumps were running.

9 Q. Okay, and can you tell us, you know, how -- what the access
10 points to that space were, how many access points there were, and
11 were they manholes, dog hatches?

12 A. There was two manholes. One was in the engine room, on the
13 aft side of that space, and then the forward side is in that
14 forward laz area. Two manholes, one on each end of that space.

15 Q. Were there any -- at the time that you worked on board, were
16 there any access points to that void from the deck itself?

17 A. Negative, not that I'm aware of. I don't think there was.

18 Q. Okay, fair enough, thank you. And then you had mentioned
19 that you knew at some point, there was an issue after you left.
20 How was that communicated to you? How were you made aware of an
21 issue after you had departed the vessel?

22 A. The crew and I kept in close contact. We would see each
23 other very regularly in town, either, you know, side-tied to each
24 other or in town at the restaurant or the bar or just in passing,
25 getting work done. But we stayed in pretty close contact.

1 Q. Okay, and then just one more time, with regards to since the
2 vessel had been sold to new ownership, had you had any
3 communication after that with anyone in that regard?

4 A. No -- well, when it was initially sold, one of the guys that
5 I worked with stayed aboard the boat to help guide the new owners
6 in the ins and outs of the boat. And so he stayed on board for a
7 very brief period. I think he just did it for maybe a tendering
8 season, a salmon tendering season, before he got off that boat, if
9 my memory is correct.

10 Q. Okay. I'm going to shift --

11 A. And so my communication -- go ahead.

12 Q. No, go ahead, sorry. I didn't mean to cut you off. I think
13 we've got a little delay, so my apologies.

14 A. No, it's fine. And so I had some communication with him
15 directly in that transition period. And he currently works for
16 me. He left the *Scandies Rose* and came to work for me.

17 Q. Okay. I'm going to shift a little to your -- so you were
18 outbound on the 29th, and you had gotten underway to try and get
19 ahead of a weather window. And can you talk to us about your
20 observations? What route did you take, and where were you heading
21 for that voyage?

22 A. We departed 2000 hours from the city dock headed north,
23 through North Channel, and then west through Whale Pass to come
24 down the Shelikof Strait heading south, southwest down Shelikof,
25 in route to Dutch Harbor. The conditions at the time were light

1 winds when we left Kodiak. The following day, wind started up,
2 notes here in my logbook that say (indiscernible) weather coming
3 up quickly. That's what I have written down here, and that was at
4 1330 on the 30th.

5 Q. Okay, and does it -- does it indicate an estimate of where
6 you were in Shelikof Strait at that point, just to give us a sense
7 in relation to --

8 A. I can give you my position, or -- (indiscernible).

9 Q. Yes, if you have it, that would be good. You know, for the
10 record, we can have that.

11 A. Okay, my position at that time was 57 degrees 04.00 North,
12 155 degrees 42.47 West.

13 Q. Thank you, sir. And so you said weather was coming up. Can
14 you tell us, from that point, what you observed during the rest of
15 your transit through this strait?

16 A. Yeah, sure. Weather started to come up, but we were
17 expecting that south wind. And as we, you know, as we traveled
18 further, further into our journey, the winds began to turn around
19 and come up to the more northerly end of direction.

20 Q. Okay, and after you left -- well, I guess before you left,
21 was there anyone that may have made the transit ahead of you that
22 you reached out to get any observations from them on what you
23 might expect in the coming days?

24 A. No, actually, I think I was one of the first ones to leave
25 town heading that direction. So I don't believe there was anybody

1 out in front of me.

2 Q. Following on that, was -- do you recall any conversations
3 with anyone who may have reached out to you along the same
4 regards, to see what observations you had during your voyage?

5 A. Negative, negative. Nope, hadn't talked to anybody.

6 Q. Okay, thank you. All right, sir. Going back to your
7 reference as you passed by the *Scandies* and made notation that she
8 looked a little heavy, aside from the rub rail, was there anything
9 that you could reference on the hull that could give you an
10 indication of maybe where she was in, I guess, in terms of draft?

11 A. I couldn't say with 100 percent certainty that there was
12 anything else that caught my attention other than the -- other
13 than the rub rail location in relationship to the waterline.

14 Q. Okay.

15 CAPT CALLAGHAN: Sir, I want to make the best use of the
16 time, particularly with your connection, and I appreciate you
17 being with us today and answering all these questions. But I want
18 to offer the opportunity to my colleagues at the National
19 Transportation Safety Board to ask a few questions, so I'm going
20 to pass it to Mr. Bart Barnum with the NTSB.

21 THE WITNESS: Okay.

22 BY MR. BARNUM:

23 Q. Hi, Captain Songstad. This is Bart Barnum, NTSB. Thanks for
24 talking to us. Follow up on -- following up on Captain
25 Callaghan's last question there regarding the rub rail on the

1 *Scandies Rose* and, as you said, the overloaded condition when you
2 sailed by there on the 29th.

3 I'm looking at a picture of her right now. I know you don't
4 have it, but I'm going to bring it up for the benefit of the
5 public. Lieutenant, can you please bring up Coast Guard Exhibit
6 14, page 1?

7 Captain Songstad, we're looking at a photo of the *Scandies*
8 *Rose* loaded with pots, appears to be underway, and looking at the
9 starboard side, there appears to be what is the rub rail. When
10 that rub rail was underwater, like you said, was it the entire rub
11 rail was underwater, or just the aft section, the forward section?

12 A. I believe it was the -- from mid-ship to the aft section.

13 Q. Okay. Mid-ship to aft. Was the starboard side or the port
14 side?

15 A. I was looking at the starboard side.

16 Q. Did the vessel look trim, or did it look like it was leaning
17 one way or the other?

18 A. It appeared to be trim at the time.

19 Q. Okay, and you stated before you'd never seen the vessel
20 sitting this low during your time on board or thereafter. When
21 the vessel was sitting that low, could you -- would you suspect
22 that there would be water on deck?

23 A. No, no, no, the deck boards were -- would have been probably
24 another 18 inches above that waterline.

25 Q. Understood.

1 A. That's an estimate.

2 Q. The deck boards, yeah. What about the false deck, or the
3 deck underneath it, the steel deck?

4 A. I believe the space between the deck boards and the false
5 deck is approximately eight inches.

6 Q. Okay. So it wouldn't have been up on the deck or underneath
7 the end?

8 A. No.

9 Q. Okay. Could you see the frame ports? Are they located above
10 the rub rail?

11 A. The frame ports are above the rub rail. Yes, I could see the
12 frame ports.

13 Q. So those were not submerged?

14 A. No, they were not.

15 Q. Okay, great. Thank you.

16 A. But they were close.

17 Q. Understood. How close? An inch or two? What would you
18 estimate?

19 A. I would say mid-ship, they were probably within six inches.

20 Q. Okay. Okay. Thank you, sir, for clarifying that. The
21 fishing vessel *Handler*, your vessel, Captain, how big is it? What
22 size is it?

23 A. I'm sorry, can you repeat the question?

24 Q. Yes, what size is your vessel, your fishing vessel?

25 A. It's 126 feet.

1 Q. Okay. How many tons, do you know?

2 A. 189.

3 Q. Okay. Very similar to the *Scandies Rose*?

4 A. Yes, very similar.

5 Q. Your journey to Dutch Harbor when you left on the 29th from
6 Kodiak through Whales Pass and Shelikof, did you experience any
7 icing?

8 A. I did not. No, I did not. I got out ahead of the weather
9 change enough to where I didn't -- I didn't experience any icing
10 at all during my journey.

11 Q. Okay. Did you have to seek shelter from the weather along
12 the route, or did you proceed the entire journey?

13 A. Proceeded the entire journey.

14 Q. Proceed, okay. All right. So back to icing a little bit.
15 You know, we were talking a lot about it for this hearing now, and
16 I just want to get your perspective on it and your experience in
17 it. You know, conditionally, when you do experience icing and you
18 have a load of pots on board and you're transiting -- you know,
19 kind of similar to the *Scandies*, what the *Scandies Rose* was doing
20 -- how much ice on your vessel do you feel comfortable with?

21 A. None. Any time you have gear -- any time you have gear on
22 board and you're accruing any kind of ice buildup, it's an
23 uncomfortable feeling for any Captain. The amount of weight that
24 it adds is -- it's surprisingly a large amount when it seems like
25 it's just a small amount on the surface areas. But when you start

1 adding up the surface areas, not only the frames of the pots, but
2 the rub and how (indiscernible) up or close up.

3 And then, also the added ice that you can't see because it's
4 closed up with ice, you know, the webbing and things like that.
5 So it happens very, very quickly, and it's -- sometimes you don't
6 notice it right away, especially when you're traveling at night.
7 You know, a quick, snappy roll can -- over an eight- or 12-hour
8 period can turn into a slightly slower roll without anyone really
9 noticing it.

10 Q. Would you say that ice accumulation is exponential and that,
11 once it starts, it progresses quickly?

12 A. Absolutely, absolutely, yeah.

13 Q. Okay. Your stability booklet for your vessel, does it
14 specifically spell out how much ice your vessel can carry and
15 accumulate?

16 A. No, it does not. The only thing it spells out to my
17 stability is under icing conditions to reduce the amount of pots
18 on board to a certain amount.

19 Q. Okay, and you know, what is that -- what's the percentage?
20 How many do you decrease when expecting to see icing conditions?

21 A. My boat's rated for 280 pots, and it reduces it to 190 pots.
22 But my pots are also substantially smaller than the pots that
23 we're using as examples for the *Scandies Rose*. The *Scandies Rose*
24 pots are seven-by-eights, seven-feet-by-eight-feet pots, and a lot
25 heavier. My pots are six-and-a-half-feet-by-six-and-a-half-feet.

1 They're about 200 pounds lighter, each pot.

2 Q. Great, thank you for that clarification. Okay. So your
3 stability instructions specifically spell out -- they tell you to
4 reduce the number of pots you carry in icing conditions. Do you
5 know and are you aware of how much ice that the regulations allow
6 for your stability instructions to account for?

7 A. No, no. I have -- I just recently looked through it again,
8 too, and there is -- it's an impossible number to actually -- I
9 mean, I didn't -- I didn't see any calculations on what it -- what
10 it was accounting for.

11 Q. Okay, great. Understood.

12 MR. BARNUM: Well, I appreciate your testimony, sir, and
13 that's all the questions I have right now. Captain Songstad, my
14 colleague here, Paul Suffern, has a couple follow-ups as well.

15 THE WITNESS: Okay.

16 BY MR. SUFFERN:

17 Q. Good morning, Captain Songstad. I appreciate your time. I
18 just have one or two follow-up questions with regards to the
19 weather sources that you mentioned there, the Windy and NOAA
20 information. On what device do you check the Windy app? Is that
21 something you check on the computer, your phone? What source do
22 you use that from?

23 A. I use it on my phone.

24 Q. Is that something you can only do while in port, and then
25 while you're underway you only have the VHF?

1 A. No, no, I have broadband aboard the vessel, so I have got an
2 internet connection at all times.

3 Q. Okay, so the Windy app on your phone is something you can
4 check while you're underway as well, if, you know, you see weather
5 changes --

6 A. Correct.

7 Q. Great. Now, as far as looking at the Windy app, I know we
8 don't have the possibility of bringing up exhibits to you, but on
9 the right side of the application, there are different tabs,
10 things for like wind and (indiscernible).

11 A. Yep.

12 Q. Do you check those other tabs on there, and if so, which ones
13 do you regularly check?

14 A. I use wind, wave height, and temperatures.

15 Q. Okay. As far as their --

16 A. This time of year.

17 Q. Okay, thank you. As far as their -- on the application, I
18 believe there's a weather warnings tab; have you ever clicked on
19 that part of the application?

20 A. I've set my notifications for areas that I'm interested in to
21 notify me if there's any warnings that are issued for those areas.

22 Q. Okay, and do you receive those warnings, you believe, in a
23 timely manner if something does pop up?

24 A. Yes.

25 Q. Okay, great.

1 MR. SUFFERN: Thank you for your time today, Captain. I
2 appreciate it. That's all the questions I have for right now.

3 CAPT CALLAGHAN: Thank you, sir.

4 And, Captain, I'm going to go ahead -- at this time, I'm
5 going to ask our parties in interest, starting with counsel from
6 two survivors, Mr. Stacey.

7 MR. STACEY: No questions, thank you.

8 CAPT CALLAGHAN: Thank you, Mr. Stacey.

9 I'll shift over now to counsel for the vessel owners,
10 Mr. Barcott.

11 MR. BARCOTT: Thank you, Captain.

12 BY MR. BARCOTT:

13 Q. Captain Songstad, this is Mike Barcott. I represent the
14 *Scandies Rose*. Can you hear me all right?

15 A. I can hear you fine, Mr. Barcott.

16 Q. Okay, good, thank you. So I want to talk for a minute about
17 the plumbing in the starboard void section. My understanding was
18 that at the time you were on -- my understanding is, at the time
19 you were on board the vessel, there were two pot launchers, is
20 that right?

21 A. No, no, the plumbing was still in place for those two
22 locations, but when the *Enterprise* was sold to Lafe back in the
23 '80s, they removed that second pot hauling station and just had
24 the one. But the plumbing was still there for that station, that
25 secondary station that was removed.

1 Q. Do you know if that was removed later on?

2 A. It -- as far as I know that it couldn't really be removed
3 because it was integrated with the forward hauling station.

4 Q. Okay. Was there a 12-ton crane on board when you served?

5 A. Oh, no. So that crane got put on after I left the vessel.

6 Q. I want to talk about access to that void, and we heard
7 testimony from a fellow from High Mark in Kodiak that underneath
8 the false deck on the wheel deck, there was a manhole access to
9 that void in 2019. Do you know anything about that manhole access
10 from the deck, but underneath the false deck?

11 A. No, I never saw that, but then again, I never had the deck
12 off in that area when I was working on the boat.

13 Q. Okay, okay.

14 A. So I was not aware of that manhole being there.

15 Q. Okay, that explains that, thank you. So talking about the
16 bulkhead, the forward bulkhead, my information is that that
17 bulkhead -- my information is that that bulkhead was repaired at
18 some substantial expense in 2012. Did you ever talk to any
19 crewmembers after 2012 about that bulkhead?

20 A. Negative, I did not.

21 Q. Got it. So I want to take you to the night of December 29th,
22 when you're going by the *Scandies Rose*. She's at the Ocean Beauty
23 dock as I understand it, right?

24 A. Correct.

25 Q. And it's about 8:00 for people who -- 8:00 in the evening on

1 a regular clock?

2 A. Correct.

3 Q. So at that time of night in Kodiak, it's pretty dark. Do
4 they have (indiscernible) that light up the boats?

5 A. It was actually fairly light still at 8:00. I would say, you
6 know, bordering on dusk.

7 Q. So did you first notice this rub rail being along --
8 underwater when you were basically alongside the boat?

9 A. That's correct, yeah. I was alongside the boat heading in a
10 northern direction, probably 50 yards off the boat.

11 Q. All right, and so we have had testimony, I believe, from one
12 of the survivors of this vessel that when she left port, she had a
13 starboard list. And you testified you thought the vessel was
14 trim. I'm wondering how closely you looked at the trim, or might
15 we just be looking at that rub rail underwater because of the
16 starboard list?

17 A. I did not closely look at the trim. Because of the angle, I
18 was almost exactly parallel to the vessel, so I couldn't -- I
19 couldn't for certain give testimony saying that, that the boat was
20 trim at that time.

21 Q. Right, exactly. That's kind of what I thought.

22 MR. BARCOTT: Thank you, Captain. We appreciate you being
23 here, and I don't have any questions beyond that.

24 Thank you, Captain.

25 CAPT CALLAGHAN: Thank you, Mr. Barcott.

1 Sir, we've got just a couple more follow-up questions from
2 the Coast Guard. I'm going to pass it back to Commander Denny.

3 Commander Denny?

4 CDR DENNY: Thanks, Captain.

5 BY CDR DENNY:

6 Q. Thanks, Captain Songstad, for being here today. I'd really
7 like to get some clarity on the rub rails some more. I know we've
8 talked about it a lot, but can we -- when you were a crewmember on
9 the *Scandies Rose*, did the crew of the *Scandies Rose* check the
10 draft marks of the vessel prior to departure?

11 A. Typically, no. Especially with a young crew, it's not
12 typical for one to think about doing that. You know, that's --
13 that would be something you'd expect the captain, the engineer,
14 and the experienced crewmembers to do -- sorry.

15 Q. Keep going.

16 A. Yeah, so no, that's not something that most deckhands would
17 think about checking. That would come with time and experience.

18 Q. All right. Well, do you check the draft marks on your
19 vessels now?

20 A. Do I? Yes, I do, every time that we leave port.

21 Q. Okay. Would you say that it's industry practice to check the
22 draft marks on vessels before departure?

23 A. I'm sorry, I can't hear you.

24 Q. Oh, no worries, Captain. We just had some technical
25 difficulties, so I apologize for that. I'm just going to repeat

1 my question. So is it industry practice -- to the best of your
2 knowledge, is it industry practice to check draft marks before
3 departure on commercial fishing vessels?

4 A. Absolutely, absolutely.

5 Q. Do you have a device on board, a chronometer, a device on
6 board to check for the list and trim of your vessel?

7 A. Yes, I do.

8 Q. Is it a -- is it like a bubble-type or a mechanical device?

9 A. It's a bubble-type.

10 Q. To the best of your recollection --

11 A. Similar to the one that was on the *Scandies Rose*.

12 Q. Oh, that was exactly my question, thank you.

13 A. Yeah.

14 Q. And then, for the benefit of the public, could you just
15 briefly explain what draft marks are used for? What are they, and
16 what are they used for?

17 A. Draft marks are to indicate how much of the hull is under the
18 water, and by doing so, allows you to understand, you know, what
19 your -- or how your boat's sitting weight-wise, both for listing
20 and for trim.

21 Q. Okay. So, you know, you've been talking about departure a
22 lot, and we've talked about the draft and the list and trim. Is
23 that something that -- that's on like a pre-departure checklist?
24 Is there -- there's certain commercial fishing vessels that are
25 required to have and use pre-departure checklists. For any

1 fishing vessel that you've been on, has anyone ever used a
2 checklist to make sure the vessel was ready for seas before
3 departure?

4 A. Any vessel I've ever worked on have all fallen under the
5 classification needing to have those pre-departure checklists.
6 However, it's very common practice for every captain to do one of
7 those. To look around your vessel, you know, make sure it's trim,
8 makes sure it's sitting right, you know, dot your Is and cross
9 your Ts, so to speak. You know, it's a non-written expectation
10 that the captain is responsible for making sure that's done before
11 you sail.

12 Q. Okay. So your vessel, the *Handler*, you said that it was
13 about the same size and construction as the *Scandies Rose*. Does
14 it have a load line?

15 A. It does not have a load line.

16 Q. Okay. Do you know if a vessel with a load line would be able
17 to be loaded so that they could exceed the load line values?

18 A. Can you repeat the question please?

19 Q. Yeah, do you know if a vessel that has a load line, if it can
20 be loaded to a condition where it can exceed the load line values?

21 A. I do not know the answer to that.

22 Q. Okay, no problem. No worries. And the last question is --
23 two last questions. One is, as a vessel captain, could you -- and
24 I'm not asking you to speculate about the *Scandies Rose*
25 specifically, but based on your experience, what are some of the

1 reasons that a vessel would have been sitting so low in the water
2 at the dock? What are some potential reasons?

3 A. Obviously, the pots on board would be a consideration.
4 However -- actually, I'll stop there. The pots on board would be
5 a consideration. How much fuel and water is on board the vessel,
6 and if the (indiscernible) tanks are full or empty. Those would
7 be the three biggest factors, pretty much the three only factors
8 that would -- sorry, I'm trying to navigate here --

9 Q. No worries. Take your time.

10 A. -- that would contribute to the drafting.

11 Q. Okay, thank you, Captain. And then last question is back to
12 when you were on the *Scandies Rose*. To the best of your
13 recollection, when you guys were underway on -- it was the
14 *Enterprise* at the time, did you guys operate, as a normal matter
15 of course, with the internal doors or hatches open? How did you
16 operate underway? Did you leave those doors closed, those hatches
17 closed or open?

18 A. When we were traveling, all the doors at deck level were kept
19 closed and dogged. The interior doors, specifically like the
20 engine room, from the mechanical space to the engineering space,
21 were -- the one door was left open. But for the most part, all
22 the doors were kept closed underway.

23 Q. Okay. Again, thank you so much for your time.

24 CDR DENNY: Captain Callaghan, I have no further questions.

25 CAPT CALLAGHAN: Thank you very much.

1 Thank you, Mr. Songstad. Sir, your testimony's extremely
2 valuable. And I do want to offer to see if anyone else has any
3 more questions. So I'll offer my colleagues at the NTSB, any more
4 questions?

5 MR. BARNUM: No questions from the NTSB.

6 Thank you very much, Captain Songstad. Appreciate it.

7 CAPT CALLAGHAN: And then, Mr. Stacey, any follow-on
8 questions?

9 MR. STACEY: Nothing further from here.

10 CAPT CALLAGHAN: Thank you.

11 Mr. Barcott, any follow-on questions?

12 MR. BARCOTT: Nothing, Captain, thank you.

13 CAPT CALLAGHAN: Okay.

14 Again, Mr. Songstad, I want to thank you for your time. I do
15 just want to make note for the record that we would -- as part of
16 the Marine Board looking into the investigation here, we would
17 like to reach out to you and have a follow-on with you in regards
18 to collecting a copy of your logbook if you would, so we can get
19 some record data of your position and weather observations during
20 that time of your voyage. So we will reach out at a date
21 following the hearing, sir.

22 THE WITNESS: Okay, that sounds fine. I will be traveling
23 for the next few days and then flying home, but I will take my
24 logbook with my when I travel so I have that available.

25 CAPT CALLAGHAN: Greatly appreciate it, sir. And we'll reach

1 out to you short -- you know, we'll give you some time, and then
2 we'll be in contact.

3 Sir, again, I want to take the opportunity to thank you. I
4 know as a prior employee of the *Scandies Rose* and not necessarily
5 a direct relationship or contact with the members that were on
6 board during the incident, but a loss in the fishing community is
7 a loss, nonetheless. And so, on part of the Board here, we do
8 offer our condolences for a loss of your community and the loss of
9 the vessel.

10 THE WITNESS: Well, thank you, and thank you for taking my
11 answers and asking the questions. I think we're all interested in
12 finding out, you know, what happened and how to avoid it happening
13 in the future.

14 CAPT CALLAGHAN: Absolutely. Thank you for your time, sir.
15 And at this time, you are now released as a witness of this formal
16 hearing. Thank you for your testimony and cooperation. And if at
17 any later date I determine that this Board needs additional
18 information, I will reach out and contact you directly. If you
19 have any questions, you may contact the investigation recorder,
20 Lieutenant Ian McPhillips.

21 Thank you again for your testimony, sir.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 CAPT CALLAGHAN: The time is now 1107. Our next witness is
25 scheduled to begin testimony at 1300 today. If for any reason we

1 are able to begin sooner, we will update the time displayed on
2 livestream. This hearing will now go into recess and resume as
3 scheduled.

4 (Off the record at 11:07 a.m.)

5 (On the record at 1:00 p.m.)

6 CAPT CALLAGHAN: The time is 1300. This hearing's now back
7 in session. We'll now hear from Mr. Bryce Buholm.

8 Captain Buholm, Lieutenant McPhillips will now read your oath
9 and ask you some preliminary questions.

10 Lieutenant McPhillips?

11 (Whereupon,

12 BRYCE A. BUHOLM

13 was called as a witness and, after being first duly sworn, was
14 examined and testified as follows:)

15 LT MCPHILLIPS: Please be seated. Please state your full
16 name and spell your last name.

17 THE WITNESS: Bryce Aksel Buholm, B-u-h-o-l-m.

18 LT MCPHILLIPS: Please identify counsel or representative if
19 present.

20 THE WITNESS: None present.

21 LT MCPHILLIPS: Please tell us, what is your current
22 employment and position?

23 THE WITNESS: Unemployed. I was previously the captain of
24 the *Western Mariner* until last month.

25 LT MCPHILLIPS: What were your general responsibilities in

1 that job?

2 THE WITNESS: I was the master of the vessel.

3 LT MCPHILLIPS: Can you briefly tell us your relevant work
4 history?

5 THE WITNESS: I've been -- so I started salmon fishing at six
6 years old, crab fishing at 17 years old, sailed as master at 21
7 years old. Started working for Dan Mattsen at 22 years old
8 until -- so that was 2002 until 2018. I also own a marine
9 surveying business and inspect vessels for -- I do condition and
10 valuation and damage surveys.

11 LT MCPHILLIPS: Okay. What is your education related to your
12 positions?

13 THE WITNESS: I'm a master 100 to 200. I've done all the
14 firefighting and all the follow-up courses necessary for a
15 1600 ton license.

16 LT MCPHILLIPS: Do you have any other professional licenses
17 or certificates related to that position?

18 THE WITNESS: Bridge resource management, just all the SCCW
19 stuff I had to complete.

20 LT MCPHILLIPS: Thank you. Captain Callaghan will now have
21 follow-up questions for you.

22 THE WITNESS: I'm sorry. Can you repeat that?

23 LT MCPHILLIPS: Captain Callaghan will have some follow-up
24 questions for you.

25 THE WITNESS: Oh, oh.

1 CAPT CALLAGHAN: Thank you, Lieutenant McPhillips.

2 And welcome and thanks for being here today, Captain Buholm.
3 Certainly appreciate it. Your testimony today will help us just
4 better understand things and help us to make changes moving
5 forward. At this time, I'm going to turn it over to Commander
6 Karen Denny for questions.

7 EXAMINATION OF BRYCE A. BUHOLM

8 BY CDR DENNY:

9 Q. Good afternoon, again, sir.

10 A. Hello.

11 Q. So, sir, Lieutenant McPhillips gave you -- asked you some
12 questions about your background.

13 A. Um-hum.

14 Q. Could you elaborate a little bit on your fishing experience?
15 Could you tell us what fisheries you've fished, the geographic
16 locations, and how much experience you've had with those?

17 A. Well, I've tendered salmon for 36 years in southeast --
18 through every area of Alaska. I've fished crab. Started fishing
19 crab at age 17, Bering Sea, snow -- opilio, king crab, bairdi.
20 I've fished black cod. Tendered a lot of different fisheries, and
21 I've done every fishery as a master as well.

22 Q. Okay, so you have a lot of experience as a vessel captain.

23 A. I also was a port captain for Mattsen Management, which
24 managed *Scandies Rose* and all the other vessels.

25 Q. And we're going to talk about that in a little bit. So let

1 me ask you a couple questions with the, you know, the hat of the
2 vessel master.

3 A. Okay.

4 Q. So when you were fishing or preparing to go out, what tools
5 did you use to manage risk or plan your voyages?

6 A. Well, I take the weather -- you know, I look at the weather,
7 I look at my gear, I kind of just kind of go around, check off
8 every list I can, and make sure that everything I'm doing is for
9 the best of everybody. You know, safety first, money second.

10 Q. How did you check the weather? What kind of tools did you
11 use to check the weather?

12 A. Oh, I used, you know, Windy on my phone. I listened to the
13 National Weather Service. You know, I watched -- I look at the
14 radar pictures. I'm kind of a weather nerd, so my whole life,
15 I've been always studying weather maps and weather pictures.

16 Q. Okay.

17 A. And try to -- you know, two weeks ago, I left Dutch Harbor --
18 a week and a half ago, I left Dutch Harbor at the end of a big
19 storm just so I could make it through the pass when the weather
20 came down on it. You know, it's kind of a -- it's kind of a
21 juggling act trying to make sure you get out at the right time,
22 and it's all about timing. You screw up the timing, and we're all
23 here today because of that.

24 Q. Okay. Are there any other third-party apps that you use?

25 A. Pretty much just Windy. Sometimes I'll use -- oh, what's the

1 other app? There's another one I used to use. I predominantly
2 use Windy and the National Weather Service.

3 Q. Okay. Do you ever listen to weather reports or forecasts on
4 VHF?

5 A. Oh, yeah.

6 Q. Do you --

7 A. That's National Weather Service. That's what I consider
8 National Weather Service.

9 Q. Perfect. Do you ever like pull up the NOAA forecast? It
10 looks like a message.

11 A. Oh, well, I don't pull the messages, but I go in and I look
12 at the radar forecast and the old school weather pictures like you
13 used to get on (indiscernible).

14 Q. Okay. Do you -- is it common practice for you to, when
15 you're fishing, talk to other vessels that are maybe in the area
16 ahead of you or where you're heading to?

17 A. Oh, yeah. Yeah, very much so. It's a lot of -- you know,
18 Gary -- I talked to Gary up until the last couple years when I was
19 trying not to fish anymore. I talked to him just about every day
20 of my captain's career. We'd always talk weather and -- you know.
21 But yeah, all of our partner boats, we all help relay information
22 to each other and try to make it work as safely as possible.

23 Q. Okay. Were you aware of any communication gaps, or are you
24 aware of any communication gaps up in the Aleutian Chain?

25 A. I'm sorry, I'm kind of hard of hearing.

1 Q. Sorry, I'll speak up.

2 A. Thank you.

3 Q. Are you aware of any communication gaps up in the Aleutian
4 Chain, in terms of like dead areas, dead zones?

5 A. Oh, they're all over the place.

6 Q. Okay.

7 A. I mean, the whole -- I mean, it all depends on where the
8 satellites are. You know, I mean, even out in the middle of the
9 Bering Sea, in the wide-open, all last winter, if we were
10 traveling east or northeast, we had no satellite coverage.

11 Q. Okay.

12 A. I missed a delivery date because of that.

13 Q. I'd like to shift to another topic. I'd like to talk about
14 icing with you. Can you tell me -- as a vessel master, can you
15 talk to me a little bit about how do you know when your vessel is
16 having issues with the vessel stability because of icing? What
17 are some of the physical signs that you'd see?

18 A. Slowing of the roll, you know. I was -- my family's been
19 fishing the Bering Sea for 100 years, and the way we've all
20 survived is we count the rolls. It's kind of a, you know, three
21 (indiscernible) by beam. You divide the beam by meters, and
22 that's your kind of (indiscernible) rolling period. It's not
23 exact science, but it's kind of how I've always gotten myself to
24 sleep. So whenever my boat rolls differently, I count the rolls.
25 And that's how I've always been able to calculate it. If the boat

1 sits -- you know, I know what my boat's supposed to feel like with
2 a load of gear on. And as she rolls, and if she hangs, it's kind
3 of just something imbedded in my head.

4 Q. So what do you do if that happens?

5 A. We change direction, stop, break ice. You know, there's --
6 it's kind of -- there's no real, set plan, because there is no set
7 plan in the Bering Sea. We kind of have to shoot from the hip a
8 lot of time and, you know, we also take -- if the weather's going
9 to be crappy, a lot of us will stop or don't go, and it's just --
10 you just kind of pay attention to the boat.

11 You've kind of got to feel the boat. And that's how I was
12 taught by my father. He was taught by his father. He was taught
13 by his grandfather. So we just -- we just kind of go with how we
14 feel. And, you know, my stability book on my boat is always dirty
15 and bent up and stuff because I consult it consistently throughout
16 the season, before the season, and after. Yeah, you know, it's a
17 different kind of -- it's different up there than anywhere else in
18 the world, and we just kind of go with what we feel is right and
19 hope for the best.

20 Q. So you mentioned your stability book and that you consult it
21 a lot. Since you're pretty familiar with it, let's talk about
22 that. Does it have a delineation between how many pots or gear,
23 how much weight you can carry in icing versus non-icing
24 conditions?

25 A. Yes, of course.

1 Q. So your stability book does specifically, in writing, say --

2 A. I've never seen one without it.

3 Q. Okay, and to the best of your recollection, what is the
4 difference? What's your max pots?

5 A. Oh, it's huge. I mean, on the *Western Mariner*, it was 126
6 pots, or 125. And during icing, we were down to -- it said 95 in
7 the book, and then when the Dutch Harbor safety came down, you
8 know, we'd check in with them. They came down and weighed a
9 handful of pots. They limited me down to, I believe it was 81
10 pots.

11 Q. And why is that?

12 A. Because pots all weigh differently. You know, some pots are
13 36 inches tall, some are 34 inches tall. For king crab, during
14 king crab, we fish two shots of line. Opilios, we fish three
15 shots. There's just a culmination of factors that change the
16 weight of the pots.

17 Q. Okay. So tell me about that. Walk me through it, like why
18 is that important that you take those things into consideration?

19 A. Well, because everything's different. You know, we've been
20 -- you know, when I was a child, my father's -- one of my father's
21 boats, right after the *Avos* (ph.), went down. He would just run
22 around with 120 pots on it, because that's what they could fit
23 out. And then the stability came out, and the boat was rated for
24 60 pots. And, you know, there's old fishing and there's bold
25 fishing, and there's no old, bold fishermen. And I plan on being

1 an old one.

2 Q. Okay. Based on your experience, how frequently does -- do
3 icing conditions happen?

4 A. Well, it depends on the area. The Bering Sea, it's always --
5 you know, like I was in Dutch Harbor all last week, for
6 two-and-a-half weeks, and it rained every day. And before the
7 Privlofs, above the -- just the Privlofs and above, it was solid
8 icing conditions. So it's -- you know, a lot of stuff can change
9 from leaving Dutch Harbor to our fishing grounds.

10 The area where the *Scandies* went down is probably one of the
11 worst icing areas I've ever experienced in my life. I spent 10
12 years doing cod around that round, around Sutwik Island and Kodiak
13 and Samiades (ph.). Unfortunately, Gary's the one that taught me
14 that whole area. The first time I crab fished down there was with
15 him in 2005. And I still don't know why he was there.

16 Q. Okay, so I'd like to get a sense of -- let me run you through
17 a scenario, okay? You're the vessel captain of a pot cod boat,
18 and the forecast calls for icing conditions. As an experienced
19 vessel captain, what do you do if you notice ice starting to
20 accumulate on the topsides of your vessel?

21 A. When do I notice it?

22 Q. What do you do when you start noticing icing?

23 A. Oh, we watch it very carefully. There's written instructions
24 in the wheelhouse that if it starts building or starts building
25 more, to wake me up immediately and bring it to my attention.

1 Q. And when you say --

2 A. And what they see and what I see are -- you know, from what I
3 see and what a deckhand sees is two different things. Deckhands
4 don't always have the eyes that captains do. And they don't --
5 suddenly, they're like, oh, we've had ice like that. It's not a
6 big deal. Where it's, you know, on my boat, it's a very big deal.
7 No matter how much ice there is, I get notified immediately.

8 Q. So you said written instructions. Is that like a standard
9 operating procedure?

10 A. Yeah, when I make up a watch schedule, I put -- you know, I
11 separate experienced with non-experienced, in order. And then
12 there's a written instructions on what time their watch is to and
13 from, as well as driving instructions. You know, make sure the
14 VHF's turned up. Make sure if any boats come within a mile and
15 half, two miles of us, I get woken up. Or if any ice is building,
16 wake me immediately. It's pretty standard.

17 Q. So is that common practice in the industry?

18 A. Very common practice.

19 Q. Okay. So on that scenario that we were talking about, so you
20 would watch it if you start seeing it accumulating?

21 A. Yes.

22 Q. As the voyage continues in our scenario, the ice keeps
23 accumulating. What happens from your standpoint as a vessel
24 master, what do you do?

25 A. Well, I always try to keep it off the boat, because if you

1 keep the small stuff off, the big stuff won't grow. But a lot of
2 what -- I mean, I've been caught off-guard in that same area where
3 I didn't have any pots onboard, so I just continued going until I
4 got somewhere safe, because I wasn't going to put my crew outside
5 in such a horrible area. And I've spent many, many days behind
6 Sutwik Island breaking ice off a boat.

7 Q. Okay, so what are some of the things that you can do to
8 mitigate the negative effects of icing? What can you do?

9 A. Well, a lot of us, we wrap all our railings and stays, and
10 anything from the house below, we try to wrap with shrink wrap and
11 electrical tape. It looks like crap, but it keeps the ice from
12 binding on to the paint as well.

13 And, you know, change direction. You know, I'm not afraid to
14 run for an extra four hours to keep the vessel from making as much
15 ice. Instead of going straight into the seas, I'll quarter it.
16 I'll put on the starboard bow, or I'll put it on the port bow.
17 And I try to keep the spray down. Slow the vessel down. Just,
18 you know, do whatever we can. Sometimes it's unavoidable.

19 Sometimes -- I've spent a week going 10 miles north, idling
20 into it, and then every four hours, we'd turn around and we'd get
21 15 miles backwards trying to break all the ice off the boat. We
22 were losing five miles every day -- every three hours, just trying
23 to keep the ice off the vessel. It's just part of the game up
24 there.

25 Q. Okay. So you said that you have a -- you've mentioned that

1 you have sense of experience with Captain Cobban.

2 A. Oh, yeah, he was my partner boat forever.

3 Q. So tell me briefly about your experience professionally; what
4 was your impression of Captain Cobban, Captain Cobban's experience
5 level as a fishing captain?

6 A. Gary started running boats at 16-years-old. You know, Gary
7 was one of the most experienced captains I've known. I've sailed
8 with him. My last time sailing on deck was with him, as his chief
9 engineer on the *Adventurer*, in -- this was in '05 or '06. And
10 Gary's always professional. Gary, he'd seen bad stuff happen. He
11 used those in all of his safety drills. I use his topics in
12 safety drills that he's brought up to me. And, you know, I always
13 expected Gary to die in the boat, I just figured it was going to
14 be of old age at 100 years old. You know, he was -- he taught me
15 that whole area.

16 When I started working out of that area, running the *Amatuli*
17 in 2009, he -- I was on the radio with him every day, you know,
18 because there was different -- there's so much -- Shelikof and
19 Chignik, there's so many different variations with tide. There's
20 so much tide coming out of there. There's so many different --
21 you know, the mountain pass -- all the mountains coming from the
22 Bering Sea over to the Gulf of Alaska, you know, it's -- there's
23 certain areas in Chignik where if it blows northeast in Kodiak,
24 and it's calling for northeast in Chignik, it'll still blow
25 northwest because of the way it funnels through mountains. I

1 mean, there's a lot of -- a lot of local knowledge that I was
2 taught by Gary explicitly about.

3 Q. So what was your impression of his like risk management?

4 A. Excuse me?

5 Q. His risk management. How would you say he managed risk?

6 A. Well, he did what he always thought was best. Nobody goes
7 out there -- not one of us will ever go out there thinking we're
8 going to die. That's how we did our job; we never think about it.
9 And Gary was always on top of stuff, very much on top of stuff.
10 He just -- he just did it, and he was the best at what he did. I
11 mean, I can hands-down say Gary is one of the top five captains
12 I've known in the Bering Sea. My family's been in the industry
13 for over 100 years, and he was one of the top five captains I've
14 ever known in my life. The other ones are all passed away and
15 old.

16 Q. Okay, so we've talked a little bit about Captain Cobban. How
17 about other members of the *Scandies Rose* crew? Do you have any
18 experience or professional knowledge of Mr. Art Ganacias?

19 A. Well, just from -- we worked alongside of each other. We
20 tied up to each other a lot, tendering. I knew him from the
21 shipyards. I know his reputation. He's always had a great
22 reputation. He was a good man, a real good man. I knew everybody
23 on there but Seth. Seth was the only person I didn't really know.

24 Q. You know what, so let's take a few minutes and just walk me
25 through your professional experience, your observation of those

1 crewmembers.

2 A. Well, David Cobban, he worked for me three different times on
3 two different boats. David -- David wasn't really a fisherman,
4 but he really wanted his dad's approval, so he kept going back to
5 fishing. David was just a kind kid, really smart, but he just
6 wasn't quite -- he just wasn't really a fisherman. But he kept
7 doing it because he wanted to be like his dad.

8 Art, like I said, we -- we'd share parts with each other.
9 We'd bullshit with each other. Excuse my language. We, you know,
10 we were just part of -- it was part of the family. We all worked
11 on the same company, and it was just we were -- he was a great
12 man.

13 Brock, he was a little kooky, but what crab fisherman isn't?
14 And he was one of the hardest working guys in the world, and he
15 loved working on that boat. And he worked his butt off for years
16 for Gary on that boat and the *New Venture*. And I knew him for
17 probably 10 to 12 years. I mean, he was a good -- he was a hell
18 of a deckhand.

19 And, like I said, Seth, I really don't know much about.

20 John Lawler, he fished king crab with me the season before on
21 the *Western Mariner*. Good hand, knew what he was doing. The only
22 reason I let him go is because he was trying to put together
23 buying his own boat, and he thought he was going to get a deal
24 gone through and was kind of lollygagging on saying he was going
25 to come back or not. And I just hired somebody else.

1 And then Dean-o, he's the closest thing to a brother I've
2 ever had in my life, Dean Gribble. His dad was the captain of my
3 father's boat growing up. We spent -- you know, I think he was 11
4 years old the first year he came tendering with us. I was 13 or
5 14.

6 And I think a lot of that -- a lot of him making it off the
7 boat has to do with us as kids because, you know, when you're a
8 young kid on a boat, we'd sit in our stateroom and figure out
9 plans on how'd we'd get out of the boat, and if anything ever
10 happened -- you know, we'd be sitting there in crappy weather, we
11 were just little kids. We were like, okay, well, this is what
12 we're going to do. We're going to climb on this wall, and we'll
13 do this, and we'll do that. And, you know, I think that had a big
14 thing -- that, and him and John had just both been working
15 together, and they were both the new guys on the boat. I think
16 that was the main reason both those men survived, was just doing
17 what they were supposed to do.

18 Q. Okay. So having worked with Captain Cobban for an extensive
19 period of time, would you -- would it be a fair statement to say
20 that he developed an environment on his vessel where -- if
21 somebody was concerned about something, do you think they would
22 have felt comfortable saying something to Captain Cobban?

23 A. That's kind of a loaded question, ma'am. I don't mean it in
24 a bad way, but the captain -- when my crew comes on my boat, they
25 look at me to keep them alive. I'm the one person. That's my

1 sole responsibility on every voyage is to bring my crew home
2 safely. And it's hard for somebody to say we shouldn't be doing
3 this, because that's our job is to keep them alive. And you don't
4 question the captain on the boat. And if you do, you should
5 leave. But there's no -- nobody's going to go do something they
6 think they shouldn't do.

7 And it's -- it's kind of hard for somebody to come up and say
8 that, because they don't want to look lame. They don't want to
9 upset the crew. They don't want to upset the captain. And it's
10 kind of a -- I don't know how to describe it, but it's just kind
11 of a -- you don't want to -- you want to keep everybody on a team
12 together. And when one person starts breaking that up, and if
13 they do say something -- you know, I mean, I've had guys come up
14 and say, you think we really should leave? And I'm like, you
15 know, I'll take that into consideration and everything.

16 But it's -- especially with somebody like new coming on the
17 boat, they aren't going to say much because they don't know the
18 rotation of the crew. They don't know how everybody works
19 together. And very rarely have I ever had a new guy come on the
20 boat and ask me that. I've had a couple of experienced guys
21 going, eh, and we'll sit there, and we'll talk about. And I'll
22 say, well, this is what we plan to do. I plan on leaving now.
23 The weather's going to be crappy. Should come down by time we get
24 to this point, you know.

25 It's just -- there should be more ways to do that, but

1 it's -- when somebody comes up asking that, they're not trusting
2 me, and they're not trusting my judgement. And by not trusting my
3 judgement, I can't trust that they're going to do what I tell
4 them, because it's very important for everybody to listen to the
5 captain, because if I tell them something and they go do something
6 else and somebody gets hurt, it's still on me. You know, when I
7 leave the dock, when I get on the airplane to go home or fly up
8 from home, and I get on that boat, there's nothing else.
9 Everybody has to listen to me. And everybody has to just do their
10 thing. And there's nobody else to -- I make that decision to the
11 best of my ability.

12 And with the weather forecast, I'm genuinely pissed off at
13 Gary for leaving. But Gary was also one of the toughest captains
14 I've ever known, and he -- the thing was is he ran around on
15 little piece-of-crap boats his whole career. I mean, little, old,
16 tiny benders for his whole career. And he survived -- he fished
17 through storms that I never would have fished on. But he -- Gary
18 had a gift of just -- that's what he did. And he was very gifted
19 as a captain, because he -- he thought like a crab, he thought
20 like a fish, and he thought like a captain.

21 And, you know, I think a lot of it has to do with a couple
22 other boats, very small boats, left with him out of Kodiak. You
23 know, 58-footers and I think a 70-footer. I can't remember the
24 other -- I can't remember the third boat; I want to say it was the
25 *Ruff N Reddy*, but I don't think it was. They all left the same

1 time as Gary did. You know, the *Alaska Dream* left, and that was a
2 58-by-28-foot boat. So, I mean, it's -- nobody could -- I was on
3 the phone with Gary for an hour-and-a-half before he left that
4 night. Everything seemed fine with him.

5 Q. Well, let's talk about that, actually, for a bit.

6 A. Okay.

7 Q. Tell me -- tell me where you were and tell me about that
8 conversation.

9 A. I was stuck in traffic trying to drive from downtown Seattle
10 up to my house, and then up to the Tulalip Reservation to go buy
11 fireworks for my daughter's birthday. And so I was stuck in
12 traffic for a solid hour-and-a-half, and we just -- we just talked
13 about, you know, he was going to go to east side. I was going to
14 go to the west side. We were going to work together all season.
15 We actually had a long talk about the stability regulations, how I
16 was dropped down to so many pots, and how his didn't change.

17 Q. Did he say anything about that? Did he give you any details
18 about that stability report?

19 A. No, he just -- I mean, me and him had multiple conversations
20 about it. We had one before king crab, and he was just like, he
21 goes, my stability went up a couple pots. I said, even for icing?
22 He goes, yep, that's what they did. I'm like, cool, because my
23 boat, you know, got dropped down to 80-some pots, which was not
24 even a full layer on my deck.

25 And fishing for as long as I have, I was pretty disappointed

1 that I couldn't bring out more gear because it kind of makes my
2 life -- really makes it a pain in the ass to bring the boats back
3 and forth, having to go run -- I ended up fishing 450 miles,
4 almost 500 miles from Dutch Harbor at one point. That's a long
5 trip to go back for pots and leave your pots out there with the
6 ice going down.

7 He said he was going to fish 196 pots because that was all
8 the shots that he had. And we just BS'd and, you know, he told me
9 a couple stupid stories. And we were talking about my kids and
10 how my daughter was turning four that next day and how we were
11 buying fireworks. And, you know, he was on another phone yelling
12 at David to run down to Kodiak Marine Supply and get more zip
13 ties. And David said he had already parked his truck. So his dad
14 said, you better walk. And, I mean, it was just a regular BS
15 session that we've had thousands and thousands of times.

16 Q. So, and remind me again, what day was that?

17 A. It was -- well, they were just getting ready to take
18 (indiscernible). I believe that was -- I want to say it was New
19 Years Eve, but it must have been the day before New Years. It was
20 the day they left town. It was, you know, in the evening.

21 Q. Okay.

22 A. Yeah -- no, it was the day before, because that's when they
23 left because he was just waiting for them to get everything
24 finished up. And they had just loaded some bait on at Trident,
25 and the fuel dock -- I don't remember exactly. And I told him to

1 take care of my little brother and take care of Johnny and be
2 safe, and I'd give him a shout when I got up to Dutch on the
3 second.

4 Q. Okay.

5 A. And that was the last that I ever heard from him.

6 Q. Did he happen to mention where he was going to be going, or
7 what route he was going to be taking?

8 A. No, not really. I just didn't even question Gary because,
9 you know, he's the one that taught me all that stuff.

10 Q. Sure. So --

11 A. He was going to go cod fishing. He was going to go do a trip
12 of cod and make a delivery and, you know, do a little prospecting
13 for crab on the way. He was going to try to fish cod where he was
14 fishing crab.

15 Q. So in the course of, you know, this very -- talking about a
16 bunch of different things for an hour-and-a-half, did the weather
17 come up at all?

18 A. Not really, no. I mean, I wasn't going to be in that area.
19 I wasn't -- I was flying to Dutch on the second, I didn't
20 really -- I didn't really think about it.

21 Q. Okay. Did you sense that Captain Cobban was concerned about
22 anything at all? Did he give you the impression that he was
23 concerned about anything?

24 A. As a captain, none of us ever sound concerned. We always try
25 to stand behind what we say and how we approach stuff. You know,

1 during a bad situation, we crack jokes. We try to keep our crew
2 calm. And rarely do we ever -- you know, we don't try to make it
3 look like anybody's nervous or have any qualms about anything,
4 because the crew has to accept us as the leader of the boat, and
5 if we don't keep cool and just do what we think's best, you know,
6 you're going to end up with -- I don't want to say a mutiny, but
7 you're going to end up with a crew uprising, not knowing how --
8 going, well, if this guy's not confident, we're not confident with
9 him being on the boat; we're not confident being on the boat.

10 Q. Right, that's fair. I understand what you're saying. But
11 you -- like having a conversation captain to captain, did he
12 express any kinds of concerns about anything --

13 A. No.

14 Q. -- or excitement about anything?

15 A. No, it was just -- it was just another season. I mean, it
16 was just another season for all of us. It was just, you know --

17 Q. Did he happen -- did he happen to mention to you that he was
18 looking to buy additional shares in the *Scandies Rose*?

19 A. Oh, yeah, yeah, he had actually said he had just sent down
20 John Walsh fifty-some thousand dollars, and he was going to buy
21 Dan out in the fall.

22 Q. How'd he sound about that?

23 A. He was excited. He was excited. I mean, me and him had been
24 talking about it for, I don't know, a couple weeks. And, you
25 know, as a marine surveyor, I -- you know, he was asking me about

1 values, and we were just kind of just BS'ing about all the
2 different things and different values. And we thought it was --
3 he thought what he was doing was right. And, you know, that was
4 about it.

5 Q. Did he happen to mention why he was -- why he wanted to buy a
6 bigger share or why he wanted to buy Mr. Walsh out?

7 A. Well, John's getting up there in age, and John was part of --
8 became part of our company when he was 22. He had bought into the
9 company. And John wanted to get out, and Gary wanted to get
10 out -- or wanted to keep going. And, you know, Dan was -- Dan's,
11 you know, he's like my second father. He's like 66 now. He's
12 probably yelling at his TV right now that he's 65, but he, you
13 know, he -- that was all kind of the plan from the beginning was
14 they were going to stay in as long as they could, and then slowly
15 start working their way out into retirement and try to enjoy their
16 lives.

17 Q. Okay. Did Gary happen to -- in his excited state about
18 staying in, did he say anything about what his intentions for the
19 future were? Did he have any projects he wanted to do or any
20 specific kind of vision for the *Scandies Rose*?

21 A. No, no. I mean, that boat, that boat was in shipyard twice a
22 year just about every year. I mean, that boat was -- he had done
23 all the stuff he'd wanted to do to it so far that I knew of. I
24 mean, there's always stuff you want to do to the boat, but he --
25 no, he was -- that boat was set up how he wanted it.

1 I mean, he got it in 2008, and -- or was it '07? Yeah, 2008,
2 he took over that boat and really did a hell of a job bringing it
3 back. And it was being sold, so it had a few maintenance deficits
4 at the time, but it was very minor stuff. Just, you know, little
5 things that got overlooked and didn't get redone. And then all
6 that boat -- I mean, that boat just was -- all of us else were
7 jealous because that boat got number one attention compared to any
8 other boats that we had in the company.

9 Q. Well, hey, let's talk about that. Let's talk about your time
10 working for -- so was it for Mattsen Management then?

11 A. Yeah, I started with Mattsen Fisheries in 2000, I think it
12 was 2001 and 2002. And then when Mattsen Management was formed, I
13 became a core captain of it. And we managed a bunch of Ocean
14 Beauty's vessels, BBDC vessels, and Van Dant's (ph.) personal
15 vessels.

16 Q. Okay, so let's talk about that a little bit. So when -- you
17 just made a comment that some folks were a little jealous because
18 the *Scandies* did get a lot of the resources. And can you
19 elaborate on that?

20 A. Well, let me just take a step back. Every vessel in the
21 company was its own entity. Every boat was its own. So every
22 boat had to live on their own. Obviously, the *Scandies* made
23 significant more money than all the rest of our boats did, because
24 it was the only boat that fished crab. All the rest of our boats
25 tendered or fished cod. And, you know, there was just -- they

1 made a lot of money with that boat, and they had quota
2 shareholders with a lot of crab on that boat, and so they made
3 sure that all the Is were dotted and the Ts were crossed, because
4 that boat could cost them a couple million dollars.

5 And, you know, there was no -- there was never -- how do I
6 say this? They -- there might have been some arguments over price
7 and stuff we needed to do, but it always got done. You know, it
8 was just the fact that there was -- when you're doing shipyards on
9 a boat, you have to find a place to stop. And so sometimes, some
10 of the small little things, like kitchen cabinets and just stupid
11 little things that you want to keep doing and redoing different
12 parts of the boat that you want to redo, but it doesn't have --
13 but they always made sure everything on that boat was very safe.
14 The safety and integrity of the boat never -- they never were shy
15 to spend money on it.

16 Q. So did you ever see -- were there ever examples that you
17 observed where you could have had a more permanent repair done,
18 but in order to kind of triage or hold it off --

19 A. Oh, we all do that. I mean, if you can't MacGyver something,
20 you can't be on a fishing boat.

21 Q. Okay.

22 A. But, when you're done, that's usually either to get you to
23 town, or if it's very minor, it gets you through the season.

24 Q. Okay. How about the bycatch chute?

25 A. I'm sorry.

1 Q. Can we talk about the starboard bycatch chute?

2 A. Oh.

3 Q. Yeah, can we talk about that? Right around 2011, we've heard
4 through previous testimony that it was -- that the metal there was
5 replaced. Do you have recollection of that?

6 A. I do not. I was -- I was a port captain for the boat, but I
7 spent the majority of my time with the other boats, so they could
8 focus on that. But no, I don't recollect that whatsoever. That
9 happens, it's not un-normal -- uncommon, excuse me. It's happened
10 on, I don't know, four or five different boats I've been on.

11 Q. And what is that, that you just said it's not uncommon --

12 A. Well, because it has running water going out of it. And when
13 those -- when all the boats were built, they were built -- now
14 most of us have stainless chutes and stuff that the water goes
15 over, so it doesn't go through the deck. But back when those
16 boats were built, they just went over the water. So you had just
17 continuously flowing water for months on end. And those areas
18 were kind of always (indiscernible) spots.

19 Q. Okay. Is it common practice in the fishing industry to, if
20 there are either bad welds or there's problems with watertight
21 integrity, to just put Splash Zone on it --

22 A. It's a common practice to finish the season or get home, you
23 know. I mean, you think about it, if you've got something
24 dripping in there, and I've been taught by all the safety classes
25 I've been in, you don't need to stop the leak, you've just got to

1 slow the leak. And having a little bit of water dripping out of a
2 chute on our way back to town or to finish the season off really
3 didn't -- it's very common practice.

4 Q. So is it also common practice to then make permanent repairs
5 or --

6 A. Yes, yes, you get in there and, you know, when you get done,
7 you finish -- you go back and you fix everything that broke on the
8 boat after winter. I mean, it's the Bering Sea. It's hard on
9 boats. It's hard on people. And, you know, Splash Zone's our
10 friend. It's in every one of my safety kits. It's -- we always
11 carry lots of it on the boat because you never know what's going
12 to happen. I mean, the United States has one of the oldest
13 fishing fleets in the world. And, I mean, there's only a couple
14 boats in my life that I've worked on that are newer than me.

15 Q. Okay. So when did you hear about the sinking of the *Scandies*
16 *Rose*?

17 A. It was my daughter's birthday. She threw up cake all over
18 the house at 1:00 in the morning, so I stayed up until 4:00 in the
19 morning cleaning. I shut my phone off because it was my last day
20 at home before I flew up the next day. And I woke up, and I had
21 about 37 missed calls. And I was thinking I was pretty popular on
22 New Years Eve. And then I looked, and Dan had called me about
23 four or five different times. And his phone was ringing again,
24 and he was pretty upset and wanted to make sure I heard it from
25 him.

1 Q. And that's -- when you say Dan, you're talking about
2 Mr. Mattsen?

3 A. Yes, yes, ma'am.

4 Q. So why did Mr. Mattsen call you?

5 A. Well, I worked for him my -- he's -- I'm his illegitimate,
6 red-headed stepchild, and he -- you know, me and him been through
7 a lot of stuff over the years. And he wanted to make sure I heard
8 it from him, because there was a lot of rumors. There was a lot
9 of BS. You never know what happens. And then he told me that the
10 boat went down that night and that Dean-o and Johnny had made it
11 into the raft, and that was all they knew.

12 Q. Okay. Captain, at this time, that's the end of my questions
13 at this time.

14 CDR DENNY: Captain Callaghan, I have nothing further at this
15 time.

16 CAPT CALLAGHAN: Thank you, Commander Denny.

17 At this time, Captain, I'm going to ask -- pass it over to my
18 colleagues at the National Transportation Safety Board for any
19 follow-on questions from them.

20 THE WITNESS: Okay.

21 BY MR. BARNUM:

22 Q. Captain Buholm, Bart Barnum, NTSB. Thanks for coming in
23 today. Appreciate your testimony. I just had a couple questions
24 for you here. First off, you stated earlier you consult your
25 stability report, stability instructions, quite frequently, pages

1 are dirty?

2 A. It's just -- it's just a good practice.

3 Q. Yeah. You know, since you're using it quite a lot, is it
4 safe to say that you trust those stability instructions?

5 A. Yes, very much so. We have to. I mean, we all have to
6 mitigate what we do and what we don't do, but we always try to
7 stay under the stability, what it's saying. And, you know, I've
8 got little kids at home. I'm doing everything I possibly can to
9 get home. And different boats burn fuel from different ways. You
10 know, the boat I ran for the last couple years, we burned it from
11 forward aft, where the other boats, we burned from aft to forward.
12 And there's different things in there that -- it's just handy. I
13 try to teach my -- it has all the different volumes of fuel, and I
14 use that to teach my engineers more about it. I always have it on
15 the dash for if anybody wants to look at it. They're always
16 looking for something stupid to read. Give them something good to
17 read and at least they might learn something.

18 Q. Okay. Understanding you spent virtually your entire life on
19 vessels and ships and your understanding of their stability is
20 probably extensive, but have you ever taken any formal stability
21 training?

22 A. Yes. Yeah, I took stability training when I sat for my
23 license, as well as last year, the NPFVOA -- must have been last
24 December I took a stability class at NPFVOA in Seattle.

25 Q. Was that part of your credentialing for the 100, 200 ton?

1 A. No, no, it was just a -- it was just a refresher course.
2 Everybody -- they -- I can't remember. It's one of the partners
3 in Hockema and Whalen puts it on at NPFVOA. It's just, I'm never
4 going to turn down learning something.

5 Q. Did you find it useful?

6 A. Very useful.

7 Q. Would you recommend it?

8 A. 100 percent. I wish it would be longer.

9 Q. Yeah.

10 A. It's the only class I've ever taken that I wish it was
11 longer.

12 Q. Really? You know, since, obviously, the tragic sinking of
13 the *Scandies Rose*, have you talked to any of your fellow
14 fishermen? Are you doing anything differently?

15 A. Yes and no. You know, it's kind of -- after a sinking,
16 everybody's a little more on edge and a little more doing their
17 thing. But we're still doing -- we still got to do what we got to
18 do. There's no real change in what we do. It's just -- we just
19 do what we think's best.

20 And I was a little hesitant. I flew out the day after the
21 boat sank, and we sat in Dutch. And there was a couple little
22 blows that went by that normally I probably would have gone out
23 on, but I was little gun shy at that point, you know, after just
24 losing all my brothers. But when it's all said and done, it's
25 crab fishing in the Bering Sea. It's just not -- it's not safe.

1 We just do what we do, and hopefully we make it home to our
2 families. That's the whole point of it is -- but --

3 Q. Anything that you think that could be done to make it safer?

4 A. Yes and no. We have -- from when I started and from what
5 I've -- you know, my family's been in it since the beginning of
6 crab fishing, and we've made so many big strides over the last 25
7 years for losing boats. And, I mean, the *Destination* blew us all
8 -- blew all of our socks off. And then the *Scandies*, I mean, that
9 was the first house-aft crab boat in crab fishing history to roll
10 over. There's never been a schooner that's rolled over crab
11 fishing. Plenty of them sank, but there's never been one that's
12 rolled over. And it's -- you know, I think we've done a lot, I
13 think.

14 I think everybody should take that stability class. I think
15 every crewmember should do -- what do they call the -- basic
16 safety training. You know, it's \$400 or something, and it
17 tells -- it teaches everybody. I think that -- I think that could
18 be the best thing for everybody. That was one of the best classes
19 I've ever taken, basic safety training, where I learned a lot of
20 different stuff and learned stuff that I'd been doing wrong when I
21 was training people. You know, I think that would be a very
22 minor, minor -- cost minor money for a lot of people to get more.

23 And that stability class that I took, I think that was a
24 wonderful class, and I think there's a lot to be learned because
25 there's a lot of people take it for granted what the book says.

1 Q. I do appreciate that. I think having your testimony of being
2 an experienced fisherman and stating that is very useful. I
3 definitely think -- definitely take that into consideration --

4 A. There's nothing wrong with learning. That's how I see it. I
5 mean, everybody goes, you got to take some stupid class. I like
6 taking the stupid classes, because usually, if there's one thing
7 that sticks out in those stupid classes, that's all that matters.
8 Even if 99.9 percent of it's redundant, but there's always that
9 one thing that came out going, oh, well, this came out from this,
10 or this came out from this.

11 Q. So you mentioned that *Scandies* is the first schooner in
12 history to roll over. Ultimately, what are you hearing or what do
13 you think happened to the *Scandies Rose*?

14 A. Well, I have three different scenarios. And to be honest, I
15 think they all happened at the same time. You know, and nobody
16 can confirm it, because -- but my biggest thing is the boat had
17 large wave walls around port and starboard sides to keep the crew
18 safe. And I think the scuppers on the starboard side froze up.
19 And I think they created --

20 Q. Free surface?

21 A. I'm sorry.

22 Q. Go ahead.

23 A. Free surface.

24 Q. Okay.

25 A. They created free surface, and I think there was a lot

1 of -- I mean, this is just going -- I mean, I fished on that boat
2 for one -- I filled in for a couple weeks during salmon, and I was
3 the mate on it for a government charter when they first bought it.
4 So I don't -- you know, I've got like eight weeks on that boat.
5 But that boat always was run -- they always ran the aft two tanks
6 down, the forward tank open or empty. And I think they got slack
7 tank -- or excuse me, I think they got free surface on the deck,
8 and the boat went down.

9 And, you know, anybody that's ever seen down-flooding knows
10 it's probably the scariest thing on earth next to a fire on a boat
11 because it happens quick. And I mean, you can think about it by
12 just taking a soda can and putting in a bottle of water -- or a
13 pot of water and putting it underneath of it and watch how fast
14 all that water goes down into that can. And that's how fast it
15 goes into it. And once the boat gets a list, you know, free
16 surface, there's no stopping it.

17 And for whatever reason, Gary pulled the boat out of gear.
18 God only knows why. He'll -- God's the only person that does know
19 why, and I think that just intensified it. And, you know, from
20 what I've heard from the survivors, it was as soon as he pulled
21 the boat out of gear, she started going over. And I'll never
22 second guess Gary's judgement. Gary taught me -- Gary's forgot
23 more than I'll ever know, and he's taught me more than any other
24 captain has, with the exception of maybe Mattsen or my father.
25 But it was just -- people do weird things in a panic situation,

1 and I've just never seen -- I've never known Gary to panic; that's
2 what really is the thing that I don't know is, I mean, he -- Gary
3 never panicked.

4 Q. Did you -- did you ever consider a hull breach in any way as
5 one of those possibilities?

6 A. No. There's been a lot of talk about that void where the
7 shit chute was cropped out and redone. One, that void was so
8 small, and it wasn't that large of a void. I mean, it's a lot of
9 water, and yes, it could have had problems. But I just -- you
10 know, I really think that they -- I mean, this is just what I'm
11 thinking, and I've thought about it night and day for over a year
12 after losing these friends.

13 And the only other thing that could have exasperated it --
14 actually, there's two more things -- is if that forward tank got
15 slack and it breached the bulkhead in the forepeak, but I don't
16 see that considering the boat stood on end before she went down.
17 I don't think that is.

18 But also, you guys have to take into consideration is the
19 area they were in. There is no area worse than where they were at
20 for icing. It's -- I've called it the freezer hold of hell,
21 because the problem is, if you get a westerly or a northwest
22 coming through the mountains of Chignik, there's glaciers all over
23 that. And you get -- a 30- to 40-knot wind comes across that
24 mountains and it picks up all this fresh water, and this cold,
25 cold water, and it turns into ice crystals. Then, when it comes

1 down, it hits the hot water, and the ice -- I've never iced up so
2 bad in my life as I've iced up in that area, within 50 miles of
3 where that boat went down. It's unbelievable the way the wind
4 comes out of those bays and it just rips that fresh water.

5 And I'm not a scientist, but I am a weather nerd. And there
6 is a captain, he's documented about 3,000 shipwrecks. His name is
7 Captain Warren Good. He was from Kodiak. He was actually friends
8 with Cobban. And what he was explaining to me one day when we
9 were BS'ing about this, amongst many other things, is there's a
10 water current that comes up, and there's the wind current that
11 comes down, and it super freezes so much there that it's -- every
12 stability test you could do, every book you could write, nothing
13 can prepare for being around Chignik.

14 It's just -- I mean, the -- you know, they have their own
15 terms for weather down there because nothing is what it's forecast
16 to be. And I spent a lot of time with one of the former U.S. --
17 Rich Courtney, he was part of the National Weather Service out of
18 Kodiak for a long time. Spent a lot of time on the radio learning
19 all the different areas from him because that area for Shelikof
20 Straits or Sitkinak past the Cape, there really should be about
21 five different weather, weather areas for Kodiak instead of three,
22 because everything changes by the geography of the land and the
23 mountains.

24 MR. BARNUM: Well, Captain Buholm, I really appreciate your
25 insight there and your observations and answering my questions. I

1 really appreciate it, helping the investigation. That's all the
2 questions I have for you, sir. My colleague has a couple.

3 BY MR. SUFFERN:

4 Q. Thank you, thank you, Captain Buholm, for your time today. I
5 just have a couple follow-up questions. If we could bring up
6 Exhibit 026, please, Exhibit 026.

7 A. Um-hum.

8 Q. And being that you are knowledgeable of Windy, it sounds
9 like, have you ever used the tabs on the right side of the screen
10 there --

11 A. Oh, yeah, I use everything.

12 Q. Okay. So which ones are your most popular that you use?

13 A. Mainly, I just do wave height and wind. Mainly it's wind. A
14 lot of time I don't even worry about the wave height because I
15 know what the wind's going to do, unless it's going to be
16 something bad, I'll check out the wave height. Predominately,
17 it's just the wind.

18 Q. Okay, and at the bottom right of the corner, it has the -- if
19 we could zoom in, maybe, on the weather warning tab there, kind of
20 three from the top there. Have you ever clicked on that
21 particular one?

22 A. No, honestly, I haven't.

23 Q. Okay. If you do have a warning for, say, a storm-force winds
24 or freezing spray, where do you typically get that information
25 from?

1 A. Oh, I just -- I watch the weather three or four times a day.
2 You know, I'm always on the phone. Every time, you know, three or
3 four times a day, I check the weather because it gets updated
4 constantly. And hours can make a difference from 30 knots to 50
5 knots or northerly to southerly. I mean, it's just, it's so
6 unpredictable. We consult weather multiple times a day.

7 Q. Okay. Thank you, Lieutenant McPhillips. You can take that
8 down. As far as what you review while you're a captain or while
9 you're out at sea, do you have internet access and able to view
10 Windy, or are you just --

11 A. Most boats do. Most boats now do. A lot of them don't, but,
12 you know, either way, we're still consulting with other boats
13 constantly. The boat I just ran -- I just ran the *Western Mariner*
14 from Dutch Harbor to Kodiak last week, and the Internet was shut
15 off, and the owners weren't going to be using it for a while, so
16 we didn't turn it on. And, you know, I called my dad, and I
17 called Dean Gribble, Sr., and I called a couple other captains I
18 knew and had them look at the weather for me to make sure it was
19 the same as I was hearing on the VHF versus Windy and stuff.
20 Having a good network and a good solid crew base -- base of
21 partner boats is huge for being a captain up there.

22 Q. Okay. As far as the observations that you're seeing, do you
23 ever pass those on to the National Weather Service? Do you know
24 if there's an avenue?

25 A. We used to. We used to when Rich Courtney did it, on the

1 sideband or on the satellite phones, we would pass it off to him.
2 Now it's kind of -- that was kind of the thing back in the day.
3 When I started, it was in the mornings, you'd have Peggy or you'd
4 have one of the other people, Peggy Dyson, they'd be giving out
5 the weather. And every fishing boat tuned into it.

6 You know, I was just coming from Dutch to Kodiak, and I
7 couldn't even find one weather -- I never got one weather forecast
8 off the radio other than the VHF. They don't do it on the
9 sidebands anymore. So it's kind of weird after always being able
10 to do it -- just doing it by radio for all those years, and then
11 now we've got the Internet. And now we're all kind of fixed on
12 the Internet and got to relying on it.

13 Q. Yeah, I understand, thank you. One more question relates to
14 -- Lieutenant McPhillips, if we could bring up 055, 055.

15 A. I'm sorry.

16 Q. Bringing up Exhibit 055 here. This is an experiment freezing
17 spray graphic that the National Weather Service has developed. If
18 we could zoom in on the pictures a little bit, and this shows how
19 freezing spray will accumulate per hour over Bering Sea locations,
20 the Aleutian Chain, Southeast Alaska. Would you find something
21 like this useful as a captain?

22 A. Oh, very much so. I mean, the biggest thing about the
23 National Weather Service webpage is, since they redid it a few
24 years ago, it's just a pain in the butt to find anything on it.
25 But this would help. I mean, the thing is, is we take all -- we

1 use every tool we possibly can. And, I mean, this would be a
2 great tool. All the weather tools are great tools, but the thing
3 is, it's not always exactly what they forecast in the spot you're
4 at. And you've got to take your experience and use your
5 experience, and you just do what you got to do. But no, I would
6 very much use one of those if I could.

7 MR. SUFFERN: Thank you, Lieutenant McPhillips, and thank
8 you, Captain. I appreciate your time. That's all the questions I
9 have.

10 CAPT CALLAGHAN: Captain Buholm, I'll ask if you could put
11 the headphones in. So I'm going to go through a couple virtual --
12 next round of questions will come virtual. So make you be able to
13 hear. I'm going to turn it over to counsel for the two survivors.

14 Mr. Stacey?

15 BY MR. STACEY:

16 Q. Thank you. And, Captain, can you hear me all right?

17 A. Yes.

18 Q. Captain Buholm, can you hear me, sir?

19 A. Yes, sir.

20 Q. Perfect. My name is Nigel Stacey. I'm representing Johnny
21 Lawler and Dean Gribble. First, they wanted me to pass along
22 their thanks to you for testifying today. They really appreciate
23 it.

24 Two very quick questions for you, sir. You talked about how
25 -- the amount of time you've worked with Dean-o and John. Would

1 you consider them good deckhands?

2 A. Oh, yeah. Both of them are excellent hands.

3 Q. All right. And when you went through -- changing topics to
4 icing -- when you would go through the freezer hold from hell, as
5 you called it, how quickly, in your experiences, would you
6 accumulate ice right in that area?

7 A. That's not an answerable question because it depends on the
8 humidity, the weather, the wind direction. I mean, there's so
9 many different things that can combine on that. You know, spray.
10 But very fast. I mean, it's scary fast.

11 Q. Yeah. Would you have instances where you would go from not
12 concerned to concerned in less than an hour?

13 A. Yes, oh, yes. No, I mean, we came out of a bay one time 30
14 miles from there, and we had just cleared the whole boat with ice.
15 And I turned the corner, and within 5 minutes I couldn't see out
16 my windows, and every door was iced shut. I mean, no, it's a very
17 -- I wasn't expecting it. I just told the guys to go to sleep,
18 and I idled down the hill, and then suddenly we're a block of ice
19 again.

20 Q. Yeah, yeah.

21 MR. STACEY: Okay, thank you very much, Captain. Those are
22 all questions I have for you. Thank you, sir, for your testimony
23 today.

24 THE WITNESS: Yep.

25 CAPT CALLAGHAN: Thank you, Mr. Stacey.

1 Now I'm going to turn it over to counsel representing the
2 vessel owners, Mr. Barcott.

3 MR. BARCOTT: Thank you, Captain.

4 BY MR. BARCOTT:

5 Q. Thank you, Bryce -- Captain Buholm. I just have one
6 follow-up, and the Board is interested, I think, in all the
7 information -- you've used a name, I suspect they don't know who
8 she was or what she did. Who's Peggy?

9 A. Oh, Peggy Dyson. She -- well, other than being -- she gave
10 out the weather for many, many years to all the fishermen on 4125,
11 and she was the one that passed off half the kids that were born
12 in Kodiak to their dads. I think she told my dad I had a -- I
13 can't remember if I was the (indiscernible) baby or a Peggy baby,
14 but I still have her barometer she shipped out to our boat in the
15 '70s when my dad had -- his barometer broke. So I still have that
16 on my wall.

17 Q. And who was her husband?

18 A. Oscar Dyson.

19 Q. Who's he?

20 A. Well, that's a big argument, because my great-grandfather
21 built the first crab boat for crab fishing, and he built the
22 second. And he always argued that the *Peggy Jo* was launched --
23 (indiscernible) the day before the (indiscernible) was laid. But
24 we were in the water first.

25 MR. BARCOTT: Thank you, and no further questions. Thanks

1 very much.

2 CAPT CALLAGHAN: Thank you, Mr. Barcott.

3 Just have a couple follow-up questions for you. I'm going to
4 go to Lieutenant Commander Comerford first for a couple questions,
5 sir.

6 THE WITNESS: Of course.

7 BY LCDR COMERFORD:

8 Q. Good afternoon, Captain. First question, you mentioned Dutch
9 Harbor Safety earlier for weighing the pots. Just help me
10 clarify, who is Dutch Harbor Safety?

11 A. It's the Coast Guard Safety Division, the MSI or Marine
12 Safety.

13 Q. Oh, okay.

14 A. (Indiscernible) acronym.

15 Q. That's fine. And when they weighed the pots, is that a
16 requirement or what initiated that?

17 A. It's -- I don't really believe it's a requirement. I don't
18 think it's -- but we are requested to call 24 hours before we
19 depart with a full load of gear for the first trip of the season.
20 But it doesn't make sense because that's for crab, but they don't
21 do it for the cod boats. And that's always been a weird thing is
22 yeah, I mean, we go further up for crab, but, you know, they never
23 -- they don't do it on any of the cod boats that go out cod
24 fishing January 1st. It's always been a weird thing in my mind.

25 Q. So help me kind of get a little bit of geographic reference

1 here. You said crab go out further but the cod are less.

2 A. Well, the cod fish have to be delivered every three days, so
3 they traditionally fish around Dutch Harbor and Unimak Pass and up
4 the peninsula, you know, closer to land. But the same crab pots
5 on the same boats.

6 Q. And then I'd like to pull up Exhibit 24, page 1, and when it
7 comes up, it's going to just show a nautical chart, a little bit
8 of Shelikof Strait, and there's a buoy that's circled up there,
9 and there's another buoy down to the south and the east, if the --
10 Mr. McPhillips, can you just kind of highlight that second buoy
11 down there?

12 A. Oh, yeah, no, I'm aware of them well. They don't mean squat
13 for the rest of that area. There should be about eight buoys in
14 this area.

15 Q. I think you just answered my question. Would you be -- so,
16 re-summarizing it, you would see value added to additional
17 observation points for these weather buoys?

18 A. Can I use my handy-dandy little thing here?

19 Q. Yes, please.

20 A. So yeah, because here's the thing. If you get the northwest
21 -- you see these lakes? And if you had a topographical chart, you
22 could see. If it blows northeast here, it circles back here. And
23 what was it, about four or five years ago, I was on my way to
24 Sutwik Island to go pick up fish with the *Retriever*, you know,
25 140-foot old military boat. And from when we were -- I drove for

1 16 hours, and it was a 24-hour run. And I went down in the
2 evening, and four hours later, I got up, and the entire boat was
3 encapsulated with ice. And it's from right about here.

4 This whole area is just -- you know, you've got the Samiades
5 here, but it's this whole area coming off the beach is just --
6 it's a scary area. And it's -- you've got to keep her on your
7 toes or it will bite you. But you also have so many -- there's so
8 many on here, these mountain passes, there's so many -- so many
9 passes that the wind changes directions and gathers coldness, and
10 it's just like nothing I've ever seen before. I spent 10 years
11 doing it in that area. And I just wish Gary would have made it
12 that last two miles.

13 Q. In your opinion -- there's been mention of Sutwik Island as a
14 lee before. Is that, in your opinion and experience, a good
15 anchorage, a good place to seek shelter from those elements?

16 A. Can you zoom in to Sutwik? Yeah, because I've anchored up in
17 -- you can't even see. There's areas right here where there's a
18 huge area. It shows you going over rocks, but they're not there.
19 I've got a lot of local knowledge. I've got a lot of friends and
20 family from Chignik that have taught me these areas along with
21 Gary. Where Gary was about to be, it wasn't the best anchorage,
22 but it was a good anchorage for the direction the wind was going.
23 There's three anchorages: there's one right here, there's one
24 right here, and we call this one, this one here -- there's another
25 one here, we call that the stupid spot because it doesn't even

1 show the mountain that's on the chart.

2 Q. Actually, we can pull up a closer chart --

3 A. Yeah, I mean, there's a tremendous amount of anchorage around
4 Sutwik, and I've anchored up in every single one of them many,
5 many times. Gary's the one that taught me Sutwik. He knew where
6 he was going. He was heading to the spot he could.

7 Q. And then, just one last related question. The -- oh, sorry,
8 wrong program. So one last question, just getting all that ice on
9 the boats, working to keep it free of ice, at what point can you
10 really be effective to start removing the ice as it's
11 accumulating? Is it one inch, is it two inches? Is there kind of
12 a general area where you know that you have to -- you can start
13 effectively managing ice on your --

14 A. It's usually when it starts -- when you can't see the paint
15 underneath of it anymore. When it glazes over, when it starts
16 building the thickness, you stop seeing the paint underneath the
17 boat, underneath the ice.

18 Q. So like where it turns white --

19 A. Oh, it's probably an inch-and-a-half or so. You know, it's
20 all different. I mean, we try to stay ahead of it because there's
21 nothing worse than working 20 hours a day on deck and then having
22 to go break ice for six, eight hours. Versus you send a couple
23 guys up between strings, and they break off the small stuff, and
24 then it doesn't accumulate as fast. And that's pretty much how
25 we've all worked on it.

1 There's no real -- like I said before, there's no -- there's
2 no chart. We don't have a chart of what we should be doing,
3 because there's just not. There's no way to guess -- you can't
4 guess with Mother Nature, and you can't guess -- you just kind of
5 do what you've got to do.

6 Q. Thank you very much, Captain.

7 LCDR COMERFORD: That's all the questions I have.

8 CAPT CALLAGHAN: Thank you, Lieutenant Commander Comerford.

9 I'm now going to ask Commander Denny for a few follow-up
10 questions.

11 BY CDR DENNY:

12 Q. Okay, Captain, I do have just a few questions based on stuff
13 that you have said to us. You mentioned that you ran the *Scandies*
14 *Rose* a couple times. One was for a government charter.

15 A. Oh, no. I never sailed as captain. I sailed --

16 Q. Sir, go ahead.

17 A. Oh, I -- the very first season Gary had it, his crew had to
18 leave, and I went over and sailed as the engineer for a week and a
19 half with him, and then that next week, I got on, and Dan Mattsen
20 took over as master for a fish and game charter up in the
21 (indiscernible).

22 Q. Okay. So question based on your experience. Why did they
23 require Dan Mattsen to be a captain? Did they require it because
24 of a license? Did they require -- did that particular charter
25 require a licensed captain?

1 A. Yes.

2 Q. Why do you think that would be?

3 A. Because we had federal observers on board or just government
4 observers on board, and it was just their requirement for that.
5 And I just about had my license done, but -- plus Dan had just
6 bought the boat, and he bought the biggest and the baddest crab
7 boat in the Bering Sea, and he wanted to go out and go do this
8 little government charter we did together. You know, it wasn't
9 actually fishing. It was five pots every five miles.

10 Q. But it -- any thoughts on -- any thoughts on why a licensed
11 mariner? Do you think it might have to do with the training or
12 credentialing part of it?

13 A. It's just a requirement for -- probably for the government
14 insurance. I've done a lot of research -- I've done a lot of
15 research programs that, you know, every -- if anybody's going to
16 send their people on a boat, they want to send them with a
17 licensed master. But that being said, I've had my license. I'm
18 up for my -- I'm up for renewal here next month, and I've used my
19 license one time in my entire life, and that was to sail as a cook
20 on a tugboat.

21 Q. Okay, that's fair.

22 A. I mean, Gary was ten times the captain any of us will ever
23 be, and there's no piece of paper, and it's -- and honestly, the
24 caliber of people that sat in my class, taking my -- sitting in my
25 license, anybody that can study for -- that knows how to study and

1 has been to college can past a masters exam. The hardest people
2 -- the hardest of us to get them were those of us that actually
3 have been captains and sailed our whole lives. It's harder for us
4 to get our license than it is for some Joe Blow that comes off the
5 street and sits down and goes, oh, I know how to study, and can
6 study and passes it and still has no clue what he's doing.

7 I've said that hundreds of times over where suddenly the
8 company's hired a -- I've been doing my surveying stuff. You
9 know, they'll hire a master to go move a boat, and I'm like, I
10 wouldn't let this guy drive my go-kart, let alone a boat. And you
11 can train all you want, you can take all the tests you want, you
12 have all the credentials you want, but nothing's -- no
13 credential's going to prepare you for the Bering Sea unless you've
14 done it, anywhere in Alaska, honestly.

15 Q. Well, thank you for that candid answer. I appreciate your
16 thoughts on that.

17 A. Gary was colorblind. He was going to get his license, he was
18 colorblind, and that's the only reason he didn't have a license.
19 He sat for a license 25 years ago down in Alabama when they were
20 working on one of the boats. He passed everything, but then he
21 couldn't pass his colorblind test.

22 Q. Okay. So I just want to shift topics a little bit. I wanted
23 to ask you about drills. You said that safety is super important
24 to you; it's a high priority. When you do drills with your crew,
25 how often do you do it?

1 A. Try to get them done every month.

2 Q. Okay, and then when you run through drills, do you have
3 everyone put on their immersion suits?

4 A. Yes.

5 Q. Do you ever practice entering a life raft or how do you do
6 that? Walk me through it.

7 A. Well, that's one of the problems. I mean, actually about 20
8 years ago, Dan Mattsen had us go up and go play around in one of
9 the rafts at one of the raft stores. And I actually took my crew
10 and couple of the other mariner boat crews over to one of the raft
11 shops this winter, and I conducted a drill for 15 of us at the
12 raft shop and had the manager of the raft shop -- we broke out all
13 the goodies and all the stupid stuff and the paddles, and we
14 actually broke out the bag, and the guys could actually see what's
15 inside of it.

16 And that's one of the things that I've really been upset
17 about is, pre-rationalization, we used to have -- before every
18 crab season, you guys would be up there doing the -- we'd have the
19 flooding thing at the fire station next door to the Marine Safety
20 Division. We'd have the swimming pool thing. They still conduct
21 it a little bit, but it's not what it used to be.

22 And I've actually been in the process of trying to build a
23 fisherman's memorial in Dutch Harbor so we can raise money to put
24 on multiple safety courses. And I'm in Dutch Harbor prior to
25 seasons and during the seasons, because nobody can do it down here

1 because, I mean, we've got guys flying in from all over the
2 country, and trying to get people into Seattle, it's just --
3 trying to get people to Dutch Harbor is a logistic nightmare, and
4 then trying to get a bunch of people to show up days before they
5 have to leave their families anyways to do stuff down here is kind
6 of -- it just doesn't work.

7 And I think we need -- you know, you can never have enough
8 training, and that's -- we need to continue on with the training
9 and build what we can and try to learn from all these -- all these
10 horrible things that have happened to our friends and family and
11 just keep training. It's never going to stop. Crab fishing's one
12 of the most dangerous things in the world, and it'll always be.
13 There's nothing -- there's nothing that nobody can do to make crab
14 fishing 100 percent safe. Unless somebody can build some sort of
15 rafts that explode out of the boat and keep the boat from sinking,
16 you know, there's no -- it's just crab fishing. We know what
17 we're getting into.

18 I mean, I've been watching my family's friends die since I
19 was a little kid, and it's -- it sucks, but we still do it. I
20 don't know if we're stupid or if we just don't care or -- it's
21 just most of us were just bred that way. Fishing's provided for
22 my family since the beginning of time, and it still provides for
23 my family now.

24 Q. Thank you. I appreciate your candid answer.

25 CDR DENNY: Captain, sir, that's all I have.

1 CAPT CALLAGHAN: Thank you, Commander Denny.

2 And so I've just got one follow-on questions for you, sir.
3 And this is probably not the easiest question to answer, but it's
4 why we're here. And I get, we just do what we do. But with
5 multiple incidents in the past few years, what needs to change to
6 make it safer?

7 THE WITNESS: I think training for the crew. I think
8 training for the crew's a big thing. Because it's one thing -- I
9 mean, I got training out the wazoo, but what happens if I'm dead?
10 I'm not -- I mean, it's -- we need more training with the crew.
11 And I think having -- not only does the training help the crew,
12 but doing it in Dutch Harbor, one, it gets the guys off the boat
13 for a day, and they get to go to the swimming pool and go play
14 around and not -- and it brings the crew together.

15 And you've got all -- you've got the whole crew. You've got
16 the captain, the engineer. You've got the whole crew together.
17 You're already a family, and it creates crew morale. And you have
18 other boats competing against your boats for -- you know, the
19 Coast Guard, you guys always give out little corny little prizes
20 like flashers for your suit or bung plugs for the emergency kits
21 and just stupid little stuff. But that stupid little stuff
22 creates crew morale, and it teaches the guys to trust each other
23 and how to operate in those situations.

24 I personally would love to be certified by AMC (ph.) or by
25 the NPFVOA and help put these classes on myself, because it's such

1 a huge thing for me. In 2003, we lost a guy off the *Shaman* in
2 king crab. And I dove over the side, didn't put my suit on. Got
3 it half-way on and dove over after him, and he died in my arms.
4 And I had to go face his mother who'd lost three sons in five
5 years to the ocean that next week when we buried him. And I never
6 want to see that again.

7 I don't want my crew -- I think about it every single day of
8 my life. There's not a day that goes by that I don't think about
9 losing Terry over the side and watching him take his last breath
10 in my arms. And I don't want my guys to ever have to go through
11 what I go through, because I don't sleep at night. I mean, I had
12 one death. I can't even fathom what Dean and Johnny are going
13 through right now, and it's -- it's not fun.

14 CAPT CALLAGHAN: I appreciate that, sir, and multiple times
15 you kind of recognized them as your family, your friends, your
16 shipmates, and I greatly appreciate the stance you take about
17 taking care of your crew and owning that role as a captain and a
18 master of your own boat.

19 THE WITNESS: When I get on that boat, anything that happens
20 to that boat is my responsibility. No boat owner's ever told me
21 what to do, and if they have, I don't follow it. I just do what I
22 think's best. Nobody's ever going to tell me to put too many pots
23 on my boat, to leave town, to do anything. The only thing -- the
24 only thing I've ever been able to -- when I get on the boat, every
25 single thing on that boat, if somebody breaks a fingernail, that's

1 my responsibility. And that's the responsibility of every captain
2 that sails, should have that stance.

3 CAPT CALLAGHAN: All right. We couldn't ask for anything
4 more. And you mentioned these were your family -- these were more
5 than friends; these were your family. And any -- as I've said
6 before, any loss in the fishing industry is a loss in and of
7 itself. And these guys were close to you. And for that, on
8 behalf of the Board here and on behalf of the Coast Guard, offer
9 my deepest condolences on the loss of your friends and family.

10 THE WITNESS: Thank you, sir. I appreciate that.

11 CAPT CALLAGHAN: And so I really thank you for being here
12 today. Thank you for taking the time out to help us along with
13 this investigation, to really better understand how we can work
14 together with the fishing industry to make it safer.

15 THE WITNESS: Well, and I think there's a lot -- like the
16 biggest thing about working with the fishing industry is having
17 former fishermen and people that are still involved in the
18 industry to work alongside of them. Because I see it every day
19 when I'm doing -- I own a marine surveying business. When I'm
20 doing surveys, you know, everybody's like all afraid to be around
21 me until they realize I'm a fisherman like them and -- because
22 there's a lot of stuff that you guys see black and white, and go,
23 oh, well, we shouldn't do this. But there's stuff like we're
24 going, wait a minute, that works for this fishery, but it doesn't
25 work for this fishery, it doesn't work for this fishery. And I

1 think there could be a lot of -- I think if we all work together,
2 you know, if we just save one freaking life, we've done well. And
3 that's how I see it. You know, if we can make one person -- save
4 one life out of this horrible thing with the *Scandies*, they didn't
5 all die in vain.

6 CAPT CALLAGHAN: Couldn't have closed it out any better, sir.
7 And it sounds like we have some use for you down the road. Sounds
8 like --

9 THE WITNESS: I would really appreciate that. I'd love to be
10 a part of it.

11 CAPT CALLAGHAN: Industry needs some representatives, and we
12 certainly need those -- that direction to work with you all to
13 make it safer. So thank you.

14 So, Captain, you are now released as a witness from this
15 formal hearing. Thank you for your testimony and cooperation. If
16 at any later date we determine that we need more information from
17 you, we'll contact you directly. If you have any questions about
18 the investigation, you may always contact us through the
19 investigation recorder, Lieutenant McPhillips.

20 Thank you again, sir.

21 THE WITNESS: Thank you, all. I really appreciate being out
22 there.

23 (Witness excused.)

24 CAPT CALLAGHAN: The time is now 1419. We'll take a recess
25 and back in session at 1430.

1 (Off the record at 2:19 p.m.)

2 (On the record at 2:30 p.m.)

3 CAPT CALLAGHAN: It is now 1430. This hearing is now back in
4 session. We'll now hear from Mr. Mark Stichert and Ms. Krista
5 Milani.

6 Mr. Stichert, Ms. Milani, Lieutenant McPhillips will now read
7 you the oath and ask you some preliminary questions.

8 (Whereupon,

9 KRISTA MILANI and MARK STICHERT

10 were called as witnesses and, after being first duly sworn, were
11 examined and testified as follows:)

12 LT MCPHILLIPS: Please be seated. I will be asking each of
13 you questions about your background, starting with Ms. Milani.

14 Ms. Milani, please state your full name and spell your last
15 name.

16 MS. MILANI: My name is Krista Milani, and my last name is
17 spelled M-i-l-a-n-i.

18 LT MCPHILLIPS: Please identify counsel or representative if
19 present.

20 MS. MILANI: Yeah, I have two present: one from NOAA general
21 counsel and one from our Department of Commerce.

22 LT MCPHILLIPS: Will each member of your counsel please spell
23 their last name as well as their company relationship?

24 MR. JONES: My name is Levi Jones, J-o-n-e-s, and I'm an
25 attorney with the U.S. Department of Commerce, Office of General

1 Counsel.

2 MR. SCHANE: And this is Demian Schane, S-c-h-a-n-e. I'm an
3 attorney with NOAA's Office of General Counsel in Alaska.

4 LT MCPHILLIPS: Ms. Milani, please tell us, what is your
5 current employment and position?

6 MS. MILANI: My current employment position is a Natural
7 Resource Specialist with Sustainable Fisheries Division in the
8 Alaska Region.

9 LT MCPHILLIPS: What are your responsibilities for that job?

10 MS. MILANI: My main responsibility is to track the harvest
11 at different quotas to ensure that we don't exceed any of our
12 quotas in fisheries, and then I also maintain a field office in
13 Dutch Harbor, the port of Dutch Harbor, and I answer questions
14 that the fishermen might have about regulations and other
15 questions that they might have.

16 LT MCPHILLIPS: Can you briefly tell us your relevant work
17 history?

18 MS. MILANI: Prior to working for the National Marine Fishery
19 Service, I worked for the Alaska Department of Fish and Game. I
20 was employed as a crab observer through the Department of Fish and
21 Game. I was an observer and debriefer for the observer program.
22 My last three years for the Department of Fish and Game, I worked
23 as an assistant (indiscernible) biologist for the ground fish
24 fisheries in the Bering Sea/Aleutian Islands. And then since
25 2009, I have been working in my current position.

1 LT MCPHILLIPS: What was your education related to the
2 position?

3 MS. MILANI: I have a bachelor's in biology from the
4 University of Oregon, and the rest is all training, on-the-job
5 training.

6 LT MCPHILLIPS: Do you hold any professional licenses or
7 certificates related to your position? Please explain if so.

8 MS. MILANI: No.

9 LT MCPHILLIPS: Thank you very much.

10 Mr. Stichert, please state your full name and spell your last
11 name.

12 MR. STICHERT: My name is Mark Stichert, last name is spelled
13 S-t-i-c-h-e-r-t.

14 LT MCPHILLIPS: Please identify counsel or representative if
15 present.

16 MR. STICHERT: None present.

17 LT MCPHILLIPS: Please tell us, what is your current
18 employment and position?

19 MR. STICHERT: I work for the State of Alaska Department of
20 Fish and Game as a fisheries management coordinator for ground
21 fish and shellfish fisheries based out of Kodiak, Alaska.

22 LT MCPHILLIPS: What are your general responsibilities in the
23 job?

24 MR. STICHERT: In general, I provide technical and
25 administrative oversight over a group of biologists and other

1 staff that are responsible for the in-season management observer
2 program and the catch accounting programs, primarily focused on
3 Bering Sea and Aleutian Islands crab fisheries.

4 LT MCPHILLIPS: Okay. Can you briefly tell us your relevant
5 work history?

6 MR. STICHERT: Sure. I'm in my 16th year with the
7 Department, fifth year in this position. Prior to that, I was
8 Area Management Biologist for the Alaska Department of Fish and
9 Game in a couple different capacities. And then I worked for the
10 U.S. Forest Service as a fisheries biologist prior to my
11 employment with the department.

12 LT MCPHILLIPS: What is your education related to that
13 position?

14 MR. STICHERT: I have a bachelor's degree from the University
15 of Wyoming and a master's degree from the University of Alaska
16 Fairbanks.

17 LT MCPHILLIPS: Do you hold any professional licenses or
18 certificates related to your position? Please explain if so.

19 MR. STICHERT: None in this position.

20 LT MCPHILLIPS: Thank you, sir, and Captain Callaghan will
21 now have follow-up questions for you.

22 CAPT CALLAGHAN: Thank you, Mr. Stichert and Ms. Milani. I'm
23 now going to pass it over to Mr. Keith Fawcett for questions.

24 Mr. Fawcett?

25 MR. FAWCETT: Thank you, Captain.

1 Good afternoon, Ms. Milani and Mr. Stichert.

2 EXAMINATION OF KRISTA MILANI AND MARK STICHERT

3 MR. FAWCETT: We are going to go through some testimony here,
4 and if you need to take a break, please do. And also, the
5 recorder, Lieutenant McPhillips, will have some exhibits that I
6 asked to put up which you will be able to see on your screen. And
7 we can -- if you need us to, like if you're answering a question,
8 we can ask him -- we can ask him to zoom in or move to a certain
9 place on the document. And we'll leave the documents up there for
10 enough time so that you can take a good look at them.

11 So the first thing I'd like to do is talk to you -- sort of
12 go in a panel discussion, and if you would, one of you can answer
13 the question, and if the other one wants to amplify the
14 information afterwards, please do so. But it's a little hard with
15 Zoom here, so kind of give a little nod of your head if you'd like
16 to ahead and answer the question. Is that okay?

17 So I'm trying to understand, and the public is watching us,
18 and they're trying to understand some of the terminology that
19 we've used through this testimony. And we've talked about --
20 Ms. Milani, you mentioned a quota. Would one of you explain, if
21 you would, what a quota is for a particular species, like crab,
22 like a type of crab, or cod?

23 MS. MILANI: Well, so I can answer.

24 MR. STICHERT: Go ahead, Krista.

25 MS. MILANI: Sorry, Mark.

1 I can answer that. So for federal fisheries, quotas are set
2 by the National Marine -- the North Pacific Fisheries Management
3 Council. And so they're basically setting a certain amount of
4 metric tons (indiscernible) to fish for a species. And so then
5 once the council sets those quotas -- we call them TACs, total
6 allowable catches -- then we have regulation that further splits
7 out those quotas by different -- different sectors, different user
8 groups. And so that's the maximum amount that we would want that
9 user group to fish. It's the number of pounds or metric tons that
10 they'd be available to fish.

11 MR. FAWCETT: So these quotas for a specific species, would
12 it be correct to say that government entities, either Alaska or
13 the Federal Government, sets those quotas?

14 MS. MILANI: So the North Pacific Fisheries Management
15 Council sets the quota, and then National Marine Fisheries Service
16 accepts those quotas. But we only set the quotas for ground fish
17 species, and the State of Alaska sets the quotas for the crab
18 species.

19 MR. FAWCETT: So, Mr. Stichert, how do you do that when it
20 comes to crab?

21 MR. STICHERT: So the crab fisheries in the Bering Sea are
22 co-managed by the State of Alaska and the National Marine
23 Fisheries Service under provisions of a Federal Fisheries
24 Management Plan. So in terms of setting an annual quota, the
25 process first starts with the federal stock assessment process,

1 which is a cooperative process where a -- it's called a crab plan
2 team meets. That group is ultimately responsible for providing
3 guidance and recommendations for what an annual removal limit
4 should be.

5 That recommendation then gets escalated to the Science and
6 Statistical Committee that's associated with North Pacific
7 Fisheries Management Council, and they ultimately adopt what's
8 called ADTROFL; those are really meant to be called biological
9 reference points or harvest limits that are meant to approximate
10 sustainable yield.

11 So once those federal harvest limits are established, the
12 State of Alaska then uses much of the same process and similar
13 information, and we set the actual TAC or co-allowable harvest
14 because crab fisheries are a little bit unique in that only male
15 crab of a certain size get harvested. The state then only uses
16 information and sets a TAC specific to male crab of a certain
17 size.

18 And so there's a little bit of a distinction in the process
19 there, but we generally follow the federal process up until the
20 department, the State of Alaska, sets the actual harvest limit on
21 the exploitable male crab in the population.

22 MR. FAWCETT: So moving on to another term that has been
23 mentioned here. That's the individual fish quotas. Since we're
24 talking about cod here, Ms. Milani, would there be any individual
25 fish quota for cod?

1 MS. MILANI: No, so the -- I mean, there are some cod
2 fisheries, but since we're talking specifically about the Bering
3 Sea/Aleutian Islands 60-foot and over specific cod fishery, that
4 fishery does not have any kind of quota system associated with it.
5 So it's not part of any kind of catch-share program.

6 MR. FAWCETT: Okay. We'll be talking more about that in a
7 minute. But, Mr. Stichert, from the Alaskan perspective, speaking
8 of that, are there individual fish quotas established and what are
9 they?

10 MR. STICHERT: Well, for Bering Sea and Aleutian's crab, most
11 crab species, there are -- there is a rationalized fishery
12 quota-share system established for those fisheries. As I
13 mentioned, the fisheries are co-managed by the state and federal
14 government.

15 The rationalization or how those crab get allocated is one of
16 the federal contributions to the fishery, but once the state sets
17 the TAC in process, that TAC is then further subdivided, and
18 individual quota-shares are issued to different vessels and
19 entities within the fishery such that each quota-share holder then
20 has guaranteed access to their portion of the available crab to be
21 harvested in that particular year. Specific to most of the Bering
22 Sea crab fisheries, the Bristol Bay king crab, bairdi, opilio, and
23 St. Matthew's blue crab, as well Aleutian gold and king crab
24 fisheries.

25 MR. FAWCETT: So the *Scandies Rose* was heading out to go for

1 cod, and then they were going to shift into the crab season. So
2 what I would like to do, Mr. Stichert, since we're talking about
3 fish quotas, individual fish quotas, I want to give you some
4 questions and see if you can provide answers.

5 So if I lived down in the United States, in Ohio or somewhere
6 like that, could I buy a share into a particular species through
7 this quota system?

8 MR. STICHERT: I think the short answer is yes. There's a
9 lot of conditions associated with how those quota-shares are
10 distributed. But yes, there's no residency requirement or
11 anything similar to that, in terms of who has access to the
12 ability to own those shares.

13 MR. FAWCETT: Can those shares be transferred or sold?

14 MR. STICHERT: Those shares can be transferred or sold or
15 even leased to each other -- each other, qualifying quota-share
16 holders within the -- within the rationalized quota-share system.

17 MR. FAWCETT: So who keeps track of how the shares are -- who
18 owns the shares?

19 MR. STICHERT: I'll start and maybe Ms. Milani can pick up.
20 But the restricted access management office within Alaska Region
21 National Fisheries Service is the entity responsible for tracking
22 and actually issuing quota-share once the TAC is set. And I'll
23 turn it over to Ms. Milani now.

24 MS. MILANI: Yes, Mr. Stichert, that was an excellent
25 description. That is exactly what occurs. Restricted access

1 management program folks are in charge of tracking and
2 transferring quota around between individuals.

3 MR. FAWCETT: So one of the things that has been discussed
4 here are the fish co-ops. Can one of you explain how fish co-ops
5 tie into the individual shares? I've heard someone talk about
6 negotiating prices for catch and maybe the term arbitration is
7 used. Can one of you explain those concepts?

8 MR. STICHERT: Krista, can (indiscernible) from maybe more of
9 a federal function? Do you want to start?

10 MS. MILANI: Yeah, so it is a federal function. So one of
11 the parameters that was put into the crab rationalization program
12 was that people that were issued individual fishing quotas had the
13 ability to form co-ops and fish the IFQs cooperatively. So they
14 could all fish off of each other's IFQs, and it would all be
15 pooled together.

16 Unfortunately, I don't know that much about the arbitration
17 system, so I can't really answer any detailed questions about how
18 that works exactly.

19 MR. FAWCETT: So we also mentioned in testimony and you both
20 brought up it was the term rationalization. Can someone explain
21 that for us?

22 MR. STICHERT: Sure, I can start on that. Rationalization --
23 sorry, Krista. (Indiscernible) recognizes a fisheries management
24 program where similar to what we were just talking about. Instead
25 of having an open-access fishery where fishermen are openly

1 competing with each other to catch their own competitive share of
2 the annual TAC, rationalization is a system where the TAC is,
3 again, divided up and issued to individual quota-share holders,
4 and those quota-share holders then have an opportunity to fish
5 those quota within (indiscernible) regulations but more freely.
6 And so it reduces competition and allows greater flexibility and
7 innovation within the fishery.

8 MR. FAWCETT: So I know this is cumbersome, this panel style,
9 and I promise we will move out of it in just a few more questions.
10 But would you say that rationalization is sort of a term that
11 captures the shift from derby-style fishing moving into this quota
12 system?

13 MR. STICHERT: Yes.

14 MR. FAWCETT: And --

15 MS. MILANI: Actually -- sorry, I know there's a bit of a
16 delay because I'm out on Dutch Harbor. So the rationalization
17 is -- for federal management, there are two types of fisheries.
18 There's the catch-share plan or catch-share program-type
19 fisheries, and then these limited-access fisheries. And so crab
20 rationalization is a type of catch-share plan fishery.

21 And then, prior to crab rationalization, it was a limited
22 access fishery, which can sometimes present sort of a derby-style
23 management fishery, where there were no individual -- no
24 individual quotas given to individuals, and so everybody was
25 fishing off the same quota until the fishery closed.

1 MR. FAWCETT: So when we shifted from, in crab -- speaking of
2 crab, from derby-style to the quota system, did the number of
3 vessels that are engaged in fishing increase or decrease?

4 MR. STICHERT: This is Mark. So when the shift in 2005
5 occurred from more of a limited access or derby-style fishery to
6 rationalized fishery occurred, the amount of effort, the number of
7 boats participating in a fishery, substantially decreased. We
8 went from an average of sometimes 250 to 300 boats, to what is now
9 closer to 65 vessels that actively participate in the fishery.

10 MR. FAWCETT: So is one of the byproducts, the intended
11 byproducts, of this shift to the quota system the improvement of
12 the safety of operations?

13 MR. STICHERT: I think that was one of the primary drivers of
14 shifting away from a derby-style fishery towards rationalization.
15 You know, one of the -- one of the downsides of derby-style
16 fisheries are vessels are functionally competing against each
17 other. And so there's a tendency to push harder if the weather
18 was poor, or conditions were such that was not conducive to being
19 on the fishing grounds. But for fear of losing out on opportunity
20 and catch, boats would oftentimes push to get there.

21 So one of the primary motivators were to provide some
22 stability for the fishery, flexibility for the fishers to be able
23 to harvest their portion of the quota at a time that makes the
24 best sense for them, and ultimately to improve safety within the
25 fishery, among other things.

1 MR. FAWCETT: So, Ms. Milani, turning to cod fishing. Is
2 there any timeline for moving cod fishing, that you can share with
3 us, to the quota system?

4 MS. MILANI: So, in order for something to move into a
5 catch-share program, it has to be, you know, reviewed and analyzed
6 and approved by the North Pacific Fisheries Management Council.
7 And in 2019, or 2018, industry did go to the council, some of them
8 did, and asked that the fishery be moved into a quota-share
9 program. The council, at that time, chose not to move forward
10 with that action. And so, as of right now, there's no scheduled
11 plan by the North Pacific Fisheries Management Council to move
12 forward with a quota-share program for this fishery. That doesn't
13 mean it won't happen, but right now, there's just nothing
14 scheduled for it.

15 MR. FAWCETT: So would it be fair to say that cod fishermen
16 get out there in the season, and when they get their catch, they
17 get in the port to unload? And that their co-ops, in general,
18 would negotiate fixed prices for their catch to reduce commercial
19 pressure?

20 MS. MILANI: Do you mean for pacific cod?

21 MR. FAWCETT: Yes, ma'am.

22 MS. MILANI: So I think there is some negotiation that the
23 fleet does with processors, negotiate a price before the beginning
24 of the season. But I know it's not -- I don't think that the --
25 they're not in cooperative. So it would just be sort of an

1 informal conversation between the fleet and processing plants on
2 what the price might be. So I wouldn't say that there's any
3 formal or regular occurrence at that, of them negotiating as a
4 group, as a cooperative. I hope that answers your question.

5 MR. FAWCETT: Yes, it does. So turning our attention to
6 competition and commercial pressure, I just want to be clear. So
7 for the waters that -- of the United States and the Alaskan
8 waters, can a foreign vessel fish for cod or be engaged in crab
9 fishery?

10 MS. MILANI: You have to have a --

11 MR. STICHERT: Go ahead, Krista.

12 MS. MILANI: I was just going to say, you have to have a
13 permit in order to participate in those fisheries. And to be
14 honest, I'm not sure what the parameters are for buying those
15 permits. I'm not sure if, as a foreign entity, if you'd be able
16 to buy those permits or not. I'm not 100 percent sure on that.

17 MR. STICHERT: This is Mark. It's my understanding, for the
18 State of Alaska waters, or waters that are under jurisdiction of
19 the state, you need to be a United States flagged vessel in order
20 to participate in those fisheries.

21 MR. FAWCETT: Okay. So now, you've been very helpful there.
22 And I'd like to shift my attention and speak about Ms. Milani and
23 the work of the National Marine Fishery Service.

24 Mr. Stichert, if there's any amplification you can provide to
25 the questions, please let me know. Just I can see a yellow border

1 around your screen, and that will help me know that you may want
2 to answer, so just tap that.

3 But if you could expand a little more, Ms. Milani, on what
4 you do. And what I did in preparation for this interview, I
5 pulled up Wikipedia and looked at -- could you talk about the
6 North Pacific Management Council and what that organization does,
7 how its -- who it gets its direction from and so forth?

8 MS. MILANI: So the North Pacific Fisheries Management
9 Council -- so under the Magnuson Stevens Act, there's a provision
10 in there that each of the regions of the United States create
11 fisheries councils. And the job of these fisheries councils is to
12 review different regulations and programs and proposals that
13 industry or sometimes National Marine Fisheries wants to put in to
14 change regulations or amend the FMP, which is the Fisheries
15 Management Plan.

16 And so, they're made up of -- well, I can't remember how many
17 people are on there, but they're made up of various people from
18 various sectors. So we have it -- so National Marine Fisheries
19 has a seat, somebody from the Alaska Department of Fish and Game
20 has a seat. You know, there's folks in industry that hold seats
21 on the council.

22 And so they review any new programs, any new fisheries
23 programs, that industry might ask for. And they look at -- they
24 look at the feasibility of a program, and they kind of take into
25 account the pros and cons of any new program.

1 And they've got -- they've got committees that help them. So
2 there's a AP committee, so that's the advisory panel committee,
3 and that's made up of industry folks who also review the same
4 actions and give advice to the council on whether or not they
5 think if the program is a good idea. And then we have a science
6 and statistical committee, and so that's a group of scientists
7 whose main job is to review any kind of proposals that are coming
8 up before the council for scientific integrity. And they give
9 advice to the North Pacific Fisheries Management Council based on
10 their scientific background.

11 MR. FAWCETT: So if -- Lieutenant McPhillips, if you could
12 pull up Coast Guard Exhibit 123. And these are screen captures
13 from the website that faces the public about the council. And
14 page one -- 125, excuse me, I'm sorry. And page one, if you'll
15 scroll down and hold it right there, Lieutenant, thank you.

16 So it talks about the -- it talks about the Gulf of Alaska.
17 And my question will be, does this apply to the Bering Sea also?
18 But in that website entry, it says that ground fish fisheries are
19 among the few remaining limited access, not-rationalized fisheries
20 in Alaska. And then, later it says Pacific cod fisheries are
21 permanently capped at the number of available licenses, and new
22 entrants will have to purchase an existing license if they want to
23 fish in federal waters. Does that apply to the Bering Sea?

24 MS. MILANI: Yes, so you have to have a limited license
25 permit in order to participate in the fishery. And there's a set

1 number of limited license permits that are in existence. So we
2 don't -- if somebody wants to come and fish in the fishery and
3 they don't have one, we don't create -- Management Fisheries does
4 not just create another license to give to them.

5 So the only way you can obtain a license is if somebody, you
6 know, wants to sell their license to you. So they do sell
7 licenses on the free market, and you can purchase them if they're
8 available on the free market, if you want to join the fishery.
9 But that's the only way you are able to join a fishery, because we
10 don't create any new licenses.

11 MR. FAWCETT: Okay. Lieutenant, if you will scroll down on
12 that page to where there's a graphic image of a VHF radio. Right
13 in the middle there.

14 So on this website, there was a -- and what I did is I did a
15 search on the website for the word safety to see if safety was
16 part of the mission outlined in the fisheries council. And this
17 came up, and it was dated December 13th of 2019. And it talks
18 about some communications issues involving VHF radios in the
19 vicinity of Kodiak and Shelikof Strait. Do you know how safety
20 items are put into the website of the council?

21 MS. MILANI: Yeah, I'm sorry, we have -- there's a specific
22 council staff that deals with that, and I'm not sure how they
23 choose what to put on there. This looks like something that they
24 put on there just to inform -- that they thought was important to
25 inform people about, but I'm not sure how they came to that

1 conclusion to put that on there. But safety is a main concern and
2 one of the main directives of the council is to make sure that any
3 programs that they're putting in place take into account safety.

4 MR. FAWCETT: Can you give some examples of some of the items
5 that that council has discussed regarding safety?

6 MS. MILANI: Well, there's definitely discussion when it
7 comes to any kind of catch-share program. It's one of the main
8 things. And in any catch-share program that you go back and look
9 at, that's one of the main things that they will -- they will talk
10 about. There has -- safety in regards to icing conditions in the
11 crab fisheries up north and the ability to get into the port of
12 St. Paul due to icing conditions. And the ability to retrieve
13 gear that might be lost in the ice. There has been discussions on
14 that as well. I'm sure there's other things as well, but those
15 are the two that come off the top of my head.

16 MR. FAWCETT: So, Lieutenant McPhillips, could you pull up
17 Exhibit 46? So this is a safety alert, when it comes on your
18 screen, that the Coast Guard has designed to alert fishermen
19 regarding the dangers of icing. Do you know if these type of
20 safety alerts or other information from the Coast Guard is
21 discussed in the council?

22 MS. MILANI: There is a Coast Guard representative at the
23 council. You know, I'm not -- I can't tell you for sure if these
24 particular things have been discussed. But there is a
25 representative from the Coast Guard at most of the council

1 meetings, who I would assume would talk about some of these
2 issues.

3 MR. FAWCETT: And if -- do you think that if this type of
4 information was given to the council, the council might consider
5 including it on the website for -- to make sure that fishermen and
6 fish vessel operators knew about this critical safety information?

7 MS. MILANI: Yeah, there might be -- they might be willing to
8 do that. But again, I don't work for them, so it's difficult for
9 me to -- to say for sure.

10 MR. FAWCETT: So, Lieutenant McPhillips, if you would, please
11 put up Exhibit 124. And this is from the Anchorage Daily News and
12 the date of the article -- and I'm just going to talk about a part
13 of it -- is December 31st, 2019. And it talks about the cod
14 harvest, and it references the Gulf of Alaska.

15 But in there it says Alaska's -- the headline is Bering Sea
16 Cod Fishery Opens 2020 in Alaska. It says, "Alaska's seafood
17 industry is open for business starting January 1, when some of the
18 biggest fisheries get underway long before the start of the first
19 salmon runs in mid-May." Then it goes on to say, "Cod begins in
20 all the Bering Sea, which has 305.5 million-pound catch quota,
21 down about a million pounds from 2019. Less than 6 million pounds
22 of cod fish will come out of the Gulf."

23 So in terms of the quota for cod for 2020, in your
24 perspective, was -- did the fishermen have the ability to get out
25 there and get more cod or less cod or shorter season?

1 MS. MILANI: So 2020 -- you know, I went back and looked all
2 the way into the '80s, and 2020 was the -- had the second-smallest
3 quota out of any of the years that I looked at. 2021 being small,
4 but 2020 was the smallest. And there is not any mechanism for
5 them to get more cod than the allocation in the TACs that the
6 North Pacific Fisheries Management Council put in place. And
7 that's because there's other parameters at play such as
8 over-fishing levels, and we don't want to (indiscernible) fishing
9 levels because that puts -- permanent harm to our stocks. And as
10 sustainable fisheries, we need to keep those limits,
11 (indiscernible) fishing limits.

12 MR. FAWCETT: So in a lot of fishery and in some of the
13 investigations I've been involved with, the start of the season
14 might be a movable date. So for cod, is the start of the season
15 fixed on a particular date?

16 MS. MILANI: Right, yes. So for federal Pacific cod, the
17 season start date is set by regulation, and there's not any
18 flexibility to change that date, currently. I mean, basically,
19 you know, industry could go to the council and ask for a change in
20 that start date or some flexibility in that start date, but that
21 has not happened for Pacific cod fisheries. And so it's set in
22 regulation, for now, and there's no -- there's no room to change
23 it.

24 MR. FAWCETT: Okay. The closure of the season, is that a
25 flexible date, or is that a fixed date?

1 MS. MILANI: So there is a regulatory closure to all of our
2 fisheries. So for example, the over-60 Bering Sea/Aleutian
3 Island, or the 60-foot and over Bering Sea/Aleutian Island Pacific
4 cod pot fishery, has a season closure date of June 10th. So that
5 seasonal closure date that's in regulation cannot be changed.

6 However, in a fishery like that, where it's a (indiscernible)
7 at the beginning of the season, the fishery closure date normally
8 (indiscernible) at the harvest -- when we harvest the full quota.
9 And so it's usually much sooner than the season dates that we have
10 in place in regulation. And we have flexibility in the sense that
11 we're managing that in season.

12 And so we're constantly updating the harvest that we see and
13 projecting forward how much harvest we think is going to be taken
14 in order to decide on those closure dates. And we do typically
15 take into account the weather towards the end of the season, to
16 ensure that, you know, people don't feel pressure to go out during
17 bad weather at the end of the season.

18 MR. FAWCETT: So with the start of the season January 1st for
19 2020, what was the closure date of the season?

20 MS. MILANI: The closure date -- the closure date in 2020 was
21 January 15th. And that was the same in 2019. And that's the
22 shortest season that we've seen for the fishery.

23 MR. FAWCETT: Mr. Stichert, I think importantly, speaking to
24 the *Scandies Rose*, they were going to go out and fish for cod,
25 take their catch in, and then when did crab season, which they

1 intended to fish for, when would that have started?

2 MR. STICHERT: So the crab season in question, we're talking
3 about snow crab season. The season technically opens on October
4 15th. However, most -- almost all snow crab fishing effort
5 doesn't start until early January for a number of different
6 reasons. But the majority of the fleet starts fishing, usually
7 first half of January, and that season runs through the end of
8 May.

9 MR. FAWCETT: So, Mr. Stichert, the plans to -- for the
10 *Scandies Rose*, it was their own -- the season was open from --
11 during the entire timeframe of January, and even from the time
12 they left port. Is that correct?

13 MR. STICHERT: Correct.

14 MR. FAWCETT: And so what would be one of the reasons --
15 either of you can answer -- that they went out and fished for cod
16 in 2020, from a business standpoint? Maybe not so much as landing
17 catch, is there another reason?

18 MR. STICHERT: So as we discussed, crab fisheries are
19 rationalized. And so the *Scandies Rose* had their quota-share, and
20 they knew exactly how many crab they had to catch and were allowed
21 to catch. And given the long season, they really have flexibility
22 on when and where they go ahead and fish.

23 So if given the opportunity to delay their crab fishing,
24 understanding that there was no competitive cost, right, their
25 quota-share was theirs to catch, and they had until the end of May

1 to catch those crab. It may be advantageous then to delay your
2 crab season to start cod fishing, where it is a competitive
3 fishing, so you could go and fish in cod. When that season
4 closed, you could then switch over and fish for crab.

5 MR. FAWCETT: So, Ms. Milani, what would have happened if the
6 *Scandies Rose* had decided not to fish for cod in early January?
7 Would that have had a potential impact on if the species went to
8 the international -- the individual fish quota system?

9 MS. MILANI: If they decided not to fish cod in 2020,
10 obviously, they would have missed (indiscernible) cod fishery.
11 The cod fishery is divided into two seasons. There's an A season
12 and a B season. So they could maybe still participate in the B
13 season, which is open on September 1st.

14 And the way that the council has specifically approached
15 catch-share for ground fisheries is that they choose a set of
16 years, six years. So say they choose 2005 to 2010, and they say,
17 okay, we're going to look at all the fishing that occurred in this
18 fishery for these years. And if you have history of fishing in
19 these years, then we're going to give you an allocation based on
20 your history for those years.

21 So, you know, fishing's not -- in a catch-share program, and
22 the council has not looked a catch-share program for this fishery,
23 but if they chose years to look at to base the future allocations,
24 and one of the years they chose was 2020, then at that
25 (indiscernible) IFQ, or individual fishing quotas, if they did not

1 fish that year.

2 MR. FAWCETT: So, Lieutenant McPhillips, could you pull up 44
3 and -- Exhibit 44, which is a GAO report on commercial fishing
4 safety from 2017? And we've added a page in there for the record.
5 And so if you'd shift to page three, please. There's a section in
6 there which describes the function of the National Marine Fishery
7 Service.

8 Okay, so the bottom part of that says, "Fishing vessels that
9 carry a fishery observer" -- and we'll talk about the fishery
10 observer program -- "as part of a required or voluntary observer
11 program generally must pass a Coast Guard commercial fishing
12 safety examination and be issued a safety decal. Further, under
13 Federal regulations, fishery conservation and management measures
14 must, to the extent practical, promote the safety of human life at
15 sea and should minimize or mitigate the safety impacts where
16 practical."

17 So you mentioned that you were involved with the fishery
18 observer program. Could you elaborate a little bit on, just very
19 briefly, on what the observers do?

20 MS. MILANI: So I was -- I'm sorry, I couldn't see the
21 screen. It never came up on my Zoom, but I think I heard
22 everything you said there. So I was a crab observer, I was not a
23 ground fish observer, so they might have, you know, different
24 standards on what the observers look at.

25 So as a crab observer, when you got in the vessel, you had to

1 check and make sure the vessel had certain safety things in place.
2 And so that included things like a current Coast Guard decal,
3 survival suits on board, whether or not the life raft had a
4 hydraulic release should it hit the water, fire extinguishers.
5 I'm sure there was -- you know, going through a drill, a safety
6 drill with the vessel.

7 I'm sure there's other things, too, I'm not remembering
8 because that was 15 -- 10 to 15 years ago. And then if the vessel
9 passes all the safety requirements for an observer to sail with
10 them, the observer would go out with them, and while they're out
11 fishing, collects biological data during the commercial fisheries.

12 MR. FAWCETT: So if a fish observer was aboard a commercial
13 fishing vessel and there was an accident, would they file a
14 report?

15 MS. MILANI: I mean, definitely a federal ground fish
16 observer would, yeah. I imagine it would be the same with the
17 crab observer program. Mark might -- or Mr. Stichert might have a
18 better idea on the current system for crab.

19 MR. FAWCETT: Mr. Stichert?

20 MR. STICHERT: So within the crab fisheries, the observer
21 program is a responsibility of the State of Alaska. And so we
22 generally mirror the federal regulations. And so, similar to what
23 Ms. Milani said, as soon as a crab observer deploys on a vessel,
24 they check the decal, run through a vessel safety checklist
25 looking at all the things that Ms. Milani outlined, and then will

1 check off on that before they're able to disembark on that boat.

2 Certainly then, when they are deployed, if something were to
3 happen on board the boat -- we -- in sensitive cases have
4 decrypted coding capabilities where a crab observer could identify
5 and report back to our crab observer office of safety violations
6 and issues in a way that the boat or skipper or anyone that was
7 sensitive to that information would hear. And so there's a number
8 of different mechanisms for observers to report back to vessels --
9 or report back to the department if there are safety violations.
10 And we are certainly empowered and have asked our observers to do
11 that.

12 MR. FAWCETT: So, Ms. Milani, do you know of any fish
13 observers who have been injured or lost their lives on commercial
14 fishing vessels?

15 MS. MILANI: I don't work for the observer program, so I
16 don't typically track that kind of information. I do know
17 observers do occasionally get injured. I don't recall any loss of
18 life, but again, I don't work for them, so I don't necessarily
19 track that.

20 MR. FAWCETT: So I'm finished with my questions for you,
21 Ms. Milani, but I want to give you this opportunity before we
22 shift over to Mr. Stichert, is there anything related to the
23 sinking of the *Scandies Rose* that I might have not asked you about
24 that you'd like to -- like a question I probably should have asked
25 that you might want to share with us?

1 MS. MILANI: No, I can't think of anything at this moment.

2 MR. FAWCETT: Okay, thank you.

3 Mr. Stichert, turning to the Alaska Department of Fish and
4 Game, you mentioned reports from observers. When your agency does
5 its work, are they able to access databases maintained by the
6 Coast Guard to look up vessel histories, information on vessels in
7 regards to their operation?

8 MR. STICHERT: I'm not sure we have that as a standard
9 practice. You know, there are -- we have a field office in Dutch
10 Harbor and an office here in Kodiak. There are Coast Guard Marine
11 Safety detachment offices in each area -- in fact, I think they
12 share our same building in Dutch Harbor, so we certainly have
13 close working relationships and access to each other.

14 But I don't know that we specifically look up Coast Guard
15 specific vessel safety information relative to management, our
16 portion of them in the fishery, but we do take safety seriously.
17 And as Ms. Milani mentioned, we do require observers to do a
18 thorough vessel safety inspection prior to disembarking on those
19 boats.

20 MR. FAWCETT: So does your agency conduct fisheries patrols
21 that take a look at crabbers or other fishermen?

22 MR. STICHERT: Sure. So the Alaska Department of Fish and
23 Game doesn't specifically do any enforcement, but the Department
24 of Public Safety -- Alaska Wildlife Troopers are a division of the
25 Department of Public Safety who have the responsibility

1 specifically for conducting compliance for commercial crab
2 fisheries, and they are generally quite active around the state
3 and generally have vessels and as well as local troopers in most
4 of the major fishing ports.

5 MR. FAWCETT: So is there a role with like safety compliance
6 for the Alaska Department of Fish and Game -- the Coast Guard will
7 conduct a safety exam and issue a decal, or conduct a safety
8 compliance check. Is it a requirement that vessels that operate
9 in Alaska have those safety compliance checks or have those safety
10 decals in place?

11 MR. STICHERT: I don't think there's a specific -- I think
12 the federal Coast Guard requirements regarding that supersede any
13 state regulations. And so, you know, if -- the state doesn't have
14 any additional safety compliance issues, but I think rely on that
15 level of oversight coming from the Coast Guard, which I think
16 apply to any vessel operating inside the state waters as well.

17 MR. FAWCETT: So there's a regulation, is it -- I assume it's
18 an Alaska regulation, that requires crabbers going out to notify
19 the Coast Guard on departure. And then another provision is to
20 communicate the pot weight or the pot count to the Coast Guard.
21 Is that a state requirement?

22 MR. STICHERT: I don't know if it's a state requirement. If
23 it is, it's likely -- again, the crab fisheries are co-managed,
24 and so everything operates under the fishery -- federal fishery
25 management plan. And so in instances where it is, I guess, makes

1 sense that the state adopt federal regulations in the state
2 regulations to allow for greater compliance, we do that. But I
3 think that is a part of the federal contribution to the
4 co-management of those fisheries.

5 MR. FAWCETT: Ms. Milani, can you add anything on that? Do
6 you know anything about the calling to the Coast Guard on
7 departure or the pot count that's being relayed to the Coast Guard
8 on departing crabbers?

9 MS. MILANI: So I am aware of those provisions. Well,
10 actually, I wasn't aware of the pot count or the weight one. But
11 calling the Coast Guard before you leave, I was aware of that. My
12 recollection is that that was something that we asked that the
13 state put in regulation, but I could be wrong about that.

14 MR. FAWCETT: So, Mr. Stichert, it doesn't appear that that's
15 a regulation. Would that be correct?

16 MR. STICHERT: You know, truthfully, sir, I don't know off
17 the top of my head. But, again, I could look, but I don't know
18 off the top of my head. I do know that vessels do need to contact
19 the trooper -- or, excuse me, the Coast Guard prior to departure.
20 Whether that is a state or federal regulation, I don't know, but I
21 do know that this a requirement (indiscernible) I believe.

22 MR. FAWCETT: Are there any state regulations -- and,
23 Ms. Milani, you might chime in here -- on the size of crab pots or
24 the construction or the weight of crab pots for, let's say first,
25 crabbing?

1 MR. STICHERT: So the -- most of the regulations regarding
2 configuration of gear are designed to address potential loss of
3 that gear. And so there are specific regulations in the state
4 regulations that require escape mechanisms. So we have to have
5 escape mesh and escape panels, in case a pot is lost, the sidewall
6 degrades, and it'll allow fish and crab to get out.

7 There are distinctions between what defines a ground fish pot
8 and a crab pot, and that deals with the size of the perimeter eye
9 opening of each pot. So, for instance, the ground fish pots have
10 a smaller diameter opening, which are designed to decrease the
11 probability of capturing halibut as bycatch. But I don't believe
12 off hand that there are any restrictions on the size or the weight
13 of the pot in state regulation. Most of our regulations all
14 address the (indiscernible) openings and mechanisms that are
15 required of that gear to allow for escapement of crab and other
16 animals.

17 MR. FAWCETT: Ms. Milani, did you have anything to add from
18 the federal level?

19 MS. MILANI: Sure. So we actually defer all of the decisions
20 about the gear to the state, so we don't have any additional
21 requirements as far as how the gear is configured beyond what the
22 state has in place.

23 MR. FAWCETT: So would crab pots be considered fixed gear?

24 MR. STICHERT: Yes.

25 MS. MILANI: Yes.

1 MR. FAWCETT: And then, Mr. Stichert, just an opportunity to
2 talk about, if you feel like it, anything that the Alaskan Fish
3 and Game Department does in the area of promoting safety of the
4 fishermen?

5 MR. STICHERT: So nothing specific, although, you know,
6 obviously our own regulatory body, the Alaska Board of Fisheries,
7 as well as the Division of Commercial Fishery, the Alaska
8 Department of Fish and Game, certainly encourage and promote and
9 advance any regulations that promote safety and safe operations in
10 the fishery. We certainly provide a fair bit of marine survival
11 safety training for our observer and any of our own staff that go
12 out. But I think we largely defer to the good folks at the U.S.
13 Coast Guard to provide the umbrella for marine safety.

14 MR. FAWCETT: If you chartered a commercial fishing vessel
15 for work for the department, would it be required to have licensed
16 personnel on board or meet other standards than a typical
17 commercial fishing vessel?

18 MR. STICHERT: Yes, it would be very similar to the observer
19 program. They would need to have a current USCG decal, and before
20 any department staff were to board that charter, they would need
21 to undergo some drills and make sure the boat's in compliance with
22 all the safety measures. Depending on the type of charter and
23 where that charter goes, what it's used for, oftentimes in the
24 procurement process we will require a certain amount of experience
25 by the captain or the crew and/or specify certain vessel

1 requirements or licensing. So, oftentimes, those are project
2 specific, but at very minimum, we do require a vessel safety decal
3 and all the other safety equipment that goes with that.

4 MR. FAWCETT: So, Mr. Stichert, my final question is similar
5 to what I asked Ms. Milani. You know, I've asked you a lot of
6 questions, and we're investigating the loss of the *Scandies Rose*
7 and her crew. And is there anything that I didn't ask you about
8 the interaction with the department that might be helpful here?

9 MR. STICHERT: Nothing specific comes to mind, Mr. Fawcett.
10 You know, the skipper and the boat were well-known participants in
11 Alaska crab fisheries, and we're certainly saddened by what
12 happened. But nothing comes to mind specific to anything unique
13 about this situation.

14 MR. FAWCETT: All right. Thank you both very much,
15 especially for the panel side of it. I know it was a little
16 cumbersome. And I'll turn my questions over to Captain Callaghan.
17 Thank you very much.

18 CAPT CALLAGHAN: Thank you, Mr. Fawcett.

19 We're now going to turn it over to the National
20 Transportation Safety Board, Mr. Barnum.

21 MR. BARNUM: Thank you, Captain, and thank you, Ms. Milani
22 and Mr. Stichert. I appreciate your time and continued help on
23 this investigation already.

24 So I guess I'll ask a couple questions, and they're for
25 Ms. Milani, just follow-up from Mr. Fawcett in regards to the

1 rationalization of the pot cod fishery in the Bering Sea. Could
2 you talk a little bit about the different -- I shouldn't say
3 different types, but to my understanding, the trawler fleet in the
4 Bering Sea, they recently rationalized that fishery for cod. Is
5 that correct?

6 MS. MILANI: So they are in the process -- they're in the
7 council process right now of reviewing a possible catch-share
8 program for (indiscernible) in the Bering Sea/Aleutian Islands
9 area. It's not in the -- you know, it's not official yet. They
10 haven't passed anything final yet, but they are in review of a
11 possible program for a (indiscernible).

12 And then to answer (indiscernible) there are -- there's three
13 basic types or sort of umbrellas of catch-share programs. So one
14 is the individual fishing quota idea which is part of the crab
15 rationalization program. Crab rationalization is a little more
16 complicated -- complex, because it also allows them to co-op once
17 they get their IFQs.

18 Then there's straight up IFQ fishery, so that's like
19 sablefish and halibut. So, again, that's individuals getting
20 quotas. They don't co-op in those fisheries.

21 Then there's fisheries where the allocation is given to a
22 group, so like Bering Sea pollock would be an example. So there's
23 different cooperatives, and each cooperative is given a certain
24 amount of quota, and then each cooperative is responsible for
25 making sure that they don't exceed the quota that's given to them.

1 And then the last one is community quotas and -- so where the
2 community development quota. So that's an allocation that's given
3 to specific communities, and then those communities can decide how
4 they want to fish those quotas. Those are the three basic types.

5 MR. BARNUM: Great, okay. And then off your comments
6 earlier, when going to rationalization, often catch history is one
7 of the elements that is considered. In this particular fishery,
8 60-foot and greater vessel pot cod, would the catch history for
9 both the A and B season be combined or would they only look at one
10 of those seasons to base the catch history from?

11 MS. MILANI: It's hard to know because the council has a lot
12 of flexibility on how they create a catch-share program. So for
13 example, the catch-share trawl fishery that's currently in
14 consideration for the catch-share program is currently divided
15 into three seasons. And so there is some speculation as to
16 putting some of the season into the catch-share program and
17 leaving, you know, one season as sort of a free-for-all kind of
18 season.

19 It's hard to know what the council will choose to do, should
20 this fishery move into a catch-share plan program. It's certainly
21 possible that they would look at A and B season combined and
22 rationalize for the entire fishery into the cost-share program.
23 But if they ever -- you know, down the road, they could choose to
24 (indiscernible) put the A season into a catch-share program. It's
25 hard to know, because they have the possibility to do it however

1 they -- you know, whatever they think.

2 MR. BARNUM: Okay, and this is my last question here, I'm
3 curious for clarification, we talked about how the pot cod
4 fishery, 60-foot and great vessels, there was some interest by
5 some of the fleet there, participants, to go rationalization in
6 2019, and then the North Pacific Fisheries Management Council
7 opted not to do that. Did they give a reason why?

8 MS. MILANI: They did. So what the council members said
9 during that meeting is that they didn't feel as though there was a
10 consensus among the fleet and the (indiscernible) on whether or
11 not everyone really wanted a catch-share program and also, if
12 there was to be a catch-share program, what that might look like.
13 So they didn't feel that there was a real consensus.

14 So the council asked the industry to go back and discuss
15 amongst themselves whether or not they really wanted -- if
16 everyone really wanted the catch-share plan program. But then
17 also, like what that structure of that would look like. And as of
18 -- you know, I mean, industry did come back and talk to the
19 council again at the last council meeting, but it didn't really
20 sound like there was any real consensus at that time either. So
21 the council has still chosen not to move forward.

22 MR. BARNUM: Understood.

23 Ms. Milani, Mr. Stichert, thank you both. I appreciate it.
24 That's all my questions.

25 CAPT CALLAGHAN: Thank you, Mr. Barnum.

1 Ms. Milani, Mr. Stichert, I'm going to now pass it over to
2 our parties in interest, counsel representing the two survivors.

3 Mr. Stacey?

4 MR. STACEY: Good afternoon, everyone. Thank you very much
5 for your testimony. We have no questions for you. Thank you.

6 CAPT CALLAGHAN: Thank you, Mr. Stacey.

7 I'll now pass it over to counsel representing the vessel
8 owners, Mr. Barcott.

9 MR. BARCOTT: Thank you, Captain.

10 Ms. Milani and Mr. Stichert, can you hear me?

11 MS. MILANI: Yes, I can hear you.

12 MR. BARCOTT: So I just have a couple of questions -- I'm the
13 attorney representing *Scandies Rose* -- and let me give you a
14 scenario, and then I'm going to ask some questions about it. The
15 plan of the *Scandies Rose* was to go out and fish in the Bering
16 Sea/Aleutian Island pot cod fishery and make one delivery, and
17 then switch over to its crab gear.

18 So my question to you is, when a fishery like this cod
19 fishery, if it ever becomes rationalized, is it possible today to
20 know what rules will be applied to allocate that catch in the
21 future?

22 MS. MILANI: It is not possible at this point in time to know
23 how that might work in the future. It requires several rounds of
24 analysis and review by the North Pacific Fisheries Management
25 Council in order to come up with the parameters of the catch-share

1 program. And sometimes it can take multiple years in development
2 before they decide on something that will work. And it is a very
3 unique process for the fishery that they're looking at, so there's
4 no cookie cutter mold on how to approach --

5 MR. BARCOTT: Knowing what you know, would it make sense to
6 you that a savvy fisherman would want to make even just one
7 delivery in the year 2020 looking forward to rationalization at
8 some point?

9 MS. MILANI: I'm not sure that I can really answer that
10 question because we don't know what years that the council might
11 look at to base the history on for the fishery. And so, you know,
12 there's a chance that they could include the year 2020 when
13 they -- if they ever look at a catch-share program for that
14 fishery, but then there's also a chance that they might not. And
15 so lots of other participants don't know either. And so it's
16 better -- you know, probably beneficial for them to make landing
17 (indiscernible).

18 MR. BARCOTT: Right. No one knows how the fishery might be
19 rationalized, if it's rationalized, but does it make sense that
20 having one landing in 2020 would be better than having no landings
21 in 2020?

22 MS. MILANI: Sure, since you don't know how it's going to pan
23 out in the end, having one landing versus no landings could make a
24 difference depending on (indiscernible) of the future.

25 MR. BARCOTT: Right, thank you. And so as I understand it,

1 the Bering Sea/Aleutian Island over 60 pot cod fishery, the one
2 the *Scandies Rose* would be engaging in, in 2019, that fishery was
3 15 days long from January 1st to January 15th, is that right?

4 MS. MILANI: Correct, 2019 and 2020 both had the same closure
5 date.

6 MR. BARCOTT: Okay. So if the *Scandies Rose* got out to the
7 fishing grounds on the 6th or 7th of January and made one delivery
8 and then switched over its gear to crab gear, was there any time
9 deadline on when it had to have its crab quota caught?

10 MR. STICHERT: I think I can take that question. So as we
11 discussed earlier, the crab fishery in question is the opilio snow
12 crab fishery. And that fishery, again, opens up on October 15th,
13 and that fishery then extends into May. So that vessel would have
14 a fair bit of time between January -- mid-January and May to catch
15 their quota depending on how much quota they caught. The 2020
16 snow crab TAC was relatively small, and so I would expect then
17 that each individual fishing quota be on the lower end of average
18 as well.

19 MR. BARCOTT: Right. While the quota was small, to be clear,
20 this was not a derby fishery. These vessels had individual
21 quotas, and they could catch them as they saw fit?

22 MR. STICHERT: That is correct. So the *Scandies Rose* would
23 have opportunity to catch their crab at any point during the open
24 season, which again, extends through May.

25 MR. BARCOTT: Okay. Thank you both very much. Those are all

1 the questions I have on behalf of *Scandies Rose*.

2 Thank you, Captain.

3 CAPT CALLAGHAN: And I've just got two follow-on questions
4 for you both. And so, in describing process, kind of talked about
5 it being a unique process, but is there any lobbying at any point
6 by individuals or quota holders or the cooperatives themselves on
7 behalf of the individual constituents of them?

8 MR. STICHERT: So this is Mark. Maybe you can clarify, what
9 do you mean by lobbying?

10 CAPT CALLAGHAN: So I guess is there any pressure or any one
11 party that's, you know, trying to push -- one side trying to push
12 to move towards the rationalization more than the other side?

13 MS. MILANI: So you're talking about for the Pacific cod
14 fishery?

15 CAPT CALLAGHAN: Yes.

16 MS. MILANI: So there is -- there is a group, I can't
17 remember what they're called, maybe Bering Sea cod -- pot cod
18 harvesters or something. I forget exactly what their name is.
19 But they have some members in that group and, you know, I'm not
20 intimately involved with that group, so I'm not really sure what
21 all they do. But I do talk to sort of the head of that group, and
22 he sort of acts as the go-between between him and the other folks,
23 so in our group and his group. So those guys do have meetings,
24 from my understanding. They do talk about things together, from
25 my understanding. But I don't know that all of the vessels that

1 participate in the fishery are part of that group.

2 CAPT CALLAGHAN: Okay, thank you. So just trying to
3 understand now season end times. So understand they can drop
4 their gear in the water. How long after the season ends do they
5 have to pick that gear up if they've laid it before the end date?

6 MS. MILANI: In the ground fish fishery, we don't really have
7 a -- I mean, we encourage them to get the gear off the ground and
8 undated and doors open as close to the closure of the fishery as
9 possible. We do not have any regulations, federal regulations,
10 that give a timeline on when that has to happen for the Pacific --

11 CAPT CALLAGHAN: Okay. Well, thank you very much. Thank you
12 both. That concludes my line of questions. But I do have one
13 question for the both of you with regards to things that we've
14 considered here in relation to the *Scandies Rose* incident. For
15 the benefit of this investigation, from where you see it, is there
16 anything else that we should be considering as part of this
17 investigation?

18 MR. STICHERT: Nothing comes to mind from my point of view.

19 MS. MILANI: Yeah, me either. Nothing comes to mind.

20 CAPT CALLAGHAN: Well, thank you both again for taking the
21 time to be with us today. Thanks for bearing with the technology
22 and conducting this virtually. Greatly appreciate your testimony
23 and the time you've allowed for us today. At this point, you are
24 now both released as witnesses from this formal hearing. I thank
25 you both for your cooperation and your testimony.

1 name and spell your last name.

2 THE WITNESS: Anthony Scott Wilwert, W-i-l-w-e-r-t.

3 LT MCPHILLIPS: Please identify counsel or representative if
4 present.

5 THE WITNESS: Lieutenant Commander Pekoske.

6 LT MCPHILLIPS: Counsel, please spell your last name as well
7 your firm or company relationship.

8 LCDR PEKOSKE: Matthew Pekoske, P-e-k-o-s-k-e, Coast Guard
9 Judge Advocate.

10 LT MCPHILLIPS: Thank you, sir.

11 Mr. Wilwert, please tell us, what is your current employment
12 and position?

13 THE WITNESS: I'm currently employed with the U.S. Coast
14 Guard at the 17th District in Juneau, Alaska. I am the commercial
15 fishing vessel safety program manager.

16 LT MCPHILLIPS: What are your general responsibilities in
17 that job?

18 THE WITNESS: General responsibilities for the position are
19 to support the Coast Guard field unit examiners, the five civilian
20 examiners as well as the active-duty, as well as keep abreast of
21 fishing vessel safety issues and regulations in the industry, and
22 provide information to the command on those issues.

23 LT MCPHILLIPS: Can you briefly tell us your relevant work
24 history?

25 THE WITNESS: Relative work history, I've been the District

1 17 fishing vessel safety program manager for approximately seven
2 years. Prior to that, I was a fishing vessel safety dockside
3 examiner at Sector Juneau for also approximately seven years.
4 I've been with the Coast Guard for 36 years, 20 years active, a
5 variety of units during active duty, and 16 as a civilian
6 employee.

7 LT MCPHILLIPS: Thank you. What is your education related to
8 your position?

9 THE WITNESS: Related to the position, attended the
10 commercial fishing vessel safety examiner resident course in
11 Yorktown, Virginia, back in -- I believe it was 2008, when I first
12 started into fishing vessel safety. Since then, the Alaska Marine
13 Safety Education Association, or AMSEA, Marine Safety Instructor
14 six-day MSIT course, as well as the drill conductor course. Other
15 OJT, on-the-job training, along the way, conducting dockside
16 exams. Took the National Cargo Bureau's stability for fishermen
17 course years ago; that's kind of a correspondence course. And
18 that's about it relative to fishing vessel safety.

19 LT MCPHILLIPS: Do you hold any professional licenses or
20 certificates related to your position? Please explain if you do.

21 THE WITNESS: I do not.

22 LT MCPHILLIPS: Thank you, sir. Captain Callaghan will now
23 have follow-up questions for you.

24 CAPT CALLAGHAN: Thank you for being here today with us,
25 Mr. Wilwert. Mr. Keith Fawcett is going to question for the Coast

1 Guard.

2 Mr. Fawcett?

3 EXAMINATION OF ANTHONY S. WILWERT

4 BY MR. FAWCETT:

5 Q. Good afternoon, Mr. Wilwert.

6 A. Good afternoon.

7 Q. Okay, thanks for being here. So all of my questions will
8 relate to the realm of commercial fishing safety unless I specify
9 otherwise.

10 A. Okay.

11 Q. So we'll have exhibits which will display on the large screen
12 in front of you, and you'll also see them on your desktop monitor.
13 And if you would like to have us move around in the exhibit, you
14 can ask Lieutenant McPhillips, who is sitting behind you, to
15 scroll down or zoom in or whatever's necessary. And we don't want
16 to just pop these exhibits on you, so please take your time to
17 review them before you answer a question. If you need a moment,
18 please ask.

19 A. Okay.

20 Q. So you prepared -- when we asked you to be here as a witness,
21 you prepared a presentation, and we've identified that as Coast
22 Guard Exhibit 105, and we'll get to that in a minute. But since
23 you've operated in the Coast Guard world so long and we do --
24 please stay away from any kind of acronyms. Use plain language
25 for the benefit of the public. I know that's hard to do, but if

1 you could, that'd be great.

2 A. Yes, sir.

3 Q. So have you ever worked as a commercial fisherman?

4 A. I have never worked as a commercial fisherman. I had
5 opportunity when I was an examiner at Sector Juneau to go on a
6 eight- to 10-day king crab commercial fishing trip with a local
7 Juneau boat. It was a February opener that occurs every year, and
8 I convinced my office that it would be an industry training of
9 sorts. And after much deliberation, they let me go. So I did get
10 to experience eight to 10 days on a southeast king crab trip.

11 Also went out one more time with a seiner to do what's called
12 some cost recovery seining, which was just a day trip in a very
13 local area. And did those just for professional development, just
14 wanted to get out there and see what it was like, to the best that
15 I could for that short of a period of time.

16 Q. So turning our attention to Coast Guard Exhibit 105, which
17 Lieutenant McPhillips will put up for you, take your time and
18 please walk us through the slides that you've prepared, and give
19 us as much explanation as possible.

20 A. Yes, sir. So again, my name's Scott Wilwert. I'm the
21 commercial fishing vessel safety program manager for District 17.

22 Next slide, please.

23 So this slide here depicts our examiner locations. So the
24 way that we're staffed at District 17 for commercial fishing
25 vessel safety program and our examiners, is we have five civilian

1 examiners, which are located in Anchorage, Kodiak, Sitka, Juneau,
2 and Ketchikan, and myself, as the program manager in Juneau.

3 So we have six full-time fishing vessel safety examiners and
4 a program manager that are civilian employees. The real variable
5 is the support we get from the active-duty element. We have many
6 units like Dutch Harbor, Valdez, Marine Safety Detachment Homer,
7 that does not have the luxury of having a civilian employee there,
8 so the active-duty component are the folks that are out doing the
9 fishing vessel safety mission.

10 And this slide here, it just depicts where our personnel are,
11 and roughly right now, I'd say we have 54 or so qualified fishing
12 vessel examiners, and that number changes widely during the
13 transfer seasons in the summer. That number can drop down by 10
14 or 20, and then we build it back up through local training. So
15 that's what the slide you're seeing there depicts.

16 Next slide, please.

17 This slide here shows a little bit of an example of what we
18 kind of work with or what we have to work with in Alaska, where we
19 try to get to. We do approximately 1700 dockside examinations
20 annually in Alaska. These places that are denoted on the map of
21 Alaska are typical outreach locations for us. So when I say
22 outreach locations, many of them that you see with the red dot do
23 not have Coast Guard personnel stationed there. So that involves
24 travel, seasonal travel.

25 We do that season travel largely to coincide with fishery

1 openers, feedback from the industry as to when's the best time to
2 show up in Huna, in southeast Alaska. And we get that feedback
3 from the industry, and we try to accommodate that as best we can
4 within our challenges, which our challenges in Alaska are pretty
5 typically geography, weather, and the seasons, the seasonality of
6 a lot of commercial fishing.

7 Some of it goes on year-round obviously, but in other places,
8 it's very seasonal. So it creates some pretty tight windows, you
9 know, lots of float-plane rides, lots of interesting ways that we
10 get around on the backs of four-wheelers and snow machines to get
11 out and do what we do in some of the more rural communities.

12 Next slide, please.

13 This slide here is just a little bit of information which I'm
14 sure that you've gotten plenty of in the last four or five days
15 about the Alaska commercial fishing industry in Alaska. On the
16 right-hand side, the bar graph depicts Alaskan operational
17 commercial fishing fatalities for about a ten-year period. And we
18 define an operational fatality aboard a fishing vessel, those
19 would exclude things like a death by natural causes, a suicide,
20 but operational fatalities would be a man overboard that wasn't
21 recovered or the total loss of a vessel where there were
22 fatalities.

23 As you can see, the bar graph depicts our highest year on
24 this graph was 11 in 2011. We had a zero year in fiscal year
25 2015. And since then, 6, 10 -- or 2, 10, 2 and 7. So it's

1 relative to the amount of commercial fishermen that are out on a
2 daily basis. You know, these numbers are low -- unacceptable to
3 me, but low given the fact that we have approximately 8,500
4 vessels that are permitted to fish in Alaska that employ over
5 30,000 personnel. And it's a big industry, it's a big job, and a
6 very important job in Alaska.

7 Next slide, please.

8 So this slide here depicts some of the initiatives, some of
9 the things that the fishing vessel program tries to do. We try to
10 be very present at fishing association meetings, and that happens
11 a lot on the local level. So if there is a long-liner association
12 meeting in Sitka, we try to make sure that we have our Sitka
13 civilian examiner there just to talk with the industry, to hear
14 what they have to say, to share our thinking on things and pass
15 any regulatory updates that might be out there.

16 Of course, we have the fishing safety, I think it's now being
17 called the National Fishing Safety Advisory Committee. It's
18 undergoing a name change, but that's an advisory committee that is
19 made up of about 17 members from industry, some of them fishermen,
20 some of them in the insurance world, some of them in the training
21 world, and the Coast Guard sits on that committee and runs that
22 committee. So we have a lot of interaction, work on a lot of
23 projects with the fishing safety advisory committee, the
24 committee.

25 Alaska Marine Safety Education Association and the North

1 Pacific Fishing Vessel Owners Association, AMSEA and the NPFVOA,
2 those are training organizations. I, myself, am on an advisory
3 board member for AMSEA, the Alaska Marine Safety Association.
4 Also am an instructor for the drill conductor classes. We also
5 try to show up whenever they're doing classes, and at a minimum,
6 come in and speak to the Coast Guard regulations section, maybe
7 bring one of our trailerable (ph.) damage control trainers, and
8 run that for them. So we work with those two organizations quite
9 a bit.

10 Of course, local industry days in different communities, we
11 attend that. We didn't have a lot of that this past year, of
12 course. I mention the flooding control trainer. That's a -- we
13 have about four mobile, trailerable devices that we can drag
14 around and hook up to a fire hydrant, and it gives fishermen, or
15 anybody that wants to jump in there, a chance to work on some
16 real-time plugging and patching sort of scenarios.

17 We get a lot of interaction with the industry through expos
18 and tradeshows. Of course, the big one down here in this area, in
19 Seattle, every November is the Pacific Marine Expo where we have a
20 booth with the District 13 fishing vessel staff. And we have a
21 huge contact rate during that three or four day show when they can
22 have it. We didn't get to do that this year.

23 The Bristol Bay Expo is kind of an up-and-coming, much
24 smaller version of that, and the Com Fish in Kodiak is also an
25 expo tradeshow-type thing where we always purchase a booth and

1 make sure we're available to speak with the industry and the
2 public. One of more recent initiatives, and I say more recent,
3 the stability pot weighing focus. Since the *Destination* accident
4 back in 2017, we took a -- we made a real concerted effort and
5 purchased some large load-sale scales, and kind of revamped the
6 pot weighing.

7 I know that I had heard some testimony earlier in the week
8 that some folks had eluded to -- some of the folks from the Dutch
9 Harbor office had been doing that, or that had happened at some
10 time. I can't say that that was continuous through a couple years
11 ago when we took those scales out there and kind of revived that.
12 But that's something that's been -- it's been accepted, really
13 well accepted by the industry, weighing the pots when we're out
14 there doing our safety and stability compliance checks in the
15 Fall. So that's been a real success, and I think in some ways,
16 maybe a little bit of an eye-opener to some of the industry about
17 what their gear actually weighs as they mix in new gear with old.

18 Another thing is the fishsafewest.info website, which is an
19 amazing site. It's actually run by my counterpart here in Seattle
20 at the 13th District. His name is Dan Hardin, and he does an
21 amazing job with that. Everything fishing vessel safety that
22 you'd ever want to know and then some lives on that site. And we
23 point a lot of people to that site.

24 We have our opportunities for media, social media, articles,
25 interviews, radio shows. Maybe when we go to town, smaller town,

1 they'll ask us to come in and talk about why we're there. So we
2 take advantage of all those opportunities.

3 Internally, with our up-and-coming examiners, I referred to
4 the active-duty element especially. We have a training academy,
5 we call it. We've been having it in Kodiak every September for
6 the last four or five years, and we bring anywhere from 10 to 20
7 people who are in the process of trying to become a qualified
8 fishing vessel examiner and put them through one of the drill
9 conductor courses run by the Alaska Marine Safety Education
10 Association, as well as on the dock, dockside, exams in a
11 classroom segment.

12 So that's been a really good training for us the last four or
13 five years. And one of the best parts of that training is we
14 always get industry guest speakers. So we always have fishermen
15 come in and talk to the up-and-coming examiners, and I think they
16 get a lot out of that. And that's a really valuable interaction
17 that we have with the industry, a positive one.

18 Next slide, please -- no, okay, that was it.

19 Q. Thank you for preparing that. That was very helpful. And we
20 will talk about the operational fatality issue Monday morning when
21 we have the chief of the program here as a witness.

22 Looking at all those initiatives and the number of people
23 that you have staffed to conduct this work, can you give me some
24 historical perspective on, you've been involved for over 15 years,
25 or 15 years or more, how long all those resources have been put in

1 place and those initiatives -- has it been for the last five years
2 or ten years?

3 A. As far as the resources, resources as I think about
4 resources, I'm assuming you mean the personnel that we have to do
5 the job. That's largely been unchanged for a long time. We have
6 added a couple additional civilian examiners back around 2010 when
7 there was an authorization act that had a lot of potential change
8 to some fishing vessel safety regulations, and we knew we were
9 heading towards mandatory examinations for certain vessels that
10 operated beyond three miles from the baseline.

11 We had opportunity to up our staff, our civilian staff, by
12 two examiners. So prior to 2010, that number that I gave you of
13 five civilian examiners, was three, and a program manager in
14 Juneau. And the active-duty part of that personnel situation has
15 always been pretty consistent. Those Coast Guard units have
16 always been in those places, with generally the same staffing. So
17 I don't think the personnel has changed too drastically for us
18 with regard to that.

19 As for the initiatives, there were a lot of them on that
20 page. We've been -- I found out this year that we were the
21 second-long tenured attendee at the Pacific Marine Expo. That's
22 how you get to pick your spot for the next year. So we have been
23 going to that show for quite a long time, 20 years or more, since
24 it's been in existence. Some of the other expos are newer, so
25 we've had a presence at those. Bristol Bay is only on their

1 fourth expo, and we've been at all four. So our history there is
2 it's not extensive, but we've been there since the beginning, I
3 guess you could say.

4 All the initiatives for outreach via social media, of course,
5 is newer or newish. That didn't exist like it does today, you
6 know, 15 years ago. But the articles, the radio shows, I'd say
7 we've been doing almost all the things that I had on that third
8 slide for a long time.

9 Q. So do you get your direction from the commercial fishing
10 safety program? Do they direct you to engage in those type of
11 initiatives and outreach for the fishing vessel safety program?

12 A. Our program manager at the office of compliance, CBC3 we call
13 it, certainly encourages and supports all of those things that we
14 do. We get guidance, certainly, to attend and do certain things,
15 I think largely, and I think any program manager, any of my peers
16 around the country, will tell you that most of the things we do,
17 we happen across them.

18 Or just in the course of being out there doing business, we
19 find, hey, this would be a really good place for us to be. Or
20 someone will say, hey, you know what you guys should do? You
21 should show up here next year. And that's how we really get to a
22 lot of the things that we do, is through interaction with the
23 industry. But we certainly get the support and the nudging from
24 the program.

25 Q. So would it be fair to say that you interact with the fishing

1 community, you come up with initiatives, and the Coast Guard, at
2 the 17th Coast Guard district, gives you the latitude and the
3 resources to make those things happen if they seem to be a good a
4 idea?

5 A. Absolutely, the -- I have a great job. It's -- if it seems
6 like a good idea, it's probably a good idea. So we're budgeted
7 well, and we're able to get around to all the places and do all
8 the things that we think are important to do with the industry.

9 Q. So does the 17th Coast Guard District have a strategic plan
10 for commercial fishing safety operations in terms of the safety of
11 the vessels and a reduction of accidents? Is there a plan?

12 A. There is a commercial fishing strategic plan for District 17.
13 I will admit that it is due for a makeover. It is definitely on
14 my longer-term list of things to do, but we do have a strategic
15 plan.

16 Q. How about the Coast Guard at-large? Do you know if the
17 commercial fishing safety program has a strategic plan?

18 A. I don't know. It would seem like I should know, but I don't
19 know if there is one on paper like the one I'm thinking about that
20 we have locally at the District. But I would hate to say that it
21 does not exist because I'm not sure.

22 Q. So in your very well-prepared presentation, you talked about
23 third-party organizations. Can you elaborate on that for us, as
24 to what those organizations are as it relates to commercial
25 fishing vessel safety?

1 A. Yes, thank you, I probably did not cover the third parties
2 when I went through that slide, so I'm glad you asked me. So
3 there are third-party organizations such as the Society for
4 Accredited Marine Surveyors, or SAMS; there's also NAMS, there's
5 (indiscernible) societies, and there are places like Navtech.

6 They're all surveyors, and through their parent organization,
7 if they have met the criteria, and I don't know those criteria
8 exactly, but if they have met the criteria to show that they
9 can -- they have the background and can do commercial fishing
10 vessel safety dockside examinations on behalf of the Coast Guard,
11 then there is a process for them to qualify to do that.

12 We will work with them. We're usually part of a -- of a
13 check-ride for them. So when someone's getting close with
14 third-party, we actually just did one the other day in Juneau. We
15 have a surveyor that is fairly new, and -- but, you know, hanging
16 his shingle out there and getting ready to go out and do business.
17 And he needed to go on an accompanied dockside examination or two
18 with the Coast Guard.

19 So our civilian examiner in Juneau went out with him and
20 replied back to the people that are in charge at Navtech down in
21 Florida, and said he did fine. He showed proficiency.

22 So that's kind of how the process works. We don't have a lot
23 of those in Alaska. We have maybe a lot that come up from the
24 Seattle area that will do work in Alaska. But in Alaska, we have
25 one in Wrangell, one in Cordova, a couple in Anchorage, one in

1 Juneau, one it Sitka, and we also have reworked our third-party
2 oversight. Used to be a NAVIC, now it's a work instruction.

3 And so when a third-party goes out, there's a very rigid
4 process that we and they follow as far as when they conduct an
5 examination, where that paperwork gets sent, who enters that
6 paperwork into our database. And we also have a new requirement
7 in the work instruction that whenever is practicable, that the
8 third-party surveyor will contact the district coordinator for the
9 area they're working in, and let us know that they are going out
10 to do a dockside examination on a vessel. And every occurrence of
11 that, if possible, we'll try to provide third-party oversight.

12 So if I got a call from the Juneau third-party examiner, and
13 he said, hey, I have an exam next Thursday at 2:00 on a certain
14 vessel. I would certainly reach back to my civilian examiner and
15 say, hey, you should probably go on this with him. And the
16 oversight is -- it's been going really well. It's a two-way
17 street. We learn from the surveyors, and I'd like to think they
18 learn from us in doing the Coast Guard mission of a dockside exam.

19 Q. So if that's done, a third-party exam, can they issue a decal
20 or issue -- complete the paperwork for the compliance check?

21 A. Yes, they do. Actually, their decals and paperwork and all
22 of those logistics are provided to them through our Coast Guard
23 CVC office, our vessel compliance office. So when our program
24 manager's here Monday, might have a little more insight into that
25 process, if you're interested in asking him. But we do provide

1 them with the decals, and they are capable of issuing them if the
2 vessel's in compliance.

3 Q. Do you ever use Coast Guard --

4 CDR DENNY: Mr. Fawcett, you're on mute. You're muted.

5 MR. FAWCETT: Oh, I'm sorry.

6 BY MR. FAWCETT:

7 Q. So have you ever used a Coast Guard auxiliarist, and the
8 Coast Guard has this cadre of incredibly dedicated volunteers as
9 part of the Coast Guard? Have you ever used them in the dockside
10 compliance check or safety inspection program?

11 A. Definitely, we had -- in Southeast Alaska, in Petersburg,
12 which is one of our largest ports without a Coast Guard Marine
13 Safety presence, I'll say there are a couple cutters there, but
14 they don't really do this mission. We rely heavily on the
15 auxiliarists there, and they did a fantastic job.

16 Again, this year was a strange year, so the auxiliary, as an
17 organization, had some very stringent guidelines as to what they
18 could and couldn't partake in due to COVID. So I don't think they
19 were out there as much this year as they would've like to been.
20 But I would say throughout the state, up in the Anchorage/Eagle
21 River area, southeast Alaska, we probably have at any given time,
22 five to ten qualified auxiliarists that will go out and conduct
23 dockside exams, with us or for us, if they're -- especially if
24 they're in a place where we're not.

25 Q. You made a very good point. This year was a unique year, and

1 so I want to try to limit your testimony, and I should have
2 probably said this in the beginning to up to and including the
3 timeframe of the accident for the *Scandies Rose* in late 2019 when
4 you answer your questions.

5 So I want to turn your attention to the actual dockside
6 safety examinations, and the pot weight checks that are conducted
7 by the Coast Guard. So I think the easiest thing would be if
8 Lieutenant McPhillips would pull up Coast Guard Exhibit 34, which
9 is paperwork for a safety and compliance check.

10 And on page 16, if you could sort of put the page in front of
11 us and focus on that. That's good, Lieutenant, thank you. Did
12 you do this dockside safety inspection?

13 A. This was 2019? October 2019. Yes, I was on board the
14 *Scandies Rose* for this safety compliance check in Dutch Harbor in
15 October of 2019, as part of a -- I think there were three or four
16 of us on that safety compliance check. Three is a pretty normal
17 group that we send out for -- to do these checks depending on the
18 workload. But I was -- I was definitely on the *Scandies* in
19 October of '19.

20 A. Okay, so let's just back up just for a moment. For this
21 particular examination, could you share with us how it started?
22 Was it a phone call that someone said, please come down and do
23 this, or was it a dock walk? From the time you made the decision
24 to go do this, could you walk us through that, briefly, through
25 the process?

1 And using this as a guide, walk us through the items that you
2 inspected without great detail because the public can see this,
3 but sort of give us an overview of what you would inspect.

4 A. Sure. So the first part of your question, I can't tell you
5 that I recall how we came upon the *Scandies Rose*. So the process
6 for the safety compliance check generally starts with a phone call
7 to the Coast Guard, and a vessel will, at that point, say I am
8 departing in a certain amount of hours, and I would like a safety
9 compliance check. And of course, we respond to that.

10 Once you are in Dutch Harbor, in the two to three days
11 leading up the opener for red king crab on the 15th, that starts
12 to morph into more like the dock walk that you talked about, where
13 you're here, we're here. They're loading pots, and they just
14 happen.

15 So in the case of the *Scandies*, I could not say -- also we'll
16 also have the home office in Dutch Harbor, they'll kind of be like
17 our dispatch. So we'll be fanned out all over Dutch Harbor doing
18 this work, and we'll get cell phone calls from the marine safety
19 detachment, and they may say, hey, the *Mary Jo* called, and they're
20 ready if you can get down there at a certain dock. And we'll just
21 -- they just point us, and we go.

22 So I'm not sure on this day, if we walked out of the office
23 knowing we were going to the *Scandies* because they had an
24 appointment, or we wound up on the *Scandies* because we did the ten
25 boats that were tied up near her. So that's how the flow of doing

1 the safety compliance checks can go when it gets busy especially.

2 With regard to what we look at on the form, as you said, you
3 can see the -- and the public can see what we look at. So we
4 focus on primary life-saving. So we look at the survival craft,
5 the immersion suits, the EPIRB. Of course, we look at the
6 stability instructions, we have that discussion with the master,
7 the person in charge, about the stability instructions.

8 We have them explain to us how are you loaded, depict, if you
9 can depict to us on a loading chart in your stability
10 instructions, what are your liquid loads, how are you tanked, how
11 many pots do you have. Of course, we're weighing the pots and
12 we're at that time, and comparing those pot weights to the assumed
13 pot weights that we may see in the stability instructions.

14 So that's pretty much the flow of a safety compliance check.
15 With three or four people, it can be a fairly quick evolution,
16 because as we get on board, someone may go and do immersion suits,
17 someone may be on the bridge doing the paperwork and working with
18 the captain and the stability book, someone may be doing the raft
19 and the EPIRB. So we just kind of fan out, do the work, reconvene
20 and move on to the next.

21 Q. So do you get -- like what you're speaking about there, do
22 you get surge ops, meaning that you have to bring in additional
23 personnel to get out there and conduct those inspections prior to
24 the start of the season?

25 A. We do, in October, we do. So Dutch Harbor, the Coast Guard

1 unit in Dutch Harbor is very unique. It's a one-year Coast Guard
2 unit. It's only staffed with six or seven personnel who likely
3 arrived there that summer, so just a few months before.
4 Generally, myself or Sector Anchorage personnel or both of us,
5 we'll go out in August and give the new crew some training in
6 fishing vessel safety.

7 With the Dutch Harbor unit, you kind of never know what
8 you're going to get every year. So six or seven people all come
9 in and then they all leave. And they could all be qualified
10 fishing vessel examiners that have been doing it for a long time,
11 or there could only be a couple. So we react to that by sending
12 an appropriate amount of people from other units like Sector
13 Anchorage, or myself from the Juneau office, to go and do a little
14 pulse operation and help them with that workload for that week or
15 so leading up to the opener of the crab fishery.

16 Q. So focusing on drills-in-training, how do you evaluate the
17 requirements for the vessel to conduct drills-in-training
18 effectively?

19 A. During dockside examination, drills-in-training, so
20 obviously, as you know or you probably know, there's a requirement
21 for a vessel, a documented vessel that operates beyond the
22 boundary line, to conduct monthly drills. There's also
23 requirements for safety orientation. There's requirements for the
24 posting of emergency instructions if the crew is of a certain
25 size.

1 Drills-in-training is a very -- it's a very fluid, very
2 interesting thing during a dockside examination. The drills have
3 to be conducted monthly when the vessel is operating. So it's --
4 you find yourself a lot of times in a position where you are on a
5 boat in the spring, and maybe the boat has not fished in three or
6 four months. So obviously, there's not an expectation that a boat
7 that is cold and in between seasons is going to reconvene a crew
8 and do drills and go home.

9 So a lot of times, you know, when you're doing that
10 examination, we will put things like, do -- have they shown a
11 history of logging drills, even though as we sit here today, the
12 logging of drills is not a regulatory requirement. It's required
13 to do them, but unfortunately, right now it's not required to log
14 them. But we look at that.

15 A lot of the -- a lot of the people in the industry are
16 really good about logging drills. So you'll see that history of
17 compliance. Of course, the more you go on these boats over years
18 and years, you definitely get a sense for are the drills-in-
19 training happening, and you can talk to the crew. As we move
20 around the boat, it's not uncommon to ask a crewman, hey, you
21 know, are you guys, are you doing your drills or when's the last
22 time you did a drill.

23 So we always get a sense or a feeling for how the drills-in-
24 training and how the boat's being run. We always look to make
25 sure that the person leading the drills has a drill conductor

1 card. That doesn't have to be the master right at the moment, but
2 if someone on the crew usually has attended one of the drill
3 conductor training courses, which allows them to lead the drills
4 on board a vessel.

5 Sometimes if we're not satisfied that those are happening or
6 have happened, we, at times, have them conduct drills while -- as
7 part of the dockside exam. Or we may say if it's not appropriate
8 right at that moment, we may go back and go through the drills.
9 And we don't evaluate them, we evaluate them evaluating because
10 that's the most important part of the drill is really, is the
11 debrief, is what you talk about afterwards and corrections that
12 you make and recommendations that come up during a drill.

13 Q. So I'm going to just take two random items from an
14 inspection, and if you would tell me how you would check those
15 items. So for example, an EPIRB, what would you do as an
16 inspector to check the EPIRB?

17 A. So if it's -- category one or category two. So a category
18 one EPIRB, of course, is the kind you're going to see mounted on
19 the outside of the vessel in the white case, with the hydrostatic
20 release that automatically deploys it. EPIRBs are an expensive
21 piece of equipment. They're usually mounted in a place that if
22 you drop it, it's not going to have a real friendly landing. So
23 for that reason, as much as practicable, we try to have someone
24 from the crew remove the EPIRB from the case. It's, I guess,
25 better if they drop it than if I drop it.

1 So whenever that's practical, we'll have someone from the
2 crew come and take the EPIRB out of the case. Of course, we'll
3 inspect the hydrostatic release to make sure it's within the two-
4 year requirement. We'll check the NOAA registration sticker or
5 decal that's on the EPIRB. We'll make sure that the EPIRB has
6 battery life left. Usually a five-year battery, I guess, we have
7 some ten-year batteries now, so we'll check the battery life.

8 We'll also make sure that the EPIRB appears to be in a good
9 float-free location, and a location that's accessible to the crew
10 in the event that they didn't want to rely on the automatic
11 deployment of it, and they wanted to grab it and take it with
12 them. So we'll always give them feedback about what, you know,
13 what we thought about the location of the EPIRB.

14 The EPIRB is required to be tested monthly by the crew, or
15 the captain or the crew, the person in charge. And we'll always
16 have that test conducted during a dockside examination with
17 ideally, the person pushing the button or lifting a lever,
18 depending on the model, will be the captain or someone associated
19 with the vessel, that will do the EPIRB test and make sure that
20 does an internal (indiscernible) and satisfactory test.

21 Q. So without going into detail, would an examination for life
22 saving appliance like a life raft and its release, would it be the
23 same kind of depth of examination?

24 A. It would. Life rafts, they are -- they don't have quite as
25 many moving parts. The life raft, again, we look for the float-

1 free location or a good, the best location possible. It has a
2 hydrostatic release, which is also a two-year piece of equipment,
3 so we make sure that that's in compliance.

4 And most of everything else we need to see about the raft is
5 on signage and placarding on the raft case. So we'll look to see
6 if it's a coastal SOLAS B or SOLAS A equipment pack inside. We'll
7 look to see that the capacity is appropriate for the amount of
8 people that are going to be on the vessel. We'll look to see when
9 its next inspection is due. Generally rafts get repacked every
10 year, unless you've got a brand-new raft, then you get two years
11 until its first re-pack.

12 So not as many moving parts on a raft. Making sure the
13 painter line is reeved around and hooked into the (indiscernible)
14 correctly. And providing that feedback to the captain, especially
15 if we find an issue. You know, we always would bring the crew up
16 and say hey, this isn't hooked up correctly, and we'd talk them
17 through the fix for that.

18 Q. Lieutenant McPhillips, could you bring up Exhibit 34 again
19 and focus on that same page, page 16? So looking at this record,
20 was the *Scandies Rose* in full compliance in this safety compliance
21 exam?

22 A. They were. So if you look, if you could scroll down a little
23 bit, please? Or I guess that's up. So this table you see at the
24 bottom that says inadequate or unserviceable immersion suits,
25 inoperable EPIRB or battery, instability, lack of free board,

1 inoperable bilge, all those things, so those would be no-go items
2 for us.

3 So if there's anything that we look at, and those are the
4 things that we -- that reflect what we kind of look at above, if
5 in that scenario, if any of those things are not in compliance,
6 then we would come down to the bottom here. We would check that,
7 and we would not sign off on that until it was rectified.

8 Q. So Lieutenant, leave that up for just a minute. So let's say
9 you had conducted the inspection on a vessel similar to the
10 *Scandies Rose*, and you found a deficiency that meets one of the
11 checkboxes on that bottom table. I notice there are -- and for
12 the benefit of the public, they talk about the captain of the
13 port, which is COTP, action. If you found a vessel that was
14 deficient in terms of its safety equipment, the captain of the
15 port or the OCMI, he or she, for that geographic area, has
16 ultimate authority on commercial vessels. What are some of the
17 actions the captain of the port could take if they found a vessel
18 deficient?

19 A. The captain of the port -- so in these scenarios with these
20 particular pieces of equipment, if we were at a place where we
21 could not rectify the deficiency, if someone needed a new
22 hydrostatic release, it would be very feasible that someone could,
23 at the time, and this happens all the time, run to the local
24 vendor, get a hydrostatic release, scratch it off appropriately,
25 reinstall it while we're there, and that rectifies -- that's an

1 on-the-spot fix of that deficiency.

2 If we were doing this in a place where that was not an
3 option, or it was a fix that was not just a trip to the store,
4 maybe they needed a whole new life raft, which are not something
5 that you can generally run to the store in most of the towns that
6 we work in, that would be when we would have to reach back to the
7 captain of the port, and make that phone call, and say, here's the
8 situation. We have a boat that's intending on going -- departing
9 port tomorrow. They do not have a life raft that's in compliance.
10 They don't have the means to get a life raft before they depart.

11 And one of the actions they could take would be what we call
12 a captain of the port order, which would tell the vessel that
13 through this check, and with the known intent that the vessel
14 intends to sail, that they would restrict the vessel from leaving
15 in that scenario. Or they could restrict the vessel from
16 departing.

17 Q. So if your inspector was aboard, and there was -- during the
18 scope of the examination, there was something that was outside the
19 scope of the examination, in other words not directly related to
20 safety equipment, is there any leverage the Coast Guard would have
21 because there was some material condition deficiency that was
22 directly observed by one of your inspectors?

23 A. Absolutely. So the dockside examination, whether it's a full
24 dockside examination or a safety compliance check, which is like
25 the form that we're looking at now, which is an abbreviated check

1 of primary life-saving for this operation for the Dutch Harbor
2 crab fishery or the Bering Sea crab fishery, if we noticed
3 something that was not a checklist item, maybe it's not in 46
4 C.F.R. Part 28, but it still raises your awareness to the point
5 where you feel I don't know if I can just walk past that. We
6 uninspected, you've heard the word uninspected a lot this week I'm
7 sure, there's some glaring differences between what our regulatory
8 authority with an uninspected fishing vessel is as opposed to an
9 inspected vessel.

10 If I'm looking through a hole in the hull a couple inches
11 above the waterline, I'm probably not going to say well, that's
12 not on the checklist, I don't see that. So that would be an
13 example of something that we would definitely call back and say,
14 hey, you know, we're seeing this. Could be an intoxicated
15 operator, it could be a material condition issue, it could be a
16 variety of things that you might see that are not exactly on your
17 punch list, your checklist of things that you're there to look at.

18 Q. So for the benefit of the public, if you take a look at that
19 exhibit, you'll see over the passage of time, the series of those
20 compliance checks. And they change over a period of time, the
21 scope and intent. So at the 17th District, are you able to add
22 items to the checklist, let's say, as a result of the sinking of
23 the *Destination*, did they change, did they include stability
24 information or information about pot weights, for example?

25 A. Absolutely, so the safety compliance check form -- so, just,

1 I want to make it clear when I differentiate between -- I'm using
2 the term a full dockside examination, which is a -- that is a
3 check of everything a vessel needs to be in compliance. It's done
4 on a Coast Guard Form 5587. That's where we're looking at the
5 magnetic compass, the coast pilot, the charts, the marine
6 sanitation device.

7 When we go out on a pulse operation like Dutch Harbor just
8 prior to a crab fishery, obviously, we're not looking at that.
9 The boat already has a valid fishing vessel safety decal on the
10 window, it's required for them as a mandatory exam vessel, it's
11 also required by Alaska state statute to participate in a Bering
12 Sea/Aleutian Island crab fishery.

13 So when we go on board, we check the decal status of the
14 dockside examination, and this is the safety compliance check, the
15 form that we've been looking at most recently here, is in addition
16 to that. So those types of things are looked at a more-extensive
17 dockside. But when it comes to the safety compliance check form,
18 when we started back into weighing the pots, we altered the safety
19 compliance check form to reflect -- actually, we altered it again
20 this year for its next printing, to, just for our own -- for the
21 ease of data entry, we've now added a pot-weighing table.

22 So instead of freely writing the pot weights and dimensions,
23 we have a table that we have built into the safety compliance
24 check form, where it will have pot one, pot two, pot three,
25 however many, and then the associated weight and the dimensions.

1 So yes, we can make changes to that form as we see fit, or at a
2 recommendation or a request from someone.

3 Q. So the decal you mentioned, that's a two-year interval? It's
4 a two-year lifespan of the decal, is that correct?

5 A. Yes and no. So when we issue a fishing vessel safety decal,
6 we only punch the decal for two years. In the Authorization Act
7 of 2010, the verbiage and the law is such that a vessel that
8 operates beyond three miles from the territorial sea baseline has
9 to successfully complete a dockside examination once in five
10 years.

11 So a vessel can have a decal on the starboard window that is
12 past the date it's punched out for, but as long as it's within
13 five years from its previous, it's in compliance with the law. So
14 we still only issue the decal for two years, but they're in
15 compliance with the law if they have one within five. I know
16 that's probably a little confusing, but --

17 Q. So if -- what's the purpose of putting that decal on the
18 starboard window?

19 A. It signifies -- the decal just signifies that the vessel was
20 found in compliance on that month and year. It's an outward sign
21 to say, Coast Guard units approaching if they look up and see the
22 decal. And if, from that distance, you can see the little hole
23 punch marks, it might tell you that that vessel has shown it was
24 in compliance just this month or last month.

25 And in an environment where there are maybe many vessels out

1 there to potentially go aboard at sea, they could use that as a
2 decision tool and maybe say, okay, well we're not going to check
3 this vessel right now because they just had a dockside examination
4 in January of '21. And this vessel here, it's been three years.
5 So outwardly to the Coast Guard, it could be a sign of
6 prioritization for maybe who they would want to board at sea. And
7 the significance of it being on a starboard window, I don't know
8 actually. That's the history of that as opposed to the port.

9 Q. So there's another type of check, and that's the pot weight
10 check which has been referred to in this testimony here as the
11 Coast Guard personnel randomly selecting a number of pots, the
12 number that was mentioned was three, and then weighing them on a
13 scale. Is that a correct description of that process?

14 A. That's correct. I would say that the random selection is
15 true, and we will always ask if the captain or person in charge
16 has particular pots that they may want weighed. So if they say
17 well, I've had these for ten years, but these are brand new. I'd
18 really like to see the difference between the new one and maybe
19 one that's had a couple years to maybe rust away a little bit.
20 We'll weigh whatever they ask us to weigh. And in the absence of
21 that, if they say oh, I've been using all the same gear for 10
22 years, they're all the same, then it could be a random selection
23 of which three or four that we weigh.

24 Q. So your inspectors go out, and they do their activity. In
25 very brief terms, could you describe how you take this

1 information, Coast Guard has a database, which is the Marine
2 Safety and Law Enforcement database, could you briefly explain how
3 you put that data in, and very briefly, what the purpose of that
4 database is?

5 A. So the Marine Information for Safety and Law Enforcement,
6 MISLE, I think that's what it stands for, when we conduct the
7 safety compliance check mission in Dutch Harbor, and we depart
8 back to our units, or if some of the forms and inspection --
9 safety compliance checks were conducted by the local unit in Dutch
10 Harbor, we'll all go home with the appropriate yellow copies of
11 the papers that we were signatory to, and we'll enter those into
12 the MISLE system.

13 The reason for the MISLE system is it creates a history, or
14 it creates an activity in a vessel's history that shows how many
15 Coast Guard interactions they've had, whether it's been an
16 interaction because of an at-sea boarding, an investigation into
17 some sort of an incident, what we call an incident management,
18 which could mean it was responded to for a search-and-rescue case,
19 the dockside examinations will be in there. The safety compliance
20 checks on, like, a Bering Sea crab vessel will be entered into
21 there.

22 And it's just a -- it's just a great one-stop shopping area
23 to pull up a vessel and look at their history going back as far as
24 -- since we've had the system and before and see if they're a
25 regular participant in the dockside exams back when they were

1 voluntary, and in the safety compliance checks.

2 Q. So, Lieutenant McPhillips, if you would pull up Coast Guard
3 Exhibit 33, which is that database's exam compliance history, and
4 go to page 8, please. Would this be an example -- and if you'll
5 scroll down just a little bit, would this be an example of what we
6 would find if the Coast Guard accessed the system for information
7 on an inspection or pot compliance check of a vessel like the
8 *Scandies Rose*?

9 A. Yes, yes, this definitely is right from MISLE, the database.

10 Q. And if you'll slide down, Lieutenant, you'll see in the
11 bottom, there's an entry in the narrative. It says, "Attended
12 vessel and conducted pot weight check, verified against the
13 assumed operating condition as stated by the master of the vessel,
14 verified pot weights of three different pots that the master
15 stated was going to load, vessel stability stated that the max
16 pots allowed was 212. The master stated that he intended to load
17 170 pots. Based on the master's attested loading condition, this
18 was in compliance." Is in compliance with what?

19 A. In compliance with the stability instructions as they read at
20 the recommendation for -- in that loaded condition, in that loaded
21 condition how many pots the stability instructions say that the
22 vessel can take.

23 Q. So when you're doing the examination, do you open the
24 stability book, examine the book, and take notes, and then go back
25 when you do the MISLE entry, the database entry, I'm sorry, and

1 you can see the whole history of the vessel in this exhibit. Is
2 that when you're determining what compliance is actually -- the
3 compliance is actually happening or what compliance is actually?

4 A. We deter -- to answer your first question, we absolutely are
5 in the stability instructions during the time that we're on the
6 vessel, during the safety compliance checks. And we have --
7 that's why you see the verbiage in this narrative the way that it
8 reads is when we talk with the master of a vessel, we don't tell
9 them what they should do or how we see it.

10 We have them explain to us how they're loaded, why they're
11 loaded that way, and to show us in the stability instructions why
12 and where it says that that condition of tankage and that fuel
13 condition with that amount of pots at that weight is okay, is in
14 compliance with what your instructions say. So we try to -- we
15 try to have that all explained to us.

16 Now, if we come up to a -- in a scenario where we're not
17 seeing it that way, then we certainly could look in the book and
18 say, well, you know, it looks like this is your tanked condition,
19 so it would really mean this amount of pots. That doesn't happen
20 very often at all.

21 My experience is that almost everyone that I've dealt with in
22 the industry in this fishery has -- knows exactly what they should
23 be taking per how they're loaded, their condition of tankage and
24 fuel, and now that, you know, recently or more recently we've been
25 weighing the pots, I think they have a better idea of what the

1 actual pot weights may be if they don't align with what the
2 stability instructions assumed back when those were last done.

3 Q. So I'm almost finished with my questions, but when your
4 inspectors are out doing the dock walks or actually conducting
5 inspections, do you carry with you informative information such as
6 safety alerts or marine safety information bulletins that you
7 actually had to the crews of the vessels?

8 A. We do. For a long time, we had an old publication that I
9 would love to get my hands on it again. It was called deck safety
10 for crab fishermen. It was a -- it's probably a little antiquated
11 now and dated, but the information is still really good. I am
12 holding on to a handful of those in the hopes that I can get those
13 reproduced. But that was an example of a pamphlet, of a little
14 booklet, that we would give out.

15 And then the safety alert, the safety alert was generated
16 post-*Destination*, and we definitely had those to distribute in our
17 first trip to Dutch Harbor after that incident. And any other
18 MSIBs and things that we see, you know, we feel like would be
19 helpful, we'll put them in our bag and distribute them.

20 Q. Have you ever had -- gone down to the dock as vessels were
21 preparing to depart for season with all the activities that they
22 go one, where they just wave you off, say, no thanks, I've got
23 other things to do?

24 A. It's extremely rare, but it has -- it has happened. I think
25 that the interesting part about the safety compliance check prior

1 to the crab fishery that we do is the calling to the Coast Guard
2 within 24 hours of departure is actually a requirement in Alaska
3 state statute. I believe it's 5AAC 39-670 or something like that.

4 So it's required to make the call, but it is not a regulatory
5 requirement to have us come on board and do the safety compliance
6 check. I think a big part of the reason that that is is that
7 vessels depart for this fishery from ports where we don't have a
8 presence. So I don't think we could get ourselves into a position
9 if someone called from Falls Pass and said I'm leaving in 24
10 hours. I don't think we could say well, we don't have anybody
11 there, so I guess you can't go.

12 So the call is required, the call to the Coast Guard, but the
13 actually conducting of the safety compliance check is not. So we
14 have some, I wouldn't call those refusals, but we have some
15 instances where people are departing from ports where we don't
16 have a presence or a team. And in that case, we try
17 telephonically, the best we can, you can't check a raft
18 telephonically, and you can't check an EPIRB telephonically, but
19 we have that conversation. And we also ask them how many pots
20 they intend to take, and if that is in compliance with their
21 interpretation of their loaded condition and what their pot weight
22 is.

23 And we document that on our -- there's a crab list that I put
24 out with some frequency this time of year, and I'll denote on that
25 list, off on the right, if the safety compliance check was done

1 in-person or if it had to be done telephonically because people
2 were departing from a different port.

3 Q. So they basically, by Alaska statute, have to give the call
4 and have to include the number of pots or if they're in compliance
5 with their stability, what would be? In terms of pot load.

6 A. No, so my understanding is that they just have to make the
7 call and give the awareness to the Coast Guard that they're
8 departing. We added the capturing of the information. We figured
9 well, if we have them on the phone, we might as well capture this
10 data.

11 But I believe that the spirit of the mandatory phone call
12 dates back to when boats would depart, and we would not have an
13 opportunity or the visibility that they were leaving. So years
14 ago, representatives from the Alaska Bering Sea Crabbers, the
15 Alaska Department of Fish and Game, the Coast Guard, NIOSH, all
16 got together at a round table. This is going back a little before
17 my time, but it's my understanding of the history of the safety
18 compliance checks that we do, that have been going on for probably
19 15 or 20 years now.

20 When things were not going so well in the Bering Sea, these
21 groups got together and what came out of it was the Coast Guard
22 said if we could get the state to require these guys to give us a
23 call before they leave, to give us the visibility and the
24 opportunity to say oh, you're leaving tomorrow? Hey, we're going
25 to come down and go through the primary life saving.

1 And the second thing they wanted was it required that any
2 vessel, crab vessel, operating in the Bering Sea/Aleutian Island
3 crab fishery had a Coast Guard safety decal. And that's when it
4 was a voluntary program. So that has sort of taken care of itself
5 since all of the crab boats are mandatory exam candidates because
6 they obviously operate beyond three miles from the territorial sea
7 baseline.

8 So those were the two things from that meeting back in the
9 early, early 2000s, that got put into Alaska state statute. But
10 my understanding of the phone call is that it was just the
11 informative call. I can't speak for 20 years of history of if
12 people captured that kind of data during the call, but we capture
13 that kind of data and report it to the best we can.

14 CAPT CALLAGHAN: Mr. Fawcett, you have one more?

15 MR. FAWCETT: I'm done, Captain. Thank you.

16 CAPT CALLAGHAN: Thank you, Mr. Fawcett, and I apologize.
17 We're just running a little behind, and just wanted to afford our
18 parties in interest and the National Transportation Safety Board a
19 chance if they had any questions.

20 Mr. Barnum?

21 MR. BARNUM: Thank you, Captain, and thank you, Mr. Wilwert.
22 I appreciate it. I do have several questions here, I think I'll
23 table most of them until your colleague, Mr. Myers, Monday. He
24 should be able to answer them as well. So basically just a few
25 follow-ups what you were talking to Mr. Fawcett.

1 BY MR. BARNUM:

2 Q. Yeah, first off, thank you. My plug for Fish Safe West,
3 anyone out there, that's a -- like you said, a great source, so
4 thank you for contributing to that.

5 *Scandies Rose* fell under, you had mentioned earlier, a class
6 of vessels, an uninspected commercial fishing vessel. Yet then
7 you were describing dockside safety exams, which are in a sense,
8 an inspection. Could you describe the major differences between a
9 fully-inspected vessel and then these uninspected commercial
10 vessels and their dockside safety exams?

11 A. I'll give it my best try. So I am not a marine inspector by
12 trade. An uninspected fishing vessel, that's why we call those
13 examinations and we really shy away from the word inspection. It
14 seems to be synonymous, but they're really very different. To my
15 knowledge, the difference between a dockside safety examination
16 and what an inspected vessel may go through would be things like
17 having to be seen at a dry docking, things like looking at shaft
18 seals and rudder posts, structural fire protection, the integrity
19 of the hull, licensing of course. Some commercial fishing vessels
20 have licensed and credentialed personnel if they're over 200 gross
21 tons, but in the inspected world, they're all going to have that.

22 So those are just some of the -- I won't call them subtle
23 differences; they're pretty big differences, but that's kind of
24 some of the things that differ between the examined boat and the
25 inspected boat.

1 Q. Okay, thank you. And then you described dockside safety
2 exams, the two versus five year, that whole aspect, and I
3 understand it, thank you. And you said you punched the ticket, if
4 you will. Is there any tracking of those decals, externally, you
5 know, or internally in your office? Or does something flag, you
6 know, commercial fishing vessel *Aleutian Lady* is up for a decal,
7 it's been over five years. Or is it just walking a dock and
8 looking at the decals?

9 A. So within the MISLE system that we referred to, almost
10 everything in there is query-able. So if -- you could easily run
11 a report or I think what we call a cube, and have that data
12 instantly based on the date that decals were issued, because that
13 is captured in MISLE, the decal issuance date for a vessel and the
14 decal expiration date. So that is able to be queried and pulled.

15 They kind of make that easy for us in the way that the
16 vessel, the office of vessel compliance sends us every Monday, a
17 list that is very much like that, of who's fallen outside of the
18 two-year window, as well as the five. So we just have a really
19 good look every Monday morning at how the fleet -- how the fleet
20 looks with regard to their decal status.

21 Q. Okay, and could you briefly describe what a load line is for
22 a commercial fishing vessel, when someone refers to a vessel if
23 they have a load line?

24 A. So a load line is -- a load line is as much a series of
25 requirements, it's a condition, as much as it as a mark or a safe

1 loading spot on a vessel. Some -- they're -- if you are a load-
2 lined vessel, that implies that you are conforming with a lot of
3 other things that have to do with the envelope of the hull and of
4 that vessel. So it's not just the line, it's a process, really,
5 of compliance.

6 Q. Okay. The *Scandies Rose* was a non-load-lined vessel. Do you
7 know if tendering vessels are required to carry a load line?

8 A. So certain fish tender vessels that are less than 500 gross
9 tons, and there are a series of exemptions in the U.S. code that
10 would -- that starts at if you're 79 feet or greater, and if you
11 operate beyond the boundary line, and if you were built as a
12 tender prior to January 1st, 1980, or if you were -- if you were
13 converted for use as a tender prior to January of 1983, or if you
14 are what's called an existing vessel, which means you're on a
15 domestic voyage and you're less than 150 gross tons. Those are
16 all things that would exclude a vessel, a fish tender, from
17 needing a load line.

18 If you don't meet any of those statutory exemptions in the
19 code, in the U.S. code, then it does appear, it appears that load
20 line does apply to fish tenders. And I say appear because we're
21 currently working, as we speak, for last better than two years, on
22 fish tender compliance with load lining. And I believe, I'm
23 speculating a little bit here as to -- as to the fish tenders and
24 why they're currently not load lined.

25 And I think their status, as a term that was used in law

1 before as a part-time tender, I believe, I believe clouded the
2 regulation a lot. And I don't believe that the part-time tender
3 status or that description was meant to apply to load lining. It
4 did relieve them of other inspection requirements, but I don't
5 believe it relieved them of load lining.

6 And when we sort of discovered this, we started moving toward
7 -- we have a tender load line charter work group now, and we are
8 actually working on a process to see if we can bring these vessels
9 that it may apply to now that we've interpreted the regulations
10 and had a legal review of the regulations, we're working on a
11 program right now to see if we can bring those vessels either into
12 compliance, or into a compliance-like program for that.

13 Q. Okay, appreciate that.

14 MR. BARNUM: Those are some of my follow-up questions, but
15 I'll save those for Monday. So I know we're short for time, so
16 thank you very much. Appreciate it.

17 CAPT CALLAGHAN: Thank you, Bart.

18 And I'll turn to Mr. Stacey, representing the two survivors.
19 Any questions, sir?

20 MR. STACEY: Thank you for the testimony. No questions from
21 us.

22 CAPT CALLAGHAN: Thank you very much, Mr. Stacey.

23 And I'm over to Mr. Barcott representing the vessel owners.

24 MR. BARCOTT: No questions. Thank you, Captain.

25 Thank you, Mr. Wilwert.

1 CAPT CALLAGHAN: Thank you, Mr. Barcott.

2 Mr. Wilwert, I want to thank you for your time here today.
3 Thank you for coming out and sharing this vital information with
4 all of us as we look into this incident and ways to make things
5 safer for the fishermen out in the Alaskan waters. So thank you
6 for that.

7 At this time, you are now released as a witness from this
8 formal hearing. Thank you again for your testimony and
9 cooperation. If at a later date, I determine that this Board
10 needs additional information from you, we will contact you through
11 counsel. If you have any questions about the investigation, you
12 may contact the investigation recorder, Lieutenant Ian McPhillips.

13 Thank you again for being here.

14 THE WITNESS: Thank you, Captain. It was a pleasure.

15 (Witness excused.)

16 CAPT CALLAGHAN: At this time, I want to take the opportunity
17 to thank all the witnesses for their testimony today. All
18 exhibits shown today will be posted on the MBI media website.

19 At an earlier date and time, a separate formal interview was
20 conducted, including parties in interest that had been identified
21 at that time, with Mr. Dean Gribble. The complete recording of
22 that testimony will be posted to the livestream on Monday, March
23 1st. I have decided that the Marine Board will not require
24 Mr. Gribble to appear on Monday. An updated schedule will be
25 posted to reflect the changes.

1 It is 1726 on February 26th. The hearing will now adjourn
2 for today and resume at 0800, Monday, March 1st.

3 (Whereupon, at 5:26 p.m., the hearing was recessed.)
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CERTIFICATE

This is to certify that the attached proceeding before the


NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Marine Board of Investigation
Into the Sinking of the *Scandies Rose*
On December 31, 2019

PLACE: Seattle, Washington

DATE: February 26, 2021

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.


Sarah Collins
Transcriber