BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of:

FOSS MARITIME COMPANY AND
PORT OF SEATTLE

from an interpretation
issued by the Director
Department of Planning
and Development

Administrative Hearing - Testimony of Paul Gallagher
before

HEARING EXAMINER ANNE WATANABE

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

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

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

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

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

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

A. Sure.

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

A. Yes, sir.

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

A. The Polar Pioneer is a large -- referred to a mobile offshore drilling unit. So it is a large vessel. That
baryte. They move things from a shore-based facility to the
rig or they move it back from the rig to shore. So they're
generally referred to as OSV or offshore supply vessel.

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

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

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

A. I believe she did.

Q. Did the Harvey Supporter call at Terminal 5?

A. I believe she did.

Q. The Harvey Explorer?

A. Yes, sir.

Q. The Harvey Spirit?

A. Yes, sir.

Q. The Sisuaq?

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

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

A. So the TOR Viking is similar to the Harvey boats, but she
has a little bit different mission. She has a big winch so
she can tow things. She, in fact, rescued a vessel in the
Aleutians a few years ago with her tow winch. When the
vessel was in trouble, the TOR Viking went out into the
Aleutians to keep the vessel from going up on the rocks.
She tends anchors and moves large anchors and chain around.
And she's also ice class, so she can work in the ice and
help the vessels -- support the vessel in the ice, if
needed.

Q. Does the TOR Viking carry cargo?

A. I believe she does, yes.

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

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

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

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

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

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

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

A. Yes. That's their primary mission.

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

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

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

A. I believe -- I don't have the exact date, but I believe it was in February that we started to move in and make some improvements to Terminal 5. It had been idle and there was
no phone service, no internet, no furniture. It was kind of
left by the previous tenant and needed to be cleaned. So we
moved in, I think, a little bit in advance of signing our
final lease.

Q. When was it that the Polar Pioneer arrived?
A. I don't have the exact date but I think it was the middle of
May.

Q. So what happened between February and May?
A. We got the facility ready. We did a lot of training. We
had to mobilize in very specialized equipment. We had to
get the facility prepared to run a business, so phones and
internet and fiber optic cables and installing work stations
and white boards and computers and getting all the equipment
to work together in a unit so we had different types of
cargo handling things that were brought in, cranes and
rigging and shackles and those things were inventoried and
stored getting ready for the season.

Q. Were materials to be loaded on to the vessel, did any of
those materials arrive during that time frame?
A. So the job of the terminal is to take things in by rail or
by truck or by other vessel, store them, and get everything
ready so that when the vessel comes, we limit the time that
the vessel is actually at the dock. The vessel really
doesn't make any money when it's at the dock. So everybody
wants to limit the time at the dock so that she -- the
Q. So what period of time did materials arrive at the terminal?
A. I believe things started to arrive at the terminal by truck in March.
Q. And from whom did these materials arrive? Where did they originate?
A. So these materials came from a variety of different places. Some of them are owned by different vendors or subcontractors that perform jobs like Halliburton, and Schlumberger, names that you hear on the news. They have very specialized tools that they use. Those things come from as far away as Norway and Europe and Singapore, they also come from the U.S., Gulf of Mexico, from Louisiana, and Houston, from different places in the oil industry where they'd be stored. So most of the things came in directly by truck. Some things came on a ship to Tacoma and then were loaded on a truck. Most everything found its way into Terminal 5 by truck.
Q. And after some -- when something comes in to Terminal 5 by truck, what was your process for handling that material upon its arrival?
A. So usually there's a piece of paper that tells you something is coming, it's called a bill of lading and it has the list of what's on the truck and what truck is bringing it and when it's going to bring it and how much it weighs. We
A. Yes. And there are materials still on the ground there at
Terminal 5 either for spare parts or for materials that
might be used that we'd have to ship up. So we've stored a
lot of things there, you know, to support the operation.

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

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

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

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

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

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

Q. And let's talk a little bit about that unloading operation,
what do you anticipate that's going to consist of?
A. When they come back, as they did in the winter of 2012, the beginning of '13 in Seward, a lot of the things have to come off the vessel to be checked: Small submarines, some of the tools that they use, some of the materials have to be recertified, and then there are lots of containerized things that have to come off. And even things like trash and recyclables and pallets and plastic all needs to come off and go to the right landfill and the right place for all of those things. So there is a large, what we call, demobilization activity that happens and it usually takes a few months to unload everything.

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

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

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

A. No, I think it's an issue of where they feel welcome and where the work can be performed. So I think they're looking at options and I think Terminal 5 is still an option, but I think based upon what's happened here in the past few months, they're looking at other options possibly.
think when the Polar Pioneer had worked in Norway for 28
years, she stayed out on location and she was delivered
things, you know, to allow her to do work. She's too big to
come into port on a routine basis, so she gets things
delivered to her. It's a much more efficient operation that
way.

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

A. Yes, I would agree with that.

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

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

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

A. Yes.

Q. And Mr. Knudsen said everything that goes on or off a vessel
is cargo and all these terms, stores, provisions, gear,
paying cargo are subcategories of cargo; is that your understanding as well?

A. Yes.

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

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

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

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

A. Sure.

Q. Okay. But let's start first with Exhibit 61, Foss 61, and this is 21 pages of photographs. And can you just describe
because it means they've all been certified and tested for this season. So those slings are used to move the tubulars up onto the rig. And depending upon how big they are, that determines how many are moved in a bundle.

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

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

Q. Do these containers contain cargo?

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

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

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

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

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

Q. Okay. How about number 3?

A. Number 3 is the same space on deck.

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

A. Yes.

Q. And also a container there?

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

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

A. Yes. Both -- on these photos both as an example on page 5, different sizes of pipe and tubulars, different containerized cargos and then palletized cargo, things that maybe didn't go into a container but were moved on a pallet and loaded onboard a vessel.
Q. When you were describing your background, you said you worked on commercial vessels. What are "commercial vessels"?

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

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

A. Yes.

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

A. Here, in --

Q. In Seattle.

A. In Seattle?

Q. Yeah.

A. I don't know exactly how many people are working here in Seattle, because the nature of our business, people live in Seattle but then they might get on a boat and go to work for
didn't seem like that was the only way you would classify cargo. It sounded like perhaps you wanted to add some other element to cargo.

MR. WEST: Is there a question?

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

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

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

Q. (By Ms. Baxendale) The classifications or the categories that were addressed yesterday, the stores, the provisions, the gear and then the cargo for carriage or the paying
cargo. Do you feel comfortable that that sort of embraces the universe of cargo?

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

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

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

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

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

Q. Not for a commercial vessel?

A. No.

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

A. I think that really depends upon the circumstances and the
Cross by Baxendale/Gallagher

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
know, economically viable function, but we're competing against other areas so I'm not sure we'll be successful. But I can't sign a contract with Fluor if I'm not allowed to maybe bring ships in and unload cargo at Terminal 5.

Q. And would that cargo be paying cargo?
A. We would provide a service. I'm not sure what you're talking about as far as "paying cargo."

Q. Well, the pipe that would come in by ship from Korea --
A. Right.

Q. -- and then go on to, was it trucks or rail?
A. Trucks or rail, yeah.

Q. Would that be paying cargo that would be coming through the port?
A. I would imagine someone is getting paid. I would be being paid to perform a service very similar to what we do for Shell, and that's unload from a ship or a vessel, use the terminal to store it, and then put it on to another means of transportation.

Q. That was my question. Would the ship that would be bringing that pipe --
A. Right.

Q. -- be paid a fee to transport that pipe from Korea to, say, Terminal 5?
A. I believe so. I think ships need to be get paid to pay for the fuel and the crew, sure.
Q. And then --
A. That's the mission of that ship.
Q. And some ships are in the business of being paid to move cargo; isn't that right?
A. That's correct.
Q. And then would the pipe be trans -- unloaded from the ship and then put onto trucks or rail to be taken somewhere else? That would be the function that would happen?
A. For this project, that would be the function.
Q. And you have never run a cargo terminal, have you?
A. I think we talked about that. I ran a terminal, you know, up in Alaska in Seward so I ran a terminal where we unloaded cargo and loaded it onto trucks and loaded a drill rig and unloaded supply vessels. That was at a terminal.
Q. But you described the use that was part of the Shell Enterprise there?
A. Sure.
Q. Okay. So my question is different because --
A. I think that those -- that use is the same. You have created a different example of it for your argument, but the use of the cargo terminal is intrinsic. It wasn't --
HEARING EXAMINER: Mr. Gallagher -- Mr. Gallagher, I'm going to have to ask you to let her ask her question and then --
THE WITNESS: If she could ask clearer questions, that
you know, there is, really, you know, this type of work, there's some commercial sensitivity in giving this stuff out, especially to an environmental firm that may put it on the internet and take photos and try to do us damage.

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

A. No, no, I --

Q. I mean, that is --

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

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

THE WITNESS: Sure.

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

THE WITNESS: Sure.

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

A. I don't know.

Q. You don't know. But you testified before you know what the
Polar Pioneer does?

A. Yeah, sure.

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

A. Yes.

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

A. Right.

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

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

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

A. Sure, I believe so.

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

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

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

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

Q. Yes.

A. To my knowledge, no.

Q. And for the other vessels that are part of the Shell fleet
Cross by Goldman/Gallagher

that came to Terminal 5 --

A. Mm-hmm.

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

A. Yes.

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

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

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

A. No.

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

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

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

A. "On arrival at the terminal, contractor shall offload both solid and hazardous waste and, if necessary, shall further sort such waste and shall place the waste in the properly
(By Ms. Goldman) Okay. So if you would go to page 1-16 and it describes both of the drill rigs, but I would like to focus first on Polar Pioneer. So you testified that Polar Pioneer is a mobile offshore drilling unit; is that correct?

A. Mm-hmm.

Q. Can you explain again what that means?

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

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

A. I believe so, yes.

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

A. I believe they -- there are lots of different types of vessels, lots of different rules, so this term "MODU" is how you go and figure out if those rules apply to your specific vessels, like having a descriptive term.
Q. Is the picture on the opposite page, 1-17 at the bottom, is that the Polar Pioneer?
A. Yes. That's the Polar Pioneer somewhere ballasted down, so about half the vessel is actually under water.
Q. So can you explain, is it a self-propelled vessel?
A. It seems that it's a thruster-assisted vessel, so I don't believe -- we're in the tugboat business and we towed it around. It has thrusters so it can move on its own, but it doesn't do it very well, so I think the thrusters can help it move but I'm not sure of its final classification. I think it was in one of the documents we saw earlier.
Q. Can you explain what a thruster is?
A. A thruster is sort of like a big propellor, like an outboard motor that's on the hull underneath. And in this case, they have got one on every corner and it helps to move the vessel around or hold it onto the location when it's out on the ocean, so it's basically like having four outboard motors on every corner of the vessel, to hold it in place.
Q. And you mentioned that the Blue Marlin is the barge that Polar Pioneer was --
A. A ship, a big ship, yeah.
Q. Can you explain how Polar Pioneer got onto that ship.
MR. WEST: I'm going to just object to the relevance of this line. Why is this pertinent to what the hearing examiner's jurisdiction is in this matter?
then it's somewhat similar.

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

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

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

A. I believe that's her principal purpose.

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

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

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

A. Yes.

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

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

Q. Was she originally built in the 1960s?
doesn't say that these vessel are oil spill response, right?
I guess at the top it says oil spill response but --

Q. This is an appendix to an oil spill response plan, and we have been talking about the various functions, but I think for this purpose my question will be rephrased again then. Could vessels that are identified on this list, associated with these various functions, call at Terminal 5 during the off season?

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

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

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

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

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

HEARING EXAMINER: All right. Okay.

Q. (By Ms. Goldman) In your contract with Shell, is there a fixed set of vessels that you are obligated to serve at
Terminal 5?

A. No.

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

A. Yes.

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

A. Yes.

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

MR. WEST: I still have the same objections.

HEARING EXAMINER: Foundation, and anything else?

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

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

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

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

HEARING EXAMINER: Right, okay. The objection is noted
but they're admitted.

MS. GOLDMAN: Okay.

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

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

A. Yes.

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

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

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

A. Stores are generally referred to as things go on the shelf and will be used over time, so we think of stores as paint, oil filters, different things that would be -- cleaning materials, possibly. Extra brooms, extra paintbrush, things like that that might be used and then consumed or and then thrown away during the voyage. Some people would argue that lubricating oils and WD-40, that those would be stores as well that would get loaded.
Q. And they would be used on the voyage?
A. And they would be used on the voyage generally?
Q. And turning to the definition that I offered of gear, would the drill bit and the drill pipe be gear?
A. Can I go back and look at your definition?
Q. Sure. I think I gave it orally.
A. Oh.
Q. I gave you the -- so my definition is materials that would be used as part of the drilling enterprise.
A. So I guess to answer your question, the other things that were loaded were to be used in the drilling enterprise. They were cargo that we loaded to put on board so that it can be used to perform the mission of the vessel.
Q. And so that would include drill bit, drill pipe?
A. Right. The specialized tools, the ROV that looks under water, the blowout preventer, all of those things.
Q. So you testified this morning that Terminal 5 would be a place that some of the vessels could come for the off season; is that correct?
A. Correct.
Q. And in the off season there would be a lot of maintenance, servicing or repairs that would need to be done; is that right?
A. I don't think I said a lot of maintenance. I think I said there would be some activities, some maintenance activities
MS. GOLDMAN: I'll move on, I'll move on.

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

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

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

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

Q. And why did you install new bollards?

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

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

A. Yep.

Q. And what is this?
A. That is letter to me from Scott Pattison at the Port, an email.

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

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

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

A. To the lease.

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

A. Right.

Q. And then he offered you an example of what the lease might say for the passenger cruise terminal. And what did he suggest for Foss? Can you read that, please, the last line?

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

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

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

Q. And can you now go to Foss Exhibit 39. Have you seen this document before?
1 Q. And what is this document?
2 A. This was a letter of understanding between Foss and the Port of Seattle that was put together in January.
3 Q. If you go to the second page under "Use," do you see the language that you suggested to Mr. Pattison?
4 A. Yes.
5 Q. I want you to go to page -- to Soundkeeper No. 16. Do you see the date on this document? Do you see the date? February 3rd?
6 A. Yep.
7 Q. And do you know when the lease was signed?
8 A. I think it was signed February 9th, but I'm not sure.
9 Q. So it appears that you're responding to something (inaudible). Can you tell why you are putting those words on the page and sending them to Mr. Pattison?
10 A. I don't know without more -- without more background. We were trying to arrive at terminology that best described our activities, and I think in the end, the marine cargo terminal was the best description, and so that was what was put in the lease.
11 Q. And you didn't stop there, though. You also had vessel outfitting and supply base to receive, et cetera?
12 A. Yeah. And so part of my job is I work in the space between a complicated international oil customer --
Redirect by West/Gallagher

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 REDIRECT EXAMINATION
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.
CERTIFICATE

STATE OF WASHINGTON

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