

BEFORE THE HEARING EXAMINER

FOR THE CITY OF SEATTLE

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In the Matter of the Appeals of:)

FOSS MARITIME COMPANY AND ) Hearing Examiner File Nos.  
PORT OF SEATTLE ) S-15-001; S-15-002  
from an interpretation ) (Directors Interpretation  
issued by the Director ) 15-001)  
Department of Planning )  
and Development )

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Administrative Hearing - Testimony of Paul Gallagher

before

HEARING EXAMINER ANNE WATANABE

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August 25, 2015

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1 providing them a place where they can come tie up the vessel  
2 safely, move people on and off and load cargo back and  
3 forth.

4 Q. Okay. And how many vessels are involved in this effort for  
5 Shell?

6 A. I believe as of today it's approximately 30 vessels. Now  
7 some vessels might come and go for a short period of time,  
8 for, you know, a few weeks, but for the most part, some of  
9 those vessels travel from as far away as Sweden and Finland  
10 or Singapore and Malaysia to work on the project and then  
11 they may leave when the project is over. So right now I  
12 think the number is 30 large vessels.

13 Q. How many of those vessels called, that is cane (phonetic)  
14 and moored at Terminal 5 this year?

15 A. I don't have the exact list in front of me, but out of the  
16 30 vessels, I believe maybe eight -- seven or eight. I'd  
17 have to go back through our notes and see.

18 Q. Okay. So let's talk about some of those vessels just to  
19 identify them and their characteristics.

20 A. Sure.

21 Q. So was one of those vessels the Polar Pioneer?

22 A. Yes, sir.

23 Q. So tell me about the Polar Pioneer, what is it?

24 A. The Polar Pioneer is a large -- referred to a mobile  
25 offshore drilling unit. So it is a large vessel. That

1 baryte. They move things from a shore-based facility to the  
2 rig or they move it back from the rig to shore. So they're  
3 generally referred to as OSV or offshore supply vessel.

4 Q. Okay. And were some of those operated by a company named  
5 Harvey?

6 A. Yes. Harvey Gulf Marine has, I think, five vessels working  
7 in the project this summer. The Sisuaq, the Harvey  
8 Supporter, the Harvey Champion, the Harvey Explorer, the  
9 Harvey Supporter -- the Harvey Spirit, I think.

10 Q. And did the Harvey Champion cull or call at Terminal 5?

11 A. I believe she did.

12 Q. Did the Harvey Supporter call at Terminal 5?

13 A. I believe she did.

14 Q. The Harvey Explorer?

15 A. Yes, sir.

16 Q. The Harvey Spirit?

17 A. Yes, sir.

18 Q. The Sisuaq?

19 A. I don't think the Sisuaq came. It might have come while I  
20 was gone for a few days. I think she did most of her work  
21 in Everett.

22 Q. All right. And how about the TOR Viking 2, can you tell me  
23 about that vessel?

24 A. So the TOR Viking is similar to the Harvey boats, but she  
25 has a little bit different mission. She has a big winch so

1 she can tow things. She, in fact, rescued a vessel in the  
2 Aleutians a few years ago with her tow winch. When the  
3 vessel was in trouble, the TOR Viking went out into the  
4 Aleutians to keep the vessel from going up on the rocks.  
5 She tends anchors and moves large anchors and chain around.  
6 And she's also ice class, so she can work in the ice and  
7 help the vessels -- support the vessel in the ice, if  
8 needed.

9 Q. Does the TOR Viking carry cargo?

10 A. I believe she does, yes.

11 Q. And then the Aiviq, are you familiar with the Aiviq?

12 A. The Aiviq is similar to the TOR Viking except it's much  
13 bigger, newer, and much more diverse in the services that  
14 she provides. She can house people like a floating hotel.  
15 She has a helicopter pad, so people can land on her. She  
16 has, I think, two different tow winches. So she helps with  
17 anchoring the vessels. But she also has some spill response  
18 capabilities. In the event of an emergency, she can deploy  
19 a skimmer and oil boom and help to take -- recover oil from  
20 the water.

21 Q. Does she carry cargo from one location to another?

22 A. Yes, she moves containerized cargos and anchors and chain  
23 and lots of different things. These types of vessels are  
24 very versatile and their jobs change quite frequently on the  
25 different types of things they can carry. They were built

1 to be as versatile as possible to carry lots of different  
2 things.

3 Q. Were there barges that came to Terminal 5 during the last  
4 year?

5 A. Yes, we've had I think three different barges that came to  
6 Terminal 5. I think the American Trader, which is a Foss  
7 owned barge, the Tuuk, which is a Native Alaskan term that  
8 means ice chisel, she came to Terminal 5 before she went  
9 into shipyard, and then we had a barge called the KRS 286-6  
10 which came to Terminal 5 for about a week.

11 Q. What is -- are the barges designed to carry cargo from one  
12 place to another?

13 A. Yes. That's their primary mission.

14 Q. Are they -- do they propel themselves or how do they move  
15 about?

16 A. They don't. Traditionally, these -- most of these barges  
17 are not self-propelled, so they don't have any propellers or  
18 any machinery. They're basically a platform that you load  
19 things onto and then they're towed or moved around by  
20 tugboats.

21 Q. Okay. So when did Foss take possession of Terminal 5 from  
22 the Port?

23 A. I believe -- I don't have the exact date, but I believe it  
24 was in February that we started to move in and make some  
25 improvements to Terminal 5. It had been idle and there was

1 no phone service, no internet, no furniture. It was kind of  
2 left by the previous tenant and needed to be cleaned. So we  
3 moved in, I think, a little bit in advance of signing our  
4 final lease.

5 Q. When was it that the Polar Pioneer arrived?

6 A. I don't have the exact date but I think it was the middle of  
7 May.

8 Q. So what happened between February and May?

9 A. We got the facility ready. We did a lot of training. We  
10 had to mobilize in very specialized equipment. We had to  
11 get the facility prepared to run a business, so phones and  
12 internet and fiber optic cables and installing work stations  
13 and white boards and computers and getting all the equipment  
14 to work together in a unit so we had different types of  
15 cargo handling things that were brought in, cranes and  
16 rigging and shackles and those things were inventoried and  
17 stored getting ready for the season.

18 Q. Were materials to be loaded on to the vessel, did any of  
19 those materials arrive during that time frame?

20 A. So the job of the terminal is to take things in by rail or  
21 by truck or by other vessel, store them, and get everything  
22 ready so that when the vessel comes, we limit the time that  
23 the vessel is actually at the dock. The vessel really  
24 doesn't make any money when it's at the dock. So everybody  
25 wants to limit the time at the dock so that she -- the

1 vessels can go to work.

2 Q. So what period of time did materials arrive at the terminal?

3 A. I believe things started to arrive at the terminal by truck  
4 in March.

5 Q. And from whom did these materials arrive? Where did they  
6 originate?

7 A. So these materials came from a variety of different places.  
8 Some of them are owned by different vendors or  
9 subcontractors that perform jobs like Halliburton, and  
10 Schlumberger, names that you hear on the news. They have  
11 very specialized tools that they use. Those things come  
12 from as far away as Norway and Europe and Singapore, they  
13 also come from the U.S., Gulf of Mexico, from Louisiana, and  
14 Houston, from different places in the oil industry where  
15 they'd be stored. So most of the things came in directly by  
16 truck. Some things came on a ship to Tacoma and then were  
17 loaded on a truck. Most everything found its way into  
18 Terminal 5 by truck.

19 Q. And after some -- when something comes in to Terminal 5 by  
20 truck, what was your process for handling that material upon  
21 its arrival?

22 A. So usually there's a piece of paper that tells you something  
23 is coming, it's called a bill of lading and it has the list  
24 of what's on the truck and what truck is bringing it and  
25 when it's going to bring it and how much it weighs. We

1 A. Yes. And there are materials still on the ground there at  
2 Terminal 5 either for spare parts or for materials that  
3 might be used that we'd have to ship up. So we've stored a  
4 lot of things there, you know, to support the operation.

5 Q. So at some point the vessels all left to go north; is that  
6 correct?

7 A. They did. They all leave on a different sort of schedule,  
8 depending upon how fast they travel and depending upon what  
9 their mission is when they actually get to the exploration  
10 site. Some people go up -- some of the vessels go up early  
11 to kind of get things done and make it ready. And then some  
12 vessels come up later with more perishable type items or  
13 just-in-time delivery items.

14 Q. And do you expect the vessels to come back?

15 A. I would like the vessels to come back. I'm sort of waiting  
16 to see what happens in this hearing to make sure that we're  
17 allowed to come back.

18 Q. Assuming that the vessels are allowed to come back, what is  
19 Foss's plan for operations later on this year?

20 A. Our plan and our plan when we entered into our contract with  
21 our customer was to have the vessels come back and support  
22 them and unload all of their cargo and get them ready to go  
23 back up next spring.

24 Q. And let's talk a little bit about that unloading operation,  
25 what do you anticipate that's going to consist of?



1 A. When they come back, as they did in the winter of 2012, the  
2 beginning of '13 in Seward, a lot of the things have to come  
3 off the vessel to be checked: Small submarines, some of the  
4 tools that they use, some of the materials have to be  
5 recertified, and then there are lots of containerized things  
6 that have to come off. And even things like trash and  
7 recyclables and pallets and plastic all needs to come off  
8 and go to the right landfill and the right place for all of  
9 those things. So there is a large, what we call,  
10 demobilization activity that happens and it usually takes a  
11 few months to unload everything.

12 Q. Is it Foss's expectation that if the oil rig is allowed to  
13 come back, that it would repeat the loading operation again  
14 in 2016?

15 A. The plan as I understand it from Shell is to at this time  
16 depending on what they find this fall is to reload the rig.  
17 The exact location where they come back to I don't think has  
18 been determined.

19 Q. That's an issue for them to deal with the federal government  
20 about?

21 A. No, I think it's an issue of where they feel welcome and  
22 where the work can be performed. So I think they're looking  
23 at options and I think Terminal 5 is still an option, but I  
24 think based upon what's happened here in the past few  
25 months, they're looking at other options possibly.

1 think when the Polar Pioneer had worked in Norway for 28  
2 years, she stayed out on location and she was delivered  
3 things, you know, to allow her to do work. She's too big to  
4 come into port on a routine basis, so she gets things  
5 delivered to her. It's a much more efficient operation that  
6 way.

7 Q. I know you weren't here yesterday to hear the testimony of  
8 Mr. O'Halloran and Mr. Knudsen. But they both testified  
9 about their use of the term "cargo" and I'm going to just  
10 paraphrase, I might not get this exactly right, but  
11 Mr. O'Halloran described three types of materials that are  
12 loaded on to vessels: Stores, provisions, and gear. And he  
13 said all of those things are cargo; would you agree with  
14 that?

15 A. Yes, I would agree with that.

16 Q. Do you think that's how the term "cargo" is used in the  
17 industry generally?

18 A. Yeah, I would think so, in general.

19 Q. And Mr. Knudsen was asked also about cargo and he agreed  
20 with Mr. O'Halloran, but he went to describe another  
21 category of cargo which he called paying cargo or maybe  
22 cargo for carriage. Are you familiar with those terms?

23 A. Yes.

24 Q. And Mr. Knudsen said everything that goes on or off a vessel  
25 is cargo and all these terms, stores, provisions, gear,

1 paying cargo are subcategories of cargo; is that your  
2 understanding as well?

3 A. Yes.

4 Q. Is that how the term "cargo" is used in the industry?

5 A. I believe so. We come from an industry that's centuries old  
6 and there's different, you know, types of both maritime law  
7 and different international standards where the terms are,  
8 you know, defined a little differently. So I think, you  
9 know, where the definition resides and whose definition  
10 you're using, you know, could be a little bit challenging  
11 sometimes. But I think in general for where we work here in  
12 Seattle and what happens in the United States, I think both  
13 Mr. Knudsen and Mr. O'Halloran's, their sort of general  
14 descriptions are correct.

15 Q. Okay. Let's turn to the second exhibit book and we're going  
16 to start with Exhibit 61, Foss 61.

17 So, Mr. Gallagher, we're going to go through a number of  
18 exhibits here and we're going to try to do it fairly quickly  
19 so we can get done today. So I'm going to ask you a series  
20 of questions that might be somewhat conclusory, but the  
21 intent is to try and move through this quickly. So I don't  
22 need you to explain every picture.

23 A. Sure.

24 Q. Okay. But let's start first with Exhibit 61, Foss 61, and  
25 this is 21 pages of photographs. And can you just describe

1 because it means they've all been certified and tested for  
2 this season. So those slings are used to move the tubulars  
3 up onto the rig. And depending upon how big they are, that  
4 determines how many are moved in a bundle.

5 Q. And then on the bottom of page 14, can you tell me what  
6 those are?

7 A. Those are a variety of different shipping containers that  
8 came into the terminal. Some are open on the top so we can  
9 put things in and take things out. Sometimes things are too  
10 big to fit inside a container or too heavy, so that's a  
11 truck that -- very much a sample of the trucks that we  
12 offload into Terminal 5 that would have come from Louisiana  
13 or New Orleans or Houston carrying a variety of different  
14 materials and cargo into the terminal.

15 Q. Do these containers contain cargo?

16 A. Yes, most all the containers. There are some empty  
17 containers, but most everything that came into the terminal  
18 had stuff in it.

19 Q. Okay. Looking at page 15, are those additional containers?

20 A. Yes, those are additional shipping containers. And they all  
21 have a number on them and some of them are labelled by the  
22 company that owns them so that's how we track things. We  
23 also weigh them when they come into the terminal, so we know  
24 how much they weigh, so we know we use the right forklift  
25 size or the right rigging to lift it up when we put it up on

1 tubulars when they're physically loaded onto the vessel.

2 Q. And page number 2, is that another bay that is used for  
3 storage of cargo?

4 A. Yes, this is another storage bay for cargo. You can see  
5 that the roof opens up and then when they're done loading  
6 cargo, they close the roof so they can keep things dry.

7 Q. Okay. How about number 3?

8 A. Number 3 is the same space on deck.

9 Q. Okay. So number 4, that shows a bunch of what you call  
10 tubulars; is that right?

11 A. Yes.

12 Q. And also a container there?

13 A. There's a container there with some tools in it. These are  
14 tubulars. I think even loaded in that same space as the  
15 first photo. And then you can see the chains over the top  
16 of it that hold it in place when it goes out into the ocean  
17 so it doesn't roll around.

18 Q. All right. So we see throughout the next many photos  
19 different types of materials that are aboard the Polar  
20 Pioneer, loaded aboard the Polar Pioneer; is that right?

21 A. Yes. Both -- on these photos both as an example on page 5,  
22 different sizes of pipe and tubulars, different  
23 containerized cargos and then palletized cargo, things that  
24 maybe didn't go into a container but were moved on a pallet  
25 and loaded onboard a vessel.

1 Department of Planning and Development.

2 A. Yeah.

3 Q. When you were describing your background, you said you  
4 worked on commercial vessels. What are "commercial  
5 vessels"?

6 A. When I say "commercial vessels" I mean different than  
7 recreational vessels, so vessels that, by their mission, go  
8 out and perform some sort of work and they get paid for that  
9 work, so whether it's fishing vessels or container vessels  
10 or tugboats or things like that, I refer to commercial  
11 vessels, just delineating them from being on someone's  
12 Boston Whaler for the weekend.

13 Q. Thank you. You also testified that Saltchuk -- is that the  
14 parent for Foss?

15 A. Yes.

16 Q. -- that they had a significant number of people who were  
17 working on the Shell project. How many of those people are  
18 working here?

19 A. Here, in --

20 Q. In Seattle.

21 A. In Seattle?

22 Q. Yeah.

23 A. I don't know exactly how many people are working here in  
24 Seattle, because the nature of our business, people live in  
25 Seattle but then they might get on a boat and go to work for

1 didn't seem like that was the only way you would classify  
2 cargo. It sounded like perhaps you wanted to add some other  
3 element to cargo.

4 MR. WEST: Is there a question?

5 MS. BAXENDALE: I'm asking, is there some --

6 A. Well, I think to answer your question, I think we deal with  
7 people in our industry from all over the world, and our  
8 industry has a very historic precedent to it, in both  
9 maritime law and in commerce and in sort of the media. So  
10 sometimes it's complicated. We have lots of jargon and lots  
11 of terminology that can complicate things and make it  
12 confusing for people. And so I think the descriptions that  
13 they talked about were sort of the general terms and general  
14 understanding that people have.

15 There are different types of ways people get paid for  
16 cargo, and I think that that could be -- may be part of the  
17 confusion of what we're talking about. When Mr. Knudsen  
18 spoke yesterday, there are certain types of cargo that  
19 generate certain types of rates and tariffs as it moves, you  
20 know, across the oceans or by truck. So, you know, I think  
21 it's a -- there's a lot of information out there probably in  
22 definition terms about types of cargo.

23 Q. (By Ms. Baxendale) The classifications or the categories  
24 that were addressed yesterday, the stores, the provisions,  
25 the gear and then the cargo for carriage or the paying

1 cargo. Do you feel comfortable that that sort of embraces  
2 the universe of cargo?

3 A. I think in general terms that that's a good descriptive  
4 term.

5 Q. Thank you. Mr. West was asking you a series of questions  
6 about things that were -- that go on at cargo terminals, the  
7 cargo terminal function. And there was loading, provisions,  
8 gear, loading equipment, getting on crew members, things  
9 that you do to prepare for a long voyage. Then you've got  
10 that, and you're unloading, and you're testing systems and  
11 you're training crew and you're changing your fire  
12 extinguishers and you're doing mooring. Are those  
13 activities that are unique to a cargo terminal?

14 A. Meaning, do I think they happen somewhere else? I guess I'm  
15 not -- I don't understand. I think there are lots of things  
16 that were left out of that description that were not all  
17 encompassing.

18 Q. Could those activities, for example, happen at a  
19 recreational marina?

20 A. Oh, definitely not. Not for a commercial vessel, no.

21 Q. Not for a commercial vessel?

22 A. No.

23 Q. But a boater who is preparing to sail to Alaska would have  
24 to do all of these things to --

25 A. I think that really depends upon the circumstances and the



1 size of the vessel and how long they were going for. I  
2 mean, I have a 28-foot boat and, you know, I don't think I  
3 would, you know, consider it, you know, taking on  
4 provisions. I mean, we bring some groceries down to the  
5 boat, so I think it really depends upon the circumstances.

6 Q. So a sailboat that's going to go from Seattle to Alaska for  
7 three months would do pretty much the same kinds of things  
8 that you were describing?

9 A. But on a very different scale; size and scale.

10 Q. Absolutely.

11 A. Yes.

12 Q. Absolutely. If you were a commercial vessel and you were at  
13 a moorage for commercial vessels that had adequate space and  
14 cranes, it doesn't really matter what the moorage is called,  
15 does it? It's a matter of what facilities are there, so it  
16 could be called a commercial moorage or it could be called  
17 cargotainer.

18 MR. WEST: Object to the form; vague. "Called"?

19 MS. BAXENDALE: I'm sorry?

20 MR. WEST: Object to the form as "called," what it's  
21 "called."

22 Q. (By Ms. Baxendale) Does it matter what the moorage is  
23 called, as to whether it's called a cargo terminal or a  
24 commercial moorage, as long as the functions are there?

25 A. I think it is confusing. I guess I'm confused about the

- 1 know, economically viable function, but we're competing  
2 against other areas so I'm not sure we'll be successful.  
3 But I can't sign a contract with Fluor if I'm not allowed to  
4 maybe bring ships in and unload cargo at Terminal 5.
- 5 Q. And would that cargo be paying cargo?
- 6 A. We would provide a service. I'm not sure what you're  
7 talking about as far as "paying cargo."
- 8 Q. Well, the pipe that would come in by ship from Korea --
- 9 A. Right.
- 10 Q. -- and then go on to, was it trucks or rail?
- 11 A. Trucks or rail, yeah.
- 12 Q. Would that be paying cargo that would be coming through the  
13 port?
- 14 A. I would imagine someone is getting paid. I would be being  
15 paid to perform a service very similar to what we do for  
16 Shell, and that's unload from a ship or a vessel, use the  
17 terminal to store it, and then put it on to another means of  
18 transportation.
- 19 Q. That was my question. Would the ship that would be bringing  
20 that pipe --
- 21 A. Right.
- 22 Q. -- be paid a fee to transport that pipe from Korea to, say,  
23 Terminal 5?
- 24 A. I believe so. I think ships need to be get paid to pay for  
25 the fuel and the crew, sure.

1 Q. And then --

2 A. That's the mission of that ship.

3 Q. And some ships are in the business of being paid to move  
4 cargo; isn't that right?

5 A. That's correct.

6 Q. And then would the pipe be trans -- unloaded from the ship  
7 and then put onto trucks or rail to be taken somewhere else?  
8 That would be the function that would happen?

9 A. For this project, that would be the function.

10 Q. And you have never run a cargo terminal, have you?

11 A. I think we talked about that. I ran a terminal, you know,  
12 up in Alaska in Seward so I ran a terminal where we unloaded  
13 cargo and loaded it onto trucks and loaded a drill rig and  
14 unloaded supply vessels. That was at a terminal.

15 Q. But you described the use that was part of the Shell  
16 Enterprise there?

17 A. Sure.

18 Q. Okay. So my question is different because --

19 A. I think that those -- that use is the same. You have  
20 created a different example of it for your argument, but the  
21 use of the cargo terminal is intrinsic. It wasn't --

22 HEARING EXAMINER: Mr. Gallagher -- Mr. Gallagher, I'm  
23 going to have to ask you to let her ask her question and  
24 then --

25 THE WITNESS: If she could ask clearer questions, that

1 you know, there is, really, you know, this type of work,  
2 there's some commercial sensitivity in giving this stuff  
3 out, especially to an environmental firm that may put it on  
4 the internet and take photos and try to do us damage.

5 Q. So I understand this is a really artificial setting in  
6 cross-examination, but I mean, it is -- I get to ask the  
7 questions and you have to answer --

8 A. No, no, I --

9 Q. I mean, that is --

10 MR. WEST: Why don't we go back to questions and answers  
11 rather than talking about the process.

12 HEARING EXAMINER: Right, let's go ahead. And,  
13 Mr. Gallagher, I have to ask to you simply listen to the  
14 question. If you don't understand it, then say so.  
15 Otherwise, just answer it.

16 THE WITNESS: Sure.

17 HEARING EXAMINER: I think it will go faster if we do it  
18 that way.

19 THE WITNESS: Sure.

20 Q. (By Ms. Goldman) So let me ask a different question then.  
21 Of the material that you loaded onto the Polar Pioneer, is  
22 it to be used by Shell in the performance of its offshore  
23 drilling operation?

24 A. I don't know.

25 Q. You don't know. But you testified before you know what the

1 Polar Pioneer does?

2 A. Yeah, sure.

3 Q. And you've testified at length about the type of gear that  
4 you were loading and the purposes of that gear.

5 A. Yes.

6 Q. And drill bits and drill casings and muds and --

7 A. Right.

8 Q. -- and all of that is going to be used in the offshore  
9 drilling operation?

10 A. For the period of time that they're working. Whether that  
11 stays on board and goes to a different job or whether they  
12 use it or not, I don't know if it will get used or not.

13 Q. I am not asking if it would be used. Was the purpose of  
14 loading the materials on to the Polar Pioneer so they could  
15 be used in the offshore drilling operation?

16 A. Sure, I believe so.

17 Q. And was there any other purpose for loading those materials  
18 on to the Polar Pioneer?

19 A. Can you rephrase the question? I guess I'm confused.

20 Q. Sure. Were the materials loaded on to Polar Pioneer to be  
21 used for any other business?

22 A. Than the mission of the vessel itself or --

23 Q. Yes.

24 A. To my knowledge, no.

25 Q. And for the other vessels that are part of the Shell fleet

1 that came to Terminal 5 --

2 A. Mm-hmm.

3 Q. -- were you loading materials onto those vessels so that  
4 they could be used -- they might not be, but they could be  
5 used in the offshore drilling operation?

6 A. Yes.

7 Q. And were you loading materials onto those vessels so they  
8 could be used in some other business?

9 A. You mean for someone other than Shell or --

10 Q. Yes, for some other business activity other than bringing  
11 them up to the Arctic to be -- so they could be used in  
12 offshore drilling?

13 A. No.

14 Q. Okay. I would like you to go to the fifth item and you will  
15 see there is reference there to disposable waste. Could you  
16 read, let's see, I think it is -- I think it's the second  
17 sentence. It's in the third line, begins with "Company  
18 shall." Can you read that?

19 A. Right. "Company shall deliver to the terminal its hazardous  
20 and non-hazardous solid waste generated offshore, presorted  
21 and placed into properly marked containers."

22 Q. And then would you read the next line as well.

23 A. "On arrival at the terminal, contractor shall offload both  
24 solid and hazardous waste and, if necessary, shall further  
25 sort such waste and shall place the waste in the properly

1 Q. (By Ms. Goldman) Okay. So if you would go to page 1-16 and  
2 it describes both of the drill rigs, but I would like to  
3 focus first on Polar Pioneer. So you testified that Polar  
4 Pioneer is a mobile offshore drilling unit; is that correct?

5 A. Mm-hmm.

6 Q. Can you explain again what that means?

7 A. It's a classification. It's -- a MODU is something that  
8 moves around, it's mobile, but then it also arrives at a  
9 location and drills. But there are other sort of vessels  
10 that fit into this category or description of vessels. As  
11 an example, there is a vessel called the Arctic Challenger  
12 that does well containment, and it provides services to  
13 clean up oil and gas that may be released underneath the sea  
14 floor. It's classified as a MODU but it doesn't do any  
15 drilling.

16 Q. And in this case, the Polar Pioneer, is it a highly  
17 specialized vessel for the purpose of offshore drilling?

18 A. I believe so, yes.

19 Q. And you testified it was subject to various regulations.  
20 Are those designed for vehicles that engage in -- for  
21 vessels that engage in offshore drilling?

22 A. I believe they -- there are lots of different types of  
23 vessels, lots of different rules, so this term "MODU" is how  
24 you go and figure out if those rules apply to your specific  
25 vessels, like having a descriptive term.

1 Q. Is the picture on the opposite page, 1-17 at the bottom, is  
2 that the Polar Pioneer?

3 A. Yes. That's the Polar Pioneer somewhere ballasted down, so  
4 about half the vessel is actually under water.

5 Q. So can you explain, is it a self-propelled vessel?

6 A. It seems that it's a thruster-assisted vessel, so I don't  
7 believe -- we're in the tugboat business and we towed it  
8 around. It has thrusters so it can move on its own, but it  
9 doesn't do it very well, so I think the thrusters can help  
10 it move but I'm not sure of its final classification. I  
11 think it was in one of the documents we saw earlier.

12 Q. Can you explain what a thruster is?

13 A. A thruster is sort of like a big propellor, like an outboard  
14 motor that's on the hull underneath. And in this case, they  
15 have got one on every corner and it helps to move the vessel  
16 around or hold it onto the location when it's out on the  
17 ocean, so it's basically like having four outboard motors on  
18 every corner of the vessel, to hold it in place.

19 Q. And you mentioned that the Blue Marlin is the barge that  
20 Polar Pioneer was --

21 A. A ship, a big ship, yeah.

22 Q. Can you explain how Polar Pioneer got onto that ship.

23 MR. WEST: I'm going to just object to the relevance of  
24 this line. Why is this pertinent to what the hearing  
25 examiner's jurisdiction is in this matter?



1 then it's somewhat similar.

2 Q. And would you say the principal use of Polar Pioneer is to  
3 aid in offshore drilling operations?

4 A. I believe she's an exploration vessel, so she drills holes  
5 for exploration.

6 Q. And would you say that's her principal purpose?

7 A. I believe that's her principal purpose.

8 Q. And would you say that the Polar Pioneer is used to  
9 transport cargo the way I've describes cargo, for a fee,  
10 paying cargo?

11 A. If we use your definition that you pointed out, no, she's  
12 not a carrier, so she doesn't get paid by a third party to  
13 move cargo from port to port.

14 Q. You said you also are familiar with the Noble Discoverer?

15 A. Yes.

16 Q. And can you describe what type of drill ship the Noble  
17 Discoverer is?

18 A. So she is also a MODU, a mobile offshore drilling unit,  
19 except she's a self-propelled vessel, and she moves or looks  
20 similar to a ship. In fact, she was a log carrier that was  
21 converted to be a drilling ship, so she's similar in the  
22 work that she performs but she is of a different style and a  
23 different configuration than the Polar Pioneer, and she's  
24 operated by a different company.

25 Q. Was she originally built in the 1960s?

1 doesn't say that these vessel are oil spill response, right?  
2 I guess at the top it says oil spill response but --  
3 Q. This is an appendix to an oil spill response plan, and we  
4 have been talking about the various functions, but I think  
5 for this purpose my question will be rephrased again then.  
6 Could vessels that are identified on this list, associated  
7 with these various functions, call at Terminal 5 during the  
8 off season?

9 MR. BROWER: Objection; asked and answered. Twice.

10 HEARING EXAMINER: Okay. So let me see if I heard the  
11 answer correctly, Mr. Gallagher. I think you said basically  
12 that Sisuaq may come to Terminal 5.

13 THE WITNESS: I mean, in general terms, ma'am, any of  
14 these vessels could come to Terminal 5 and tie up, but I  
15 don't know the plans. If I had to guess which my customer  
16 would send there, send to Terminal 5, really the Aiviq and  
17 the Sisuaq are probably the only vessels that would come to  
18 Terminal 5, if that helps to answer the question.

19 HEARING EXAMINER: Well, it's Ms. Goldman's question, so I  
20 was just trying to help.

21 MS. GOLDMAN: I think this is just creating some  
22 (inaudible).

23 HEARING EXAMINER: All right. Okay.

24 Q. (By Ms. Goldman) In your contract with Shell, is there a  
25 fixed set of vessels that you are obligated to serve at

1 Terminal 5?

2 A. No.

3 Q. Could that contract obligate Foss to serve as many vessels  
4 in the Arctic drilling fleet at Terminal 5?

5 A. Yes.

6 Q. And could that include various vessels that are designated  
7 to perform some of the oil spill response functions that are  
8 required for the Arctic drilling fleet?

9 A. Yes.

10 MS. GOLDMAN: I would like to move to admit Soundkeeper  
11 Exhibits 46 and 47.

12 MR. WEST: I still have the same objections.

13 HEARING EXAMINER: Foundation, and anything else?

14 MR. WEST: They're not complete; they're partial  
15 documents.

16 HEARING EXAMINER: And they're incomplete, okay. And --  
17 yes, Mr. Schneider?

18 MS. SCHNEIDER: And I would like to add the objection that  
19 any theoretical relevance is outweighed by other  
20 considerations. I don't see how they are helpful to the  
21 interpretation of that issue here.

22 MS. GOLDMAN: And if that's the case I would move to  
23 strike all of the evidence that's been elicited on these  
24 vessels and what they do and their functions.

25 HEARING EXAMINER: Right, okay. The objection is noted

1 but they're admitted.

2 MS. GOLDMAN: Okay.

3 (Soundkeeper Exhibit Nos. 46 and 47 admitted into evidence.)

4 Q. (By Ms. Goldman) So you testified this morning about  
5 loading various types of materials onto the various vessels;  
6 do you remember that?

7 A. Yes.

8 Q. And going with the definitions that I offered earlier, so  
9 provisions being things that will used by the crew, what of  
10 the materials that were loaded would constitute provisions?  
11 Give me some examples.

12 A. To use your definition, if it's things consumed by the crew,  
13 it would be groceries, paper towels, laundry soap, things  
14 like that along those lines, things that would be used to  
15 consume during the voyage.

16 Q. And of the materials that Foss loaded onto the various  
17 vessels, which ones would be stores?

18 A. Stores are generally referred to as things go on the shelf  
19 and will be used over time, so we think of stores as paint,  
20 oil filters, different things that would be -- cleaning  
21 materials, possibly. Extra brooms, extra paintbrush, things  
22 like that that might be used and then consumed of and then  
23 thrown away during the voyage. Some people would argue that  
24 lubricating oils and WD-40, that those would be stores as  
25 well that would get loaded.

1 Q. And they would be used on the voyage?

2 A. And they would be used on the voyage generally?

3 Q. And turning to the definition that I offered of gear, would  
4 the drill bit and the drill pipe be gear?

5 A. Can I go back and look at your definition?

6 Q. Sure. I think I gave it orally.

7 A. Oh.

8 Q. I gave you the -- so my definition is materials that would  
9 be used as part of the drilling enterprise.

10 A. So I guess to answer your question, the other things that  
11 were loaded were to be used in the drilling enterprise.  
12 They were cargo that we loaded to put on board so that it  
13 can be used to perform the mission of the vessel.

14 Q. And so that would include drill bit, drill pipe?

15 A. Right. The specialized tools, the ROV that looks under  
16 water, the blowout preventer, all of those things.

17 Q. So you testified this morning that Terminal 5 would be a  
18 place that some of the vessels could come for the off  
19 season; is that correct?

20 A. Correct.

21 Q. And in the off season there would be a lot of maintenance,  
22 servicing or repairs that would need to be done; is that  
23 right?

24 A. I don't think I said a lot of maintenance. I think I said  
25 there would be some activities, some maintenance activities

1 MS. GOLDMAN: I'll move on, I'll move on.

2 HEARING EXAMINER: Yeah. We can't conduct the deposition  
3 now, so I am certainly inclined to allow you to continue to  
4 examine this witness. I just need for you to kind of hone  
5 in on what you are seeking rather than just general lines of  
6 questions.

7 MS. GOLDMAN: I will pursue some other lines of  
8 questioning.

9 Q. (By Ms. Goldman) So, Mr. Gallagher, Foss installed bollards  
10 at Terminal 5; is that correct?

11 A. On the shore? Actually, we hired Quigg Brothers, a  
12 contractor, to install new mooring bollards at Terminal 5.  
13 They're actually putting bollards back that used be there in  
14 the past.

15 Q. And why did you install new bollards?

16 A. When we looked at wind and weather data and the size of the  
17 Polar Pioneer we wanted to make sure that we didn't have any  
18 failures, and the mooring bollards that were on the dock,  
19 the previous customer had downgraded them to 20 tons and we  
20 felt we should have stronger ones on the dock after we did  
21 the engineering analysis.

22 Q. I would like to you look at Soundkeeper Exhibit 29. Are you  
23 there?

24 A. Yep.

25 Q. And what is this?

1 A. That is letter to me from Scott Pattison at the Port, an  
2 email.

3 Q. You see the question that he's asking you at the bottom?  
4 What did you understand that he was asking you?

5 A. He was trying to come up with, asking me in general terms  
6 how do we describe the activities that might be happening  
7 here so everyone would understand it, that the Port  
8 commissioners would understand it.

9 Q. Do you know what document he was referring to?

10 A. To the lease.

11 Q. And do you see that he offered you examples of, for example,  
12 what the lease might say for uses of container terminal?

13 A. Right.

14 Q. And then he offered you an example of what the lease might  
15 say for the passenger cruise terminal.

16 And what did he suggest for Foss? Can you read that,  
17 please, the last line?

18 A. "Lessee shall use the entire premises in a first-class  
19 manner as a vessel fleeting base..."

20 Q. And then it looks like you replied to him?

21 A. At the time that this was written, I replied back for a  
22 general descriptive term, "Vessel supply base is storage  
23 depot."

24 Q. And can you now go to Foss Exhibit 39. Have you seen this  
25 document before?

- 1 A. Yes.
- 2 Q. And what is this document?
- 3 A. This was a letter of understanding between Foss and the Port  
4 of Seattle that was put together in January.
- 5 Q. If you go to the second page under "Use," do you see the  
6 language that you suggested to Mr. Pattison?
- 7 A. Yes.
- 8 Q. I want you to go to page -- to Soundkeeper No. 16. Do you  
9 see the date on this document? Do you see the date?  
10 February 3rd?
- 11 A. Yep.
- 12 Q. And do you know when the lease was signed?
- 13 A. I think it was signed February 9th, but I'm not sure.
- 14 Q. So it appears that you're responding to something  
15 (inaudible). Can you tell why you are putting those words  
16 on the page and sending them to Mr. Pattison?
- 17 A. I don't know without more -- without more background. We  
18 were trying to arrive at terminology that best described our  
19 activities, and I think in the end, the marine cargo  
20 terminal was the best description, and so that was what was  
21 put in the lease.
- 22 Q. And you didn't stop there, though. You also had vessel  
23 outfitting and supply base to receive, et cetera?
- 24 A. Yeah. And so part of my job is I work in the space between  
25 a complicated international oil customer --



1 Q. I don't think -- I think you answered my question.

2 A. Okay, fine.

3 Q. Do you know whether Pier 2 is part of the leased area to  
4 Foss?

5 A. Pier 2?

6 Q. Yes.

7 A. I'm not aware of it. I don't have the diagrams in front of  
8 me.

9 Q. If you -- do you still have Foss 36, I believe --

10 MS. GOLDMAN: That's all I have.

11 HEARING EXAMINER: All right. I'm going to check with  
12 this side of the table. Mr. Brower, Mr. West.

13 MR. WEST: I have a little redirect if no one else has  
14 anything.

15

16 R E D I R E C T E X A M I N A T I O N

17 BY MR. WEST:

18 Q. Mr. Gallagher, let's start with Foss 38 -- excuse me, 39,  
19 which was the letter of understanding.

20 A. Yes.

21 Q. And let's go ahead and ask you about the language in this  
22 page 2, paragraph Roman II, "Use," correct?

23 A. Yes.

24 Q. And if you go to page 5 of the document.

25 A. Yes.

C E R T I F I C A T E

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STATE OF WASHINGTON )  
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COUNTY OF KING )

I, the undersigned, do hereby certify that the foregoing recorded statements, hearings and/or interviews were transcribed under my direction as a transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of September, 2015.

\_\_\_\_\_  
Bonnie Reed, CETD