

1 A. I don't believe that I said that only cargo work was
2 seasonal.

3 Q. That is the only thing you referenced in the interpretation,
4 correct?

5 A. Yes, the interpretation was -- was specifically about
6 whether something was or was not a cargo -- cargo terminal
7 use.

8 Q. Did you accept the port's statements in exhibit number 9 as
9 true?

10 Sorry, I am jumping around on you there.

11 A. Exhibit 9?

12 Q. Is number F22, the lay berthing letter?

13 A. Yes.

14 Q. Did you have any basis on which to challenge the port's lay
15 berthing statements?

16 A. No.

17 Q. You don't have any basis to challenge them here today, do
18 you?

19 A. No.

20 Q. And turning back to the interpretation, which is exhibit
21 number 1, and looking at the conclusion -- paragraph 1 says
22 you are addressing the proposed moorage of an oil drilling
23 rig and two accompanying tugboats at terminal 5 during the
24 winter months. Correct?

25 A. Yes.

1 HEARING EXAMINER: No, no --

2 MR. WEST: 61.

3 HEARING EXAMINER: 61.

4 Q. (By Mr. West) Could you take a look through all of those
5 photographs that are marked as Exhibit 61 -- or excuse me,
6 Exhibit 14?

7 Thank you.

8 (Brief Pause in Proceedings)

9 Q. (By Mr. West) And actually let me ask you a question as you
10 are doing that, Mr. McKim.

11 Could you tell me if you see anything in those exhibits
12 that does not appear to be to you goods or container cargo?

13 MS. BAXENDALE: Objection, speculation.

14 HEARING EXAMINER: I am going to let him answer it
15 if he has an answer.

16 (Brief Pause in Proceedings)

17 A. I see pictures of a lot of items that could qualify under a
18 definition of goods.

19 At the end I see things that appear to be in
20 containers.

21 Q. (By Mr. West) So why don't we take a look, for example, at
22 page 14 of Exhibit 14?

23 Do you see there is a -- at the bottom photograph?

24 A. Yes.

25 Q. Would you describe the things that are on that trailer as

1 containers?

2 A. To the -- they are consistent with my understanding of
3 containers, yes.

4 Q. How about on page 15? Is that consistent with your
5 understanding of what constitutes a container?

6 A. Yes.

7 Q. And 16, is that consistent with what you understand to be a
8 container?

9 A. Yes.

10 Q. Looking at photograph -- page 1 shows pipe, right?

11 A. Yes, there's a lot of long tubular items --

12 Q. Okay.

13 A. -- I assume to be pipe.

14 Q. And would you agree that all of those tubular items qualify
15 as goods as that term is used in the definition of a cargo
16 terminal?

17 A. I would have to go back. I don't remember which exhibit the
18 definition was.

19 HEARING EXAMINER: Well our Exhibit 13. I
20 don't --

21 Q. (By Mr. West) 25. It is on tab 25.

22 (Brief Pause in Proceedings)

23 A. Yes, to the extent that they could be wares, commodities or
24 merchandise. They are at least something that has economic
25 utility.

1 Q. You would agree they are all personal property having
2 intrinsic value, correct?

3 A. They are that, yes.

4 Q. And that is actually the definition you used in the
5 interpretation, isn't it?

6 A. Was that what I used?

7 Q. 3B, "personal property having intrinsic value"?

8 (Brief Pause in Proceedings)

9 A. Yes.

10 Q. (By Mr. West) So again, all of the tubular items you see
11 there would qualify as goods under that definition?

12 A. Yes.

13 Q. And do you know whether or not any of the containers that
14 you have seen in this exhibit were actually loaded onto the
15 Polar Pioneer?

16 A. I don't know.

17 Q. I would like you to assume that a number of those items were
18 in fact loaded; that is the items in the containers, and I
19 would like you to assume that a number of the tubular items
20 were loaded on the containers.

21 Would you agree that if that was so that the Polar
22 Pioneer was loaded with goods and container cargo?

23 A. I would agree that they would qualify as goods under a
24 certain -- under one of those definitions, yes, and that
25 they were items in containers, as well, yes.

1 correct?

2 A. Yes.

3 Q. And it has to be a cargo vessel that actually is loading or
4 unloading cargo, correct?

5 A. Yes.

6 Q. So if a cargo vessel comes to a cargo terminal without any
7 cargo in it, and doesn't load, and doesn't unload, it can't
8 moor at that cargo terminal, correct?

9 A. We would regard that as a moorage use, so yes, correct.

10 Q. It would not fall within the cargo terminal use?

11 A. Yes.

12 Q. They would need some other permit to do that?

13 A. That's correct.

14 Q. Okay.

15 And similarly, vessels that aren't cargo vessels at all
16 can't come and moor at cargo terminals for any purpose under
17 the cargo terminal use, correct?

18 A. Absent establishing the different or additional use there,
19 that is correct.

20 Q. So for example, they can't come and take crew on and off,
21 right, because they can't moor?

22 A. Right.

23 If it were related to, and I don't think that we got
24 into that in the interpretation, the question would be is
25 this something that is happening in relation to the

1 A. I don't recall, no.

2 Q. And you don't recall running that by either of your
3 supervisors, do you?

4 A. No.

5 Q. All right.

6 So in this instance, the only person that you can
7 recall discussing that with are lawyers in the city
8 attorney's office?

9 A. That's correct.

10 Q. And after those discussions, you reached a different
11 conclusion than you had reached in your draft; is that
12 right?

13 A. That's right.

14 Q. We talked earlier about the extra comma that was added in
15 this definition; so that comma in paragraph 7 of exhibit
16 number 1 where the cargo terminal description is, that is
17 the old definition, correct?

18 A. Yes.

19 Q. And the new definition inserts a comma after the word
20 "carriers," which is on the third line there?

21 A. Yes.

22 Q. And that comma then sets off the second clause from the
23 third clause, does it not?

24 A. Yes.

25 Q. But you ignored the addition of that comma in the

1 interpretation; is that right?

2 A. I concluded that it wasn't relevant.

3 Q. So you ignored it, correct?

4 MS. BAXENDALE: Objection.

5 HEARING EXAMINER: I will sustain the objection.

6 Q. (By Mr. West) You testified in your deposition that you
7 ignored it, did you not?

8 A. I don't recall.

9 Q. And if -- let's go through the definition, if one uses the
10 original interpretation that you have.

11 You agree that terminal 5 is a transportation facility
12 as it was going to be used by Foss, correct?

13 A. Yes.

14 Q. And you agree that the tubulars, and the other items that
15 you saw in those pictures constitute goods or containers,
16 correct?

17 A. Yes.

18 Q. And you agreed that they were stored there on terminal 5 as
19 shown by the photos, correct?

20 A. Yes.

21 Q. And they were stored, to your understanding, without
22 undergoing any manufacturing processes, correct?

23 A. Correct.

24 Q. And if one stops there and does not use your unifying theme,
25 jumping that -- two clauses forward -- that would be the end

1 A. Yes.

2 Q. Newspaper articles?

3 A. I don't recall that the newspaper articles specifically
4 addressed how they operate.

5 Q. Are interpretations supposed to be based on assumptions?

6 A. No.

7 Q. And you had people available to you to tell you the facts,
8 right? You had my email, you communicated with Foss,
9 correct?

10 A. Correct.

11 Q. And you never asked, What is going to happen with this
12 material when it gets to the Arctic?

13 A. I don't recall having asked that, no.

14 Q. Okay.

15 So again let's assume that these tubulars, and other
16 materials, are going to be taken to a specific location by
17 the Polar Pioneer.

18 That specific location is licensed by the federal
19 government, and the Polar Pioneer stops and anchors itself
20 there, and then it puts all of that material into the ground
21 and leaves it there.

22 Is that transferring that material to another location?

23 A. In a broad sense, yes.

24 Q. In the sense used in the definition of a cargo terminal,
25 isn't that transferring it from one location to another?

1 A. Again the -- the reason -- the purpose is like in order
2 to -- it is in order to conduct a particular operation as
3 opposed to being in order to move the equipment, so I would
4 say no.

5 Q. I'm sorry, isn't the purpose of it coming here and loading
6 the material to transfer it up to the Arctic?

7 A. It is to -- to take it up there in order to use it there.

8 Q. And to -- and to transfer it into the ground, correct?

9 A. I would say that it is not a delivery as opposed -- I would
10 say it is a use rather than a delivery, so I wouldn't regard
11 that as a transfer, no.

12 Q. But you agree it is left there in the other location,
13 correct?

14 A. I again don't know.

15 Q. And the distinction between the operations of the OSV's and
16 the barges, the offshore supply vehicles and the barges, and
17 the rig itself, both of which contain -- carry the exact
18 same items, and both of which were loading those exact same
19 items at terminal 5, the only distinction is that the OSV's
20 and the barges put them onto the oil rig first? That makes
21 them qualify whereas the oil rig doesn't qualify?

22 A. That's correct.

23 Q. That is the only distinction?

24 A. Yes.

25 Q. So that all takes place 2000 miles away from terminal 5?

1 A. I think that is something that we would have to consider,
2 but I believe that a better case could be made that its
3 purpose was the transfer, so it is something that I -- we
4 have not specifically examined for purposes of this
5 interpretation.

6 Q. Well lots of vessels have multiple functions, correct?

7 A. Correct.

8 Q. And your test that you have developed here, the primary
9 function test, you have applied to the Polar Pioneer without
10 even knowing all of its functions, right?

11 A. That's correct.

12 Q. But you're not prepared to make a determination of what
13 happens on a fishing boat in the simple little scenario I
14 gave you?

15 A. That's right.

16 Q. In your deposition you said those vessels would be cargo
17 vessels, didn't you?

18 A. Yes, I believe I did.

19 Q. And you concluded that those vessels could in fact moor at
20 cargo terminals so long as they delivered their fish to that
21 particular cargo terminal, right?

22 A. Yes, I believe that there would be more support for saying
23 that they could be regarded as a cargo terminal use.

24 Q. So so long as they deliver at that terminal, they get to
25 moor; if they don't deliver at that terminal, they don't get

1 to moor? Is that your analysis?

2 A. I would say the latter part is true. If they don't deliver
3 then they're not a cargo terminal use.

4 Q. What about the former part?

5 A. The former part is the one that, as I said at the
6 definition -- at the deposition, I thought that it did sound
7 consistent with cargo terminal; however, that was my own
8 off-the-cuff opinion at the deposition. It is not something
9 that we have specifically looked into or analyzed.

10 Q. You didn't look into the fact that many vessels at terminal
11 91 do exactly what I just described? That is moor long-term
12 and over winter without delivering any cargo to that
13 terminal?

14 A. Well the interpretation related to terminal 5 not terminal
15 91.

16 Q. But you asked for examples from the city, excuse me, from
17 the port and from Foss of what happens at other cargo
18 terminals, did you not?

19 A. Yes.

20 Q. And terminal 91 is permitted as a cargo terminal, is it not?

21 A. Among other things, yes.

22 Q. Yes, and the port gave you many examples of what happened at
23 terminal 91, correct?

24 A. Correct.

25 Q. And then you didn't investigate those at all?

1 A. No.

2 Q. Why did you just drop it?

3 A. As a part of our preliminary analysis, I was looking
4 generally at a -- the question about what may be regarded as
5 a -- well, let's see. Let me back up.

6 I think with respect to terminal 91, specifically, I
7 was looking for information actually when I asked about
8 other -- what happened at port facilities -- along the lines
9 of trying to figure out what is customarily incidental in
10 port facilities. It was to try and get a general
11 understanding about what happens at cargo terminals in order
12 to -- as a background for writing the interpretation.

13 However, based on our further discussion and
14 consideration, when we looked into this specifically, and
15 specifically the issue about what might be regarded as a
16 legitimate accessory use, the issue being intrinsic, which I
17 had missed in my initial analysis and wound up, after
18 discussion wound up in the interpretation that we weren't
19 able to say that things were intrinsic so that narrowed what
20 legitimately might be allowed at a cargo terminal.

21 I had asked about other facilities just to try and
22 understand what was customary under a different concept of
23 what might be regarded as accessory without taking into
24 account the specific provisions for accessories uses in the
25 shoreline code.

1 Q. And let's just finish off on this example of the fishing
2 boat.

3 So the Polar Pioneer, it took tubulars and other
4 materials, loaded them at terminal 5, went up to Alaska and
5 is leaving those items in the ground under the ocean floor,
6 correct?

7 A. I --

8 Q. That is your understanding?

9 A. That is my understanding.

10 Q. That is the basis of your analysis, correct?

11 A. Correct.

12 Q. A fishing boat goes to Alaska, takes stuff out of the ocean,
13 brings it back here to Washington and delivers it over the
14 dock.

15 Aren't those two situations exactly the same?

16 A. Again we -- the issue of the fishing vessels is something
17 that we would have to provide to do more analysis on.

18 Again, I don't have a good understanding about how
19 fishing vessels operate, either.

20 Q. Okay, let's talk about the particular vessels at terminal 5.

21 Do you have any information about what other vessels
22 were there besides the Polar Pioneer, what the specific
23 vessels were?

24 A. Currently, recently, over the years?

25 Q. No, I meant in connection with Foss's work there in May and

1 this is your document, right?

2 A. Yes.

3 Q. Ben Perkowski's document?

4 A. That's correct.

5 Q. Nobody else wrote this? The department wrote this, correct?

6 A. I have no idea whether that was language that Ben Perkowski
7 came up with or language that was provided by the applicants
8 that was simply placed in there as a description about what
9 was actually going on at -- at the site -- or somebody's
10 representation about what was going on at the site.

11 I don't know whether Ben Perkowski visited the site and
12 determined what activities were going on, or simply provided
13 that as a base point for the additional analysis.

14 Q. Is there any mention in exhibit number 90, at Foss 90, of
15 the primary function test?

16 A. Not that I know of.

17 Q. Did you have a chance to review it before your testimony
18 here today?

19 A. I didn't read it in detail.

20 Q. So as of August 2014, had you ever heard of the primary
21 function test?

22 A. Not in so many words.

23 Q. Well no, in those words. Had you heard of it?

24 A. No.

25 Q. Did it even exist?

1 A. Not in so many words.

2 Q. In any way?

3 A. Well yes, we regulate principal uses of sites, and so to the
4 extent that we are looking at the principal use of the site,
5 I would say that, you know, that might equate to the primary
6 function of what is going on at the site.

7 Q. Well that is all pretty hypothetical. I am talking about
8 whether or not you had actually heard of the primary
9 function test as you articulated it in the interpretation;
10 that is the test applicable to cargo terminals?

11 A. Not in so many words.

12 Q. Have you ever applied that test?

13 A. To cargo terminals? No.

14 Q. It is only applicable to cargo terminals, correct?

15 A. As I was just saying, we look at the principal use of what
16 is going on at the property, so principal use, primary
17 function, I think that that is basically what we are getting
18 at when we are looking at how to categorize a use in the
19 code, which we routinely and regularly do; we are looking at
20 the main thing that is going on.

21 We have to decide what use is dominant in extent and
22 purpose on the property, so it makes -- it is consistent
23 with the way that we regularly routinely evaluate uses of
24 property.

25 Q. I was asking -- I was trying to use a narrower definition,

1 so let me make sure we understand each other when I use that
2 term.

3 When I use the term primary function test, I am using
4 the term you applied in the interpretation. That is to say
5 the test that only vessels whose primary function is to move
6 cargo from one location to another location can load, unload
7 and moor at cargo terminals. Okay?

8 I am asking that question. That is my definition of
9 the primary function test, and my question is have you heard
10 of that test as of August 2014 when this decision was put
11 out?

12 A. I think I have answered that.

13 The -- we have never -- I -- I don't recall having used
14 that specific wording; however, it is consistent with the
15 way that we normally evaluate uses of property.

16 Q. So then why, if you were evaluating uses of property in
17 applying this test, did you not look at whether the short
18 and long-term moorage for tugs and other large vessels was
19 appropriate or not at terminal 91?

20 A. Again I was evaluating terminal 5 and not terminal 91, so I
21 wasn't looking at specifically what is described in
22 background materials on past decisions for terminal 91.

23 Q. And you don't know why Mr. Perkowski didn't apply that test
24 back in 2014, I guess?

25 A. I don't think that he was evaluating an application relating

1 to moorage -- or this was specifically relating to emergency
2 response boats, and so his analysis was not focused on what
3 was already there, how it should be categorized, and whether
4 it was consistent with the use permits.

5 Q. Since you've studied the permits at terminal 91 now, are you
6 aware of any permit there, besides the cargo terminal --
7 excuse me, the cargo facility permit, that would allow long-
8 term moorage of fishing boats and tugs and other large
9 vessels?

10 A. Not that I'm aware of, no.

11 Q. So it is either the cargo terminal use or nothing, right?

12 A. Exactly. Not that -- I don't know of anything else that
13 would be pointing to.

14 Q. All right.

15 Let's talk a little bit more again about the primary
16 function test as it is applicable to the Polar Pioneer and
17 the other vessels that are going up -- that have gone up now
18 to Alaska.

19 So just to remind you, earlier you said if an offshore
20 supply vessel or barge were to take on goods or container
21 cargo at terminal 5, and transport those goods or container
22 cargo to the Arctic, and transfer them to the Polar Pioneer,
23 then that offshore supply vessel or barge would be -- would
24 fit the primary function test, correct?

25 A. Correct.

1 just a general understanding.

2 Q. And in order to find out how they actually operate, you
3 would have to ask people who know about it, people like
4 Foss, correct?

5 A. That's correct.

6 Q. And you didn't ask Foss?

7 A. I don't believe I asked that specifically, no.

8 MR. WEST: That's all the questions I have now,
9 but will reserve the right to re-call him on rebuttal.

10 HEARING EXAMINER: I don't know if -- if --

11 MR. SCHNEIDER: I have just a few.

12 HEARING EXAMINER: Okay.

13 * * * * *

14 C R O S S - E X A M I N A T I O N

15 BY MR. SCHNEIDER:

16 Q. Andy, the interpretation Foss -- I guess Exhibit 1 for the
17 hearing, it doesn't mention the primary function test,
18 correct?

19 (Brief Pause in Proceedings)

20 A. No, I don't think I used those words in the interpretation.

21 Q. (By Mr. Schneider) So why not? If that is the test, why
22 isn't it in the interpretation?

23 A. I think that the wording of primary function was more --
24 elaborated at my deposition -- as an explanation about how
25 we would differentiate between the activities at different

1 sorts of vessels, so it is one of those things in terms of
2 that particular wording. It was meant as explanatory --
3 when pressed in detail for six hours in my deposition.

4 Q. So does that mean the primary function test -- that
5 articulation of the test did not exist until after the
6 interpretation was issued?

7 A. I don't believe that we used that in so many words, but I
8 believe it is consistent with the interpretation.

9 Q. So that is your explanation provided after the
10 interpretation was issued in response to questions at the
11 deposition?

12 A. Yes.

13 Q. And but that is the test that the port should use going
14 forward in determining which vessels can and cannot moor at
15 cargo terminals?

16 A. I would say yes, which vessels would require -- could --
17 what activities would be permitted in association with
18 vessels moored at cargo terminals versus moored at -- or at
19 locations with additional or other permits established, yes.

20 Q. So if Greg Englin, who will testify after you, and is
21 responsible for moorage at T91 and a host of other places,
22 including portions of T5 not under lease to Foss, if he gets
23 a call from an agent saying a vessel is coming, and they
24 want to moor at a cargo terminal -- not to load and unload
25 cargo, but to lay berth or to do some minor repairs or

1 didn't pursue that question further. I didn't discuss that
2 in the interpretation, as it seemed like a dead end.

3 Q. When you do an interpretation on the meaning of a term in
4 the code, what do you consider?

5 A. Well, to start off I will look at, you know, what -- if it
6 is defined I will look at the definition in the code. I
7 will look at the context. I will look at the definition,
8 dictionary definition if there is not a regular definition.

9 I think that, you know, like the -- like the Obama Care
10 decision, you have to look at the whole context to
11 understand what -- what something means or was intended to
12 mean.

13 What we are really trying to get to is what did -- what
14 was intended, and so to that extent, you know, we will take
15 into consideration things like rules of statutory
16 construction; however, if a rule of statutory construction
17 leads us to -- applied on its own would lead us to something
18 that seems inconsistent with what otherwise seems to be
19 intended in the context, then we are not going to --
20 wouldn't apply that rule.

21 Q. Your interpretation identifies several code sections. Are
22 there other code sections that might be relevant in
23 considering what the context for the interpretation is?

24 A. Well, I believe so.

25 One of the background things that I don't think we went

1 A. Yes.

2 Q. You and Mr. West spent some time talking about goods, and I
3 want to go back through and maybe see if we can parse it so
4 that it is more crystal-clear.

5 So cargo terminal -- so a cargo terminal warehouse is a
6 transportation use?

7 A. Yes.

8 Q. And is it a transportation use that involves goods?

9 A. Yes.

10 Q. Do the goods need to be connected to transportation?

11 A. Yeah. I mean in order to qualify here, and as we have read
12 the interpretation, it has to be stored in order to be
13 transferred to another location, and also -- yeah.

14 Q. So might coffee be goods?

15 A. It might.

16 Q. If coffee is put on the vessel, and the vessel delivers the
17 coffee to a place where it is sold, is that a transportation
18 use?

19 A. Yes.

20 Q. And if the coffee is put on a vessel, and the vessel
21 delivers the coffee to a place where it is put on a train
22 and taken away, is that a transportation use?

23 A. Yes.

24 Q. If the coffee is put on the vessel and the crew consumes it,
25 is that a transportation use?

1 A. I would say no. We regard that, or at least not a cargo
2 terminal use. We would regard that activity as
3 provisioning, so for example you might put coffee on a
4 vessel at a commercial moorage. You might put coffee on a
5 vessel -- or a commercial marina, as it is now categorized,
6 and I don't recall whether that is under the definition of
7 transportation use or not, but it would not be a cargo
8 terminal use.

9 Q. So might fuel filters be goods?

10 A. They could.

11 Q. And if the fuel filters are put on a vessel, and the vessel
12 delivers the fuel filters to a place where it is sold, is
13 that a cargo terminal use?

14 A. Yes, it would be.

15 Q. And if the fuel filters are put on a vessel, and the vessel
16 uses the fuel filters to maintain the vessel function, is
17 that a cargo terminal use?

18 A. On its own, it would not be, no.

19 Q. And if there are pipes, those could be goods, couldn't they?

20 A. They can.

21 Q. If the pipes are loaded onto a vessel, and the vessel
22 delivers the pipes to a place where they are loaded onto a
23 truck and taken away, is that a cargo terminal use?

24 A. Yes.

25 Q. And if the pipes are loaded on a vessel, and the operation

1 of the vessel is to lay the pipe, and the pipes are used for
2 the operation of laying the pipes -- the pipes are actually
3 put into that function -- would that be -- the loading of
4 the pipes on the vessel be a cargo terminal use?

5 A. No, if the vessel were used to lay the pipe, then that would
6 not be.

7 MS. BAXENDALE: I have no further questions at
8 this time.

9 HEARING EXAMINER: All right.

10 Ms. Goldman, did you have questions for Mr. McKim?

11 MS. GOLDMAN: Mr. Baca --

12 HEARING EXAMINER: Mr. Baca?

13 MR. BACA: Yes.

14 * * * * *

15 C R O S S - E X A M I N A T I O N

16 BY MR. BACA:

17 Q. Good afternoon, Mr. McKim.

18 A. Good afternoon.

19 Q. It has been a long afternoon. I am Matt Baca. I represent
20 the environmental intervenors, just to remind you.

21 I want to return to a few lines of questioning that you
22 and Mr. West were engaged in.

23 First of all, he asked you whether certain items in
24 container type boxes were container cargo, and he showed you
25 some photos of those.

1 rig's purpose would be to drill?

2 A. Yes.

3 Q. Did anything that the port or Foss presented to you before
4 making the interpretation change that assumption?

5 A. No.

6 Q. All right.

7 Okay, now turning to a few of the hypotheticals Mr.
8 West asked you about, he asked you about fishing boats,
9 about trawlers I think was another type -- other vessels
10 that call at other terminals.

11 Do you remember generally that line of questioning?

12 A. Yes.

13 Q. Okay.

14 Does the interpretation itself say that it applies to
15 the specific facts that might be an issue with fishing
16 vessels?

17 A. No.

18 Q. And when you answered those questions, did you have all of
19 the facts in front of you that you would need if you were
20 issuing an interpretation specific to fishing vessels?

21 A. No.

22 Q. How about for trawlers?

23 A. No.

24 Q. All right.

25 Mr. West also asked you about offshore support vessels

1 and their relationship with the drill rigs.

2 Do you recall that?

3 A. Yes.

4 Q. All right.

5 Is your understanding that the purpose of terminal 5's
6 use by Shell and Foss would be to service an entire fleet of
7 vessels?

8 A. I don't know how many vessels would ultimately be involved.
9 At the time the interpretation was requested, I had been
10 relying initially on information -- well the information the
11 port had provided us initially -- which -- I don't believe
12 there were a lot of vessels discussed at the time.

13 Q. But it would be more than one vessel coming and going? It
14 would be a few vessels that are mutually supporting each
15 other for a similar goal?

16 A. It could be, yes.

17 Q. Okay.

18 And was your understanding that the primary purpose of
19 that fleet altogether would be to drill in the Arctic?

20 A. Yes.

21 Q. And maybe there would be some shuffling of supplies once
22 they got to the Arctic, but that fleet would be about
23 drilling, right?

24 A. That would be true, yes.

25 Q. Okay.

1 So it would make sense that not to focus on what every
2 single individual vessel might be doing, but collectively
3 part of the thinking might be about what -- what is the
4 fleet doing?

5 MR. WEST: Object to the form. Leading.

6 HEARING EXAMINER: Okay, can you maybe rephrase it
7 a little, Mr. Baca?

8 MR. BACA: Sure. Yes, absolutely.

9 Q. (By Mr. Baca) Would it be -- could it form part of the
10 interpretation to think about the purpose of the whole
11 fleet?

12 A. Right, and that is something I actually hadn't thought
13 about. I certainly can see that line of reasoning as well.
14 It is not something that I actually thought about, either as
15 I wrote the interpretation or while I was being questioned.

16 I think that you could certainly make the argument that
17 if we are looking at the purpose of the fleet, as opposed to
18 each individual vessel, that the ultimate purpose being
19 served was the drilling rather than the delivery of the
20 goods.

21 Q. Okay.

22 And could that be a reason that you wouldn't need to
23 necessarily look at which pipes are going onto which
24 vessels?

25 A. Yes.

1 believe that they would be -- that that would be
2 transferring those things to that location.

3 Q. Would it be transferring possession at all?

4 A. No. I mean assuming that they lease that space, it is still
5 their own, and they have just placed it there.

6 Q. One last question for you -- just about provisioning.

7 Is your understanding -- perhaps you don't know the
8 answer because you're not an expert about container ships,
9 but to the extent you know, is your understanding that they
10 use cargo terminals to exclusively load up to provision for
11 a voyage?

12 A. So the idea is that a vessel that already has containers on
13 it just stops by a particular location to refuel or pick up
14 more coffee and breakfast cereal?

15 Q. Right?

16 A. I think that that particular use -- I don't believe would be
17 the -- would fall under this.

18 This actually talks about -- you know, under the rest
19 of it, I mean you have quantities of goods being stored,
20 transferred or stored outdoors in order to be transferred to
21 other locations.

22 I think that -- no, I don't believe that that would be
23 consistent with that.

24 Q. All right.

25 MR. BACA: I have no further questions.