

ATTACHMENT D

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)

Administrative Hearing - Testimony of Paul Gallagher

before

HEARING EXAMINER ANNE WATANABE

August 25, 2015

TRANSCRIBED BY: Bonnie Reed, CETD and Marjorie Jackson, CETD
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A P P E A R A N C E S

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4 PAUL GALLAGHER

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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 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 usually get those in advance. Those things would come in to
2 the terminal provided either by Shell or by one of Shell's
3 trucking companies. We would then determine where that was
4 going to be loaded, we would identify the cargo when it came
5 into the terminal, we would label it, and then we would
6 depending upon what vessel it was going to be loaded onto
7 and in what priority, we would store it in the terminal.

8 Q. Was there some planning function that related to the loading
9 plan for that material?

10 A. There was a lot of planning that was done. There was
11 planning on things arriving. There was planning on where we
12 would put them in the terminal, whether they had to be kept
13 from freezing or kept from getting wet or kept from being
14 associated with other types of cargo. But really the
15 biggest job is where do you put things on the vessels so the
16 vessels have the right stability, they don't tip over, that
17 they don't get smashed up when you're putting them on, and
18 that you can get at them when you need them. So to kind of
19 make a bad analogy, it's like going camping. So if you have
20 five people going camping and you have a Volkswagen Jetta,
21 you try to fit everything in the trunk that you can, knowing
22 that you've got to pull things out when you get to the
23 campsite. So a lot of these vessels have a limited amount
24 of space, so it's all about packaging all of your things
25 that you might need because they're going to work in the

1 that allow the drill (inaudible) rig to go up and down. So
2 the number kind of goes up and down depending upon what's
3 happening on board. But for the most part, it's planned
4 that the vessel would be occupied and activities would be
5 happening to get ready for it to go.

6 Q. So you just described a range of activities that happened
7 during the loading of the oil rig and then its return and
8 then unloading and then let's call it a moorage period
9 between those two. Are any of those any different than any
10 other vessel that calls at a cargo terminal in your
11 experience?

12 A. I don't believe so, no. I think every vessel has a very
13 similar type of a cycle of coming in, unloading things,
14 getting ready, doing planning, doing training, making sure
15 the vessel is ready to operate and then loading back
16 things -- even here with containerized cargos, maybe they're
17 unloading important containers because they're going to put
18 full ones onboard to depart. I think just the timing
19 changes depending on the type of vessel and her schedule.

20 Q. And we've been talking here primarily about the oil rig.
21 But let's talk about the other seven vessels that were
22 loaded and unloaded at Terminal 5, the barges and the oil
23 supply vessels. Are those expected to go through a similar
24 sort of cycle?

25 A. I think they would all go through a similar cycle. They're

1 it's close to 500 people, especially in the summertime when
2 cargo is moving through the system.

3 Q. Let's talk a little bit about how the oil rig moves goods
4 from one location to another. So you were describing
5 loading operations at Terminal 5. What does the oil rig do
6 with the stuff that's loaded (inaudible)?

7 A. So the oil rig takes cargo from shore and stores it into a
8 variety of different places on board the rig so that they
9 have it when they're ready to use it, and that includes
10 tubulars which is drilling pipe, casing, things that they
11 need to drill a hole down into the earth. And then they use
12 different types of dry goods, cement and barite to limit the
13 pressure on the well or to control the pressure on the well
14 as they're drilling. So all of those things get loaded
15 onboard to the vessel as well as a variety of different
16 specialized equipment. And these are tools that help put
17 the pipe together, tools that measure pressure, you know, in
18 the oil reservoir, tools to, you know, get things unstuck,
19 you know, when they're drilling. All of those things sort
20 of have a place on the drilling rig where they store them
21 and they have to store them in a way that they can get at
22 them when they need them.

23 So some of the things are stored in tanks, some of them
24 are stored in containers so that they can move them around
25 easily, and then some stuff that's maybe heavier and larger

1 is stored in racks. As an example, a pipe and tubulars are
2 stored in racks. Like, if you saw a truck driving down the
3 road with logs loaded onboard, those logs are held in racks.
4 The pipe is stored in a very similar method onboard the ship
5 by size.

6 Q. And I take it some of the material you're describing is
7 going to be put into the ground in Alaska?

8 A. When a well is drilled, depending upon the geology and the
9 plan developed, a lot of things are left in the earth to
10 build the well. So they drill a hole down and then they use
11 casing, which is kind of like a large metal pipe of
12 different sizes to keep the well from collapsing on itself,
13 and then they also put cement and other chemicals and a
14 material called mud down into the well to make sure that
15 nothing blows back or blows out while they're drilling a
16 well. So a lot of that equipment, including some of the
17 valves and the preventers to limit pressure coming out, are
18 left on the sea floor. And I think that has to deal with
19 the permits they have and the agreements they have with the
20 federal government of what's left in the earth when they
21 leave.

22 Q. Can they drill the well or -- is Shell going to drill the
23 well in just any location they choose?

24 A. No, no, I think there's an extreme amount of planning and
25 preparation that goes into doing exactly what they said they

1 floor to Washington?

2 A. They bring back core samples, but I'm not sure if they make
3 it back to Washington, if they come back on the vessel in
4 freezers or in coolers or if they're sent to a laboratory.
5 I'm not a drilling engineer so I don't know the specifics.
6 But I think there are lots of things that they bring back as
7 far as scientific samples, but I'm not sure the final
8 disposition of where they actually go and who moves them.

9 Q. And what's the purpose of taking core samples?

10 A. They're looking to the geology of what they find and trying
11 to match it up with the data that they've recorded over the
12 years and it may influence, when they actually decide if
13 they want to move forward, how they build their production
14 well.

15 Q. So let's put the Pioneer aside for a second and talk about
16 the OSVs, the offshore supply vessels, and the barges.
17 Those had cargo on them; is that right?

18 A. Yes, a variety of different things.

19 Q. And tell me how that stuff is used in this operation?

20 A. For the Harvey -- for the Harvey supply vessels, they carry
21 a variety of different materials to resupply the well -- or
22 resupply the drill rigs because there are two different
23 drill rigs involved. They carry pipe and extra materials in
24 case there is a problem and they need to drill a relief
25 well. The barges carry more supplies and emergency response

1 equipment onboard, things that might be needed throughout
2 the season or things they might need, if they need more pipe
3 or tubulars than they had planned on. The barges act like a
4 floating warehouse for the summer that's on -- that's close
5 to the location so they can get things quickly.

6 Q. Do they transfer that material to the oil rig as well?

7 A. They transfer things -- using the supply vessels, they
8 transfer things to the drilling rigs by using the offshore
9 supply vessels. So the barges would act a floating
10 warehouse, the supply vessel would come alongside, the barge
11 would load things onto the vessel, because the supply
12 vessels don't have their own crane. It's like having a
13 pickup truck, so heavy things need to get loaded in by
14 someone else's crane, and then the vessels would transit to
15 the location of the drill site. And the vessels are very
16 technologically advanced, they have a navigation system that
17 allows them to hover in one location next to the vessel
18 holding themselves in place no matter what the waves or the
19 wind or the weather, and then a crane lowers a hook down
20 from the drill rig and takes that containerized cargo or
21 drill pipe and puts it up onto the rig and then the empty
22 stuff comes off.

23 Q. So part of the drill rig's operation, it's designed to load
24 and unload this cargo at sea?

25 A. It has to. That's the only way it gets its support. I

1 rack of the -- the pipe rack on the back of the vessel.

2 Q. Let's look at Foss 68. Can you tell me what this series of
3 photographs shows?

4 A. Similar to what we just saw on the Harvey Champion, this is
5 the sister vessel Harvey Supporter that was loaded with
6 cargo at Terminal 5.

7 Q. And we won't go through all the different types of cargo
8 here, but just in general does it show containerized cargo?

9 A. Yes.

10 Q. And what -- was containerized cargo loaded on to that vessel
11 at Terminal 5?

12 A. Yes.

13 Q. And do the pictures in Exhibit No. 68 show the items that
14 were loaded onto the Harvey Supporter at Terminal 5?

15 A. Yes.

16 Q. Okay. Let's look at Foss 69, Harvey Explorer. What does
17 that photograph show?

18 A. The Harvey Explorer being tied up at -- moored at
19 Terminal 5. She's loaded some different types of equipment,
20 some scientific equipment that's being loaded onboard, boxes
21 and gear. You can see these yellow buoys, these are
22 monitoring buoys that listen for activity or take
23 temperatures or look at different scientific data. The
24 Harvey Explorer has a little bit different mission while
25 she's working in the Arctic, she has more of a science

1 mission.

2 Q. Okay. Let's look at Foss 70.

3 A. This is a picture of the Tuuk barge which is the Foss
4 warehouse barge. I believe this photo was taken at the Port
5 of Everett. This is not a photo from Terminal 5.

6 Q. Were the materials that are shown on here loaded at
7 Terminal 5?

8 A. No.

9 Q. Was -- what's the function of the Tuuk?

10 A. The Tuuk is sort of the floating warehouse for the season.
11 So in case something's needed, she goes up into the
12 operating area, maybe a hundred miles away from where
13 they're doing their explorations work, and she keeps the
14 spare parts and supplies and acts as sort of a mobile
15 warehouse.

16 Q. Let's look at Foss 71. What's this a picture of?

17 A. This is a picture of the back deck of the Sisuaq. I know
18 it's the Sisuaq because she has this big white crane that's
19 on the right-hand side. She's the only Harvey boat that has
20 a big crane.

21 Q. Was the Sisuaq loaded at Terminal 5?

22 A. Not to my knowledge, no.

23 Q. Okay. Let's take a look at Foss 72. And what vessel is
24 this?

25 A. This is the deck barge KRS 286-6.

1 Q. Is -- who is the charterer of this barge?

2 A. This is a barge chartered by Foss that was provided to do a
3 project in support of Shell. Foss didn't own the barge, but
4 we chartered it from someone else in Seattle.

5 Q. Okay. Was the KRS 286-6 loaded at Terminal 5?

6 A. Yes.

7 Q. And what was it loaded with?

8 A. Lots of different equipment to support a mission up in
9 Everett to remove mooring wires and to do some diving work
10 while the Noble Discoverer was up in Everett.

11 Q. Okay. And looking at page 3, does that show some of the
12 material that was loaded at Terminal 5?

13 A. Yes. So you can see from page 1 there's not very much --
14 many things on the vessel at that time, probably taken early
15 on. And when you look at page 3, there's a lot more things
16 loaded onboard. So we're getting closer to being completed.

17 Q. Okay. Unfortunately, we don't have a picture of the TOR
18 Viking, but we do have a diagram. So if you could turn on
19 to page -- or exhibit -- or 73 --

20 A. Yep.

21 Q. -- and tell me what that is?

22 A. This is the stow plan for the back deck of the TOR Viking.

23 Q. And can you tell me where on this plan any cargo might be
24 shown?

25 A. Sure. There's a bunch of chain that's represented by these

1 that nothing was damaged, so we take a lot of photos. And I
2 take a lot of photos for my customers to show them the
3 activities that day because I write reports to my customer
4 every day of what's happening at Terminal 5. So I can speak
5 to all these photos being photos that I took because my job
6 is to communicate to the customer what's happening at
7 Terminal 5.

8 Q. Is all of the materials shown in the pictures in Foss 61
9 personal property having intrinsic value?

10 A. Yes, I believe so.

11 Q. Is any of the materials shown in the photographs in Exhibit
12 61, money, securities or negotiable instruments?

13 A. I don't think so.

14 Q. All right. Does all of the material shown in Exhibit 61
15 have economic utility?

16 A. Yes.

17 Q. Does all this material satisfy an economic need of your
18 customers?

19 A. Yes.

20 Q. Is all of it goods?

21 A. I believe all of it is goods.

22 Q. All right. And is all of it cargo?

23 A. I believe, as we've discussed, all of this is cargo.

24 Q. So is the label: Photos of goods and cargo at T5 misleading
25 in any way?

1 tell us what -- I'm sorry; I'll let you catch up. Can you
2 tell us what Foss 86 is?

3 A. Foss 86 is a copy of the certificate of compliance which is
4 used by the U.S. Coast Guard to the vessel, Polar Pioneer.
5 It was issued in Seattle June 14th following a Coast Guard
6 inspection.

7 Q. And what's the process of having this document created?

8 A. Could you rephrase the --

9 Q. Sure. How does this document get created?

10 A. It's part of a regulatory process that the Coast Guard comes
11 in and inspects vessels that are working in U.S. waters. So
12 it's a regulatory inspection document to make sure that this
13 vessel has met or exceeded the requirements as defined by
14 the Coast Guard.

15 Q. And there's a top box here with several sub-boxes and we'll
16 look at the bottom one of those sub-boxes: Type of vessel.
17 You see a check next to the word "mobile offshore drilling
18 unit, (MODU)"; do you see that?

19 A. Correct.

20 Q. And that's what you earlier described the Polar Pioneer is?

21 A. That's her class of vessel as by the Coast Guard and others
22 that's what they call this type of vessel.

23 Q. I see. And then near the bottom third of the page there's a
24 heading that begins: 4 MODUs only --

25 A. Right.

1 Q. -- this vessel has been examined in accordance with, and
2 there's a checkmark next to the box 33 CFR 143.207C?

3 A. Right.

4 Q. What does that involve?

5 A. That's title 33 of the federal regulations Section 143.207C.
6 This is the section of the regulations that dictate the
7 rules and regulations that mobile offshore drilling rigs
8 need to operate by.

9 Q. All right. Let's take a look at Exhibit No. Foss 87. What
10 is this?

11 A. This is the vessel's certificate of registry issued by the
12 Republic of the Marshall Islands to the Polar Pioneer.

13 Q. And when you say vessel, you're describing the Polar Pioneer
14 as a vessel?

15 A. Yes, sir.

16 Q. And is this essentially the vessel's registration as such?

17 A. I believe this would be -- as for us, it would be similar to
18 our registration in our car. You know, of the state of
19 Washington. In this case it's the Republic of Marshall
20 Islands which is the flag state, which means the vessel is
21 registered in the Marshall Islands and those are the rules
22 that she abides by when she travels internationally. So
23 this is her registration document.

24 Q. And Foss 88. You talked earlier about classification
25 societies. What is this document?

- 1 A. In preparation for the voyages, yes.
- 2 Q. Does Foss expect to provide a location at Terminal 5 for
3 those vessels to return after their long voyages?
- 4 A. Yes, that is our hope. We'd like to provide that service.
- 5 Q. And is that to perform the services you were discussing
6 earlier, such as unloading, maintenance and repair?
- 7 A. Yes. And, I mean, we'd like to perform services for other
8 vessels at Terminal 5 in addition to these ones that we've
9 talked about.
- 10 Q. Has Foss used Terminal 5 to store quantities of goods and
11 container cargo without undergoing any manufacturing
12 process?
- 13 A. Yes, sir.
- 14 Q. Has Foss done that to transfer those goods and container
15 cargos to other locations?
- 16 A. Yes. Ultimately. Some stuff is still stored on the ground
17 there now, but for the most part it's been used as a place
18 to store while we're getting ready to determine the final
19 location.
- 20 Q. Has Foss used Terminal 5 to transfer quantities of goods and
21 container cargos to other carriers?
- 22 A. I'm not sure what that -- what carriers refers to, but if
23 carriers are other vessels or other trucking companies,
24 then, yes.
- 25 Q. Okay. Has Foss used Terminal 5 to store quantities of goods

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 dictionary of maritime terms. I would like you to look at
2 the second page under "cargo," and would you read that
3 definition?

4 A. "Merchandise or goods accepted for transportation by ship.
5 Commodities are goods that are transported in commercial
6 enterprise, domestic trade or international trade by a
7 common carrier."

8 Q. And is that an understanding that you have of the definition
9 of "cargo"?

10 A. No, I think this is -- this is Jeffrey Monroe and Robert
11 Stewart's definition in their dictionary, whatever this is.
12 I have never seen this before.

13 Q. Do you disagree that what is described there in that
14 definition is cargo?

15 A. One type of cargo.

16 Q. So this then definition, in your view, is a definition of a
17 type of cargo?

18 A. Sure.

19 Q. Okay. And when I refer to "paying cargo," that's what I'm
20 going to refer to in my questions, just to be precise so we
21 have clear understanding.

22 A. That's different than what we have been talking about,
23 right?

24 Q. I will try to be precise, and use "stores" or "gear" or
25 "provisions" to refer to other types of questions. So just

1 furnish all tools and equipment, materials, except
2 company-furnished materials, labor, supervision, to provide
3 terminal dock facilities, slips, on-site storage,
4 material-handling operations, in support of company's
5 operations at Terminal 5, Seattle, Washington terminal."

6 Q. So the activities that Foss is obligated to provide are in
7 support of Shell's operations at Terminal 5; is that
8 correct?

9 A. Correct.

10 Q. I would like to you go to the next page, Foss 3, and would
11 you read the third item?

12 A. Under No. 3?

13 Q. Yes.

14 A. "Contractor is responsible for the receipt, storage,
15 staging, loading and unloading of all material used by
16 company in performance of its business."

17 Q. So is this referring to what you were describing in response
18 to Mr. West's questions, in terms of loading and unloading
19 of materials?

20 A. I think it's one component of the services we provide at
21 Terminal 5.

22 Q. My question was about the materials that were loaded and
23 unloaded. Is this item describing the receipt, storage,
24 staging, loading and unloading of the materials you were
25 discussing with Mr. West?

1 A. Yes, in general terms I believe so.

2 Q. Were you referring to any materials that would not be
3 accomplished within this description?

4 A. Can you rephrase the question?

5 Q. In your answers to Mr. West's question, were you referring
6 to the loading, unloading and storage of any materials that
7 would not be described in this description?

8 A. I think so because -- well, I mean, it's a little bit
9 confusing in that we loaded things used by others in support
10 of the project that, you know, weren't owned or controlled
11 by Shell. So it's a little bit -- this is a very general
12 term. I think it's meant to encompass -- they can kind of
13 ask us to do and load, stage anything that they believe is
14 in support of their business.

15 Q. And what is Shell's business as it's referred to in No. 3
16 here?

17 A. I think that must be somewhere else in the document. It
18 must talk about what services the company provides, because
19 Shell is a very large company. It has lots of different
20 businesses, so I'm not sure what that is.

21 Q. Haven't you been talking about Shell's Arctic Offshore
22 drilling outfit?

23 A. Yeah.

24 Q. Isn't that the business that would be served at Terminal 5?

25 A. This contract is very complicated. I'm not sure where it

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 A. I believe so.

2 Q. Is that sort of old for a drill rig?

3 A. I don't know. We have tug boats that are that old and they
4 seem to be working and doing a great job every day so I
5 can't comment on that.

6 Q. Can you explain how she positions herself for drilling?

7 A. I think very similar in that we, in the 2012 season, we used
8 our tugboat Lauren Foss, we brought her into position and
9 then they set anchors on the sea floor. The Noble
10 Discoverer is a little bit different ship in that her
11 anchors go into the center of the vessel so the vessel can
12 spin and spin into the wind much like a weathervane, where
13 the Polar Pioneer anchors and she's fixed at a location
14 because the anchors go out from each corner, so she's a
15 little bit different vessel in that she can rotate 360
16 degrees while being anchored in the same place and she can
17 point her nose of her ship into the wind and waves and
18 operate and still drill, whereas the Polar Pioneer instead
19 takes on water and ballasts down but stays in that location,
20 so they perform the same mission and yet they're very
21 different in how they operate.

22 Q. And would you say the principal use of the Noble Discoverer
23 is for offshore drilling?

24 A. For drilling exploration wells, yes.

25 Q. So for exploration offshore?

1 discussing, but, again, I need to have this tied back
2 somehow to what's going on with the vessels, the Foss
3 operations at Terminal 5. I'm hearing you query him about
4 different pieces of spill containment equipment. I need
5 some sort of connecting back.

6 So what I'm going to suggest is that we go ahead and break
7 for lunch now. We can come back at 1:30 and continue on
8 with the cross-examination and then any additional questions
9 for Mr. Gallagher.

10 And in terms of the timing of the afternoon's witnesses, I
11 know originally we had planned for Soundkeeper's witness I
12 think to come on board next. Is that still how you want
13 to --

14 MS. GOLDMAN: Sure, we can (inaudible).

15 HEARING EXAMINER: Okay. And then DPD's remaining
16 witnesses.

17

18 (12:19:45)

19 (Recess)

20

21 (1:31:20)

22

23 HEARING EXAMINER: All right. We're back on the record
24 and ready to continue on with questions for Mr. Gallagher.
25 So, Ms. Goldman.

1 C R O S S - E X A M I N A T I O N (continued)

2 BY MS. GOLDMAN:

3 Q. Would you look at Soundkeeper Exhibit 47. If you go to the
4 Appendix A-5. So you see Aiviq is listed there, correct?

5 A. Yes.

6 Q. And Aiviq spent some time at Terminal 5 this last season?

7 A. Yes.

8 Q. Do you expect that Aiviq might be one of the vessels that
9 could return to Terminal 5?

10 A. At this time I'm not sure. It appears it's going to go to
11 the Port of Everett. They needed shore power, and the Port
12 of Everett has put some shore power onto the dock so that
13 Aiviq can return to the Port of Everett this winter.

14 Q. Could any of the other oil spill response vessels come to
15 Terminal 5 in the off season?

16 A. Possibly, yes.

17 Q. And --

18 A. But it would be limited to the Sisuaq. That's really the
19 only vessel on this list. A lot of them, the vessels that
20 are controlled by Crowley would go back to Crowley's berth,
21 wouldn't come to Terminal 5.

22 Q. Nanook come to Terminal 5?

23 A. I don't believe so.

24 Q. But some of the oil spill responses --

25 MR. BROWER: Objection, mischaracterizes the evidence.

1 The witness has testified that these vessels are
2 multi-purpose vessels, not just oil response vessels I?

3 MS. GOLDMAN: I'm actually referring to a list that's
4 identifying them as oil spill response vessels.

5 MR. BROWER: I'm sure you are, but that's not what he has
6 he has testified to and it's not what the functions are.

7 HEARING EXAMINER: Okay. I'm sure there's a way around
8 this. If you want to refer to the vessels on the list,
9 that's what we'll call them.

10 Q. (By Ms. Goldman) And on the list, there is an
11 identification of a particular vessel or similar; do you see
12 that for many of them?

13 A. Yes, under description, yes.

14 Q. So my question, just to rephrase, is: Could some of the
15 vessels that are identified as oil spill response vessels
16 for this mission, call on Terminal 5 in the off season?

17 A. If you mean that the vessels on this list are part of oil
18 spill response vessels, then yes. Under the Aiviq it refers
19 to it as VOSS, it doesn't refer to it as OSR, oil spill
20 response.

21 Q. But this list -- all right. I'll just say --

22 A. But the list says, "Marine vessels in support of Chukchi"
23 under A-2, and then it says "List of Marine vessels in
24 support of Chuck" -- it doesn't say that -- you know, we
25 know that OSR we think means "oil spill response," but it

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 A. Yes.

2 Q. And that reads "Cargo: Merchandise or goods accepted for
3 transportation by ship, the commodities or goods that are
4 transported in commercial enterprise, domestic trade or
5 international trade by a common carrier."

6 The Polar Pioneer, is it owned by Shell?

7 A. No, it's not.

8 Q. Who --

9 A. It's owned by a company called Transocean.

10 Q. And does Shell operate it?

11 A. No.

12 Q. Are the members of the crew Shell employees?

13 A. No, sir. They all work for Transocean.

14 Q. And I think earlier you said that the vessel was on charter
15 to Shell; is that right?

16 A. I believe it's on a multi-year charter to Shell.

17 Q. And could you describe in a little bit more detail what a
18 charter is?

19 A. So a charter would be a contract between a ship owner and
20 someone who wants to have a service provided, and they would
21 agree to a term for financial payment to go perform a
22 mission. So it's a contract that usually has geographic
23 areas specified, an activity that they want to undertake,
24 and then details about who will pay for fuel or moorage or
25 things like that. But it's usually a contract between the

1 company and the vessel owner to perform a service for the
2 vessel.

3 Q. I think you described that Shell paid Foss to load all of
4 the goods and cargo that we describe earlier onto the Polar
5 Pioneer?

6 A. Yes.

7 Q. Did Shell pay someone to transport all of that material from
8 Terminal 5 up to the Arctic?

9 A. They paid Transocean to use the vessel to move the cargo
10 from Terminal 5 up to the drilling site.

11 Q. Okay.

12 A. That's what the vessel -- the vessels moves it.

13 Q. So that would make the cargo, cargo for pay, as being --

14 A. I guess if they're getting paid to put it on board and move
15 it, it seems to me like a good definition.

16 Q. Let's look at Puget Soundkeeper Exhibit No. 40, and
17 particularly to the contract that is attached. I'd like you
18 to turn your attention to page Foss 03.

19 So Ms. Goldman asked you about paragraph 3 and paragraph
20 5. I would like you to talk about paragraph 4, which she
21 skipped over. Did Foss's work at Terminal 5 involve any
22 aspect of paragraph 4?

23 A. Yeah. That was the part of what we did at Terminal 5. We
24 load, unload Marine vessels, trucks in accordance with the
25 company's requests, requirements.