

U.S. Department  
of Transportation

United States  
Coast Guard



Commandant  
United States Coast Guard

2100 Second St. S.W.  
Washington, DC 20593-0001  
Staff Symbol: (G-MOA-1)  
Phone:(202)267-0678  
AUGUST 9, 1996

COMDTNOTE 16000

COMMANDANT NOTICE 16000

CANCELLED AUG 9, 1996

Subj: CH-1 TO COMDTINST M16000-10 (SERIES), MARINE SAFETY MANUAL,  
VOLUME V, INVESTIGATIONS

1. PURPOSE. This Notice advises personnel assigned to Investigation duties of the latest policies and procedures for program activities.
2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanders of Headquarters units, shall ensure compliance with the provisions of this Notice.
3. SUMMARY OF CHANGES. This change is a complete replacement of Chapter 2. Substantive changes have been marked with a vertical line; editorial changes are not marked.
4. PROCEDURES. Remove and insert the following pages:

Remove

CONTENTS I  
2-i through 2-68

Insert

CONTENTS I CH-1  
2-i through 2-65, CH-1

COMDTNOTE 16000  
AUG 9 96

5. DOCUMENTATION. Date and sign the Record of Changes. File this notice with the manual as a record of changes.

NACCARA  
CAPTAIN, U.S. COAST GUARD  
ACTING CHIEF, MARINE SAFETY AND  
ENVIRONMENTAL PROTECTION

Encl: (1) CH-1 to COMDTINST M16000.10

Non-Standard Distribution:

B:c CCGD8 (14); CCGD7 (11); CCGD13 (9); CCGD9 (8);  
CCGD1, 5 (7); CCGD17 (6); CCGD2, CCGD11 (5); CCGD14  
(4); MLCLANT, MLCPCAC (FAC) (1).

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Office Commander U.S. Naval Forces Central Command  
(1).

E:o New York (15); Grand Haven (4); Long Island Sound  
(2); Sault Ste. Marie (2).

F:j Except Tampa.

ABS (1).  
DOJ Torts Branch (Washington, DC; New York.- San  
Francisco only) (1).  
MARAD (MRG 4700) (1).  
MSC (M-24) (1).  
NOAA Fleet Inspection Officer (1).  
NTSB (Marine Accident Division) (2).  
World Maritime University (2).  
U.S. Merchant Marine Academy, Kings Point, NY (1).

(G-MP-2)

Washington, DC 20593-0001  
202-267-1483  
COMDTINST M16000.10  
27 FEB 1989

COMMANDANT INSTRUCTION M16000.10

Subj: Marine Safety Manual, Volume V, Investigations, COMDTINST M16000.10

1. PURPOSE. This manual establishes policies and procedures for the activities associated with the investigation of commercial marine casualties, recreational boating accidents, facility casualties, pollution incidents, compliance with load line regulations, and marine industry personnel actions.
2. DIRECTIVES AFFECTED. COMDTINST M16000.3 (old CG-495) dated 17 October 1977 is cancelled.
3. DISCUSSION.
  - a. A comprehensive manual which provides guidance on the application of Coast Guard regulations, and explains the rationale behind their development, is vital to the successful execution of the Coast Guard's marine safety programs. This volume serves that function by providing an overview of the various investigation activities performed under the auspices of the officer in charge, marine inspection (OCMI) and/or the captain of the port (COTP). These activities are included in the programs of Marine Inspection (MI), Port Safety and Security (PSS), Marine Environmental Response (MER), Marine Licensing (ML), and Recreational Boating Safety (RBS).
  - b. The policies and directions in this volume, and in subsequent amendments to this volume, whether construed as mandatory or permissive, are intended only for the internal use of the Coast Guard. Nothing herein is intended to create rights or expectations on the part of other parties, or to establish any duty or standard of care owing to other parties on the part of the Coast Guard. The provisions of this volume may not cover individual situations which are best handled through experience and sound judgment. Hence, the policies and directions herein are intended to promote consistent and uniform execution of the marine safety programs, without undue restriction of independent judgment on the part of marine safety personnel.

COMDTINST M16000.10  
27 FEB 1989

3. c. The master Table of Contents, found in the front of this volume, lists the Headquarters staff symbol and telephone number of the branch responsible for the information provided in that chapter.
- d. Three-ring binders may be obtained through the federal supply system, using stock number 7510-01-114-3612.
- e. All personnel should use the self-mailer, Form CG-5122, to make suggestions for improving the volume.
4. CHANGES. When necessary, the volume will be updated by consecutively numbered changes.
5. CONFLICT BETWEEN EXISTING POLICIES. In cases of apparent conflict between this volume and provisions of statutes or regulations, the latter provisions shall be applied and Commandant (G-M) shall be advised of the apparent conflict. In cases where there is an apparent conflict between the volume and current marine practice, the appropriate Headquarters division should be contacted for further resolution of the matter. Appropriate action shall be taken in such cases to correct conflicting provisions of this volume.
6. ACTION. District commanders and unit commanding officers shall ensure that personnel performing marine safety duties are familiar with the provisions of this volume.
7. REPORTS AND FORMS REQUIRED. The following reports and forms are prescribed in this volume:
  - a. Report of Marine Accident, Injury or Death, CG-2692 and Barge Addendum, CG-2692A (RCS-G-MMI-4017) (see Chapter 3).
  - b. Report of Merchant Marine Investigations and Hearings, CG-2802 (RCS-G-MMI-4013) (see Chapter 2).
  - c. Recreational Boating - Simplified Narrative and Addendum, CG-4885 and CG-4885A (RCS-G-NAB-15007) (see Chapter 6).

J. D. SIPES  
Chief, Office of Marine Safety,  
Security and Environmental Protection

Non-Standard Distribution:

- B:c CCGD9 (15); CCGD8 (14); CCGD7 (11); CCGD2 (10); CCGD13 (9); CCGD5 (7);  
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MARAD (MRC 4700) (1).  
MSC (M-24) (1).  
NOAA Fleet Inspector (1).  
NTSB (Marine Accident Division) (2).  
World Maritime University (2).

DEPARTMENT OF  
TRANSPORTATION  
U S COAST GUARD  
CG-5122 (Rev 10-84)

**SUGGESTION FOR IMPROVING  
THE MARINE SAFETY MANUAL, COMDTINST M16000 SERIES**

**INSTRUCTIONS**

Thoroughly describe your suggestion, giving careful consideration to whether it has local, Coast Guard-wide or broad marine safety applications. You may wish to discuss your suggestion with appropriate supervisors and other personnel before submitting this form.

FROM *(Unit name and address)*

NATURE OF SUGGESTION  
 ADDITION     CORRECTION  
 DELETION     OTHER *(Specify)*

**SUGGESTION** Explain your proposal in sufficient detail so reviewing officers will know exactly what you are proposing. Specify if your proposal has local, Coast Guard-wide or broad marine safety application. Cite the specific section(s) of the manual you are commenting on and specify the benefits of your suggestions. *(If more space is needed, continue on extra sheet(s))*

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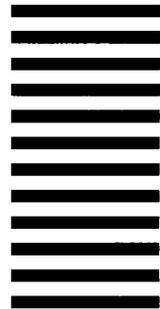
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## MARINE SAFETY MANUAL

### CHAPTER 1. INVESTIGATIONS-GENERAL

#### A. Investigative Principles.

1. Purpose. The primary purpose of an investigation is to ascertain the cause(s) of an accident, casualty, or personnel misbehavior to determine if remedial measures should be taken; and to determine whether any violation of federal law or regulation has occurred. It should be clearly understood that the Coast Guard does not conduct investigations to determine civil liability in disputes between private litigants. Rather, its investigations are a means to promote safety of life and property and to protect the marine environment. Investigations are conducted for: vessel casualties or accidents; violations of statutes the Coast Guard is authorized to enforce; incidents involving vessel personnel that may lead to suspension and revocation (S&R) proceedings or assessment of civil or criminal penalties; boating accidents; waterfront facility casualties and incidents; au port casualties and incidents; marine pollution incidents; accidents involving aids to navigation; and accidents involving structures on the outer continental shelf. The information derived from investigations is used to measure the effectiveness of the entire spectrum of the safety program. It is used to monitor existing policies, adequacy of existing regulations, and the operational practices of owners and operators. The information garnered plays a major role in changing or developing new laws and regulations as well as implementing new technologies in areas of Coast Guard concern. This chapter provides information of a general nature for the conduct of investigations. Policy applicable to particular types of investigations is located in the succeeding chapters of this volume.
2. Definition. Investigation has been defined as the inquiry into a matter, with systematic attention to detail and relationship. Derived from a word meaning "footprint," the term accurately implies the attempt to acquire a current picture of a prior event. It is a planned search for facts and evidence through interviews, interrogations, observations, examination of records, and interpretations of physical evidence. Thee technique of investigation is an art for which only general rules and a few guiding principles can be outlined. It is quite different from an exact science in which all factors can be predetermined with mathematical certainty. A successful investigation is one in which evidence is competently handled, witnesses are intelligently questioned, all leads are fully developed, and the case is reported comprehensively, concisely, clearly, and in a timely fashion.
3. Sources Of Information. There are numerous sources of information that may indicate that an investigation is warranted. Information may come from a vessel's master, crewmembers, shipping companies, pilot associations, unions, underwriters, maritime organizations, passengers, police, environmental groups, or the news media. Federal agencies such as the Drug Enforcement Administration (DEA), Federal Bureau of

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- 1.A.3. (cont'd) Investigation (FBI), Customs Service, and state agencies are also sources of information. In addition, information received from Coast Guard Headquarters, district offices, and other units may provide the initial impetus to conduct an investigation. Information on incidents occurring abroad will generally originate from crewmembers, consuls, or shipping agents.
4. Coordination Of Activities.
- a. Coast Guard Units. Investigating officers (I.O.'s) at all levels should establish liaison with other Coast Guard commands. Appropriate units shall be notified when a case develops or information is received that may be of concern to them. I.O.'s should avail themselves of all Coast Guard facilities whose resources may prove useful in the development of a case. Requests for assistance are generally honored by other commands, commensurate with their workload. I.O.'s should not hesitate to call upon the district legal officer or others for advice.
- b. Other Agencies. The importance of cooperation and coordination between the Coast Guard and other federal, state, and local agencies should be stressed. Liaison is often best achieved by having designated persons act as links for the coordination of activities between the agencies. It should be remembered that liaison is a reciprocal process. Coast Guard personnel should cooperate with other agencies in their quest for information if they expect to receive continued assistance. Tact and discretion are essential in developing and maintaining sources of information, particularly key contacts in critical agencies. I.O.'s should know what sources are available in the local area. They should develop new sources at every opportunity and should not impair ready access to those already developed. Effective personal relations with individuals from whom such information may be procured cannot be overemphasized.
5. Determining The Type Of Investigation. In determining the type of investigation to be conducted, the following factors shall be considered:
- a. Seriousness of the incident (i.e., extent of injuries and/or vessel damage);
- b. Importance of the information that may be developed by the investigation;
- c. Complexity of the incident;
- d. Public interest;
- e. Necessity for maintaining a verbatim record;
- f. Necessity for protecting the rights of parties in interest; and

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- 1.A.5. g. Necessity of proceeding expeditiously while maintaining flexibility.
6. Jurisdiction. Prior to starting any investigation, it should be determined that the Coast Guard has jurisdiction in the case. The Coast Guard has the jurisdiction to investigate the following:
- a. A marine casualty or other accident involving any vessel upon the navigable waters of the United States, or involving U.S. vessels wherever they may be;
  - b. An incident involving the destruction of, or damage to, any bridge or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to those waters;
  - c. An incident involving a major fire, an oil spill, or any injury occurring as a result of operations conducted pursuant to the Outer Continental Shelf Lands Act, as amended (OCSLA) including allegations of unsafe working conditions or violations of safety regulations;
  - d. Water pollution by oil or other hazardous substance or the threat thereof to the "waters of the United States" (anywhere in the hydrologic chain);
  - e. Acts of misconduct, incompetence, negligence, unskillfulness, or willful violation of law committed by any licensed, certificated, or documented individual;
  - f. Boating accidents; and
  - g. Casualties or accidents which occur to any component of a deepwater port.

Failure to challenge the issue of jurisdiction in the initial proceedings does not bar raising of this issue during an appeal from any action the Coast Guard may take. The I.O.'s jurisdiction cannot exceed the limits of the Coast Guard's jurisdiction, as provided by the laws it administers and enforces; hence, I.O.'s shall limit their activities to those areas which fall within the limits of Coast Guard authority, while cooperating with other investigative agencies of the federal government, and state and local investigating authorities. For example, the I.O. may come upon evidence of an offense within the jurisdiction of another agency. In such a case, leads should be developed only to fulfill our responsibilities, and not to the extent of encroaching upon the jurisdiction of the other agency or interfering with the proper development of the case. When such evidence is discovered, the I.O. should submit a full report of the offense to the agency having jurisdiction, via the chain of command and the district commander. For example, in a marine casualty resulting in death, the state having criminal jurisdiction may desire to proceed in a negligent homicide case

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1.A.6. (cont'd) against the vessel's pilot or master. The state's attorney should be offered the full cooperation of the Coast Guard in providing information in this regard.

7. Legal Terminology And Citations.

a. Introduction. I.O.'s will be exposed to numerous legal terms and phrases in the course of their activities. Most of these terms and phrases are common, and I.O.'s should develop a working knowledge of them. Some of the more common terms and phrases are defined in the Code of Federal Regulations (CFR). Examples include the "charge" and "specification" (46 CFR 5.23 and 5.25), "negligence" (46 CFR 5.29), "incompetence" (46 CFR 5.31), and "party in interest" (46 CFR 4.03-10). Another excellent reference is Black's Law Dictionary (West Publishing Co.). It offers concise, convenient explanations of the terminology of American and English jurisprudence and should be used by all I.O.'s. [NOTE: See Volume I of this manual for discussion of legal authorities and their development.]

b. Sample Citations.

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|-----|--|--|
| (1) | R.S. 4400  | Section 4400, Title 52, Revised Statutes.  |
| (2) | 64 Stat. 100                                     | Volume 64, U.S. Statutes At Large, page 100.   |
| (3) | P.L. 83-500, 1st. Sess.                          | The 500th Public Law enacted by the 83rd Congress of the United States, 1st Session.   |
| (4) | Sec. 1, Act of June 25, 1936                     | Section 1 of an Act of Congress approved on June 25, 1936.   |
| (S) | 46 U.S.C. 6301                                   | Section 6301 of Title 46, United States Code, published by the U.S. Government Printing Office (GPO).                                      |
| (6) | 33 U.S.C.A. 1                                    | Section 1 of Title 33, United States Code Annotated, an analytical version of the Code published by West Publishing Co.                    |
| (7) | <u>E. Pat Kelly v. Washington,</u><br>302 U.S. 1 | The decision of the U.S. Supreme Court in this case, as published in Volume 302, United States Supreme Court Reports, beginning at page 1. |

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- 1.A.7.b.
- (8) Ace Waterways Inc. v. Fleming, 98 F.Supp. 666  
The decision of the Federal District Court in this case, as published in Volume 98, Federal Supplement (which contains decisions from all Federal District Courts), beginning at page 666.
  - (9) Davis v. U.S., 185 F. 2d 938 (2nd Cir.), cert. den. 340 U.S. 932  
The decision of the Second Federal Circuit Court of Appeals in this case, as published in Volume 185, Federal Reporter, Second Series, beginning at page 938. The words "cert. den." indicate that application for a writ of certiorari [agreement to hear an appeal of the Circuit Courts decision] was denied by the Supreme Court; the denial may be found in Volume 340, U.S. Supreme Court Reports, page 932.
  - (10) 135 S. Ct. 936  
The opinion in this case begins at page 936, Volume 135 of the Supreme Court Reporter, an unofficial but authoritative reporter of Supreme Court decisions published by West Publishing Co.
  - (11) The SEA HORSE, 1953 A.M.C. 522, 524  
The decision of the Federal District Court in a case involving the vessel SEA HORSE, as published in the 1953 annual edition of American Maritime Cases, beginning at page 522. The reference to page 524 indicates the particular page wherein pertinent determinations or findings appear.
  - (12) 38 Op. Atty. Gen. 441  
An opinion of the U.S. Attorney General may be found at page 441 of Volume 38, Opinions of the Attorney General of the United States.

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1.A.7.b. (13) 46 CFR 5.301 Section 5.301, Title 46, CFR.  
(14) 15 F.R. 1 Page 1, Volume 15 of the  
Federal Register.

B. Fundamental Investigative Procedures. Every investigation involves several basic procedural steps: analysis and outlining of initial steps, fact-finding, verification and evaluation, and development of conclusions and recommendations. The fundamental precept in conducting any investigation is the answering of the questions who, what, where, when, how, and why.

1. Analysis. Certain material will be available to the I.O. as a starting point for the inquiry. The nature and extent of this information will vary according to the manner in which the investigation originates. That information should be analyzed by the I.O. to determine what is involved and what is necessary to complete an investigation. Prior to taking any action, it is important that the information be carefully and intelligently evaluated with regard to jurisdiction and whether any allegation, if proved, would constitute a violation of law or regulations. In addition, an I.O. should look for indications of safety defects in the design or use of a vessel or its equipment. Information that is nonspecific, or apparently of little consequence, should nevertheless be given careful scrutiny. Important leads may follow from information that at first appears to be of little or no value; also, seemingly minor bits of information may accumulate to warrant investigation at a later date. Information that relates to a matter within the jurisdiction of another agency should be referred to that agency without delay.

a. Initial Steps. After determining what information or documentation has been acquired, the next question is whether any steps can be taken to acquire additional evidence or information at this stage of the investigation. Such steps should include obtaining all available related files and records. The I.O. should also request information from Headquarters, other Coast Guard units, or other agencies, if previous experience or information in the case indicates the need for this action.

b. Outline. The I.O. will find it desirable, and in many cases necessary, to outline the essential elements pertinent to the type of investigation(s) involved. In developing the outline, consideration should be given to the evidence required, possible sources of information and evidence, and the methods that will be used to obtain the evidence and conduct the investigation. The outline, properly used, is a tremendous tool for the I.O. Witnesses can be contacted and source materials obtained when they are in the same area with a minimum of time and effort expended. By outlining the elements involved, the I.O. can also avoid pursuing irrelevant tangents. I.O.'s should realize that, while only a certain phase of

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- 1.B.1. b. (cont'd) an investigation may be assigned to them, the course of the investigation may produce additional data that will require judgment as to whether a new line of inquiry should be pursued and, if so, the manner and extent to which it should be developed. This decision may sometimes be necessary without the benefit of consulting with a supervisor, although this is advisable whenever possible.
2. Fact-Finding. This is the means whereby sufficient information and evidence are acquired to support or disprove case information. It involves gathering of information not only in the form of eye witness accounts, but also items more tangible in nature, such as reports of chemical analyses, autopsy, medical treatment, photographs, vessel data, and weather.
3. Verification And Evaluation. Throughout the course of the investigation, the information and evidence obtained should be checked against the general plan or outline of the investigation. This will aid in ensuring a sufficient accumulation of facts upon which to base reliable conclusions and formulate productive recommendations concerning marine casualties. It will also help determine whether sufficient evidence has been obtained to prove each of the elements required to establish the violation, or to resolve matters in dispute. It also will test the adequacy of investigative efforts. During this process, the I.O. should review the testimony of witnesses and evaluate their credibility, and verify the accuracy and authenticity of records and documents. When testimony to a material matter is conflicting, the I.O. should attempt to resolve the conflict by obtaining additional evidence from other competent witnesses or by resorting to other pertinent records. In reviewing and evaluating testimony of a witness, account should be taken of interests, biases, integrity, reputation, sense deficiencies, and the manner in which the witness acquired the information. In evaluating information obtained from records and documents, account should be taken of the source of the record or document, how it was prepared and for what purpose, who supplied the original information, and whether the record or document is one of original or secondary entry.
4. Conclusions And Recommendations. After sifting through all accumulated data and applying reasoning and experience, the I.O. should decide the most cost-efficient and thorough course of action to complete and close the case. Conclusions should be supported by the facts developed. Conclusions should state the primary cause and contributing causes, if any. If sufficient facts cannot be elicited, the conclusions should state that the cause cannot be determined and indicate what is considered the most probable cause. In addition, any conflicting versions of material facts should be resolved, if possible. Recommendations should flow logically from facts and conclusions. To be of benefit, they should be limited generally to such remedial action as is indicated in the particular case. In some cases, a recommendation

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- 1.B.4. (cont'd) that no further action be taken and that the case be closed will suffice. In others, recommendations for specific safety measures or for further investigation may be in order.
- C. Conduct And Ethics Of The Investigating Officer (I.O.). The I.O. should not display a narrow, rigid, or arbitrary application of the law. It should always be remembered that authority is not license, and no action should be taken without considering its probable impact on the Coast Guard's image. One of the most important aspects in this regard is respect for the dignity of every human being. An I.O. who is considerate is bound to derive respect in return. The I.O. is not expected to condone violations of the law, but the proper target is the person's violation not the person. Every person connected with an investigation shall be afforded his or her legal rights.
1. Attitude. The I.O.'s demeanor should be professional and courteous. The Coast Guard is dependent upon the law-abiding public for valuable information. It can only be secured in an atmosphere of cooperation. The best possible relationship with the public is maintained through courtesy, fairness, and impartiality without sacrifice of personal dignity or integrity, even under the most adverse provocation. This cannot be overemphasized. Courtesy and tact, in particular, are the keys to achieving public cooperation that is so essential to the job. In the long run, it will make the job easier. It is essential for the I.O. to believe in the policies of the Coast Guard's investigation program. Public confidence in the Coast Guard is manifested by the I.O.'s professional execution of its policies. The investigative performance is a continuing learning process. The I.O. should be able to handle various kinds of investigations, some of which will present new, difficult problems. Each of these experiences will provide valuable lessons. A particular assignment may appear insignificant or relatively unimportant, but it should be remembered that all investigations are necessary, and they all provide experience.
  2. Impartiality. The I.O. should maintain a fair and impartial attitude toward matters under investigation, and should not be influenced by political, economic, or social considerations. The I.O. should strive to be open-minded throughout the investigation, reporting the pertinent facts on both sides. The I.O. should also avoid even the appearance of impartiality. The I.O. should avoid jumping to conclusions based on evidence obtained early in the investigation. In particular, the I.O. should not formulate a theory and then try to develop evidence that coincides with or supports these ideas. Of course, it is necessary that the evidence be weighed and judgment adequately exercised to determine what additional investigation may be necessary. The I.O. should not only be impartial but should present an appearance of impartiality to all parties. The I.O. should keep in mind the possibility of misinterpretation of remarks, acts, and motives. Even when certain evidence points strongly to one conclusion, the I.O. should remain open-minded to evidence that points to a different conclusion. The objective is neither to "get" a party nor to "whitewash" an investigation but to determine the cause of a particular incident.

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### 1.C.3. Discretion.

- a. Public. Investigations are not regarded as strictly confidential, and investigative information might be made available to the public. However, the identity of a source of information who requests confidentiality may only be protected as permitted by the Freedom of Information Act (FOIA) and Department of Transportation (DOT) regulations (49 CFR 7). Accordingly, promises of confidentiality shall not be given. It is noted, however, that 46 U.S.C. 3315(b) prohibits Coast Guard personnel from divulging the names of individuals employed on any vessel who provide information about defects and imperfections in matters subject to regulation and inspection. By violating this provision, such Coast Guard personnel will be liable to disciplinary action.
- b. Other Investigators. It may at times be beneficial to discuss a case with another investigator, particularly one who is experienced in similar investigations. Yet an I.O. should never be guilty of loose or careless talk regarding a case with other personnel, and particularly with persons outside the Coast Guard.
- c. Other Agencies. This policy of discretion should be applied when dealing with other government agencies that may be interested in an investigation conducted by the Coast Guard. In this connection, prompt attention should be given to authorized requests for information from representatives of law enforcement and investigative agencies. It does not give license for them to delve into other investigations which do not concern them.

### D. Investigative Interview.

1. Definition. An interview is a detailed but informal questioning of a witness or other person with knowledge of a matter under investigation.
2. Guidelines. Telephonic interviews should be limited to those investigations where only a brief summary of the facts are desired or to determine information leading to other sources of information. Witnesses can sometimes be interviewed privately; however, investigations and investigative reports might be made available to the public, and the I.O. may find that a more successful interview is completed when the witness is accompanied by a friend(s) or another person(s). Occasionally, it may be necessary for the witness to consult someone else or some record to refresh their memory. The witness' manner of giving information and the reliance that may be placed on their memory are matters that should bear weight in determining the value of the information. Frequently, a witness may be of little value in terms of providing evidence based upon first-hand knowledge. However, the witness may be extremely helpful in furnishing leads and information that may be checked in other ways and thereupon developed into admissible and competent evidence that may be used in court or in

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- 1.D.2. (cont'd) an administrative hearing. The witness may also be extremely valuable in providing information which may be developed to aid in determining cause.
3. Reliability Of Testimony. When interviewing a person, the I.O. should never set out to prove or disprove a preconceived opinion. The I.O. should only endeavor to obtain the facts, being constantly alert to separate truth from untruth. Witnesses may, for one reason or another, relate deliberate falsehoods or unconsciously color and distort facts. Some of the factors that may color or distort the testimony of a witness are as follows:
- a. Prejudice, dislike, or hatred for a person, race, organization, or principle;
  - b. Education, background, age, sex, political leanings, social and economic status, and preconceived opinions and judgments;
  - c. Physical conditions at the scene of an incident, such as defective lighting;
  - d. Strong emotions, such as fright, excitement, resentment or anger, either at the time of an incident or at the time of giving information;
  - e. Poor memory and gaps in sense perception (frequently causing persons who have forgotten or missed details to invent them); and
  - f. Constant repetition of ideas and mental images, which frequently cause persons to accept them as remembered facts (just as frequent repetition of hearsay and rumors may also cause persons to accept them as facts).
4. Preparation For An Interview. Within the limits of available time, thorough preparation should be made prior to an interview to ensure that all pertinent details are covered. Such preparation should include a detailed study of the material that has already been accumulated, including the accident scene and any wreckage. The I.O. should also have a good working knowledge of the laws, regulations, and guidance material applicable to the matter under investigation. Familiarity with all of these factors will enable the I.O. to properly prepare a brief, detect any discrepancies and falsehoods in the subject's statements, and impress the subject with that knowledge and the futility of any attempt to withhold or distort information. On the basis of such a detailed study, the I.O. should carefully determine the following:
- a. Proper persons to be interviewed;
  - b. Questions that must be answered to further the investigation;

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- 1.D.4. c. Probable degree of willingness of each person to be questioned;
  - d. Reliability of their information, and any factors that may consciously or unconsciously influence, color, or distort such information;
  - e. Manner of interview and psychology to be employed, based on the subject's position, willingness, reliability, personality, and personal weaknesses as revealed by the material already acquired; and
  - f. Outline of questions to which the answers are already conclusively known and which can be used to test the subject's truthfulness.
5. Order Of Interviews. The order of interviews will depend upon the manner in which the facts are developed and the accessibility of witnesses. All necessary and logical leads should be covered during the investigation. Generally, those witnesses who will not forewarn the subject of the investigation should be interviewed before witnesses who might reasonably be expected to inform the subject that they have been questioned. In this manner, facts and information are obtained that can be used in detecting inconsistencies or attempts to mislead on the part of witnesses who may be unsympathetic to the investigation. For marine casualty investigations it is best to interview witnesses who have the most complete overview of the casualty. This would ordinarily be the Master or Chief Engineer. If more than one party is involved, key personnel should be rotated so as not to provide an unfair advantage to one side.
  6. Interview With Subject. As a general rule, the subject under investigation should not be interviewed until all other known witnesses have been interviewed and all pertinent records and documents have been examined. There will, of course, be cases where it will be necessary to contact, if not interview, the subject at the outset of the investigation (e.g., when it is believed that records or documents in the witness' possession may be altered, concealed, or destroyed if not examined or obtained without delay). Circumstances and developments will dictate in each case the most opportune time for the interview with the subject.
    - a. Follow-Up. After the interview with the subject, additional investigation should be conducted as necessary in the light of subsequent denial or explanations.
    - b. Miranda/Tempia Warning To Military Personnel. Whenever a member of the Coast Guard or another armed service is suspected of any wrongdoing, or in any way is being deprived of freedom of action and questioned about culpability or conduct in a marine casualty, the warning provided by Article 31, Uniform Code of Military Justice (UCMJ), and the military Miranda/Tempia Warning shall be given before any questioning takes place. This warning is considered

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- 1.D.6. b. (cont'd) particularly necessary if a Coast Guard member is suspected of wrongdoing and is being questioned by a Coast Guard I.O. This warning is not generally necessary if any of the above factors are not present in the situation involved. However, when such a warning is necessary, the warning shall be separate and distinct from any other statements made to the person in question and shall be given in such a fashion as to assure the subject's complete understanding. For example:

"My name is \_\_\_\_\_. I am investigating the circumstances surrounding (the casualty being investigated), in which you are suspected of \_\_\_\_\_. I advise you that under the provisions of Article 31, UCMJ you have the right to remain silent, that is, to say nothing at all. Anything you do or say may be used as evidence against you in a trial by court-martial, or by any federal, state, or local court of law. I advise you also that you have the right to consult with an attorney, if you desire, and to have an attorney present during this interview. You may obtain a civilian attorney of your own choosing, at your own expense, or, if you wish, the Coast Guard will appoint a military attorney for you free of charge. You may request an attorney at any time during this interview, and if you decide to answer questions without an attorney present, you may stop the questioning at any time."

After this warning has been given, it shall be ascertained that the individual understands his or her rights and is able to freely, knowingly, and intelligently waive them. If the subject indicates an understanding of the legal rights involved, the following specific questions shall be asked:

"Do you want an attorney?"

"Do you want to make a statement and answer questions at this time?"

If the individual wishes to exercise any Miranda/Tempia or Article 31 rights, all questioning should cease immediately.

c. Miranda Warning To Civilians.

- (1) Negative Effects. I.O.'s should bear in mind that the Coast Guard's primary concern is determining the cause of marine casualties or accidents in the hope that something will be learned that can be used to prevent a similar casualty in the future. The process of giving a witness or a party in interest a Miranda Warning to protect his or her constitutional rights may have a chilling effect on the gathering of important information and may adversely affect the entire investigation. Therefore, Miranda warnings need not be given until there is

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- 1.D.6.c. (1) (cont'd) substantial evidence of a violation. Frequently, the I.O. cannot decide that there is evidence of criminal liability until all of the evidence has been evaluated. The I.O.'s priority, then, should be the developing of facts and evidence that will assist in the determination of the cause of a casualty, even at the possible sacrifice of future criminal prosecution of appropriate parties.
- (2) Criminal Prosecution. There are instances, however, when the seeking of a criminal penalty is a primary consideration in the conduct of an investigation. For example, when dealing with investigations of pollution incidents, an I.O. may be dealing with an apparent violation of the notification requirement contained in 33 U.S.C. 1321(b)(5). In this type of case, primary consideration should be given to the development of a case for criminal prosecution of the responsible party who failed to give notification. If it is deemed desirable to protect this possibility of criminal prosecution, a Miranda Warning shall be given to the party during the interview,
- (3) Statement Of Warning. When it has been determined that a person is suspected of criminal wrongdoing and may be subject to criminal prosecution, the Miranda Warning shall be given before any questioning about the matter takes place. The Miranda Warning shall be separate and distinct from any other statements made to the person, shall be given before the asking of any questions, the answers to which may subject the person to criminal liability, and shall be given in such fashion as to assure complete understanding. For example:

"My name is \_\_\_\_\_ . I am investigating the alleged offense(s) of \_\_\_\_\_ of which you are suspected. I advise you that under the provisions of the Fifth Amendment to the Constitution you have the right to remain silent, that is, to say nothing at all. Anything you do or say may be used as evidence against you in a trial or in other judicial or administrative proceedings. I advise you that you have the right to consult with an attorney if you desire and to have an attorney present during this interview. You may obtain an attorney of your own choosing at your own expense, or if you cannot afford an attorney, one will be appointed for you. You may request an attorney at any time during this interview, and, if you decide to answer questions without an attorney present, you may stop the questioning at any time."

After this warning has been given, it shall be ascertained that the individual understands his or her rights and is able to freely, knowingly, and intelligently waive them. If the subject indicates an understanding of the legal rights

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- 1.D.6.c. (3) (cont'd) involved, the following specific questions shall be asked:

"Do you want an attorney?"

"Do you want to make a statement and answer questions at this time?"

If the individual wishes to exercise any Miranda/Fifth Amendment rights, all questioning should immediately cease. A decision should then be made as to what action is appropriate under the particular law enforcement statute involved. Should that action be arrest of the individual, the appropriate judicial authority would subsequently appoint counsel to represent the individual if necessary.

d. Refusal Of Witnesses To Testify.

- (1) Subject Of Investigation. The person whose conduct is the subject of an S&R proceeding has the right to remain silent, pursuant to 46 CFR 5.519, and should be so advised by the administrative law judge (ALJ).
- (2) Persons Other Than Subject. Occasionally, during the conduct of a formal investigation, marine board, or S&R proceeding, a witness whose conduct is not the subject of the inquiry refuses to testify. The witness may assert the Fifth Amendment right not to testify, or state an intent to assert such a right. In a case where sources of information are available other than from the respondent or from a witness who refuses to testify, the refusal of a witness to testify, while possibly causing some delay or inconvenience, does not prevent the investigation or hearing from proceeding. There are instances, however, in which such a witness is the only source of information other than the subject, and the refusal to testify prevents the investigation or hearing from proceeding. In addition, 5 U.S.C. 555 and 46 U.S.C. 6304 provide for enforcement of subpoenas in court. Should a witness under subpoena refuse to testify, the assistance of the district legal officer and appropriate U.S. attorney should be requested to obtain a court order to compel testimony. Title II of the Organized Crime Control Act of 1970 (18 U.S.C. 6001-6005) provides the investigating agency, after obtaining approval of the Attorney General, power to order a witness to testify, but precludes use of such testimony or evidence derived from it in a later criminal prosecution of that witness. [NOTE: These procedures are not available to compel the testimony of a person whose conduct is the subject matter of the hearing and who has chosen to remain silent.]

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- 1.D.6.d. (3) Response Procedures. In any case where a witness has refused or states an intent to refuse to testify before an I.O., marine board, or ALJ, and enforcement of a subpoena is not sufficient or appropriate, the district commander may, upon a judgment that the testimony of that witness may be necessary for the public interest, submit a request to Commandant (G-LCL) to obtain approval of the Attorney General to order the witness to testify. Such a request should contain the following elements:
- (a) A draft of the proposed order to testify, to be signed by the I.O., board chairperson, or ALJ presiding. This should include requisite findings that the witness refuses to testify on Fifth Amendment grounds and that such testimony is necessary to the public interest. See Figures 1-1 through 1-3.
  - (b) An information sheet giving the following data:
    - (i) Name, citation, or other identifying information of the proceeding in which the order is to be used;
    - (ii) Name of the individual for whom immunity is requested;
    - (iii) Name of the employer or company with which the witness is associated;
    - (iv) Date and place of birth of the witness;
    - (v) FBI record number or local police number, if any;
    - (vi) Whether any state or federal charges are pending against the prospective witness and the nature of the charges;
    - (vii) Whether the witness is currently incarcerated, under what condition, and for what length of time;
    - (viii) Military status and organization, if any;
    - (ix) Whether the witness would be likely to testify under a grant of immunity precluding the use of his or her testimony against him or her in a criminal proceeding;
    - (x) Factual basis supporting the finding that the witness is likely to refuse to testify on Fifth Amendment grounds;

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FIGURE 1-1

SAMPLE ORDER TO TESTIFY BEFORE A FORMAL (ONE-MAN) INVESTIGATION  
UNITED STATES COAST GUARD, EIGHTH COAST GUARD DISTRICT

Investigation of the collision between the tug LaFITTE and tow, and the tug PIERRE and tow, at about Mile 75.4 Above Head of Passes (AHP) Mississippi River, on 1 January 1988.

1. Under the authority vested in me under 46 U.S.C. 6301, 49 U.S.C. 108, 49 CFR 1.46(b), and 46 CFR 4.07-5, hereby make the following findings:
  - a. That on or about 0001 1 January 1988, at approximately Mile 75.4 AHP Mississippi River, a collision occurred between the tug LaFITTE and tow, and the tug PIERRE and tow;
  - b. That at the time in question, John Richard Doe was serving under the authority of Coast Guard License Number 123456 and Merchant Mariner's Document Number 78910, as pilot on the tug LaFITTE;
  - c. That at the time in question, Peter Henry Smith was serving as pilot on the tug PIERRE;
  - d. That in the proceedings in the above-captioned action stemming from said collision, the testimony of Peter Henry Smith is necessary to the public interest; and
  - e. That during a session held in the above-captioned action, the Coast Guard was advised by counsel representing Peter Henry Smith that he intended to invoke his privilege under the Fifth Amendment to the Constitution, and would refuse to testify on the grounds that evidence introduced during the investigation could be referred to the Attorney General for further investigation by and prosecution through the United States attorney of the district having jurisdiction, under the provisions of the Criminal Code.
2. On the basis of these acts, under the authority vested in me under 18 U.S.C. 6004 by reason of 46 U.S.C. 6304 and 7705, 49 U.S.C. 108, 46 CFR 4.07-5 and 49 CFR 1.45(a)(2), and the precept for the above-captioned investigation (Commander, Eighth Coast Guard District Letter of February 1988), I hereby order Peter Henry Smith to appear, testify, and provide such other information as I order in the above-captioned investigation. As provided in 18 U.S.C. 6002, no testimony or other information compelled under this order (or any information directly or indirectly derived from such testimony or other information) may be used against Peter Henry Smith in any criminal case, except a prosecution for perjury, giving false statement, or otherwise failing to comply with this order.
3. This order is issued with the approval of the Attorney General of the United States as set forth in Exhibit 1 annexed hereto.

(Signed)

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FIGURE 1-2

SAMPLE ORDER TO TESTIFY BEFORE A MARINE BOARD  
UNITED STATES COAST GUARD, EIGHTH COAST GUARD DISTRICT

Marine Board of Investigation to inquire into the collision between the tug LaFITTE and tow, and the tug PIERRE and tow, at about Mile 75.4 AHP Mississippi River, on 1 January 1988.

1. Under the authority vested in me under 46 U.S.C. 6301, 49 U.S.C. 108, 49 CFR 1.46(b), 46 CFR 4.09-1 and -5, and the precept for the above-captioned marine board of investigation (Commandant (G-MMI) letter of 2 February 1988), I hereby make the following findings:
  - a. That on or about 0001 1 January 1988, at approximately mile 75.4 AHP Mississippi River, a collision occurred between the tug LaFITTE and tow, and the tug PIERRE and tow;
  - b. That at the time in question, John Richard Doe was serving under the authority of Coast Guard License Number 123456 and Merchant Mariner's Document Number 78910, as pilot on the tug LaFITTE;
  - c. That at the time in question, Peter Henry Smith was serving as pilot on the tug PIERRE;
  - d. That in the proceedings in the above-captioned marine board of investigation stemming from said collision, the testimony of Peter Henry Smith is necessary to the public interest; and
  - e. That during a session held in the above-captioned marine board of investigation, the Coast Guard was advised by counsel representing Peter Henry Smith, that he intended to invoke his privilege under the Fifth Amendment to the Constitution and would refuse to testify on the grounds that evidence introduced during the investigation before the board could be referred to the Attorney General for further investigation by and prosecution through the United States attorney of the district having jurisdiction, under the provisions of the Criminal Code.
2. On the basis of these facts, under the authority vested in me under 18 U.S.C. 6004 by reason of 46 U.S.C. 6304 and 7705, 49 U.S.C. 108, 46 CFR 4.09-1 and -5, and 49 CFR 1.45(a)(2), and the precept for the above-captioned marine board of investigation (Commandant (G-MMI) letter of 2 February 1988), I hereby order Peter Henry Smith to appear, testify, and provide such other information as I order in the above-captioned marine board of investigation. As provided in 18 U.S.C. 6002, no testimony or other information compelled under this order (or any information directly or indirectly derived from such testimony or other information) may be used against Peter Henry Smith in any criminal case, except a prosecution for perjury, giving false statement, or otherwise failing to comply with this order.
3. This order is issued with the approval of the Attorney General of the United States as set forth in Exhibit 1 annexed hereto.

(Signed)

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FIGURE 1-3

SAMPLE ORDER TO TESTIFY DURING SUSPENSION AND REVOCATION PROCEEDINGS  
BEFORE AN ADMINISTRATIVE LAW JUDGE  
UNITED STATES OF AMERICA, UNITED STATES COAST GUARD

vs.

License No. 123456 and Merchant Mariner's Document No. 78910,  
Issued to John Richard Doe, Respondent

1. Under the authority vested in me under 46 U.S.C. 7701, 49 U.S.C. 108, 49 CFR 1.46(b), and 46 CFR 5.19, I hereby make the following findings:
  - a. That on or about 0001, 1 January 1988, at approximately Mile 75.4 AHP Mississippi River, a collision occurred between the tug LaFITTE and tow, and the tug PIERRE and tow;
  - b. That at the time in question, John Richard Doe was serving under the authority of Coast Guard License Number 123456 and Merchant Mariner's Document Number 78910, as pilot on the tug LaFITTE;
  - c. That at the time in question, Peter Henry Smith was serving as pilot on the tug PIERRE;
  - d. That in the proceedings in the above-captioned action stemming from said collision, the testimony of Peter Henry Smith is necessary to the public interest; and
  - e. That in the hearing held in the above-captioned action, the Coast Guard was advised by counsel representing Peter Henry Smith, that he intended to invoke his privilege under the Fifth Amendment to the Constitution and would refuse to testify on the grounds that evidence introduced at the hearing could be referred to the Attorney General for investigation by and prosecution through the United States attorney of the district having jurisdiction, under the provisions of the Criminal Code.
2. On the basis of these acts, under the authority vested in me under 18 U.S.C. 6004 by reason of 5 U.S.C. 556(c), 46 U.S.C. 7705, 49 U.S.C. 108, 46 CFR 1.45(a)(2) and 5.19, and 49 CFR 1.46(b), I hereby order Peter Henry Smith to appear, testify, and provide such other information as I order in the above captioned case. As provided in 18 U.S.C. 6002, no testimony or other information compelled under this order (or any information directly or indirectly derived from such testimony or other information) may be used against Peter Henry Smith in any criminal case, except a prosecution for perjury, giving false statement, or otherwise failing to comply with this order.
3. This order is issued with the approval of the Attorney General of the United States as set forth in Exhibit 1 annexed hereto.

(Signed)

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- 1.D.6.d.(3)
- (xi) General nature of the charges to be tried in the proceeding at which the witness' testimony is desired, if any;
  - (xii) Offenses, if known, as to which the witness' testimony might tend to incriminate the witness;
  - (xiii) Date upon which it is anticipated the order will be issued; and
  - (xiv) Summary of the expected testimony of the witness as it applies to the particular case in issue.

See Figure 1-4 for a sample information sheet. Should the Attorney General approve an order for the witness to testify, the proposed order and verification of the Attorney General's approval will be returned to the district commander for submission to the I.O., board chairman, or ALJ, as appropriate. The I.O., chairman, or ALJ shall issue the order in exactly the same form as approved by the Attorney General. Should the I.O., chairman, or ALJ wish to modify the proposed order in any material or substantive way, the modified order must be forwarded to Commandant (G-LCL) for submission to the Attorney General. Upon approval by the Attorney General, the modified order may be issued to the witness.

7. Time Of Interview.

- a. At The Scene. Persons observed committing acts in violation of law or regulation, and witnesses to marine casualties, boating accidents, or pollution incidents, should be questioned as promptly as possible, preferably at the scene. At that time, the I.O. is often able to secure the most valuable admissions or information. Furthermore, the subject will not have had time to concoct a detailed cover story. In appropriate cases, the signed and sworn statement should be taken immediately, even though it may be written in longhand. A contingency plan should be developed by each command prior to the actual occurrence of such an event. I.O.'s should always be prepared to proceed directly to the scene of an incident in order to secure timely interviews of witnesses. Material such as subpoenas, paper, and pens, normally used in investigation activities, should be close at hand at all hours of the day or night.
- b. Other Times. On other occasions, the time of the interview depends on the availability of both the subject and the I.O. The time chosen should ensure availability of both parties for a considerable period of time without interruption. Once the subject begins to talk, the interview should continue without interruption until the maximum amount of information has been elicited from the subject. As soon as the interview is completed, immediate steps should be

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FIGURE 1-4  
SAMPLE INFORMATION SHEET

INFORMATION SHEET ON PETER HENRY SMITH AND THE PROCEEDINGS IN WHICH THE  
PROPOSED ORDER TO TESTIFY WILL BE ISSUED

- A. Proceedings in which the order is to be issued: In the matter of the (investigation) (hearing) concerning the collision between the tug LaFITTE and tow and the tug PIERRE and tow at about Mite 75.4 AHP Mississippi River on 1 January 1988 - pursuant to 46 U.S.C. 6301.
- B. Name and address of the individual for whom immunity is requested: Mr. Peter Henry Smith, 1432 Poopdeck Place, Clipperstown, CT 06546.
- C. Employer: Multistate Transportation Co., Inc., New Orleans, LA.
- D. Date and place of birth: 19 January 1923, Brooklyn, NY.
- E. FBI number: 234 678 C. Local Police No: 987432DL.
- F. Prior or pending criminal charges and convictions:
1. 12 February 1941 Convicted of public drunkenness in Philadelphia, PA.
  2. 23 August 1958 Convicted of assault and battery in New Haven, CT.
- G. Witness is not currently under any sentence or incarcerated.
- H. Military status and organization: Honorably discharged from U.S. Navy after serving 4 years active duty 17 March 1947.
- I. Likelihood of witness to testify under immunity grant: The witness may be compelled to testify by order of the (presiding ALJ, marine board chairman, or I.O., as appropriate) enforceable in court, 46 U.S.C. 6301.
- J. Factual basis to support finding that witness is likely to refuse to testify during administrative proceeding: Mr. Peter Henry Smith, through his attorney, has communicated to the Coast Guard I.O. the fact that he intends to assert his Fifth Amendment privilege and will refuse to testify at the administrative proceeding if and when he is called.
- K. Nature of the charges to be tried on the proceedings (investigation): Negligence or misconduct on the part of John Richard Doe who was the pilot of a vessel involved in a collision.
- L. Offenses with respect to which witness' testimony may tend to incriminate him: Reckless and negligent operation of a vessel in violation of 46 U.S.C. 2302.
- M. Date upon which it is anticipated the order will be issued: The administrative proceeding has been suspended at the request of the Coast Guard I.O. to obtain a grant of immunity. Should the proposed order be approved by the Attorney General, the administrative proceedings will be immediately reconvened and the witness will be called.
- N. Expected testimony: The details of expected testimony are: (insert summary). It is expected that these details will enable the (presiding ALJ)/(I.O.) to determine if any negligence or misconduct was involved in the collision from which the suspension and revocation actions have arisen, and if so, whether the party charged was guilty of negligence or misconduct.

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- 1.D.7. b. (cont'd) taken to verify the subject's story by further interviews to reduce the risk of collusion in falsifying testimony. [NOTE: In many cases, interviewing the subject or involuntary informants should not be done too early in an investigation. It is sometimes best to build a case file by other investigative techniques.]
8. Manner Of Interview. The conduct of an interview depends upon the situation and personality of the individual to be interviewed. The I.O. should maintain a businesslike and courteous manner. Usually, the interview is conducted in an environment familiar to the person interviewed and the subject is not brought before the I.O. Time may be saved by interviewing certain persons by appointment; appointments also ease tensions. The I.O. should make a self-introduction, present his or her credentials, and inform the subject of the purpose of the visit. Generally, the first few minutes of an initial interview should be spent establishing an atmosphere of mutual cooperation and "sizing up" the witness. Some questions about the witness' background, or about other matters not relevant to the case, are often helpful. Allowance should always be made for language difficulties.
- a. Questioning. The specific questions to be asked during an interview depend upon the brief drawn up prior to the interview, the I.O.'s judgment, and the I.O.'s appraisal of the witness' attitude and circumstances. A talkative subject should first be permitted to complete a statement. The I.O. may then, by specific questions, obtain the answers to the essential elements of who, what, where, when, why, and how. The interview should never be forced, but the I.O. should guide the interview into channels of investigative interest and seek to obtain specific facts rather than general statements, opinions, or conclusions. In some instances, however, an opinion may be important. For example, if an operator of a boat is involved in an accident, the operator's opinion as to what caused the accident, or what might have been done to prevent the accident, may be very useful. The I.O. should maintain control of the interview, permitting digression to put the witness at ease, if necessary but not permitting evasiveness. Undue familiarity, violent expressions, or distracting mannerisms shall be avoided. The I.O. should look for inaccuracies and omissions, and, as necessary, should conduct a discreet but persistent questioning. The I.O. should likewise observe the witness' attitude, expression, and tone of voice.
- b. Objectivity. Throughout the interview, the I.O. should remain objective and fair. Witnesses should be unable to discern the I.O.'s personal opinion concerning them or the subject of the interview. Although the I.O. may occasionally find it necessary to lead the witness, the latter's statements should not be colored or influenced. Questions should not be based upon false assumptions. I.O.'s are cautioned against relying too heavily on the use of leading questions (i.e., questions that assume a controverted fact

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- 1.D.8. b. (cont'd) or suggest the answer, usually "yes or no"). Where information has been obtained by leading questions, it should be confirmed by subsequent detailed related questions.
9. Voluntary Witnesses. The manner of questioning voluntary witnesses whose reliability is known depends largely upon the relationship established between the I.O. and the witness. Generally, however, it is best to treat voluntary witnesses in a friendly manner, make them as comfortable as possible during the interview, ensure complete privacy, and show respect and appreciation for everything they have to say. With voluntary witnesses of unknown or doubtful reliability, the I.O. should attempt to ascertain the motives prompting the witness, and weigh the information accordingly. Factors that tend to influence, color, or distort testimony should be borne in mind during the interview, and should be noticed as they appear in the informant's statements.
10. Involuntary Witnesses. The manner of interviewing unwilling witnesses will depend upon personality, weaknesses, character, position, and the amount of information already acquired on the case. A study of the case and a preliminary interview may reveal these essential items. If the witness proves to be uncooperative, the I.O. should ascertain the reasons for the reluctance to provide information and should conduct the interview and phrase questions accordingly. An involuntary witness may actually be involved in the matter under investigation. Leading questions should often be used in interrogating such witnesses. All witnesses should be treated with a respectful or friendly attitude, but their prejudices, biases, grudges, and other emotions that influence their responses should be noted. Particular care should be taken to evaluate the reliability of the information revealed by such a witness.
- a. False Statements. In some cases, if it is obvious that the witness is making false statements, the I.O. should try to put the subject into a position from which there is no alternative but to tell the true story. This can sometimes be accomplished by carefully explaining to the subject the point where his or her story contradicts other evidence, or any contradictions inherent in the story. The I.O. may then question the subject closely, pausing long enough between questions to permit a prompt reply, but not long enough to permit the subject to concoct falsehoods which fit into a cohesive and noncontradictory pattern.
- b. Body Language. The I.O. should watch the subject constantly, alert to any verbal or physical signs of lying or exaggeration. The I.O. should search for contradictions, weigh every word, and note the greater or lesser assurance with which the subject relates each portion of his or her story, or responds to varied questions. The I.O. should pin the subject down for specific answers; a response is not always the answer to a question. The question should be rephrased if necessary. Persons and events should be specifically identified.

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1.D.11. Termination Of Interview. An I.O. should terminate an interview upon judging that all information that the witness can give has been provided. Upon conclusion, the I.O. should thank the witness for his or her cooperation and information. If the interview has taken place in the I.O.'s office, it is a good tactic to see the witness to the door personally.

12. Use Of An Interpreter.

a. When Required. If the person being questioned speaks other than fluent English, the I.O. shall ascertain whether the services of an interpreter are required. If there is any doubt, even if a witness is willing to proceed without one, the I.O. should defer further action until an interpreter is available. The record should reflect all questions and answers concerning the respondent's need for an interpreter. The interpreter should be identified and qualified for the record (i.e., the ability to speak and translate into English the language of the person being questioned, and vice versa, should be verified) and placed under oath. The record should show that the interpreter and the witness have conversed in the latter's language and that they understand each other, especially when the witness' native language has many dialects, such as Chinese. The record should also indicate the particular language and dialect being used in the questioning. Although the witness should be cautioned at the outset to indicate any inability to understand the interpreter, it is an excellent idea to check from time to time during the questioning to make certain that the interpreter and the witness understand each other. Such checks should appear in the record.

b. Difficulties Encountered. Interviewing through an interpreter is difficult. For one thing, shades of meaning may be missed. For another, it is a natural impulse to attempt to explain or clarify questions; this should be constantly guarded against. The I.O. will lose control of the situation unless the interpreter repeats verbatim the answers that the subject gives. As an example, if the witness responds, "I don't understand the question," that response is to be given by the interpreter to the investigator. Under no circumstance should the interpreter attempt an explanation of his or her own. It should be clearly understood that the interpreter acts as a conduit of information, not an originator. If any explanation is required, it is the responsibility of the I.O., not of the interpreter, to rephrase or change the questions. In this way, the I.O. should never accept a subjective summary by the interpreter of what the respondent says. Finally, the interpreter should not say, "He says. . . ." after a lengthy conversation in dialect with the witness, but should strictly repeat the exact question or answer as expressed by the I.O. or the witness.

E. Documentation Of Information. Accurate documentation of information is essential in developing an investigation record. Notes and recorded tapes can supply information which, with other statements and documentary and

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1.E. (cont'd) physical evidence, will facilitate preparation of a complete report. Recordings should be intelligible, and notes should be sufficiently legible that another person may make use of them if it should become necessary.

1. Note-Taking. The method of taking notes is left to the discretion of the I.O., consistent with the need to identify persons interviewed; indicate their residence and business addresses; specify dates and places of interviews; and state all pertinent and material information developed. Telephone numbers should be obtained for the purpose of making appointments should additional interviews become necessary. Notes should be comprehensive, accurate, and neat. The following general rules should be observed:
  - a. A conveniently sized notebook should be used for a professional impression and security of notes.
  - b. Normally, notes should not be taken until after the witness has given the entire story once. The witness may not feel at ease if you are taking notes and may withhold information which would have been given freely in an ordinary conversation.
  - c. The taking of notes should never be allowed to retard the progress of an interview. If the witness talks less freely in the presence of a notebook, the I.O. should put the notebook away, and note the substance of the interview at its termination.
  - d. If notes are not made during the interview, they should be made immediately after the interview while the conversation is still fresh in the I.O.'s mind.
  - e. More detailed notes concerning the substance of pertinent information are required when no signed statements are obtained. Where signed statements are obtained, the notes should supplement the statement by showing any pertinent information furnished but not included in the statement.
  - f. If only one interview is recorded on a page, it will permit flexibility of handling when arranging notes in logical order to prepare reports, and, when necessary, will confine the use of notes at a hearing to only those which relate to a particular subject matter.
2. Friendly Witnesses. When interviewing "friendly" witnesses, it may be possible to take notes during the interview. Such persons are usually eager to impart information and may not object to having it recorded. Indeed, they will frequently consider note-taking as an acknowledgment of the importance of their information.

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- 1.E.3. Hostile Witnesses. Then interviewing "hostile" or indifferent witnesses, the I.O. should not produce a notebook until satisfied that the person has first related all pertinent information of first-hand knowledge. Then, the I.O. can record pertinent information by either statement or note form, or both, and the person interviewed can be ensured that the note-taking provides protection by providing an accurate record of the oral statements. The witness should be shown the notes of the interview, if so requested.
4. Lengthy Interviews. Lengthy interviews may require the taking of copious notes long before the person interviewed has covered all pertinent information orally. In such cases, names, addresses, telephone numbers, and similar information which the I.O. would not normally be expected to remember should be recorded.
5. Retention Of Notes. Notes are always filed with the other information and exhibits obtained during the investigation.
6. Stenographic Reporting Services. Then Coast Guard personnel are unavailable to perform court reporting functions, employment of commercial court reporters is authorized. Class justification for contracted commercial stenographic reporting services for marine casualty investigations, and S&R proceedings conducted under 46 U.S.C. 7701, has been established in accordance with 41 CFR 12-50.304. These services may be procured by contract from individuals or firms pursuant to 5 U.S.C. 3109 or other statutory authority, when there are variable requirements or insufficient qualified personnel, and necessity or economy to the government requires procurement by contract. [NOTE: Consultation with the district contracting officer to determine the availability of a mandatory General Services Administration (GSA) contract for court reporting services is required.] Such contracts shall normally be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript or words per page). The contractor ordinarily shall be required to furnish necessary material (typewriter, paper, and bindings) in accordance with 41 CFR 12-50.304. Then contracts contain a provision for the reporting service to reserve the sales privileges, requests for duplicate copies of the transcript should be referred to the reporting service in accordance with COMDTINST M5260.2 (series).

### F. Written Statements.

1. Introduction. Written statements are permanent official records of the testimony of complainants, witnesses, and subjects interviewed during an investigation. Oral statements from witnesses or subjects that have evidentiary weight should be transcribed as soon as possible after the interview. This is particularly important when the statements are derogatory. The I.O. should never make reference to a written statement until after completion of the oral testimony. The statement is one of the I.O.'s most valuable tools, and care should be exercised to develop all material matters therein.

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- 1.F.1. a. Supplemental Statements. Pertinent facts developed subsequent to an original statement may be incorporated in a supplemental statement. Prior written statements should not be returned to the witness or destroyed, nor should any promise be made that such statements will be destroyed. While there is no objection to the witness preparing his or her own statement, experience has demonstrated that, as a rule, the statement will have to be prepared by the I.O. Notes will help to arrange the topics in logical sequence. Any disagreement as to content should be resolved before the statement is completed. The I.O. should bear in mind that the statement is that of the witness; the witness may give partial or incomplete information, or include explanations or irrelevant material if the witness so desires. However, irrelevant and "off the record" statements should be discouraged. The witness should be encouraged to speak clearly, distinctly, and not too rapidly, using plain and simple language.
- b. Outline. Before taking any statements, the I.O. should become acquainted with the background of the case and the elements that should be covered. A brief outline of the most important facts of the incident is helpful. It cannot be emphasized enough that preparation before taking a statement is an important and integral part of the investigation. The I.O. should remember that there may not be another opportunity to take a statement from a particular person.
2. Signature And Purpose. It is particularly desirable to obtain a signed statement when a person furnishes material testimony. A signed statement:
- a. Provides a reliable record of what the witness said;
  - b. Precludes likelihood of denial by witness that he or she furnished information contained in the statement;
  - c. Renders less likely a change of testimony on the part of the witness;
  - d. Can be used to impeach the testimony of the witness in the event he or she testifies in a contrary manner;
  - e. Will rebut charges that an I.O. misquoted the witness; and
  - f. Can be used to refresh the witness' recollection if he or she later forgets information furnished in the statement.

The I.O. may explain to the witness, or his or her attorney when present, that the witness is being given an opportunity to present his or her side of the case in the form of a permanent written record, to avoid any misunderstanding as to the testimony. The attorney should be invited to sign the statement as a witness.

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- 1.F.3. Language Of Statement. Language used in the statement should be, insofar as possible, in the witness' own words. It may not be necessary to correct ungrammatical language and misspelled words. The statement should be couched in short and simple sentences, to obviate the risk of ambiguity resulting from involved clauses and sentences. Use of "loaded" expressions and words such as "violation," "guilty," "penalty," or "admit" should be avoided.
4. Use Of Subpoenas. The Coast Guard has the power to use subpoenas to compel testimony or produce documentary or other evidence for investigations of marine casualties, port safety, and acts which may lead to S&R proceedings. It is sometimes in the interest of the Coast Guard to subpoena cooperative witnesses, as a witness under subpoena is in a more favorable situation under the laws relating to the protection of witnesses. Individuals under subpoena are usually less reluctant to give testimony detrimental to friends or relatives or in some way derogatory to themselves. Furthermore, some private agencies routinely require subpoenas for the production of their records, as a protection to themselves. Additionally, some employers require a subpoena before they will permit an employee to miss work in order to testify.
5. Styles Of Written Statements.
  - a. Question And Answer (Q&A) Style. The Q&A format is good evidence of the fact that a statement was freely and voluntarily given, since it is a record of the questions asked and the replies given. It leaves little ground for misinterpretation or claims that important information given to the I.O. has been omitted. The Q&A format is generally the most satisfactory when the issues are controversial or involved. It is emphasized that answers to initial questions may change the nature and extent of following questions at any time during the interview.
  - b. Narrative Style. Then the issues are not controversial or involved, a narrative is a practical and effective way of taking a statement. The narrative makes it possible to write the essence of the statement concisely. It requires less time and is generally easier to transcribe and review than a Q&A statement.
6. Format Of Written Statements.
  - a. Place And Date. The place and date that the statement was taken should appear on the first page.
  - b. Opening Paragraph. The opening paragraph of the statement should read substantially as follows:

"I, John S. Jones, make the following statement freely and voluntarily to Paul Martin, who has identified himself to me as an Investigating Officer of the U.S. Coast Guard, knowing that this statement may be used in evidence."

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- 1.F.6. c. Second Paragraph. The second paragraph of the statement should include the occupation and home and business addresses of the person making the statement. Other pertinent information should also be obtained. If the person from whom the statement is obtained is an expert, and special knowledge and training are essential to qualify him or her, the next paragraph should set out information as to his or her education, training, and experience.
- d. Body. The body of the statement should set out clearly and concisely all pertinent information furnished by the maker, whether for or against his or her interests. The information should be arranged to accurately and logically present the matter discussed (see paragraph 1.F.5 above). In taking a statement, the I.O. should consider:
- (1) That information the maker may possess and could normally be expected to give in testimony; and
  - (2) That information is needed to support or disprove testimony.
- e. Last Paragraph. The last paragraph of the statement should read substantially as follows, if the person is able to read and write:
- "I have read the foregoing statement, consisting of \_\_\_ pages, and it is true in its entirety. I have signed each page and have been given an opportunity to make any corrections or additions."
- f. Signatures. The person making the statement should sign his or her name on the right-hand side of the last page immediately below the last paragraph, and should sign or initial the bottom of all other pages of the statement to preclude claims of alterations or substitutions. Any change or correction should be initialed by the person making the statement. The witness or witnesses should sign on the left-hand side of the last page just below the signature of the person making the statement. The I.O., always a witness to statements signed in his or her presence, will affix his or her name and title.
- g. Numbering Pages. Each page of the statement should be numbered by writing in the lower center or right corner: "Page \_ of \_ pages."
- h. Illiterate Witnesses. If the person making the statement is unable to read, the statement should be read back by another person, who should sign as a witness with the I.O. If no other person is available, the I.O. should read the statement to the maker. The last paragraph of such a statement should read substantially as follows:

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1.F.6. h. (cont'd)

"The foregoing statement, consisting of \_\_\_ pages, has been read to me by Thomas L. Jordan and it is true in its entirety. I have signed each page and have been given the opportunity to make any corrections or additions."

7. Refusal To Sign. If the person refuses to sign a statement but has admitted the contents to be true, and his or her admission has been heard by a disinterested person, the I.O. should place an addendum at the end of the statement to the effect that it was read to or by the maker, who admitted the contents to be true but refused to sign the statement. Both the I.O. and the disinterested person (or another I.O., if present) should sign beneath the addendum. This, in effect, makes the disinterested person who heard the admission an additional witness. In every instance when the subject or a witness from whom a written statement is requested refuses to sign it, his or her reason for such refusal should be obtained and attached to the statement.
  
8. Letter In Lieu Of Statement. Letters may serve in lieu of statements in some cases. Some persons will prefer to write a letter containing pertinent information and will refuse to sign the prescribed form of a statement. In such cases, the I.O. should suggest the inclusion of an opening paragraph or opening remarks, which will give the letter the character of a statement by reflecting the voluntary nature of the writer's comments, and his or her knowledge of the I.O.'s identity; this is tantamount to acknowledging that the letter may be used as evidence. Such an opening paragraph could be as follows:

"Mr. Philip Roe, who has identified himself to me as an Investigating Officer of the U.S. Coast Guard, has brought to my attention certain matters about which I should make certain comments and explanations."
  
9. Statements Under Oath. In most cases, it is unnecessary that signed statements be sworn to; but the I.O. should obtain signed statements under oath from witnesses if all or most of the following conditions exist:
  - a. The circumstances surrounding the casualty are very complex;
  - b. There is a possibility of a prolonged delay before the hearing in an S&R proceeding;
  - c. The investigation is of a serious nature;
  - d. There is a possibility that the witness may alter his or her testimony; and
  - e. There is a possibility that the witnesses may give conflicting descriptions of the casualty.

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1.G. Evidence. The assignment of legally trained personnel as I.O.'s is generally the exception rather than the rule. Nevertheless, it is the I.O.'s responsibility to present evidence in support of a case, and it is essential to be well-versed in the accepted basic rules of evidence. Each investigation department should have at least the Federal Rules of Evidence and one recognized textbook on evidence for use by I.O.'s in studying such basic rules.

1. Purpose Of Evidence. To establish the truth is the reason for gathering evidence. The word "evidence" itself refers to the various items or means of proof used to establish the truth or falsity of some fact or matter that is in issue. It includes any information, act, circumstance, event, incident, or real object, that proves or disproves, or tends to prove or disprove, the truth of a fact or matter in question. It is important that the I.O. have an understanding of the rules of evidence. This will:
  - a. Enable an evaluation of what evidence is reliable, misleading, or a waste of time;
  - b. Indicate the need, in some cases, to obtain additional corroborative evidence before recommending action; and
  - c. Assist in determining if the evidence gathered will be adequate in an administrative hearing.

The I.O. is cautioned to report all the pertinent information gathered. It is stressed that the investigative reports must include all competent, relevant, and material information received, including "hearsay" or rumor, unless the I.O. is convinced that it has come from a totally unreliable source.

2. "The Law." A law is a rule of human action. "The law," as a system, may be separated into two classes: substantive law, which prescribes or defines the rights or the obligations of people, and procedural law, which states the means of enforcing rights and obligations (the law of evidence is a rule of procedural law). Rules defining the rights and obligations of people, however complete and perfect, would be of little use without the means of compelling conformance to them. Procedural law establishes tribunals and describes methods of enforcing substantive law.
3. "Evidence." The word "evidence" means any matter of fact from which an inference may be drawn as to a second matter of fact that is in question. The former is called the evidential fact; the latter is called the principal fact. The purpose of gathering evidence is, obviously, to establish the truth about an issue. It may be physical, oral, or written and may concern an incident, circumstance, or action relevant to the issue. The Law of Evidence consists of certain rules as to the inclusion/exclusion and manner of presenting evidence.

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- 1.G.3. a. Competent, Relevant And Material Evidence. Evidence is both relevant and material when it tends to establish or disprove facts that are at issue. To determine if evidence is relevant and material, the I.O. must keep in mind what must be proved to "make" the case, then weigh the logical relationship and importance of that evidence to these ultimate propositions. Oral or documentary evidence may be presented at administrative proceedings, and all evidence that is competent, relevant, and material will ordinarily be accepted into the record of an administrative hearing.
- (1) Competent Evidence. Evidence is competent when it is admissible or is able to assist the trier of fact in determining questions of fact.
  - (2) Relevant Evidence. Evidence is relevant when it touches upon the issues involved.
  - (3) Material Evidence. Evidence is material when it has an effective influence or bearing on the issue in question.
- b. Logical Relevance. Logical relevance is the first essential to admissibility of all evidence. It is present when any two facts are so related to each other that, according to the common course of events, one, either taken by itself or in connection with other facts, proves or renders probable the past, present, or future existence or non-existence of the other. There similar acts are performed so frequently as to constitute a customary habit, they may be accepted as logically relevant to disprove an alleged act inconsistent with the habit, or to establish performance of a similar act. [NOTE: The reputation of a person for being reckless or careless is not admissible upon the question of his or her commission of a particular act of negligence.]
- c. Judicial Notice. The recognition of facts by a court as true without proof of evidence, because they are well known, easily ascertainable, or so related to the official character of the court that it is sensible to recognize them, is known as judicial notice. This relieves parties from the necessity of introducing evidence to prove main facts of the case or facts that are necessary or helpful in establishing a main fact. For example, the court may take notice that tuberculosis is contagious; however, it may be proved that a particular person did not know tuberculosis was contagious. Judicial notice may be objected to by any party adversely affected. It is generally wise to be prepared to assist the court when in doubt concerning judicial notice. The doctrine of judicial notice is both mandatory and permissive, as there is no uniform rule as to matter that is judicially noted. The court is bound to take judicial notice of facts of governmental concern, such as treaties, statutes, and the Constitution; matters relating to phenomena of nature; and other matters of universal recognition. It is customary

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- 1.G.3. c. (cont'd) for the court to take judicial notice of physical facts relating to the appearance, condition, location, and qualities of physical facts, objects, mental processes of mankind, and matters that have become nature under given conditions, and of scientific, historical, and geographical facts. The court may take further notice of other facts at its discretion. If doubt exists concerning judicial notice, the district legal officer should be consulted. [NOTE: This doctrine applies to S&R and other administrative proceedings in the same manner as to civil and criminal proceedings.]
- d. Documentary Evidence.
- (1) Definition. Documentary evidence includes all kinds of documents, records, and writings, and is subject to the same rules of evidence as is oral testimony. It must be competent, relevant, and material. It is divided into two classes: public and private documents. Public documents are the official records of legislative, judicial, and administrative bodies; all other documents are private.
  - (2) Admissibility. The admissibility of documentary evidence is subject to a wide variety of rules, most of which have many exceptions. Official records are admissible as evidence, sometimes for a limited purpose. However, this does not make any official correspondence admissible in a proceeding, and frequently official writings are properly excluded as hearsay. Sometimes, documents prepared in the subject's handwriting or bearing his or her signature, such as a fraudulent application for license, are strong, admissible evidence. On the other hand, a confession signed by the accused may not be admissible. Generally, the admissibility of a document depends on:
    - (a) The circumstances under which it was prepared;
    - (b) The degree of first-hand knowledge by its author;
    - (c) Whether its contents are objectionable according to the Rules of Evidence;
    - (d) Whether it is the best evidence available; and
    - (e) The point to be proved by its introduction into evidence.
  - (3) Determining Admissibility. The following routine steps can be taken to eliminate doubt concerning admissibility of documentary evidence:
    - (a) Collect all available documents, submitting them separately so that none will affect the others or damage part of the record. Then a document is introduced during

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- 1.G.3.d.(3)
- (a) (cont'd) a formal investigation, a witness having first-hand knowledge of the document should be called to identify it, describing it for the record by title, date, author, and addressee. It shall be appended to the record as a numbered exhibit, with the body of the record showing the number assigned.
  - (b) The I.O. must ensure that the document is the best of its kind available. The best document, of course, is the original itself. Microfilmed documents are admissible when satisfactorily identified, provided the originals have not been purposely destroyed to avoid being introduced as evidence. Next best is a properly certified photostatic or other facsimile copy. Least desirable is a certified typewritten copy. In making certified copies of documents, it should be borne in mind that the copy must be made from the original. A copy of a copy becomes documentary hearsay and must be avoided.

There are two familiar examples that are noteworthy. The first is the translation of a document. A translation is essentially a paraphrase of the original document. Although translations should be supplied whenever possible, they should always be accompanied by the original or certified copy. This is necessary because it is the original that actually speaks as evidence. The second example is the form used by many masters to furnish mariners who have been logged with a copy of the log entry. Caution should be exercised not to use a copy of this form as evidence, since this copy would be documentary hearsay. [NOTE: It should be remembered that the form itself can be made documentary evidence in its own right.]

e. Hearsay.

- (1) It is very important for the I.O. to know the legal "Hearsay Rule," which is applied strictly in all judicial proceedings. It should be recognized that hearsay evidence may be admissible in administrative hearings and accorded such weight as the circumstances warrant. "Hearsay" is any oral or written assertion (other than an admission by a party) that was not subject to cross-examination at the time when made, and which is offered in the proceeding as evidence of the facts asserted therein. In other words, it is "secondhand" evidence. The "Hearsay Rule" usually bars such information from being admitted over objection as evidence whenever the following elements are present:
  - (a) That the witness seeks to testify not as to what he or she personally saw or heard, but as to something that someone else (not a party to the proceeding) said or wrote;

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- 1.G.3.e.(1)
- (b) That the other person was not subject to cross-examination (by the party affected) at the time he or she said or wrote what he or she did; and
  - (c) That the statement is offered in evidence to prove the truth of the facts asserted therein.

Hearsay is objectionable because the party against whom it is used has no opportunity to test its truth by cross-examining the maker of this assertion in the presence of the fact finder and because, as second-hand information its reliability is reduced.

- (2) The evidentiary concept of hearsay should not be confused with a literal interpretation of the word; all evidence concerning what a witness heard is not [legally speaking] hearsay. For example, when a person is charged with having spoken certain words, the testimony of a witness to the effect that he or she heard the person charged speak those words is original evidence, not hearsay. In summary, where the fact in dispute is the making of a statement, not its truth or falsity, testimony that the statement was made is original evidence, and the "hearsay" rule does not apply.
  - (3) The ability to recognize hearsay evidence is important to the I.O. When confronted with any statement that might be hearsay, the I.O. must immediately ascertain the bases of the witness' knowledge. If the witness has no personal knowledge of the facts, and is merely repeating something stated by a third party, the I.O. should attempt to question that third party to ascertain the basis for his or her knowledge of the facts.
  - (4) The I.O. should never rest with hearsay evidence on any material point in the case if better evidence can be obtained. Yet, there are a number of exceptions to the hearsay rule. For example, records kept in the regular course of business, spontaneous outbursts, and dying declarations may be admissible, under certain conditions. A logbook entry itself is also an exception to the hearsay rule.
- f. "Expert" And "Opinion Evidence. Obtaining evidence from "expert" witnesses frequently raises the problem of "opinion" evidence. Generally speaking, witnesses may not testify as to their opinions or conclusions, but only to the facts upon which their conclusions are based. A major exception to the opinion evidence rule permits an expert to give an opinion on a particular set of facts or circumstances (e.g., a fingerprint expert). These experts are permitted to express opinions because they are considered particularly qualified to do so, in view of the complex, technical, and specialized nature of their experience. The I.O. must bear in

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1.G.3. f. (cont'd) mind that, when an expert witness is to be called, the Coast Guard must prove his or her experience and qualifications. The testimony of such witnesses is generally admissible because it is being given by them as experts, or because they are testifying from their own knowledge, based upon personal observations and activities. [NOTE: In cases involving merchant mariners, there is an important rule that any person who can testify as to the appearance, action, odor of breath, or observed drinking of a person may give an opinion as to his or her sobriety.]

g. Substantial Evidence. This has been defined by the courts as:

- (1) Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion;
- (2) Evidence of such quality and weight (which may be based upon circumstantial as well as direct evidence) as would be sufficient to justify a reasonable person in drawing the inference of fact that is sought to be sustained; and
- (3) Evidence that contains a quality of proof which makes a definite impression on reason.

Just because certain evidence permits two or more possible inferences to be drawn by a reasonable person, it does not necessarily follow that it is not substantial. Evidence is not substantial when a reasonable person must conclude that it does not establish the I.O.'s case. It must be evidence that is reasonably more than a scintilla, suspicion, or surmise, and more satisfying than hearsay or rumor.

h. Corroborating Evidence. This is evidence that is used to strengthen or make certain other evidence (e.g., a log entry corroborated by the testimony of a witness).

i. Circumstantial Evidence. This is evidence that tends to prove a fact in issue by proving circumstances which afford a basis for reasonable inference of the occurrence of the fact.

4. Presumptions. A presumption is an inference as to the existence of one fact, drawn from proof as to the existence of some other fact, that the law allows or requires to be drawn. In other words, when one fact is established by evidence, another connected fact is presumed to exist, without proof having to be made of the second fact. A presumption supplements evidence; it is not, itself, evidence. A party entitled to the benefit of a presumption is not required to present evidence to establish the presumed fact. In a situation where the subject of a proceeding is favored by a presumption, the I.O. must seek sufficient counter evidence to overcome the presumption.

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1.G.5. Admissions. Admissions constitute a very important class of testimonial evidence. They are generally admissible in evidence in both judicial and administrative proceedings. In S&R proceedings, 46 CFR 5.551 limits the use of admissions made by a respondent during a Coast Guard investigation conducted under 46 CFR 4 or 5 to impeachment. The "Hearsay Rule" does not affect their admissibility into evidence because the reason for the rule does not apply to them. Admissions are voluntary statements or acts of a party to the proceeding that:

- a. Were made outside the proceeding;
- b. Are materially contrary to his or her presumed interest in the proceeding (a finding of innocence);
- c. Are placed into evidence by an opposing party; or
- d. Are offered by the opposing party as confirmation of the alleged statement or act.

An admission carries its own guarantee of truth since, by its very nature, it would not have been made unless true.

6. Recollections. Recollection represents impressions originally received by the witness' observations. The discussion that follows has particular applicability to an I.O.'s reports and notes.

- a. Records Of Past Recollections. In proceedings, if a witness has no present recollection of a past act or event, and cannot revive his or her recollection by referring to a report or memorandum made of it at the time, a written report or memorandum recording the act or event may be admissible in evidence. A past recollection that has been recorded is admissible in evidence, absent any present recollection whatever of the act or event, provided that:
  - (1) The maker of the report or memorandum, testifying as a witness, must establish on the record, under appropriate questioning, the identity of the report;
  - (2) The report must have been made when the facts were fairly fresh in the witness' mind (i.e., as close as possible to the actual occurrence of the event);
  - (3) The witness must be able to testify that he or she believes the report to have been true and correct at the time it was written, either because the witness specifically remembers what he or she knew at the time, or because the witness' habit in such cases was to make accurate notes, relying on his or her identification of his or her handwriting, or other indications of correctness;

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- 1.G.6.a. (4) The report must concern matters of which he had personal knowledge; and
- (5) In offering a past recollection recorded, the original report must be produced, if procurable; if not available, an identical copy may be used.

These requirements dictate that the I.O. acquires a habit for correctness in preparing his or her reports. By adopting and following a proper procedure and practice, the I.O. will be assured of the admissibility of his or her reports at a future date, although it may be impossible to give oral testimony at that time from his or her own recollection. I.O.'s shall adopt the practice of writing their reports as soon as possible after the occurrence of the event and shall make their reports complete and correct in every respect.

- b. Present Recollection Refreshed. The legal rule as to "present recollection" has particular applicability to the I.O.'s notes. If the I.O., as a witness, avers a present recollection that might be refreshed and improved by reference to notes, those notes may be used to aid recollection. The I.O. may also use material that was written by someone else, at any time. However, he or she must be able to testify to recalling the act or event and demonstrate such recollection by other testimony. The "present recollection rule" is also important in regard to the testimony of a witness concerning events that occurred a long time before. Written statements should always be obtained from witnesses during an investigation; such statements, identified by the witness, are an excellent medium for refreshing his or her memory. If a statement has been taken in a foreign language through an interpreter and transcribed in English, it may be necessary to produce the interpreter at a subsequent hearing. When it is shown or anticipated that the statement will be challenged on the ground that it was not correctly interpreted, the interpreter must be available to testify to his or her knowledge of the language and to the correct interpretation of the statement when it was made.

7. Impeachment Of Witnesses.

- a. Introduction. This term refers to the process of discrediting a witness. The I.O. must be concerned with this process, particularly as a witness may be challenged for the purpose of diminishing his or her credibility on grounds of character. However, such matters ordinarily do not affect a witness' credibility to an extent that the entire testimony of the witness will have to be ignored. A witness, including the person charged when voluntarily testifying in his or her own behalf, may be impeached by proof of prior inconsistent statements, whether oral or written, made by him or her. However, before evidence of such inconsistent statements is admissible in evidence, a proper foundation must be established.

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- 1.G.7. a. (cont'd) Also, bias for/against a party to the proceeding or strong interest in the outcome strongly tend to discredit a witness and are appropriate subjects of inquiry for impeachment.
- b. Discrepancies. In both judicial and administrative proceedings, a witness' reputation for veracity is a pertinent avenue of challenge for impeachment purposes. Questioning of a witness with a view to impeachment is often directed toward showing his or her conviction of a crime affecting his or her veracity, or other matters tending to show disinclination to speak truthfully when under oath. A prior conviction for perjury is particularly pertinent; also, gross discrepancies on important points will tend to discredit the witness. However, a witness who is shown to have lied under oath on one occasion is not necessarily discredited completely, nor do minor discrepancies necessarily discredit the witness completely. The fact that a witness is sometimes confused or contradictory affects the weight of his or her testimony, not his or her competency. It is to be expected that an honest witness, in speaking of a past event, will not repeatedly reproduce his or her testimony completely and unchanged. Nor does variation in the recollections of a number of people necessarily damage one's credibility (indeed, if a number of witnesses agree exactly in their testimony as to the details of some event, collusion may be suspected).
8. Burden Of Proof And Burden Of Proceeding. In every case, there is a burden of proof and a burden of proceeding. The burden of proof is used in a double sense. It is the duty of the person alleging a case to prove it, and it is also the duty of one party or the other to introduce evidence to disprove it. For the Coast Guard, the burden of proof is always the I.O.'s duty to prove his or her case. The burden of proceeding does shift after the I.O. has made his or her prima facie case, as it becomes the duty of the person charged to produce his or her rebuttal evidence. [NOTE: If the evidence is evenly balanced, and if at the conclusion the case is in exactly the position as it was in the beginning, then it must go against the party who has the burden of proof.] In administrative proceedings initiated by the Coast Guard, the burden of proof is not "proof beyond a reasonable doubt," but that which is sufficient to indicate reasonably that the alleged acts or statements were committed. The sufficiency of the evidence to discharge the burden of proof depends not upon the number of witnesses, but upon the convincing quality of the testimony given.
- H. Transcription Of Records.
1. Policy.
- a. Time Of Proceedings. All proceedings shall begin promptly at the appointed time and are set on standard time, unless specified otherwise. The I.O. should require the reporter to be present in the designated room at least 15 minutes prior to the time set for the proceedings to ensure adequate preparation.

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- 1.H.1. b. Presiding Officer And Reporter. The presiding officer is the ALJ, marine board chairman, president, I.O., or officer so designated. The reporter shall, unless otherwise directed, report to the presiding officer at the time and place of the proceedings. The reporter shall be governed, at all times, by the instructions of the presiding officer in matters concerning the composition of the record, including exhibits and attachments, adjournment to other times and places, and all matters of like character. During the proceedings, the reporter shall be subject to the instructions of the presiding officer, much the same as a reporter in a court is subject to the instructions of the court.
- c. Reporting Of All Speech. Everything spoken during the proceedings must be reported, unless the presiding officer directs otherwise during the course of the proceedings. If the presiding officer says, "It will be stricken," or words to that effect, those words and the direction to strike them shall remain in the record. Only if the presiding officer directs those words or phrases to be expunged shall they be left out of the transcript. If any other party says, "Off the record," the reporter shall be guided by the instructions of the presiding officer only.
- d. Form Of Record. The record shall be typewritten. Each page shall be numbered in the space provided in the lower right hand corner. Only 1 side of the paper shall be used, leaving a margin of 1 inch on the left, 1/2 inch on the right, and 1 inch at the top and bottom of each page.
2. Contents Of The Transcript. Transcripts of the proceedings (or portions thereof) are made only upon the direction of the presiding officer or the Commandant (G-MMI). Proceedings of S&R hearings are generally transcribed only if the respondent has appealed his or her case to the Commandant and has requested a copy of the transcript. An Official Transcript of Proceedings will consist of the following items in the order given. [NOTE: Items marked with an asterisk (\*) are applicable to S&R proceedings.]
- a. Cover Sheet, numbered page i.
  - b. Index of Witnesses, numbered page ii, iii, etc.
  - c. Index of Exhibits, numbered page viii, etc.
  - d. Appearance page, numbered 1, 1a, 1b, etc.
  - e. Record, numbered page 2, 3, etc.
  - f. Reporter's Certificate, last numbered page(s).
  - g. \*Copy of the ALJ's written Decision and Order with appeal information attached.

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- 1.H.2. h. \*Copy of Charge Sheet. [NOTE: A copy of the charge sheet is forwarded with the original appeal and the officer in charge, marine inspection (OCMI) blue copy is placed in the unit investigation department's appeal file.]
- i. Motions or briefs (if any) filed with the presiding officer proposed findings of fact and conclusions, and any other pertinent correspondence.
- j. Rulings on motions.
- k. \*Merchant Marine Personnel Record (MERMARPER) (Telex original) or prior record affidavit, if not made an exhibit during the proceedings. [NOTE: If the presiding officer has not made a decision of a matter proved on the record during the proceedings, but does so by letter at a later time before making his or her final decision and order, the MERMARPER or Prior Record Affidavit shall be placed in the transcript with all correspondence relating thereto.]
- l. \*Notice of Appeal and any correspondence forwarding the notice to the ALJ.
- m. \*Authorization to issue a temporary license or document (if any).
- n. \*Copy of temporary document(s), if issued. [NOTE: Any pertinent correspondence, other than that described above, shall be placed after the copy of the temporary document in chronological order.]
- o. Exhibits (original exhibits attached to original appeal record; copies of exhibits attached to copies of appeal record).
3. Cover Sheets And Bindings. A cover sheet shall be prefixed to each volume of the record. The cover sheet should identify the case; the place, date, and time of the proceedings; the number of pages (per volume); and the Coast Guard district and port where the proceedings were held. The cover sheet should also be marked, near the lower margin, "Vol. 1 of 12, etc. At the end of each volume of the record, following all appended documents, a heavy blank sheet shall be added to protect the record. See Figures 1-5 and 1-6 for examples of typical cover sheets. All transcribed pages of the record must be securely bound together on the left margin (book style). When the record is long, it shall be bound in volumes, each not exceeding 250 pages and terminating at the conclusion of an individual witness' testimony. Small transcripts may be bound with staples and masking tape to cover the staples. ACCO fasteners or similar types may be used for thicker transcripts. Exhibits should be placed in file-size envelopes and marked by exhibit number and title or a short description of the exhibit.

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UNITED STATES COAST GUARD  
EIGHTH COAST GUARD DISTRICT

In the Matter of:

THE MARINE BOARD OF INVESTIGATION  
INTO THE COLLISION OF THE S/S  
FROSTA AND THE M/V GEORGE PRINCE  
ON 20 JANUARY 1988 AT MILE 120.8,  
LOWER MISSISSIPPI RIVER

. . . Pursuant to Notice, the above-  
entitled investigation commenced at 0900,  
c.s.t., on Saturday, 23 January 1988, at  
the U.S. Coast Guard Marine Inspection  
Office, 23rd Floor, 1440 Canal Street,  
New Orleans, Louisiana,

B E F O R E:

REAR ADMIRAL WILLIAM P. DAVIS, USCG,  
Chairman;  
CAPTAIN JAMES M. DUKE, USCG;  
CAPTAIN RONALD D. THOMAS, USCG,  
Members,  
and  
COMMANDER PETER C. LAWRENCE, USCG,  
Member and Recorder.

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UNITED STATES OF AMERICA;  
UNITED STATES COAST GUARD  
vs.

DOCKET NO. 8-349-RLB-77

License 123456 and  
Merchant Mariner's Document  
222-44-5555

CASE NO. 16722/6159

Issued to JOHN SMITH,  
Respondent.

Place: Houston, Texas

Date: 12 April 1988

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EIGHTH COAST GUARD DISTRICT

HOUSTON, TEXAS

## MARINE SAFETY MANUAL

- 1.H.4. Indexes For Lengthy Records. If the transcript of a proceeding exceeds 20 pages in length, it shall be preceded by an index showing on which page each step of the investigation is recorded. This will consist of the names of witnesses, attachments, and exhibits. In preparing the index of witnesses, the appropriate heading shall be indicated (e.g. U.S. COAST GUARD, RESPONDENT, CHAIRMAN, or JUDGE, and the names of the witnesses for the respective parties). The surname of the witness shall be inserted first, followed by his or her initials or his or her given name (e.g., Smith, John J.); the word "resumed" shall be inserted after the name in the event that the witness has previously appeared for the particular party as a witness, or after a recess. In preparing an index of exhibits, the appropriate heading shall be indicated (e.g., U.S. COAST GUARD, RESPONDENT, CHAIRMAN, or JUDGE); and the exhibit number, in the order marked for each heading. If one of these headings does not have an exhibit, insert the word "None" under the heading. Under the heading Description, a brief description of the exhibit shall be given; and in parenthesis the number of pages it contains. Under the heading Identification, the page number of the transcript on which the exhibit was marked for identification shall be indicated. Under the heading In Evidence, the page number of the transcript on which the exhibit was marked in evidence shall be indicated. See Figure 1-7 for an example of an Index of Witnesses, and Figure 1-8 for an example of an Index of Exhibits.
5. Appearance Page. The appearance page immediately follows the Index of Witnesses and the Index of Exhibits and shall contain the title of the case; the docket number; the case number; the place, date, and time of the proceedings; the presiding officer; and all appearances. It shall be numbered page 1, 1a, etc. See Figure 1-9 for an example of an appearance page. [NOTE: An appearance page must be made for each day of the proceedings.]
6. Information Concerning The Record. See Figure 1-10 for a sample of the transcript for a marine board or formal investigation. See Figure 1-11 for a sample of the transcript for an S&R hearing. The first page of the proceedings transcript is entitled PROCEEDINGS and is numbered page 2 of the transcript. This portion of the volume(s) shall contain the entire verbatim transcript of the record and must be numbered consecutively.

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15 August 1988

<u>WITNESSES FOR:</u>	<u>EXAMINATION</u>				<u>EXAMINATION</u>
	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>	<u>BY</u>
<u>U.S. COAST GUARD</u>					<u>JUDGE/BOARD</u>

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(Resumed)

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16 August 1988 (Cont'd)

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VOLUME VI

16 August 1988 (Cont'd)

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DOCKET: NO. 8-349-RLB-77

1 UNITED STATES OF AMERICA;  
2 UNITED STATES COAST GUARD

3 vs.

4 License 123456 and  
5 Merchant Mariner's Document  
6 222-44-5555

7 Issued to JOHN SMITH,  
8 Respondent.

Rm. 225, Appraiser's Store Bldg.  
7300 Wingate Street  
Houston, Texas 77011  
12 January 1988

9  
10 Met, pursuant to notice, at 10:00 a.m.

11 BEFORE:

12 THOMAS E. P. MC ELLIGOTT, Administrative Law Judge

13 APPEARANCES:

14 LTJG R. A. KNEE, USCG  
15 Investigating Officer

16 JAMES L. WALKER, Esq.  
17 Fulbright & Jaworski

18 Bank of the Southwest Bldg.  
19 Houston, Texas 77002

(Representing the Respondent/Parties In Interest)

20 JOHN SMITH, Respondent

21 (NOTE: If the Respondent/Party In Interest has no representative,  
22 the following is placed in lieu of the above:

23 JOHN SMITH, Respondent/Party In Interest  
24 (Appearing in his own behalf))  
25  
26

TRANSCRIPT FOR MARINE BOARD OR FORMAL INVESTIGATION

P R O C E E D I N G S

1  
2 0900, 22 January 1988

3           RADM MOREAU: Good morning, ladies and gentlemen. I am RADM James W.  
4 Moreau, Commander, 14th Coast Guard District, Honolulu, Hawaii. I have been  
5 directed to serve as Chairman of this Marine Board of Investigation, which has  
6 been convened by the Commandant of the Coast Guard under the authority of  
7 Title 46 U.S.C. 6301 and Title 46 CFR Part 4, to investigate the circumstances  
8 involving the explosion and fire aboard the SS VISION in Los Angeles Harbor,  
9 California, on 17 January 1988. The officer on my right is CAPT James A. Takson,  
10 who is attached to the Office of Marine Safety, Security and Environmental  
11 Protection at Coast Guard Headquarters, Washington DC. The officer to his right  
12 is LCDR Ron N. Roussel who is attached to the Coast Guard Marine Inspection  
13 Office, San Diego, California. He is also serving as Recorder.  
14

15           CAPT Takson, LCDR Roussel, and I will make up the composition of this  
16 Marine Board of Investigation. The Board will submit its report of findings,  
17 conclusions, and recommendations to the Commandant of the Coast Guard.  
18

19           Present at this investigation is Mr. Luigi A. Colucci, representing the  
20 National Transportation Safety Board. He is seated to my left. The National  
21 Transportation Safety Board is also charged with the responsibility for the  
22 determination of cause or probable cause of a major casualty under the  
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1 provisions of Section 304(a)(1)(E) of the Independent Safety  
2 Board Act of 1974. For this reason the Safety Board  
3 representative will participate fully in this investigation  
4 and may make recommendations about the scope of the  
5 investigation, may call and examine witnesses, and may  
6 submit or request additional evidence.

7 I would like to request the cooperation of all persons  
8 present to minimize any disruptive influence on the proceedings  
9 in general and on the witnesses in particular. Smoking will  
10 be prohibited. Photography, including television cameras,  
11 will only be permitted during this opening statement and  
12 during recess periods. The members of the press are, of  
13 course, welcome, and an area has been set aside for your use  
14 during the proceedings. All cameras shall be removed from  
15 the room following this statement. The news media may  
16 question witnesses concerning the testimony that they have  
17 given after they have been released by the Chairman. It is  
18 requested that such interviews be conducted outside this  
19 room.

20 This investigation is intended to determine the cause of  
21 the casualty to the extent possible and the responsibility  
22 therefor, subject to final review and approval by the Commandant  
23 of the U.S. Coast Guard, and to obtain information for the  
24 purpose of preventing or reducing the effects of similar  
25 casualties in the future. This investigation is also intended  
26 to determine if there is evidence that any incompetence,

1 misconduct, unskillfulness, or willful violation of the law  
2 on the part of any licensed officer, pilot, seaman, employee,  
3 owner, or agent of such owner of any vessel involved or any  
4 inspector, officer of the Coast Guard, or other officer or  
5 employee of the United States, or any other person, caused or  
6 contributed to the cause of this casualty; or if there is  
7 evidence that any act in violation of any of the provisions  
8 of the United States Code or any of the regulations  
9 issued thereunder was committed. All parties in interest  
10 have a statutory right to be present, to be represented by  
11 counsel, to cross-examine, and to have witnesses called in  
12 their behalf. Witnesses who are not parties in interest may  
13 be assisted by counsel for the purpose of advising them  
14 concerning their rights; however, such counsels are not  
15 permitted to examine or cross-examine other witnesses or  
16 otherwise participate. All witnesses will be examined under  
17 oath. When testifying under oath, a witness is subject to the  
18 Federal laws and penalties for perjury for making false statements  
19 under 18 U.S.C. 1001. This Board is also empowered to  
20 recognize any commendatory actions by persons involved, and to  
21 make appropriate recommendations in this regard.

22 The following individuals and firms have been designated  
23 as parties in interest: Barracuda Tanker Corporation, the  
24 owner of the VISION; Hendy International Company, agent  
25 and operator, VISION; Captain Pete Barone, Master of the  
26 VISION; C. Gugliat a, Chief Officer, VISION; D. Rubertis,

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Chief, Engineer, VISION; and Union Oil Company of California. A person is a party in interest by reason of his position or his part in the casualty. He is not necessarily suspected of wrongdoing. Parties in interest are those who, under the existing facts or because of their position, may, in any way, be responsible for or have contributed to the casualty. A person is named a party in interest so that he may have an opportunity to protect himself if facts develop that are adverse in nature to him. A party in interest may be named during the course of this investigation if it appears that he may, in any way, have been responsible for or may have contributed to the cause of the casualty. Additional parties in interest may be named if, during the course of the investigation, such designation is indicated.

The sources of information into which this Board will inquire are many and varied. The investigation resources of the Coast Guard have made attempts to locate every available piece of information having a pertinent bearing on the casualty.

This Board will hear all such evidence. Should any person have or believe he has information not adduced but which might be of direct significance, that person is urged to communicate such information to the recorder.

At this time I would like to ask that all of you stand for a moment of silence in respect to those persons who have been lost as a result of this casualty.

(All present stand.)

This concludes the opening statement. Thank you for your attention. I will give the representatives of the media an opportunity to ask me a few questions at this time.

Following a ten minute recess the recorder will call the first witness.

-----

0935, 22 January 1988

RAADM MOREAU: The Board will come to order. Mr. Roussel, will you proceed.

LCDR ROUSSEL: At this time I would like to have appearances for the record. Would counsel for parties in interest please identify themselves.

MR. MACLAUGHLIN: My name is Francis J. MacLaughlin and I'm with the firm of Lillick, McHose, and Charles. I represent each of the named parties in interest.

LCDR ROUSSEL: I will call the first witness, Mr. Clemente Gugliotta.

Clemente Gugliotta was called as a witness by the Board, and having first been duly sworn, was examined and testified as follows:

Direct Examination

By LCDR ROUSSEL:

Q. Please state and spell your name.

A. Clemente Gugliotta, C-l-e-m-e-n-t-e G-u-g-l-i-o-t-t-a.

Q. What is your address?

TRANSCRIPT FOR AN S&R HEARING

P R O C E E D I N G S

1  
2 ADMINISTRATIVE LAW JUDGE: Good morning, gentlemen. Let  
3 the record show we are opening the hearing in the matter of the  
4 U.S. Coast Guard vs. the License No. 123456 and Merchant  
5 Mariner's Document No. 222-44-5555 issued to John Smith,  
6 Respondent.

7 Let the record show today is 12 January 1988, and the  
8 time is now 10:00 a.m.

9 We will take formal appearances on the record at this  
10 time.

11 INVESTIGATING OFFICER: Lieutenant (junior grade) R. A.  
12 Knee, Investigating Officer, Marine Inspection, Houston, Texas.

13 MR. WALKER: James L. Walker, Fulbright & Jaworski,  
14 appearing on behalf of the Respondent, John Smith.

15 JUDGE: Let the record show that the reporter has been  
16 previously sworn. The hearing is being reported by means  
17 of stenotype equipment. The reporter is instructed that no part  
18 of the hearing will be transcribed or released to any person  
19 except on the express authority and direction of the Administrative  
20 Law Judge or the Commandant.

21 -----

22 INVESTIGATING OFFICER: First of all, I will introduce  
23 an Affidavit of Service stating that on the date that I charged  
24 Mr. Jones that he was apprised of his rights.

25 JUDGE: An objection, Counselor?

26 MR. WALKER: No objection.

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JUDGE: Mark it into evidence as Exhibit 1.

(The Affidavit of Service was  
marked for identification and  
received in evidence as U.S.  
Coast Guard's Exhibit No. 1.)

INVESTIGATING OFFICER: I would like to introduce the  
CG-2692 for the SS UBANKS into evidence.

JUDGE: The CG-2692 for the SS UBANKS will be marked  
for identification as the U.S. Coast Guard's Exhibit No. 2.

(The CG-2692 for the SS UBANKS was  
marked for identification as the  
U.S. Coast Guard's Exhibit No. 2.)

INVESTIGATING OFFICER: Thank you, Your Honor.

-----

INVESTIGATING OFFICER: I would like to call Mr. Tom  
Jones to the stand.

Thereupon,

TOM R. JONES

was called as a witness by the U.S. Coast Guard, and having  
first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE INVESTIGATING OFFICER:

Q. Mr. Jones, are you the master of the vessel SS UBANKS?

A. Yes, sir.

INVESTIGATING OFFICER: Your Honor, I would like this  
exhibit identified as our Exhibit No. 2 to be marked into

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evidence at this time.

JUDGE: The exhibit previously marked as the U.S. Coast Guard's Exhibit No. 2 shall be marked received into evidence.

(The CG-2692 for the SS UBANKS previously marked for identification was received into evidence as the U.S. Coast Guard's Exhibit No. 2.)

JUDGE: You may proceed.

BY THE INVESTIGATING OFFICER:

Q. -----

A. -----

JUDGE: -----

THE WITNESS: -----

JUDGE: -----

THE WITNESS: -----

BY THE INVESTIGATING OFFICER:

Q. -----

A. -----

JUDGE: Just your best estimate.

A. -----

Q. -----

A. -----

INVESTIGATING OFFICER: That's all I have at this time.

JUDGE: Any cross examination, Counselor?

MR. WALKER: Yes, Your Honor. I have just a few.

CROSS EXAMINATION

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BY MR. WALKER:

Q. -----

A. -----

Q. -----

A. -----

MR. WALKER: Your Honor, may we have a discussion off the record?

JUDGE: Surely. Off the record.

(There was discussion off the record.)

JUDGE: On the record.

BY MR. WALKER:

Q. -----

A. -----

Q. -----

A. -----

MR. WALKER: That's all the questions I have at this time, Your Honor.

JUDGE: I think this would be a good time to take a short recess. We will resume in five minutes.

(A recess was taken.)

JUDGE: Let the record show we are resuming and all parties are present who were present before. Please take the stand again, Mr. Jones. You are reminded that you are still under oath.

TOM R. JONES

resumed the stand and testified further as follows:

JUDGE: Mr. Knee, do you have any redirect of this witness?

INVESTIGATING OFFICER: Not at the moment.

JUDGE: I believe I have some questions of this witness.

EXAMINATION

BY THE JUDGE:

Q. -----

A. -----

Q. -----

A. -----

Q. -----

A. -----

JUDGE: Does anyone have any further questions of this witness?

MR. WALKER: Yes, I do, Your Honor.

JUDGE: Please proceed.

RE-CROSS EXAMINATION

BY MR. WALKER:

Q. -----

A. -----

Q. -----

A. -----

1 MR. WALKER: May I have the last question and answer  
read back, please?

2 JUDGE: Read the last question and answer, please.

3 (The last question and answer were read.)

4 OR

5 (The last question and answer were read as follows:

6 "Q. Tell us when the casualty occurred.

7 "A. At 9:00 o'clock in the evening, I believe,  
8 is when the casualty occurred, according to the log.")

9 MR. WALKER: That's all, Your Honor.

10 JUDGE: Any redirect?

11 INVESTIGATING OFFICER: Yes, just one question, Your Honor.

12  
13 REDIRECT EXAMINATION

14 BY THE INVESTIGATING OFFICER:

15 Q. -----

16 A. -----

17 INVESTIGATING OFFICER: That's all I have.

18 JUDGE: Is there anything else that you might want to  
19 all that is relevant to this incident that has not been asked  
20 of you?

21 THE WITNESS: Not that I can recall.

22 JUDGE: Very well. You are excused.

23 (The witness was excused.)

24 -----

25 INVESTIGATING OFFICER: Your Honor, at this time I'd  
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like to offer into evidence the original deck bell book of the SS UBANKS. I would prefer that the original be marked for substitution and a photocopy made, as the vessel is not at the end of its voyage and would like to retain the original deck bell book.

JUDGE: Very well. The original deck bell book will be marked for identification and received in evidence as the next Coast Guard Exhibit No. 5, with substitution authorized.

(The deck bell book of the SS UBANKS was marked for identification and received in evidence as the U.S. Coast Guard's Exhibit No. 5, with substitution authorized.)

JUDGE: Gentlemen, I think this would be a good time to take a lunch break. We will adjourn until 1:00 o'clock this afternoon.

(Whereupon, at 12:00 noon, an adjournment was taken until 1:00 p.m., this day.)

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AFTERNOON SESSION

1:00

ADMINISTRATIVE LAW JUDGE: Good afternoon, gentlemen.  
The hearing will come to order.

Let the record reflect that all parties are present  
who were present this morning.

Is the Investigating Officer ready to proceed?

INVESTIGATING OFFICER: Yes, Your Honor.

JUDGE: Is the Respondent ready to proceed?

MR. WALKER: Yes, we are, Your Honor.

JUDGE: Please proceed.

MR. WALKER: I'd like to call the Respondent,  
Mr. Smith, to testify in his own behalf.

JUDGE: All right. Mr. Smith, would you please take  
the stand and raise your right hand.

Thereupon,

JOHN SMITH

was called as a witness in his own behalf, and having first been  
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q. -----

A. -----

Q. -----

A. -----

MR. WALKER: That's all I have at the moment, Your Honor.

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JUDGE: Any cross examination?

INVESTIGATING OFFICER: Yes, Your Honor.

CROSS EXAMINATION

BY THE INVESTIGATING OFFICER:

Q. -----

A. -----

Q. -----

A. -----

Q. -----

A. -----

INVESTIGATING OFFICER: That's all I have.

JUDGE: Any redirect?

MR. WALKER: Just one, Your Honor.

REDIRECT EXAMINATION

BY MR. WALKER:

Q. -----

A. -----

JUDGE: -----

THE WITNESS: -----

JUDGE: -----

THE WITNESS: -----

BY MR. WALKER:

Q. -----

A. -----

MR. WALKER: I believe that's all we have, Your Honor

JUDGE: Any recross examination of this witness?

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INVESTIGATING OFFICER: No, Your Honor.

JUDGE: All right. Mr. Smith, you are excused as a witness.

(The witness was excused.)

JUDGE: Do you have anything further, Mr. Smith, you with to say?

RESPONDENT: No, sir, Your Honor.

JUDGE: Please proceed with your case, Counsel.

MR. WALKER: Your Honor, at this time I would like to call a witness who was not able to be here earlier at our sessions of the hearing. He speaks very little English and I have taken it upon myself to provide an interpreter, Mr. A. B. Garcia.

JUDGE: Very well. Please proceed.

MR. WALKER: I would like to call Mr. Jose Lopez Reyes to the stand, Your Honor.

JUDGE: Mr. Garcia, I will swear you in first and then Mr. Reyes.

(A. B. GARCIA was duly sworn to interpret English into Spanish and Spanish into English to the best of his ability.) Thereupon,

JOSE LOPEZ REYES

having been called as a witness in behalf of the Respondent and having first been duly sworn, was examined and testified through the interpreter as follows:

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DIRECT EXAMINATION

BY MR. WALKER:

(The questions were interpreted to the witness in Spanish and the answers thereto being given by the witness in Spanish.)

Q. -----

A. -----

Q. -----

A. -----

(NOTE: A witness may testify through an interpreter, but occasionally give an answer in English. The following format may be used:)

Q. -----

A. (In English) -----

Q. -----

A. -----

Q. -----

A. (In English) -----

(NOTE: An interpreter may be present in case the witness is unable to express himself in English. The witness may testify for the most part in English, but occasionally give an answer through the interpreter.

The following format may be used:)

Q. -----

A. (Through the Interpreter) -----

Q. -----

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A. -----

Q. -----

A. (Through the Interpreter) -----

MR. WALKER: That's all I have, Your Honor.

JUDGE: Any cross examination?

INVESTIGATING OFFICER: No, Your Honor.

JUDGE: Very well. You are excused, Mr. Reyes.

(The witness was excused.)

JUDGE: Do you rest your case, Mr. Walker?

MR. WALKER: Yes, Your Honor.

INVESTIGATING OFFICER: We rest also, Your Honor.

JUDGE: Very well. Are there any closing arguments?

INVESTIGATING OFFICER: Yes, Your Honor. -----

MR. WALKER: -----

JUDGE: Gentlemen, I am ready to render an oral  
decision on the record. -----

All right, gentlemen. We will close the hearing at  
this time.

(Whereupon, at 4:00 o'clock p.m., the hearing was closed.)

MARINE SAFETY MANUAL

- 1.H.6. a. Adjournment. Should the presiding officer mistakenly remark that the hearing is "closed," the word "adjourned" should be substituted, as the word "closed" should be used only at the termination of the final session in the proceedings. Proceedings are closed only by declaration of the presiding officer. When applicable, the key word used by the presiding officer should be repeated in the parenthetical remarks (e.g., adjourned, recessed, or closed).
- b. Parenthetical Entries. Parenthetical phrases for the marking of exhibits and excusing of witnesses shall start in the center of the page and continue to the right margin. [NOTE: Complete English sentences are used in parenthetical remarks; as in "(A recess was taken.)," "(There was discussion off the record.)," and "(The witness was excused)."] There is a group of parenthetical remarks that rarely, if ever, occur in transcripts. It consists of a word or phrase immediately following a transcribed sentence but within a paragraph. The most frequent words in this group are "(Laughter)" and "(Applause)." The first letter is capitalized so that the parenthetical remark will be set off more obviously from the main body of the sentence. The participants in proceedings routinely hand each other documents without the need for parenthetical remarks. Either they say on the record that they are handing something to another, or the handing is of no concern to the reader. However, there are two occasions when a parenthetical remark is necessary when something is handed from one person to the other.
- (1) A request or a direction is made for the handing of a paper, and the paper is then handed silently; or
  - (2) The witness answers a question, the questioning attorney hands the witness a paper without saying that the attorney is doing so, and then the witness changes his or her answer. Without a parenthetical remark, the reader would have no clue as to the reason for the change in the witness' answer. A question may require a witness, in the course of testimony, to point to a spot on a photograph or chart, indicate a certain distance, or demonstrate a certain action. If the witness does so without speaking, the following parentheticals should be used:  
  
A "(The witness indicated.)"  
A "(The witness demonstrated.)"  
A "(The witness marked the photograph.)"

MARINE SAFETY MANUAL

1.H.6. b. (cont'd) These parenthetical remarks note only that the witness indicated, demonstrated, or marked the photograph. The reporter should never presume in a parenthetical remark to specify any height or distance a witness may have indicated, the manner in which a witness may have demonstrated, or the part of an exhibit that may have been marked. If a witness says, "It hurt me here," no parenthetical remark should be added. An attorney or the presiding officer will sometimes add the comment, "Indicating the left shoulder," or "Indicating the head." Even if no one makes a comment on the record to clarify a vague answer, the reporter should not make presumptions. An error on the reporter's part may be an influence on one of the parties concerned, with no way of correcting the error later. There is no need for the parenthetical remark "(Interrupting)" in a reporter's transcript. When one speaker is interrupted by another in midsentence, a dash shall be put at the end of the interrupted remark. Also, there is no need for the parenthetical remark "(Continuing)" in the reporter's transcript. [NOTE: A dash is also used to note a change of thought in midsentence of the person speaking.] Likewise, there is no need for the parenthetical remark "(Reading)" in a transcript. The quotation marks that surround a direct quote make it absolutely clear that something is being read, and the marks are far less cumbersome than "(Reading)."

c. Reading Back. When indicating that portions of questions and/or answers were read back, there are some simple ways of noting this parenthetically, such as:

- (1) "(The last question was read.)"
- (2) "(The last question and answer were read.)"
- (3) "(The last two questions and the intervening answer were read.)"
- (4) "(The next to the last question and answer were read.)"
- (5) "(The last sentence of the last answer was read.)"

When indicating the reading back of previous questions and/or answers, the first line quoted shall be indented 15 spaces; each subsequent line of the question/answer shall be indented 5 spaces (see page 1-62 of Figure 1-11, line 6). Some reporters merely note "(The testimony was read.)" or "(The record was read.)". These notes can be unnecessarily vague. The reporter should be more specific if possible, for example "(The pending question was read.)". This is satisfactory if the pending question is clearly identifiable and not too far back in the transcript. If both of these conditions are not met, the following is better: "(The testimony was read as follows:"

MARINE SAFETY MANUAL

1.H.6. c. (cont'd)

Q Tell us the circumstances of the arrest.

A At 9:00 o'clock in the evening -

Q Which evening is this? Was it the evening of December 24th?

A Thursday evening, December 24th.)"

If the testimony read back is close to some convenient point, the parenthetical remark may be greatly simplified, for example, "(The first three questions and answers of the examination of Mr. Roberts were read.)" or "(The last two questions and answers before the marking of Respondent's Exhibit B were read)." Parenthetical phrases used for marking exhibits and excusing witnesses shall start in the center of the page and run to the right margin.

d. Marking For Identification. For an example of an exhibit marked for identification only, see-page 1-58 of Figure 1-11, line 10. For an example of an exhibit previously marked for identification and subsequently received in evidence, see page 1-59 of Figure 1-11, line 5. For an example of an exhibit marked for identification and received in evidence at the same time, see page 1-58 of Figure 1-11, line 2. For an example of an exhibit marked for identification and received in evidence at the same time with substitution authorized, see page 1-63 of Figure 1-11, line 9.

e. Breaks In Testimony. When the examination of a witness is interrupted by a recess during the day, for a noon lunch break, or at the end of the day, the following format is used:

"Thereupon, JOHN JACKSON resumed the stand and testified further as follows:  
DIRECT EXAMINATION (Continued)."

f. Use Of Interpreter.

(1) When an interpreter's services are used, the following parenthetical phrase is used:

"(A. B. GARCIA was duly sworn to interpret English into Spanish, and Spanish into English to the best of his ability.)"

"Thereupon, JOSE LOPEZ REYES, having been called as a witness by the U.S. Coast Guard and having first been duly sworn, was examined and testified through the interpreter as follows:"

MARINE SAFETY MANUAL

- 1.H.6.f. (1) (cont'd) A witness may testify through an interpreter, but occasionally may give an answer in English. (See page 1-67 of Figure 1-11, line 10 for a sample of the proper format.) An interpreter may be present in case the witness is unable to speak English. The witness may testify for the most part in English, but occasionally may give an answer through the interpreter. (See page 1-67 of Figure 1-11, line 19 for the proper format.)
- (2) Other practices:
- (a) Occasionally, one of the parties will read questions and answers from previous proceedings or from statements or depositions. The first line of the question or answer quoted shall be indented 15 spaces, and each subsequent line shall be indented 5 spaces (see page 1-62 of Figure 1-11, line 7).
  - (b) When the proceeding is interrupted at noon or for lunch, the afternoon session shall begin on the next numbered page (see page 1-64 of Figure 1-11).
  - (c) Titles in full shall be used at all times in the transcript (e.g., Administrative Law Judge or Judge, Chairman, Board Member, Investigating Officer, Respondent, or The Witness [not Witness]). The only exception is Mr. Smith, not Counsel. An individual, once sworn, then becomes The Witness and remains such until excused as a witness, at which time the individual becomes "Mr. Jones." This, of course, applies only to such times as the witness is talking in the form of colloquy.

7. Exhibits.

- a. Marking. The marking of exhibits is an important part of the record and therefore must be understood. Exhibits merely marked for identification shall be stamped and shall remain in the custody of the submitting party until received in evidence. All exhibits shall contain the following information when appropriate:

10 EX \_\_\_ R EX \_\_\_ JUDGE/BOARD EX \_\_\_  
Re: \_\_\_\_\_  
For ID \_\_\_ Admitted \_\_\_ Date \_\_\_\_\_  
Substitution authorized \_\_\_\_\_

When an exhibit is received in evidence, or identified and rejected, it immediately goes into the custody of the presiding officer and remains in custody until final disposition is made. If, at any time, the exhibit is removed from the custody of the presiding officer, a signed receipt shall be substituted therefore, and

MARINE SAFETY MANUAL

1.H.7. a. (cont'd) inserted in the place reserved for that particular exhibit. (See Figure 1-12 for a sample exhibit receipt and worksheet.) Exhibits referred to in the record of proceedings shall be numbered or lettered by the reporter at the time of marking for identification, or marking for identification and receipt into evidence. They shall be marked as follows:

- (1) A single series of consecutive numbers for the U.S. Coast Guard;
- (2) A single series of consecutive capital letters for the respondent and parties in interest; and
- (3) \*A single series of Roman numerals for the presiding judge (\* only for S&R proceedings).

A single series of numbers or letters shall be used for the entire proceedings, regardless of the number, duration, or places of the proceedings. If exhibits in a particular hearing are, by direction of the presiding officer, made a part of the record in another proceeding, such exhibits shall be marked, stamped, recorded, and indexed, in regular sequence among the exhibits of the record into which they are incorporated, without damage to the original markings. A single series of numbers or letters shall be used for all exhibits whether marked for identification, introduced without previous marking for identification, or marked for identification and later introduced and received. The transcript shall reflect the offering of exhibits to be marked for identification and the receipt of exhibits in evidence in the record. The exhibit referred to in the transcript shall be stamped by the reporter on the face of the exhibit in the lower right-hand corner, if possible; otherwise, it shall be stamped where there is available space on the face of the exhibit. If there is no space on the face of the exhibit, the stamp will be placed on the back of the exhibit. Each page of the exhibit shall be marked.

- b. Authentication. Authentication of exhibits must be completed by the reporter before exhibits are forwarded or surrendered to the presiding officer, counsel, or either party. On physical exhibits, such as glassware, film, or metal, that cannot be legibly and permanently stamped or marked upon their surfaces, the reporter shall affix to each such exhibit an adhesive tape surface that is large enough to receive proper authentication and identification. On exhibits consisting of bolts, nuts, revolvers, or knives, the reporter shall place the exhibit stamp on a tag and affix the tag to the exhibit, preferably by wire.
- c. Real/Physical Evidence. This is rarely necessary for inclusion into the record in casualty investigations. In most cases, photos, reports, or other documentary descriptions of such evidence is adequate for inclusion into the record. The evidence may then be returned to its owner or be otherwise legally disposed of.

MARINE SAFETY MANUAL  
FIGURE 1-12  
SAMPLE EXHIBIT RECEIPT AND WORKSHEET

CASE NO. \_\_\_\_\_ DOCKET NO. \_\_\_\_\_  
RESPONDENT \_\_\_\_\_  
LICENSE AND/OR MMD NO. \_\_\_\_\_

Date Charged \_\_\_\_\_ Pre-Hearing Conference  
Time - \_\_\_\_\_ Date \_\_\_\_\_

Hearing(s) - Date(s):	Time: <u>Opened</u>	<u>Closed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
		Total Hours _____

Motions: USCG \_\_\_\_\_ R \_\_\_\_\_

EXHIBITS: (Description and number of pages)

IO 1 _____	R A _____
2 _____	B _____
3 _____	C _____
4 _____	D _____
5 _____	E _____

ALJ I _____	Received for by:
II _____	_____
III _____	_____
IV _____	_____
V _____	_____

Witnesses:	Appearances:
_____	_____
_____	_____

Briefs (if any)  
\_\_\_\_\_  
\_\_\_\_\_

MARINE SAFETY MANUAL

- 1.H.7. d. Small Exhibits. When small documentary exhibits, such as newspaper clippings or photographs, are too small to receive the stamp of authentication, or when the stamp would obliterate any wording or printing, the exhibit shall be securely mounted on a letter-size sheet of bond paper. The fully completed stamp shall be placed on the mounting sheet, but the exhibit itself shall also be marked with the identifying number.
- e. Large Exhibits. A large exhibit such as a chart that must be folded in order to attach it to the record shall be marked on the face of the chart, but will also be marked on the folded portion of the chart as the preceding page is lifted, so that the exhibit may be identified readily without the necessity of unfolding. If possible, the chart should be cut to a size showing only the required information. In this case, the chart number and date, along with the chart correction information, shall be printed on the face of the chart.
- f. Multi-Page Exhibits. When an exhibit consists of more than one separate sheet of paper (i.e., two or more pages of a letter or two or more parts of an article) each sheet, piece, or part shall be marked showing the number of the exhibit of which it is a part. For example, the first page is marked "10," the second "10-A," and the third "10-B." For exhibits consisting of more than 26 pages, sheets, pieces, or parts, and when the alphabet has been entirely used, the 27th and subsequent pages or parts of the exhibit shall be marked by the addition of a number to the letter "Z" (e.g., "10-Z-2" and "10-Z-3.") The letters "AA," "BB," etc., shall not be used.
- g. Transmittal Of Exhibits. Unless otherwise directed, exhibits shall be transmitted at the same time as the record of proceedings, whether in the same volume or in separate volumes. If any exhibits are not attached to the record (i.e., too large or classified) a memorandum shall be inserted in the appropriate place, giving the full identification data of the exhibit and stating that it is being forwarded under separate cover.
8. Reporter's Certificate. The reporter's certificate shall be executed by the reporter and shall be attached to the transcript of proceedings of an investigation (or deposition) as the final numbered page(s) (see Figure 1-13).

SAMPLE REPORTER'S CERTIFICATE

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UNITED STATES OF AMERICA;  
UNITED STATES COAST GUARD  
vs.  
License 123456 and  
Merchant Mariners's Document  
222-44-5555  
Issued to JOHN SMITH,  
Respondent.

I, PEGGY A. TRAYLOR, an officially designated and qualified  
(Reporter, Shorthand Reporter, Reporting Stenographer or Court  
Reporter, as appropriate) of the United States Coast Guard,  
hereby certify that the foregoing proceedings were taken by me  
and transcribed by me, and is a true record of the testimony of  
all witnesses, and of the proceedings herein contained.

I further certify that there is no interest attached, either  
financially or by virtue of relationship with any party hereto,  
on my part.

---

PEGGY A. TRAYLOR  
Shorthand Reporter  
U.S. Coast Guard

MARINE SAFETY MANUAL

- 1.H.9. Depositions And Interrogatories. These may be oral or written, or a combination of both. Depositions are statements made by a witness, and interrogatories are questions asked of a witness unable to appear at a session of the proceedings, by parties to the proceedings. They are transcribed the same way as that of the proceedings of which they are a result, with the following exceptions:
- a. The Cover Sheet denotes that it is a deposition of a particular witness in lieu of a hearing or investigation (see Figure 1-14).
  - b. The Index contains only the page numbers of the testimony and attachments thereto (if any), and the exhibits that are made a part of the testimony (if any) (see Figure 1-15).
  - c. The Appearance Page denotes that it is a deposition and the name of the witness(es) to be deposed (see Figure 1-16).
  - d. The depositions and interrogatories do not have direct and cross-examination, but merely a notation of whom the examination is made by. (See Figure 1-17 for a sample of the format for an oral deposition, and Figure 1-18 for a sample of the format for a written interrogatory.)
  - e. Parenthetical remarks are made when the witness is not available to sign a deposition, written interrogatory, or sworn statement. Should the witness be sailing or otherwise unavailable for signature, the instrument can be completed and forwarded to the appropriate requesting officer; however, signatures should be obtained if possible. A parenthetical notation beginning at the center of the page to the effect that the reading and signing of the instrument was waived, should be added at the end of the deposition (see page 1-87 of Figure 1-18, line 24).
  - f. The reporter's certificate is altered to show the name of the witness being deposed (see Figure 1-19).
  - g. In taking depositions or written interrogatories, the presiding officer is required to sign a certificate. (See Figure 1-20 for the format of a certificate signed by a judge, and Figure 1-21 for the format of a certificate signed by an officer.)
  - h. In the event the deposition is a combination of both written questions and oral questions, both formats on Figures 1-17 and 1-18 shall be utilized.
10. Sworn Statements. Sworn statements have no Cover Sheet, Appearance, or Contents page, unless there are attorneys present, in which case an Appearance page is necessary. A reporter's or presiding officer's certificate is not required. Only the notation that the statement was sworn to and subscribed before the officer who affixes his or her signature to the last page of the statement is necessary (see page 1-83 of Figure 1-17).

SAMPLE DEPOSITION COVER SHEET

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OFFICIAL TRANSCRIPT OF PROCEEDINGS

DEPOSITION OF JOHN JACKSON

UNITED STATES OF AMERICA

UNITED STATES COAST GUARD

vs.

DOCKET NO.

License No. 123456 and

CASE NO.

Merchant Mariner's Document

No. 222-44-5555

Issued to JOHN SMITH,

Respondent.

Place: Houston, Texas

Date: 2 February 1988

Pages 1 to 7

EIGHTH COAST GUARD DISTRICT

HOUSTON, TEXAS

SAMPLE DEPOSITION INDEX

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C O N T E N T S

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Testimony, John Jackson	2
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Order for Taking Deposition	
Application for Taking of Deposition	
Direct Interrogatories	
Cross Interrogatories (if any)	
Subpoena (es) (if any used)	

E X H I B I T S

<u>U.S. COAST GUARD</u>	<u>Description</u>	<u>Identification</u>	<u>In Evidence</u>
(if any)			

RESPONDENT/PARTIES IN INTEREST

(if any)

SAMPLE DEPOSITION APPEARANCE PAGE

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UNITED STATES OF AMERICA;

UNITED STATES COAST GUARD

vs.

License 123456 and

Merchant Mariner's Document

222-44-5555

Issued to JOHN SMITH,

Respondent.

Rm. 225, Appraiser's Store Bldg.

7300 Wingate Street

Houston, Texas 77011

2 February 1988

Deposition of JOHN JACKSON, pursuant to Order of  
Administrative Law Judge, New York, New York/Chairman, Marine  
Board of Investigation dated 13 January 1988, in the above-  
entitled action, before Honorable T. E. P. McElligott/CDR D. E.  
Zed, commencing at 10 a.m., on Tuesday, 2 February 1988.

APPEARANCES:

On behalf of the United States Coast Guard:

LT I. KNOWELL, USCG (if represented)

On behalf of the Respondent:

I. COUNSELWELL, Esq. (if represented)

JOHN SMITH, Respondent (if present)

JOHN JACKSON, Deponent



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Thereupon,

JOHN JACKSON

having been called as a witness by the U.S. Coast Guard and  
having first been duly sworn, was examined and testified as  
follows:

EXAMINATION

BY THE INVESTIGATING OFFICER:

Q. -----  
A. -----  
Q. -----  
A. -----

INVESTIGATING OFFICER: That's all I have, Your Honor.

JUDGE: Any cross examination?

MR. COUNSELWELL: Yes, Your Honor. (or RESPONDENT)

JUDGE: Please proceed.

EXAMINATION

BY MR. COUNSELWELL: (or RESPONDENT)

Q. -----  
A. -----  
Q. -----  
A. -----  
Q. -----  
A. -----

MR. COUNSELWELL: (or RESPONDENT) That's all I have.

JUDGE: I believe I have one or two questions, just  
to clear the record.

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EXAMINATION

BY THE JUDGE:

Q. -----

A. -----

Q. -----

A. -----

Q. -----

A. -----

Q. -----

A. -----

(NOTE: If examination by the judge is lengthy, the foregoing Q and A format is used in lieu of the colloquy format used below when examination is brief.)

JUDGE: -----

THE WITNESS: -----

JUDGE: -----

THE WITNESS: -----

-----

JUDGE: Mr. Jackson, as you have requested, we will prepare the transcript of this proceeding and notify you when it is ready for you to examine and make any changes you deem.

There being nothing further, we will close the deposition at this time.

(Whereupon, at 10:40 o'clock a.m., the deposition was closed.)

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JOHN JACKSON

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_  
1988.

\_\_\_\_\_

I. KNOWELL, LT

United States Coast Guard

(OR)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_  
1988.

\_\_\_\_\_

THOMAS E. P. MCELLIGOTT

ADMINISTRATIVE LAW JUDGE

Houston, Texas

SAMPLE WRITTEN DEPOSITION

P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE: Good morning, gentlemen.

The matter of taking the deposition as duly ordered in the hearing held in New York, involving the matter of the U.S. Coast Guard vs. License No. 123456 and Merchant Mariner's Document No. 222-44-5555, issued to John Smith, is now open. The direction for taking the deposition of the subject witness is set forth in an order by the Administrative Law Judge, New York. Said order will be incorporated into the record by reference thereto.

Let the record show that the date is 2 February 1988, and the time is now 1000 hours or 10:00 a.m. The reporter has been previously sworn and the evidence is being recorded by means of stenotype equipment.

Are you the gentleman that received the subpoena today for this deposition?

MR. JACKSON: Yes, sir.

JUDGE: Would you kindly stand and raise your right hand.

Thereupon,

JOHN JACKSON

having been called as a witness by the U.S. Coast Guard and having first been duly sworn, was examined and testified as follows;

JUDGE: The court reporter should append a copy of the subpoena to the record showing his signature as having been served this date in Houston, Texas, to Mr. Jackson.

1 Mr. Jackson, do you have your merchant mariner's  
2 document with you today?

3 THE WITNESS: Yes, sir.

4 JUDGE: May I see it, please, so that I may read it  
5 into the record.

6 Let the record show that Mr. Jackson has produced a  
7 U.S. Merchant Mariner's Document No. Z-1201156, issued to John  
8 Jackson, giving his date of birth as 1942 in Ohio, USA. His  
9 address at the time of issue was 20 Parker Street, Charleston,  
10 Massachusetts. It contains his picture in what appears to be  
11 a Coast Guard uniform. The front side contains his signature  
12 and is stamped "validated for emergency service." It indicates  
13 his height as 5'11"; weight, 165 pounds; fair complexion; brown  
14 eyes; and brown hair. It indicates his Social Security No. 292-  
15 35-3622, and that it was issued by the U.S. Coast Guard at the  
16 port of Boston, Massachusetts on June 22, 1968.

17 It's endorsed for any unlicensed rating in the engine  
18 department, lifeboatman and ordinary seaman.

19 I will return your document to you at this time.

20 Mr. Jackson, we have questions that were put by the  
21 Coast Guard officer and the attorney representing the Respondent,  
22 Mr. Smith, in a case involving his license and merchant mariner's  
23 document. I will first ask you the direct interrogatories  
24 propounded by the U.S. Coast Guard officer and, secondly, the  
25 questions or cross interrogatories propounded by the Respondent's  
26 counsel. Please answer the questions fully and completely and to

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the point. If you do not understand the question, I will reread the question upon request.

DIRECT INTERROGATORIES TO BE PROPOUNDED ON BEHALF OF THE U.S. COAST GUARD BY ADMINISTRATIVE LAW JUDGE MC ELLIGOTT:

1. For the record, please state your full name and address.

A John Jackson.

2. -----

A -----

3. -----

A -----

4. -----

A Please repeat that question again.

4. -----

A -----

5. -----

A -----

JUDGE: That's the end of the direct interrogatories by the Coast Guard. Now, I'm going to ask you the question or cross interrogatories proposed by the Respondent's counsel.

CROSS INTERROGATORIES PROPOUNDED ON BEHALF OF THE RESPONDENT BY ADMINISTRATIVE LAW JUDGE MC ELLIGOTT:

1. -----

A -----

2. -----

A -----

1 JUDGE: Mr. Jackson, that concludes the questions  
2 proposed by both sides in this matter.

3 The regulations provide that a formal transcript be  
4 prepared of all the testimony you have just presented. Further,  
5 you have the right to review and examine that evidence as  
6 formally prepared and make any change as to form or substance,  
7 accompanying that change with pertinent reasons therefor, as set  
8 forth in 46 Code of Federal Regulations 5.20-140(f).

9 Now, do you wish to stand by and examine the prepared  
10 transcript of the record, or do you wish to have the record stand  
11 as you have testified and waive your right of signature?

12 THE WITNESS: I will waive my right to sign and let  
13 the record stand as I have testified.

14 JUDGE: Very well. Do you have anything else that you  
15 think you would like to add that you think is important or relevant  
16 to this testimony.

17 THE WITNESS: No, I don't.

18 JUDGE: All right. The subpoena as served upon you  
19 has been duly spent in this matter and the deposition is now  
20 closed.

21 You are excused as a witness, Mr. Jackson.

22 (The witness was excused.)

23 (Whereupon, at 11:00 o'clock a.m., the deposition was closed.)

24 (Reading and signing of the deposition  
25 was waived by the witness.)  
26

SAMPLE REPORTER'S CERTIFICATE FOR DEPOSITION

1 UNITED STATES OF AMERICA;

2 UNITED STATES COAST GUARD

3 vs.

4 License 123456 and

DOCKET NO.

5 Merchant Mariners's Document

CASE NO.

6 222-44-5555

7 Issued to JOHN SMITH,

8 Respondent.

9  
10 I, PEGGY A. TRAYLOR, an officially designated and qualified  
11 (Reporter, Shorthand Reporter, Reporting Stenographer or Court  
12 Reporter, as appropriate) of the United States Coast Guard,  
13 hereby certify that the foregoing proceedings were taken by me  
14 and transcribed by me, and is a true record of the testimony of  
15 JOHN JACKSON, Deponent, and of the proceedings herein contained.

16 I further certify that there is no interest attached,  
17 either financially or by virtue of relationship with any party  
18 hereto, on my part.

19  
20 \_\_\_\_\_  
21 PEGGY A. TRAYLOR

22 Shorthand Reporter

23 U.S. Coast Guard  
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SAMPLE JUDGE'S CERTIFICATE

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UNITED STATES OF AMERICA;

UNITED STATES COAST GUARD

vs.

LICENSE NO. 123456 and

DOCKET NO.

Merchant Mariner's Document

CASE NO.

No. 222-44-5555

Issued to JOHN SMITH,

Respondent.

I, THOMAS E. P. MC ELLIGOTT, Administrative Law Judge, Houston, Texas, do hereby certify that, pursuant to notice of taking deposition, there came before me on the 2nd day of February, A.D., 1988, at 10:00 o'clock a.m., at 7300 Wingate Street, Houston, Texas, the following named person, to wit, JOHN JACKSON, who was by me duly sworn to testify the whole truth and nothing but the truth of his knowledge touching and concerning the interrogatories and cross interrogatories (questions) propounded to him, and he was examined upon his examination being taken down stenographically by Peggy A. Traylor, and transcribed by said individual (or under her direction).

I further certify that I have retained said deposition for the purpose of sealing and forwarding to the Administrative Law Judge presiding in the above-entitled matter, pursuant to his order.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day  
of \_\_\_\_\_ 1988.

\_\_\_\_\_

THOMAS E. P. MC ELLIGOTT

ADMINISTRATIVE LAW JUDGE

Houston, Texas

SAMPLE OFFICER'S CERTIFICATE

1 UNITED STATES OF AMERICA;

2 UNITED STATES COAST GUARD

3 vs.

4 LICENSE NO. 123456 and

5 Merchant Mariner's Document

6 No. 222-44-5555

7 Issued to JOHN SMITH,

8 Respondent.

9 I, I. KNOWELL, a commissioned officer in the U.S. Coast Guard, do  
10 hereby certify that, pursuant to notice of taking deposition, there  
11 came before me on the 2nd day of February, A.D., 1988, at 10:00 o'clock  
12 a.m., at 7300 Wingate Street, Houston, Texas, the following named person,  
13 to wit, JOHN JACKSON, who was by me duly sworn to testify the whole truth  
14 and nothing but the truth of his knowledge touching and concerning the  
15 interrogatories and cross interrogatories (questions) propounded to him,  
16 and he was examined upon his oath, his examination being taken down  
17 stenographically by Peggy A. Traylor and transcribed by said individual  
18 (or, under her direction).

19 I further certify that I have retained said deposition for the purpose  
20 of sealing and forwarding to the Administrative Law Judge presiding in the  
21 above-entitled matter, pursuant to his order.

22 IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_  
23 day of \_\_\_\_\_ 1988.

24 \_\_\_\_\_  
25 I. KNOWELL, LT

26 United States Coast Guard

MARINE SAFETY MANUAL

- 1.H.11. Corrections To Records, Depositions, And Sworn Statements. The hearing record is to be transcribed verbatim. Should an error of a substantive nature be noted in the record, the presiding officer shall make the necessary correction(s) to the record. This is done only if, after checking the record, it is in fact found to be in error. Grammatical errors, colloquialisms, or slang expressions used by a witness should be transcribed exactly as stated by the witness. Phonetic spellings of uncommon words may be used. A witness who desires to make corrections to a deposition, written interrogatory, or sworn statement shall draw a line through the information to be corrected with a pen, so as not to make it illegible. The witness then shall legibly print the new information above the lined-out information, initialing each correction and the bottom of each page in the right-hand corner, to indicate that he or she has read each page. Upon completion of the transcription of an official record, deposition, written interrogatory, or sworn statement, it is sometimes noted that a page number is repeated or inadvertently omitted. Should a page number be repeated, the second page of the same number should have the letter "a" placed after the page number. If a page number is omitted, a notation to that effect should be placed at the bottom of the previously numbered page close to the page number (e.g., "(Page 126 omitted.)"). Interjections in the record such as "hum," "aha," "ah," "ahem," or "pew," are to be avoided in the transcription of the record as they needlessly clutter the record. However, the following interjections are included in the record as they indicate a definite answer: uh-huh" (meaning yes); "uh-uh" (meaning no); and "huh?" (meaning the question or answer was not heard or understood).
12. Disposition Of Records. The disposition of records shall be with COMDTINST M5212.12 (series), Paperwork Management Manual or HQINST M5212.6 (series), Headquarters Records Control Manual.
13. References. Although most experienced reporters are familiar with the terminology used by the marine industry in the course of their activities, the following publications are excellent reference material that should be used for guidance:
- a. U.S. Government Printing Office Style Manual, GPO;
  - b. Word Division, Supplement to Government Printing Office Style Manual, GPO;
  - c. Black's Law Dictionary, West Publishing Co.;
  - d. The Coastguardsman's Manual, Naval Institute Press;
  - e. A nautical dictionary;
  - f. A medical dictionary; and

MARINE SAFETY MANUAL

- 1.H.13. g. A slang or colloquial dictionary.  
These publications can aid not only the reporter, but I.O.'s and other marine safety personnel as well.
14. Conferences. Conference transcripts are headed by subject and specific persons speaking to each subject (see Figure 1-22).

SAMPLE CONFERENCE TRANSCRIPT

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UNITED STATES COAST GUARD

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MARINE SAFETY MANUAL

1 UNITED STATES COAST GUARD  
2 CONFERENCE  
3 OF  
4 OFFICERS IN CHARGE, MERCHANT MARINE SAFETY

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6 Second Coast Guard District  
7 1430 Olive St.  
8 St. Louis, MO 63103-2398

9 The Conference convened at 0900, CAPT E. F. GEE, USCG,  
10 Commander (m), Second Coast Guard District presiding.

11  
12 PRESENT:

13 RADM D. E. EFF, USCG, Commander, CGDTWO

14 CAPT E. F. GEE, USCG, CCGDTWO (m)

15 CAPT F. G. AITCH, USCG, CCGDONE (m)

16 CAPT G. H. AYE, USCG, CCGDFIVE (m)

17 CAPT J. K. ELL, USCG, CCGDEIGHT (m)

18 CAPT K. L. EM, USCG, CCGDNINE (m)

19 CAPT M. N. OH, USCG, CCGDELEVEN (m)

20 CAPT N. O. PEA, USCG, CCGDTHIRTEEN (m)

21 CAPT P. Q. ARE, USCG, CCGDFOURTEEN (m)

22 CAPT Q. R. ESS, USCG, CCGDSEVENTEEN (m)

23 LT S. T. YOU, USCG, Recorder  
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P R O C E E D I N G S

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2       RADM EFF: Good morning, gentlemen. Welcome to  
3 St. Louis. -----

4       (Laughter)

5       CAPT GEE: We will open our conference with our first  
6 subject, "Investigations."

7                   I N V E S T I G A T I O N S

8       CAPT DEE: -----

9       CAPT AITCH: -----

10       CAPT ELL: -----

11       CAPT GEE: The next subject will be -----

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13                   P L E A S U R E   B O A T I N G

14       CAPT -----

15       CAPT -----

16       CAPT -----

17       (Whereupon, the Conference recessed at 1200, to reconvene  
18 at 1300, the same day.)

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AFTERNOON SESSION

CAPT GEE: -----

CAPT DEE: -----

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(Whereupon, the Conference adjourned at 1600 to reconvene  
at 0900, Monday 9 August 1988.)

OR

Whereupon, at 1600 hours, the Conference was ended.)

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CHAPTER 2. PERSONNEL INVESTIGATIONS - PROCEDURES AGAINST LICENSES AND DOCUMENTS

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### CHAPTER 2. PERSONNEL INVESTIGATIONS - PROCEDURES AGAINST LICENSES AND DOCUMENTS

A. General. Violations by personnel of statutes and regulations enforced by the Coast Guard can result in criminal or civil penalties taken against the person and/or administrative proceedings (or alternative action) against merchant mariners' credentials (MMCs) issued to the person by the Coast Guard. Enforcement tools available to the Officer in Charge, Marine Inspection (OCMI) are discussed in Volume I, Commandant Instruction (COMDTINST) M16000.6 (Chapter 4). Procedures for processing civil penalty violations and evidence of criminal violations are contained in Chapter 5 of COMDTINST M16000.6. This chapter provides policy guidance concerning action against MMCs. The basic authority to initiate suspension and revocation (S&R) proceedings is derived from 46 U.S.C. Chapter 77. This authorizes action against a mariner who while acting under the authority of his or her MMCs commit acts of incompetence, misconduct, negligence, or violations of laws or regulations which are intended to promote marine safety or to protect navigable waters. 46 U.S.C. 7704 also allows for S&R proceedings against mariners who have convictions for a dangerous drug law violation, or have been shown to be a user of, or addicted to the use of dangerous drugs whether acting under the authority of their MMCs or not. Personnel investigations are conducted to promote safety on the high seas and the navigable waters of the United States, and to prevent or mitigate personnel related hazards to life, property, and the marine environment. Alternative actions concerning MMCs include voluntary surrender agreements, voluntary deposit agreements, good-faith deposits, settlement agreements, and letters of warning.

#### 1. Definitions.

- a. Merchant Mariners' Credentials (MMCs). Any license, Certificate of Registry (COR), or Merchant Mariner Document (MMD) issued by the Coast Guard authorizing service on vessels, as required by various statutes and regulations.
- b. Mariner. Any person who has been issued MMCs by the Coast Guard.
- c. Suspension And Revocation (S&R) Proceedings. Proceedings against MMCs under the authority of 46 U.S.C. Chapter 77.

2. Disciplinary Concerns. It is not the intent of the Coast Guard to use S&R proceedings to maintain discipline on merchant vessels. Only if a disciplinary problem constitutes a hazard to life, property, or the environment will S&R proceedings be contemplated.

3. Jurisdiction. Jurisdiction to initiate S&R action against MMCs must be established in one of two ways. The first is through the existence of evidence that a mariner, while acting under the authority of his or her MMCs, has committed an act of incompetence, misconduct, or negligence; or has violated or failed to comply with a provision of, or regulation issued under, Subtitle II of Title 46 U.S.C.; or has violated or failed to comply with any law or regulation intended to promote marine safety or to protect navigable waters. The second is through the existence of evidence that a mariner has either been convicted of violating a dangerous drug law of the United States or of any State within the past 10 years; or has ever been a user of, or addicted to, a dangerous drug.

3. a. Acting Under Authority Of MMCs. As defined in 46 CFR 5.57(a), a person employed in the service of a vessel is considered to be acting under the authority of his or her MMCs when the holding of MMCs is

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- A.3. a. (cont'd) either required by law or regulation, or is required by an employer as a condition of employment. See subparagraph 2.D.7.b. below for special circumstances in cases involving pilots. A mariner continues to act under the authority of his or her MMCs during periods of time away from the ship while in the service of the vessel. A mariner also acts under authority of his or her MMCs when engaged in official matters related to those credentials, including such acts as applying for renewal of his or her MMCs, taking examinations for upgrading or endorsements, requesting duplicate or replacement credentials, appearing at a suspension and revocation hearing, etc. The Coast Guard maintains jurisdiction over a mariner with expired MMCs because our S&R proceedings are taken against the mariner's entitlement to those MMCs. The act of applying for original MMCs is therefore not an action performed under the authority, since the application precedes the issuance of the credential. See Appeal Decisions 2025, 2062, and 2131.
- b. Violation Of Narcotic Drug Law/Use Or Addiction To Dangerous Drug. There is no requirement to show that a seaman was acting under the authority of his or her MMCs to prove charges of violation of narcotic drug law or use/addiction to dangerous drugs. The Investigating Officer (IO) need only prove that one of the offenses under 46 U.S.C. 7704(b) and/or (c) occurred, that the seaman was duly issued credentials at the time of such an offense, and the offense occurred within the last 10 years.
4. Public Vessels. A "public vessel" is defined in 46 U.S.C. 2101(24) as a vessel that is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and is not engaged in commercial service. A public vessel of the United States is not subject to Coast Guard inspection, and is exempt from certain other navigation and vessel inspection requirements (except vessels owned, operated, or controlled by the Department of Transportation (DOT), as per 46 U.S.C. 2109. However, a mariner hired to serve on a public vessel on the condition that he or she holds MMCs is subject to S&R proceedings. The Commandant has signed an Inspection and Certification Agreement with the Commander, Military Sealift Command (MSC), and the U.S. Army Corps of Engineers (COE) concerning disciplinary actions against merchant mariners serving on board MSC and COE vessels. The Coast Guard has authority to conduct S&R proceedings against a civil service or contract crewmember when possession of MMCs was a condition of employment.
5. Fraudulent Application. Any MMCs issued upon submission of false information are void: See Appeal Decision 2025. When a fraudulent application results in the issuance of original MMCs, the credential is considered void and may be recovered without the process of an Administrative Hearing. Under 18 U.S.C. 1001 intentionally false or fraudulent statements or representations made in any matter within the jurisdiction of any department or agency of the United States are punishable by a \$10,000 fine or 5 years' imprisonment, or both. Such cases can be forwarded to the district commander with a recommendation for referral to the local U.S. attorney.
6. Intoxication. 33 CFR 95:055 provides penalties for individuals who are intoxicated while operating a vessel. 46 CFR 4.05-12 further requires that marine casualty reports include information on whether or not the

- 2.A.6. (cont'd) use of alcohol contributed to a casualty. Additionally, 46 CFR 16.240 requires drug and alcohol tests be conducted on individuals involved in serious marine incidents.
- a. Intoxication Standards. 33 CFR 95, sets intoxication standards based on blood alcohol concentration (BAC) levels and/or observed behavior; defines what constitutes reasonable cause for chemical testing of individuals, and establishes certain operating rules for commercial marine personnel serving aboard inspected vessels.
  - b. Detection of Intoxication Incidents. The marine employer is responsible for the detection and reduction of incidents involving intoxicated operators aboard commercial vessels. CCMIs, and Captain of the Ports (COTP) should review the evidence that marine employers submit of intoxication in a timely manner. If the submitted evidence is inadequate to support civil penalties or S&R proceedings, the marine employer should be informed of specific discrepancies discovered so that adequate evidence is presented in future situations.
  - c. Enforcement. The OCMI or COTP have discretion on whether to decide if enforcement action should be initiated. Voyages shall be terminated by use of COTP orders or OCMI termination letters, unless there is another operator who is capable and properly licensed to operate the vessel. Civil penalties and/or S&R proceedings are appropriate for first offenses and threats to marine safety. Revocation is sought in those cases where severe injury or death occurs, or when the mariner is a repeat offender.
7. Labor-Management Disputes. IOs should not become involved in labor/management conflicts. If a contractual infraction did not affect the safety of the passengers, crew, vessel, marine environment, or national security, action against MMCs should not ordinarily be taken. This policy requires OCMI's and their department heads to remember that Coast Guard officers should not place themselves in roles as labor/management arbitrators. See 46 CFR 5.71; Appeal Decision 2470 (Giachetti).
8. Failure To Obey. Whenever the basis of a complaint is refusal or failure to obey an order, the evidence should show that the order was not in the nature of a request, that it was properly communicated to the person charged, that it was lawful, and that it was directly connected with the safe operations of the vessel.
9. Absence Over Leave (AOL). Absence Without Leave (AWOL). And Failure To Join. S&R proceedings should be brought for these offenses only when it can be established that the absence of the charged mariner created a situation in which the safety of the vessel, passengers, crew, or marine environment was adversely affected. The fact that the absence created a crew shortage below the complement required by the Certificate of Inspection (COI) usually establishes such an adverse effect. Whether the ship was in a foreign or domestic port does not itself determine the effect.
10. Oil Pollution Incidents. A personnel investigation shall be conducted in all instances when the actions or nonactions of a mariner apparently caused or contributed to the cause of an oil pollution incident (see paragraph 2.D.7.a below).

2.A.11. Use Of Narcotics And Other Dangerous Drugs. Each instance shall be handled according to its merits (see subparagraph 2.D.6.a.(8) and 2.D.6.e below).

B. Investigations Pertaining To MMCs.

1. Initial Activities.

- a. Receiving Information. All proper complaints received shall be immediately investigated, regardless of the source of the complaint. During any type of investigation, the IOs function is to obtain all of the available facts. The IO should not, under any circumstances, be influenced by the interests of any particular person or group. In cases where an IO is personally involved in an incident which requires investigation, the involved officer may serve as a witness, but shall not conduct the investigation nor represent the Coast Guard at the hearing.
- b. Creation Of Personnel Case Files. A personnel case file shall be created if a complaint is made against an individual possessing MMCs, and during any investigation when possible action against MMCs is indicated. [NOTE: An entry in a vessel's Official Logbook does not necessarily require the creation of a case file.
- c. Transfer Of Jurisdiction. During the initial phase of an investigation, it may become apparent that necessary information is available outside the jurisdiction of the local Marine Safety Office (MSO) or Marine Inspection Office (MIO). Generally, such information can be obtained by the local MSO or MIO for the appropriate marine inspection zone and forwarded to the IO conducting the investigation. However, if it is determined that all of the information needed is located in another zone and that anticipated Coast Guard action will be taken there, the investigation may be transferred to that zone. See subparagraph 2.C.10.
- d. Closing An Investigation Without Action. A case file should be closed when:
  - (1) Information indicates that the complaint is unwarranted, or that no further action need be taken by the Coast Guard; or
  - (2) When a complete investigation fails to produce evidence sufficient to prove a charge at an administrative hearing.In such cases, the investigation is closed locally by a written memorandum to file.
- e. Marine Safety Information System (MSIS). MSIS Transaction Guides are within the COMDTINST M5230 series and should be used, as appropriate, for personnel investigation activities.

2. Processing Complaints.

- a. Agency And Industry Complaints. Occasionally, adverse information regarding persons possessing MMCs will be received from the Department of State (DOS), Federal Bureau of Investigation (FBI), the U.S. Customs Service, or from state and local authorities. Receipt of the information should be considered a "complaint" and

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- 2.B.2. a. (cont'd) investigated to determine what action is deemed appropriate. Effective liaison should be maintained with other Coast Guard units, federal, state, and local law enforcement agencies, as well as industry managers, shipping agents, maritime unions, marina operators, and the public. All complaints received from these sources shall be investigated.
- b. Official Logbook Entries. One source of complaints will be official logbooks. Coast Guard marine safety personnel should take every opportunity to examine vessel logs when on board a commercial vessel. In this regard, liaison with shipping agents and local company representatives can be beneficial alerting investigative personnel to shipboard problems and arrange visits to arriving vessels. Official logbooks are required to be maintained as specified in 46 U.S.C. 11301. Additional guidance is provided in the official logbook (Form CG 706B) and Navigation and Vessel Inspection Circular (NVIC) 1-86.
- c. Written Complaints. Receipt of any letter of complaint concerning a mariner is sufficient reason to commence a personnel investigation. A written acknowledgment of receipt shall be made as soon as practicable.
- d. Telephoned Complaints: A telephoned complaint is sufficient to commence a personnel investigation. If possible, the identity of the caller should be noted by the IO and the information received verified by written correspondence.
- e. Disclosure Of Defects and Protection of Informants. The value of identifying and reporting hazardous or unsafe conditions to the Coast Guard has long been recognized. Under 46 U.S.C. 3315 Coast Guard personnel are prohibited from disclosing, except as authorized by the Secretary, the name of a licensed individual who reports vessel defects or imperfections in matters subject to regulations and inspections. This nondisclosure policy has for some time been extended to unlicensed persons as well. Additionally, 46 U.S.C. 2114 protects seaman from recrimination for notifying the Coast Guard of unsafe conditions or practices.
- f. Advance Notice Of Complaint. Rapport with local maritime managers should enable IOs to obtain information concerning personnel complaints before the vessel arrives in port. The IO need not wait for a formal request from the master or other vessel personnel before commencing an investigation, and should be ready to proceed upon the vessel's arrival.
3. Developing Information.
- a. Initial Resources. Upon receipt of a complaint, sufficient information should be obtained to determine the proper method and scope of investigation. Locator/Wanted Lists should be checked in all cases. If a verbal complaint is received, probing questions may be sufficient. If the complaint is written, review of local files, Communications with Headquarters, and other activities may be helpful in generating sufficient information. The information initially received will determine what equipment the IO will need for further investigation. A notebook is always necessary, and sufficient copies of standard investigation forms should be available at all times. On some occasions, a portable tape recorder or camera may be necessary.

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- 2.B.3. b. Additional Resources. If initial investigation indicates possible S&R action against MMCs, available additional information and evidence should be obtained as quickly as possible. The information contained in official logbooks and Shipping Articles, for instance, is considered a minimal resource to be supplemented with statements from prospective witnesses, diagrams, photographs, etc. This supplemental information should be obtained even though it may not be used as evidence in subsequent actions. In very serious or complex cases, or instances of possible protracted delay before final action, statements signed under oath should be obtained from witnesses.
- c. Post Casualty Chemical Testing. 46 CFR 16.240 and 46 CFR 4.06 mandate that post casualty testing be conducted to determine if drugs or alcohol were contributing factors in a marine casualty. Serious marine incident chemical testing shall be done as soon as practicable to provide useful results for investigative purposes. This is especially important for alcohol testing, due to alcohol's relatively rapid elimination from the body.
- (1) Individuals To Be Tested. 46 CFR 4.06 require marine employers to take all practicable steps to test individuals involved in a serious marine incident for evidence of use of drug and alcohol as soon as practicable after addressing the resulting safety concerns delineated in 46 CFR 4.06-1(e). There are limits concerning who can be directed to be tested after a serious marine incident. 46 CFR 4.06-1(c) states that a law enforcement officer (not necessarily federal) may determine that additional personnel are directly involved in the incident and shall undergo drug testing. The personnel who can be so designated are limited only to those directly involved in the incident and actually on board the vessel. This restriction is stipulated in the regulations by the phrase "any individual engaged or employed on board a vessel . . .", which appears in 46 CFR 4.06-1(b) and 4.06- 5(a). Given this restriction, it is not feasible for the marine employer or the law enforcement officer to extend the requirement for testing to someone who is not actually on board the vessel, such as a dispatcher, drawbridge tender, or barge supervisor who issued orders to the master/operator of the vessel.
- (2) Authorization For Chemical Tests. 33 CFR 95.035 authorizes chemical tests of individuals suspected of being intoxicated or directly involved in the occurrence of a marine casualty. Chemical tests should be directed whenever an individual appears to be intoxicated. Unlike mandatory chemical testing after a serious marine incident, chemical tests are not automatically required whenever an individual is involved in a marine casualty. Good judgment and careful consideration of the seriousness and circumstances of a marine casualty shall be exercised before directing chemical testing under 33 CFR 95.035.
- (3) Drug Testing Procedures. 46 CFR 4.06 require that drug tests shall be conducted in accordance with (IAW) 49 CFR 40. A chemical test for drugs directed under the authority of 33 CFR 95 should also be conducted IAW 49 CFR 40. Coast Guard personnel shall not under any circumstances provide urine collection materials or perform as the collection site person. Coast Guard personnel may suggest local sources for those materials and services. Note: the Department of Transportation

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- 2.B.3. c. (3) (cont'd) (DOT) split sample procedures are not mandatory for the maritime industry. Marine employers may still use single specimen procedures, but if they elect to use the split samples, they shall use the DOT split sample procedures.
- (4) Alcohol Testing Procedures. The alcohol testing requirement in 46 CFR 4.06 and alcohol testing authorized in 33 CFR 95 may be conducted by either blood or breath samples. Only qualified Coast Guard or other local law enforcement personnel may perform breath tests, if such testing would be more timely than the testing arranged by the marine employer or if there is any concern that testing would not otherwise be accomplished. It is Important to note that the DOT alcohol testing procedures in 49 CFR 40 are NOT applicable for the marine industry.
- d. Chemical Testing-General. Listed below are interpretations of the chemical testing regulations in 46 CFR 16.
- (1) Fishing Industry Vessels. Fishing industry vessels of less than 200 gross tons are not subject to the chemical testing regulations (46 CFR 4.06 & 16), because they are not required to be operated by individuals holding a Coast Guard-issued license. However, the "Operating a Vessel While Intoxicated" regulations at 33 CFR 95 are applicable to any fishing industry vessel. Also, tankerman required by 46 CFR 105 on commercial fishing vessels dispensing petroleum products are subject to the testing requirements of 49 CFR 16, for the same reasons discussed in paragraph (6) below.
- (2) Marine Employer Financial Status. The financial status of a marine employer, whether operating "for profit" or "not for profit" (i.e., charity), does not change the requirement for chemical testing.
- (3) Employee Payment Status. The payment status of an employee, whether he or she is a paid employee or serving as a volunteer, does not change the requirement for chemical testing if that person is a "crewmember", as defined in 46 CFR 16.
- (4) Uninspected Sailing School Vessels. Students on board uninspected sailing school vessels technically meet the definition of "crewmember" in 46 CFR 16 due to their involvement in the operation of the vessel. However, their primary purpose on board is as paying passengers, who the regulations are intended to protect. Due to the instructional nature of the vessel's operation, the licensed operator is ultimately operating the vessel. Therefore, students on these type of vessels are not subject to chemical testing under 46 CFR 16.
- (5) Exemptions. 46 CFR 16 does not authorize the Coast Guard to grant exemptions to the requirements for chemical testing.
- (6) Cargo Handling Personnel On Unmanned Barges. The regulations governing cargo handling (46 CFR 35.35 and 151.45 4) dictate the crew duty requirements for cargo transfer operations of unmanned barges. Both of those sections require that an individual with either the proper license, MMD endorsement, or letter of designation (for subchapter 0 cargoes) be on duty to perform transfer operations. That individual is deemed to meet the

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- 2.B.3. d. (6) (cont'd) definition of "crewmember" and is subject to the testing requirements of 46 CFR, Part 16.
- (7) Foreign Citizens. Foreign nationals employed on foreign flag vessels are not covered by 46 CFR 4.06 or 16. However, in the event of a marine casualty within U.S. waters, the provisions of 33 CFR 95 do apply. Foreign nationals who are employed on a U.S. vessel in a position which is required to undergo chemical testing are covered by 46 CFR 4.06 and 16.
- (8) Seasonal Employees. 46 CFR 16.210 state the exemptions for individuals who do not have to undergo pre-employment testing. Seasonal employees who do not meet one of these exemptions shall be pre-employment tested upon their return each season. All employees who are required to undergo chemical testing, whether they are seasonal or permanent, shall be included as part of the random testing pool during the time they are in the actual employment of the company. If a marine employer wants to retain an individual as an unpaid employee during the "off-season" and that individual fully participates in any required testing, he/she can be treated as a "returning" employee when they return to the payroll and will not need to be pre-employment tested. The same would hold true for a seaman returning to the same company after an absence (i.e., vacation or normal time off from being part of a blue/gold crew) during which the seaman was still considered an employee of the company (i.e., still receiving medical and/or other benefits). Individuals changing positions or ships within a company's fleet are not considered "new hires".
- (9) Other DOT Drug Tests. Drug test taken under the authority of another DOT agency cannot be used to satisfy the requirements of a Coast Guard required test. Even though all DOT agencies use the same drug testing procedures (49 CFR 40), their requirements concerning when a test is required and procedures for handling results differ.
- e. Fatal Flaws In Dangerous Drug Use Investigations. Commandant's Decision on Appeal (CDOA) number 2555 vacated a finding of proved for the use of dangerous drugs because of a fatal flaw in the chain of custody surrounding the test specimen in question. In that case, the collector neglected to obtain the donor's signature on the custody and control form. This flaw went undetected through the lab analysis, the Medical Review Officer (MRO) review and subsequent Coast Guard preferring of charges before the Administrative Law Judge (ALJ). The integrity of the chemical testing program relies on the strict compliance with prescribed procedures. IOs shall conduct a thorough review of all facts of a case before pursuing charges at an administrative hearing. Although the check of a specimen's chain of custody is the responsibility of the MRO, it is important that IOs review supporting material for their hearing to ensure that all applicable regulations have been complied with before proceeding with S&R proceedings. Failure to do so could result in wasted time and effort for all involved parties. The most significant piece of documentation available to the IO in a drug use case is the custody and control form. Flaws concerning this form considered "fatal" to the viability of a specimen for use in S&R proceedings are:

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- 2.B.3. e. (1) Specimen Identification Number (I.D.) on the specimen bottle and custody and control form do not match.
- (2) Collector's signature is omitted from certification statement.
- (3) Donor's signature, Social Security Number (SSN), or I.D. is omitted from custody and control form unless "refusal of donor to provide" is stated in the remarks section.
- (4) Chain of custody block is incomplete.  
There should be a minimum of two signatures, shipping entry, and date.
- f. Action Required upon Receipt Of Positive Chemical Tests. When a chemical test report indicates a positive result, the IO shall review it closely. If it appears that the test result is flawed due to the circumstances such as those listed above, the viability of pursuing further administrative action shall be evaluated. If the report appears to be complete, the IO shall ensure that the mariner is removed from any safety sensitive position, and initiate S&R proceedings. Questions regarding the seriousness of specific flaws and the viability of certain evidence for use in hearings should be addressed to Commandant (G- MAO-1).
- g. MRO Drug-Free Certificates. 46 CFR 16.370 states that "before an individual who has failed a required chemical test for dangerous drugs may return to work, the MRO shall determine that the individual is drug free..." This determination is usually accompanied by a certificate from the MRO. This provision was included in the regulations to provide a means for individuals who do NOT possess MMCs to reenter the marine work force. Although these individuals do not possess MMCs, a positive test result still prohibits marine employers from employing these individuals. Without the MRO certificate provision, there is no way for an individual without MMCs to become re- eligible for employment in the marine industry.
- (1) MRO Certificate Requirements Prior To A Hearing Or Surrender. Individuals with MMCs who have failed a chemical test, but who have not had their case adjudicated at a S&R hearing, or who have not yet surrendered their MMCs, shall obtain a MRO's DrugFree Certificate before returning to work as undocumented seaman in a non- safety sensitive position.
- (2) MRO Drug-Free Certificates Relating To Administrative Clemency. Possession of a MRO Drug-Free Certificate is not an alternative to the administrative clemency process for individuals who have had their MMCs revoked or surrendered for association with dangerous drugs. However, a MRO's Drug-Free Certificate may be presented for consideration as evidence of cure as part of the administrative clemency package. Individuals who have applied for, and have been granted Clemency are not required to obtain a MRO Drug-Free Certificate before returning to work.
4. Interaction With Marine Boards Of Investigation.
- a. General Principles. The OCMI in the port in which a marine board of investigation is held shall open a personnel case file as soon as sufficient information indicates possible S&R action against MMCs. This information may be obtained during the preliminary casualty investigation or from evidence received by the marine board. The IO or the IO's representative should arrange to attend those sessions

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- 2.B.4. a. (cont'd) the IO deems appropriate. Under no circumstances should a personnel investigation resulting from a marine casualty interfere with the work of the marine board. Liaison between the IO and the marine board recorder will provide a smooth flow of information which will be helpful to the personnel investigator, and possibly the marine board. The following actions might be considered:
- (1) Advise the recorder of any personnel investigation being contemplated; and
  - (2) Request permission to interview witnesses after they have been questioned by the marine board.
- b. Simultaneous Activities. Personnel investigations should be conducted after a marine board has convened only with the approval of the marine board chairperson. If the chairperson requests abeyance until the marine board adjourns, investigation activities should be suspended. This is often requested so that the marine board has flexibility in developing recommendations for submittal to the Commandant. However, this does not preclude initiation of S&R proceedings during the course of, or immediately following, the marine board investigation. If sufficient information in the personnel investigation is developed before the casualty investigation is completed, charges may be filed. Prior to any personnel action, however, the marine board chairperson should be notified and the chairperson's recommendations respected: If the marine board recommends S&R proceedings and a personnel investigation has not yet commenced, the IO should contact the recorder for the marine board to obtain the necessary initial information.
- c. Further Development. If, upon review of the marine board of investigation report, the Commandant directs further personnel investigation, the IO shall obtain the initial information by the most expeditious means possible. Upon completion, a letter describing the final outcome of all personnel actions resulting from marine boards of investigations shall be forwarded to Commandant (G-MAO-1) by the IO.
5. Activities In Other Coast Guard Vessel Casualty Investigations. Personnel investigations stemming from vessel casualties should begin as soon as possible and should not await the completion of the casualty report. If the personnel investigation is conducted by someone other than the casualty investigator, close coordination between the two will be necessary.
6. S&R Recommendations In Marine Casualty Reports. Recommendations in marine casualty investigation reports to initiate S&R proceedings against licensed or documented personnel shall be quickly and meaningfully acted upon. The ever increasing importance of investigations in the Coast Guard's marine safety programs, and resulting public awareness, mandate all reasonable efforts to accomplish these recommended actions. The execution of personnel investigations and the Commandant's policies for discipline on merchant vessels and maritime safety should result in meaningful, timely response to S&R recommendations in casualty investigation reports.

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### 2.B.7. Shipboard Investigations.

- a. Etiquette. When first boarding a vessel, the IO should report his or her presence and purpose to the master or senior deck officer. Reasonable efforts should be made to conserve the master's time.
- b. Privacy. Since most investigations require interviews of crewmembers, the IO should request the use of an area where privacy can be ensured. This will enable the IO to interview personnel privately, with as little distraction as possible. Witnesses should not be interviewed together.
- c. Review Of Logbook Entries.
  - (1) Adequacy. Log entries should be reviewed to ensure that they have been made in compliance with applicable law. If they have not, the master should be advised of the deficiencies to prevent recurrence in future entries. Since a log entry can, under some circumstances, serve as sufficient evidence to prove a charge in subsequent S&R proceedings, masters should be encouraged to provide ample information in the logbook, even to the point of making a special entry or attaching additional statements received during the master's investigation.
  - (2) Criteria For Investigation. Not every entry logged against a mariner should be considered a complaint. Only those entries showing a compromise of safety or hazard to life, property, and/or the marine environment or when the seaman has a history of repeated offenses should cause an investigation.
  - (3) Cancelled Entries. If a cancelled log entry indicates a condition serious enough to have warranted an investigation, the master should be questioned about the reason for cancellation. If the entry was merely in error, no further action need be taken.
  - (4) Review Prior To Voyage Termination. If the IO has boarded a vessel prior to completion of the voyage, the IO should review all log entries. Before departing the vessel, the IO should make an entry in the margin of the logbook, indicating what action the IO has taken and (as appropriate) what remains to be accomplished. This is particularly important when the mariner under investigation remains with the ship. Notations such as "Investigated" are insufficient; more detailed notations, such as "Investigated, reported to Commandant (G-MAO-1)," "Warned," "Investigated, no action taken pending further conduct on voyage," give IOs reviewing the logbook at the end of the voyage a clear picture as to what action should be taken.
  - (5) Final Port Of Voyage. Official logbooks should be reviewed by the final port of voyage in a timely manner to determine if actionable offenses occurred during the voyage.
  - (6) Emphasis On Correct Log Entries. Investigating personnel should be alert to the opportunity to advise ship's officers on the correctness of log entries. It should be emphasized to the master that log entries made in compliance with the applicable requirements often obviate the need for vessel personnel to appear as witnesses during S&R proceedings (this is important,

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- 2.B.7. c. (6) (cont'd) considering their brief in port periods). The importance of attaching statements taken by the master and referring to them in log entries so that they will be accepted as parts of the log when presented as evidence should be carefully explained.
- d. Completion Of Investigation. The IO should, as far as reasonable, stay aboard the vessel until the investigation is completed. This will ordinarily be possible because most "leads" can usually be developed on the ship. However, if it appears that assistance is necessary, the Chief, Investigation Department should be notified so that the investigation can be completed as expeditiously as possible. The IO should strive to complete the investigation in sufficient time to avoid a delay in sailing. [NOTE: Vessels shall not be delayed for S&R proceedings without authority of the OCMI.]
8. Use Of Foreign Records. An official record or document of a foreign country may be evidenced by an authenticated copy, summary, or excerpt, under the Federal Rules of Evidence, Rule 902(3). That Rule provides that foreign records may be authenticated by a certificate made by a secretary of an embassy or legation, a consul general, consul, vice consul, or consular agent of the U.S. and authenticated by the seal of that person's office. A foreign official, so authorized by the laws of that official's country may also authenticate his or her country's documents. In many cases, properly authenticated foreign records of court actions, hospitalizations, etc., are important evidence. Prior to the hearing, the IO should make every reasonable effort to obtain such records. Foreign records must be translated, as necessary, and authenticated by an appropriate official. Assistance may be obtained from the office providing legal support.
9. Information Obtained From Consuls. Occasionally, information needed for a personnel investigation must be obtained from a U.S. consul; this may include court or medical records. OCMI's are authorized to correspond directly with U.S. consuls for the purpose of requesting routine records needed for personnel investigations. In many instances, however, the consul will be reluctant to release information without specific authority from superiors or he or she may have difficulty obtaining such records. In such cases, Commandant (G-MAO-1) should be notified so that the request for information may be forwarded to Department of State (DOS). This method also facilitates tracer action if information is lost in transit.
10. Issuance Of Subpoenas. The IO may issue subpoenas to obtain the attendance of witnesses or production of books, papers, documents, or other relevant evidence needed by the IO or by the person charged. During the hearing, the ALJ may issue subpoenas for these purposes. This may be done upon the ALJ's own motion, or upon request by the respondent or the IO. [NOTE: The power to issue subpoenas is provided by 46 U.S.C. 7705 and 46 CFR Part 5, Subpart F. The subpoena may be served anywhere within the judicial district in which it is to be returned; or if outside the district, at a place within 100 miles of the place to which it is returnable.
11. Dual Investigations. On many occasions, information received during a Coast Guard investigation may be of importance to other federal, state, or local law enforcement authorities. These authorities should be notified at the earliest opportunity, to enable them to take early investigative action, if warranted.

## MARINE SAFETY MANUAL

### C. Procedures In Lieu Of A Hearing.

1. Introduction. Investigations shall be conducted to provide as thorough information as possible, to determine what official action, if any, should be taken against mariners or their MMCs. S&R proceedings need not be used in all instances, but rather when marine safety or the marine environment has been directly and adversely affected. The severity of the act or offense, the gravity of the situation, availability of other corrective action, the prior history of the seamen, and the likely impact of such action on similar incidents in the future are factors which should influence the choice of actions taken. Consideration must also be given to the responsibilities of masters, owners, and operators of vessels in maintaining the standards of competence and disciplined conduct in the U.S. Merchant Marine. Civil penalty action against holders of MMCs is authorized at the discretion of the OCMI. Additional guidance is contained in- Volume I of this manual.
2. Letters Of Warning. Written warnings shall be issued when investigation indicates that there is a basis for some remedial action under 46 U.S.C. Chapter 77, but that the act or offense under investigation was of a relatively minor nature. These letters of warning should not be confused with letters issued by the district commander in lieu of civil penalty proceedings. Personnel action letters of warning are issued by the IO when they are deemed to be more appropriate than pursuing S&R proceedings. The Letter of Warning should not contain direct allegations of negligence or any other term by which civil liability or responsibility might be construed by the mariner's acceptance of the warning. A sample letter is shown on Figure 2-1.
  - a. Procedure For Giving Warnings. 46 CFR 5.105(e) provides for giving warnings to mariners. When the IO determines that this will best resolve the matter, the IO shall prepare a Letter of Warning to the mariner. Whenever practical, the letter shall be personally delivered by the IO with receipt acknowledged on the unit copy. The receipted copy of the warning letter and the mariner's statement regarding his or her prior record should be filed in the office file. Before delivery of the letter, the mariner should be questioned, under oath, regarding his or her prior record. The mariner should be warned that failure to acknowledge current remedial or disciplinary actions (e.g., recent warnings for the same offense or a recent order of suspension or probation) or materially misrepresenting the mariner's record, will be considered an act of misconduct, and the mariner may be brought to an S&R proceeding. The mariner should sign a statement regarding his or her prior record, which explains the mariner's rights and reemphasizes the mariner's right to counsel. The IO shall then advise the mariner that the IO believes a Letter of Warning to be sufficient to resolve the matter, and that charges will not be preferred if the letter is accepted. The IO should be prepared to prefer charges under the appropriate specification(s) at the time that the letter is prepared, as the mariner's refusal to accept the letter normally results in the IO preferring charges formally. Should the mariner state a desire to consult counsel before accepting a letter of warning, the IO shall provide this opportunity. If the mariner is a local resident or the IO is confident the mariner will cooperate in the future service of a letter of warning or a charge sheet, the IO may rely on the seaman without the necessity of a good- faith deposit or serving charges at that time. A reasonable time, up to 30 days or longer with good cause, should be allotted for this purpose. If the IO has reason to doubt the future availability of the seaman, a good- faith deposit

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**FIGURE 2-1**

**SAMPLE LETTER OF WARNING**

16722/123  
12 June 1995

Mr. Bruce Adam  
557 Land High Drive  
New Orleans, LA 70142

Dear Mr. Adam:

An investigation has revealed the following conduct on your part while serving aboard the M/V SEA LION under authority-of Merchant Mariner's Document No. 123-45-6789: While serving as able seaman aboard said vessel on 5 and 6 June 1995, you failed to report for work; and on 7 June 1995, you failed to perform your assigned duties as oiler on the 0800 to 1200 watch.

In consideration that justice will be best served by a warning rather than a formal proceeding against your document, you are hereby given a written warning for your conduct as set forth above.

You are advised that this warning will become a part of your record at Coast Guard Headquarters, Washington, DC, and will be considered at any future proceedings involving your document. If you feel this warning is not warranted, you may refuse to accept it. However, your refusal may result in your being charged for a formal hearing before an administrative law judge under Title 46 U.S.C. Chapter 77, in which case this warning will be withdrawn.

Sincerely,

G. R. SEA  
Commander, U.S. Coast Guard  
Chief, Investigation  
Department

The foregoing has been fully explained to me and I accept this warning without admitting any civil liability on my part or on the part of the M/V SEA LION, the owner(s) and operators). I acknowledge that I have no prior disciplinary record with the Coast Guard (or, 'my record is as follows':).

[Signature of Mariner]

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- 2.C.2. a. (cont'd) of his or her MMCs shall be sought. If the mariner expresses a desire to meet with counsel and declines to make a good-faith deposit of the MMCs, the IO should serve charges; if the mariner responds to the IO in sufficient time, the charge will be withdrawn. The object here is to impress on the mariner that, while the mariner has the right to legal advice, some type of official action will result (i.e., the acceptance of the Letter of Warning or formal charges under 46 U.S.C. Chapter 77). In exceptional cases, where distance or other factors preclude personal delivery of the Letter of Warning, it may be mailed by certified mail, return receipt requested, for delivery to the addressee only. In these cases, the IO should verify, before issuing the letter, that the mariner will accept the letter. The mariner should be requested to sign and return a copy of the letter.
- b. Reports Of Letters Of Warning. The 3x5 index card mailed to Commandant (C-MAO-1) is no longer required when a Letter of Warning is issued. This information should now be entered in MSIS. Explanation of the nature of the offense should be confined to the comments" section of the electronic entry. A supplemental letter to Commandant (G-MAO-1) is not required. Letters of Warning are not releasable to the public under FOIA.
3. Voluntary Deposit Of MMCs For Mental Or Physical Incompetence. Under the provision of 46 CFR 5.201, a Voluntary Deposit can only be offered in cases where there is evidence of mental or physical incompetence. A medical condition by itself is not incompetence; for example, an epileptic who can control the condition through medication should not be charged with incompetence unless evidence is available that his professional performance is hindered by his condition. If the condition prevents the mariner from performing duties directly related to the safe operation or navigation of the vessel, a voluntary deposit may be properly considered. Prior to accepting a voluntary deposit, the IO shall explain to the mariner that the deposited MMCs cannot be returned until the Coast Guard receives satisfactory evidence that the mariner is considered fit for duty without qualification, and that the mariner must initiate action to regain his or her MMCs. If the mariner agrees to these conditions, the IO shall complete a Voluntary Deposit Agreement, Form CG-2639F, in triplicate. After the mariner has signed all three copies in ink, the IO shall give the original to the mariner and retain a copy in the investigative file. The remaining copy of Form CG-2639F shall be forwarded to: Director, National Maritime Center- (NMC4A), U.S. Coast Guard, 4200 Wilson Blvd, Suite 510, Arlington, VA 22203-1804, for inclusion in the mariner's seaman's jacket.
- a. Mariners Deemed Incompetent Who Do Not Enter Into A Voluntary Deposit. When a mariner who has been certified by proper medical authority as physically or mentally incompetent will not voluntarily deposit his or her MMCs, and it appears that the mariner is a threat to shipmates, and has signed on a vessel or otherwise acted under authority of his or her MMCs while incompetent, S&R proceedings shall be initiated.
4. Voluntary Deposit Of MMCs For Addiction To Dangerous Drugs As A Cause Of Incompetence. 46 CFR 5.201(b) states that use of a voluntary deposit can only be accepted where mental or physical incompetence has occurred resulting from use of, or addiction to dangerous drugs. The use of a voluntary deposit is only appropriate in those instances where the use and/or addiction is not discovered as a result of a Federal, State or local government investigation". For Coast Guard purposes, the discovery of a drug problem through the chemical testing mechanisms of 46 CFR 16 is considered to be discovered as part of an "investigation" and therefore

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2.C.4. (cont'd) a voluntary deposit shall not be used.

a. Voluntary Deposits In Drug Investigations. The IO shall screen all requests for voluntary deposit to ensure that the request has not been prompted by a Coast Guard mandated chemical test. This includes mariners who are scheduled to take a test, but feel, or know they will have a positive result, and those who have been notified by a MRO of a positive test. All cases shall be handled through the voluntary surrender, settlement agreements or hearing process. Voluntary deposits which are discovered to have been prompted by a positive chemical test shall be considered "null and void" and the MMCs returned to the individual, together with a charge sheet and an explanation of the options available.

b. Acceptance Of Voluntary Deposits. Where the mental or physical incompetence of a holder of MMCs is caused by use of, or addiction to dangerous drugs, a voluntary deposit will only be accepted contingent on the following circumstances:

- (1) The holder is enrolled in a bona fide drug rehabilitation program;
- (2) The holder's incompetence did not cause or contribute to a marine casualty;
- (3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, state, or local government investigation, (see 2.C.4.); and
- (4) The holder has not voluntarily deposited or surrendered his or her MMCs, or had his or her MMCs revoked for a drug related offense on a prior occasion.

5. Voluntary Deposit Of MMCs For Alcoholism As A Cause Of Incompetence  
46 CFR 5.201(c) states that the use of a voluntary deposit can only be accepted where mental or physical incompetence has occurred resulting from use of, or addiction to alcohol. The use of a voluntary deposit is only appropriate in those instances where the use and/or addiction is "not discovered as a result of a Federal, State or local government investigation". For Coast Guard purposes, the discovery of an alcohol problem through the chemical testing mechanisms of 33 CFR 95 or 46 CFR 4.06 are considered to be discovered as part of an "investigation" and therefore a voluntary deposit shall not be used. The Coast Guard recognizes alcoholism as a disease and acknowledges that there are successful programs for the prevention and treatment of alcoholism. It is not the Coast Guard's policy to compel merchant mariners with alcoholism to enter such programs, but rather to encourage sincere individuals to obtain the medical help they need. While the Coast Guard cannot endorse or recommend a specific facility or program, the IO should be familiar with locally available resources to enable him to provide information to merchant mariners requiring assistance of this nature.

a. Voluntary Deposits In Alcohol Abuse  
Investigations. In considering S&R proceedings for offenses involving alcohol, the IO must recognize the distinction between the disease of alcoholism and mere intoxication or alcohol abuse. It is not intended that misconduct involving mere intoxication should be punished any differently than instances of "sober" misconduct. However, if alcoholism, alcohol

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- 2.C.5. a. (cont'd) abuse, or intoxication is considered to be a factor in the case, it is appropriate to charge the offender with "incompetence based on alcoholism," in addition to any misconduct charge. On this basis, cases involving alcoholism should be handled in a manner similar to other cases of physical or mental incompetence. Probative evidence of rehabilitation may be accepted by the ALJ in arriving at a final determination regarding the mariner's competency. Similar evidence may be accepted by the IO to support the return of voluntarily deposited MMCs.
- b. Acceptance Of Voluntary Deposits. Where the mental or physical incompetence of a holder of MMCs is caused by use or addiction to alcohol, a voluntary deposit will only be accepted contingent on the following circumstances:
- (1) The holder is enrolled in a bona fide alcohol rehabilitation program;
  - (2) The holder's incompetence did not cause or contribute to a marine casualty; and
  - (3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, state, or local government investigation, (see 2.C.5).
6. Written Agreement. A holder may deposit his or her MMCs with the Coast Guard in any case where there is evidence of mental or physical incompetence as described above. A voluntary deposit is accepted on the basis of a written agreement, the original of which will be given to the holder, which specifies the condition upon which the Coast Guard will return the MMCs to the holder.
- a. Limiting Conditions For Voluntary Deposits. Where the conditions of paragraphs 2.C.4. or 2.C.5. above are not met, the holder may only surrender his or her MMCs in accordance with 46 CFR 5.203, or S&R proceedings must be initiated.
7. Disposition Of Deposited MMCs. If, in the IO's opinion, the mariner is likely to be eligible for return of the deposited MMCs within a relatively short time (i.e., 1 year or less), the MMCs should be retained locally. If return eligibility is unlikely, or more than 1 year has passed, the deposited license or COR shall be forwarded to the issuing Regional Examination Center (REC) with a memorandum including a brief summary of the case. A copy of the memorandum shall be forwarded to NMC4A, for inclusion in the mariner's record. Deposited MMCs shall be forwarded to NMC4A with a memorandum including a brief summary of the case. (See address 2.C.3.)
8. Return Of MMCs. A person may request the return of his or her voluntarily deposited MMCs at any time, provided he or she can demonstrate a satisfactory rehabilitation or cure of the condition which caused the incompetence; has complied with any other conditions of the written agreement executed at the time of deposit; and complies with the physical and professional requirements for issuance of MMCs.
- a. Return Where Drug Abuse Was Cause Of Incompetence. Where the voluntary deposit is based on incompetence due to drug abuse, the deposit agreement shall provide that the MMCs will not be returned until the person:

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- 2.C.8. a. (1) Successfully completes a bona fide drug abuse rehabilitation program;
- (2) Demonstrates complete non-association with dangerous drugs for a minimum of 6 months after completion of the rehabilitation program; and
- (3) Is actively participating in a bona fide drug monitoring program which incorporates random unannounced chemical testing.

b. Return Where Alcohol Abuse Was Cause Of Incompetence. Where the voluntary deposit is based on incompetence due to alcohol abuse, the deposit agreement shall provide that the MMCs will not be returned until the person:

- (1) Successfully completes a bona fide alcohol abuse rehabilitation program; and
- (2) Is actively participating in a bona fide support group.

9. Acceptance Of Medical Reports. A medical report indicating that a mariner is fit for duty need not be accepted without question. The designation of fit for duty requires a careful evaluation balancing the mariner's past medical history, his or her current physical/mental condition and future medical outlook against the person's ability to live and perform safely in a shipboard environment. In some instances, this evaluation may be reasonably conducted by the IO, and the deposited MMCs may be returned to the mariner. The IO may consult with a physician concerning a mariner's prior medical history and shipboard duties for this purpose. Prior to releasing the medical history to the physician, the consent of the mariner shall be obtained. In certain instances, however, a proper evaluation will be considered to be beyond the scope of an IO's expertise and discretion. These instances include cases involving:

- a. Convulsive disorders, such as epilepsy;
- b. Psychiatric illnesses; and
- c. Complicated or conflicting medical data in which the mariner's ability to live and perform safely in a shipboard environment is unclear to the IO.

In such instances, the mariner's medical history, along with pertinent physician's evaluation, and the IO/OCMI case remarks shall be forwarded to Commandant (G-MAO-1) who will request a determination from the Chief Medical Officer of the Coast Guard. In the event that the Commandant determines that the mariner is permanently not fit for sea duty, S&R proceedings for incompetence should be initiated.

10. Good-Faith Deposits. The mariner may make a "good-faith" deposit of his or her MMCs to the IO conducting an investigation, when the mariner desires that any action be taken at a different port, or when the mariner requests a delay for any reason and the IO agrees. This process ensures the mariner's appearance at another time or place. The IO should agree to a change of date or location only if satisfied that it will not prejudice the government's position. Before agreeing to a change the IO should consider the availability of:

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- 2.C.10. a. An ALJ;
- b. Witnesses and the reliability of documentary evidence; and
- c. A hearing room and medical facilities.

Transfer of jurisdiction strictly for the convenience of the mariner should be done only if the mariner is willing to make a good-faith deposit; otherwise, a charge sheet should be issued. In cases for which there is evidence of misconduct, when the mariner requests that the case be transferred to another office, the IO should prefer charges; at the initial hearing, the mariner can request a change of venue (location) from the ALJ. The ALJ can so order, provided that change of venue will not adversely affect the government's case and is not requested solely for purposes of delay. In cases when the sailing of a vessel precludes immediate convening of a hearing, subpoenas should not be issued to compel attendance. Rather, the investigative file should be forwarded to the OCMI at the port of destination, with a request for an IO to meet the vessel. A good-faith deposit shall not be accepted from an individual who must continue to serve under his/her MMCs in order to meet the vessel's obligations or if the mariner is attempting to complete a alcohol/drug rehabilitation program.

11. Voluntary Surrender. 46 CFR 5.203 contains provisions for voluntary surrender of MMCs in lieu of a hearing to answer pending charges. Before agreeing to accept voluntarily surrendered MMCs, the IO shall ensure that the mariner is:
- a. Shown a copy of the charges, and informed of a definite time and place for a hearing on those charges;
- b. Advised of the right to counsel at the hearing; and
- c. Informed of the possible consequences, favorable and unfavorable, of a hearing.

Before accepting a voluntary surrender of MMCs for any act or offense, the IO should be satisfied that revocation would be the likely outcome of hearings into the matter under investigation. A voluntary surrender is equivalent to a revocation; the only means for the mariner to have his or her MMCs restored is the administrative clemency procedure (see 46 CFR 5.901). [NOTE: The Commandant reserves the right to return MMCs which have been voluntarily surrendered.] The IO shall ensure that the mariner's rights and the consequences indicated above are understood by the mariner before entering into a voluntary surrender agreement. If the person persists in the desire to surrender his or her MMCs, a written agreement may be executed on Form CG-2639E, in triplicate. All copies shall be signed in ink by the mariner and the IO and any witnesses. The original agreement shall be given to the seaman with copies to the unit file and to NMC4A (see address in 2.C.3) for inclusion in the mariner's record. The surrendered license or COR shall be forwarded to the issuing REC with a memorandum including a brief summary of events. A copy of the memorandum shall be forwarded to NMC4A for inclusion in the mariner's Surrendered MMDs shall be forwarded to NMC4A with a memorandum including a brief summary of the case.

12. Settlement Agreements. A settlement agreement is a Joint Motion of Settlement and Request for Entry of Consent Order made between an IO and respondent, and offered to an ALJ. A settlement agreement is designed to

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2.C.12. (cont'd) expedite the administrative hearing process, not by pass it. The IO should review the case prior to making a decision on the use of a settlement agreement. A settlement agreement shall not be used when there is a charge of incompetence. Additionally, if an investigation indicates there was intentional misconduct or negligence which caused injury, death, damage to property, or environmental damage, a settlement agreement shall not be used. In a case where the respondent does not contest the charge(s), and a strong message shall be made, the IO has the option of insisting that the settlement agreement be signed during an appearance before an ALJ. Questions concerning the proper use of settlement agreements should be addressed to Commandant (G- MAO-1).

a. Procedure. **A settlement agreement can only be offered after the charge(s) have been served on the respondent. Figure 2-2, is an example of a Joint Motion of Settlement and Request for Entry of Consent Order and is-intended to be a guideline which may be tailored as required. For a settlement agreement to be valid, the respondent shall agree:**

- (1) The charge(s) and specifications are legally sufficient;
- (2) To accept the plea of "no contest" for each charge and specification, and the charge(s) and specifications be found proved;
- (3) To waive the right to appear before an Administrative Law Judge at a hearing; and
- (4) If the IO feels that the respondent must waive the right to seek judicial review regarding any provision of the agreement and/or to otherwise contest the validity of the consent order or the agreement, and the respondent does not agree, a settlement shall not be made. However, where the IO does not have reason to insist on the waiver, then a settlement should be made without the respondent waiving that right. It is important for the IO to understand that even though a respondent waives his or her right of appeal, if the agreement was made by coercion or misinformation, etc., the agreement may be voided by the ALJ.

If the MMCs is to be suspended or revoked, the respondent shall surrender his or her MMCs with the Coast Guard prior to signing the settlement agreement.

b. Sanction. The settlement agreement adds a new dimension to the adjudication of a case. In a hearing, the ALJ can only impose sanctions against the MMCs. A settlement agreement allows the IO to impose remedial actions such as specific training, or the SWEENEY requirements for cure. Sanctions should be based on 46 CFR 5, Table 5.569 - "Suggested Range of an Appropriate Order", or case history from CDOAs. The IO should also be specific in the words used in the sanctions requested. Any remedial actions proposed should be designed to correct the cause of the misconduct or negligence. The agreement should also contain a provision to impose an additional sanction if the respondent fails to comply with any of the conditions set forth in the agreement. The provision should be specific in nature, i.e., if the mariner fails to complete a required training school, or provide required documentation, an additional (X) months of suspension or outright revocation would result.

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FIGURE 2-2
SAMPLE SETTLEMENT AGREEMENT

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

IN THE MATTER OF CITY AND STATE
LICENSE NO.(Lic. #) DATE
MERCHANT MARINER'S DOCUMENT CASE NO. PA
(MMD# ) DOCKET NO.

ISSUED TO (respondent's name)
Joint Motion of
Settlement and Request
for Entry of
Consent Order

The following is a joint motion between the United States Coast Guard and the respondent, (Mr./Ms. respondent's name).

- 1. Come now the United States Coast Guard and the Respondent, and make a joint motion 6 request that a Consent Order be issued by the Administrative Law Judge in the present case. The parties to this motion respectfully request that the Consent Order find that the charges and specifications in the above captioned case be found legally sufficient; that the plea of "no Contest" by the Respondent be accepted, that the charges and specifications in the above case be found proved; that the sanction be (enter in detail the proposed sanction, i.e., revocation, stayed for 18 months upon completion of requirements in paragraph 2., suspended or 12 months, 6 months outright, etc.); and that the Coast Guard retains possession of the captured (license/document); and that the hearing scheduled for this matter be cancelled. In support thereof, the parties agree to the following:
2. Both the United States Coast Guard and the Respondent agree that the Respondent ( list type of remedial training required, i.e., shall successfully complete, through a Coast Guard approved maritime institute, the following courses... ; Enter into a bona- fide drug/alcohol abuse rehabilitation program. List all the steps and requirements that the respondent shall complete.
3. Further, both parties agree that the Respondent shall satisfactorily complete the requirements of paragraph 2, and provide documentation of completion. The certificates or documentation shall be mailed to the Investigations Department at Marine Safety Office (enter unit). (Enter any additional modification, i.e., if the respondent completes the above requirements, and the Respondent does not commit any offenses during (the sanction period, probation period, etc.). The Decision and Order will be amended to an (Administrative Law Judge's Admonition Letter of Warning, Investigating Officer's Letter of Warning, etc.) The Respondent also understands that if (he/she) violates any Coast Guard regulation or maritime law, and or fails to complete the requirements in paragraph 2, during (the sanction period, probation period, etc.), the captured (license/document) will be (revoked/suspended for (X) months) outright and could face additional action against the captured (license/document).
4. Respondent understands and knowingly and intentionally waives the right to challenge or contest the validity of the order entered in accordance with this agreement, and to all rights to seek judicial review or otherwise contest the validity of the consent order.
5. Both the United States Coast Guard and the Respondent agree that this order will have the same force and effect as an order made after a full hearing. It is also understood that the respondent was advised of (his/her) due process right to a hearing (and that the Respondent knowingly and intentionally waived that right).

Respondent

Investigating Officer

Witness

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- 2.C.12. b. (1) Requested Documentation. A pre-hearing settlement agreement will reduce the amount of preparation time required for a hearing. However, it is important that the IO keep track of the submitted documents and other evidence required by the agreement, especially in drug cases.
- (2) Settlement Agreements In Drug Cases. Settlement agreements in drug cases shall use the standard for "cure" as defined in CDOA 2535 (SWEENEY), except for cases involving convictions (see 46 U.S.C. 7704(b)). The IO shall seek revocation stayed on suspension. The length of the suspension shall be based upon the time required to complete the in/out patient drug abuse program. The suspension shall include the mandatory 1 year nonassociation period required after completion of treatment. The IO shall require that the respondent provide an appropriate amount of random, unannounced drug tests during the 1 year nonassociation period. The sanction should also require all documentation and proof be submitted at the end of the suspension period. This is recommended to reduce the need for the IO to perform follow up checks on the respondent during the suspension period. It is important that the respondent understand the he or she is solely responsible for submitting all required documentation on time. If the respondent fails to comply with the conditions of the agreement, a default motion shall be filed with the ALJ, requesting outright revocation. If the respondent meets the conditions of the order, a motion is put before the ALJ requesting the order of revocation be put aside (with the charge(s) and specifications) proved) and the MMCs returned.
- c. Decision and Order. If the ALJ accepts the agreement, a decision and order based upon the consent agreement is issued which has the same force and effect as an order made after a full hearing. If the consent agreement results in revocation of the MMCs, the mariner must comply with the administrative clemency provisions for issuance of a new MMCs. (For the disposition of MMCs which are revoked see 2.C.7).
13. Referral To The Department Of Justice (DOJ). When investigation reveals evidence of criminal liability on the part of a mariner, that evidence shall be transmitted to the local U.S. attorney for appropriate action. If such evidence indicates criminal liability within the jurisdiction of a state or locality, it should be forwarded to the district commander (dl) with a recommendation for referral to the appropriate prosecutor.
- D. Charges And Specifications.
1. "Charge Sheet," Form CG-2639.
- a. Service. 46 CFR 5.107 sets forth the requirements for preparation and service of charges and specifications. Form CG-2639, Notification with Charge and-Specification, shall be used in the preparation of charges and specifications for S&R proceedings. To initiate proceedings, the IO shall prepare the "charge sheet" with all charges and specifications listed, including notice of the time and place of the hearing. The charge sheet shall be served personally upon the mariner charged or by certified mail with return receipt requested, signed by the addressee (mariner) only. The form must be served sufficiently in advance of the time set for the hearing so that the mariner (the "respondent") has a reasonable opportunity to prepare a defense. When the charge sheet is

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- 2.D.1. a. (cont'd) personally served on the mariner, the person making the service shall give the original of the form to the mariner, read the entries on the form to the mariner, and record the date and time of service on the file copies of the form. Further, whether the charge sheet is personally served or delivered by certified mail, the respondent shall be advised of the following:
- (1) Nature of S&R proceedings and the possible results thereof;
  - (2) Right to have counsel (a lawyer or any other person whom the mariner desires represent the mariner in the hearing;
  - (3) Right to have witnesses and/or records subpoenaed in the mariner's behalf;
  - (4) Effect of the failure of the respondent to appear at the time, date, and place specified for the hearing may result in the hearing being held in absentia; and
  - (5) If the alleged offense involves mental incompetence, mariners shall be advised at the time of service to be represented by counsel at the hearing. If the allegation involves mental or physical incompetence, mariners shall be advised that they may submit evidence of medical examination in their behalf.
- b. Refusal To Acknowledge Charge Sheet. Should a mariner being charged refuse to sign or accept the charge sheet, the person making the service shall testify to this at the hearing. The person making the service shall also testify to the advice given concerning the respondent's rights and the latter's response.

### 2. Charges.

- a. Types Of Charges. Types of charges which may be initiated are specified in 46 CFR 5.23. They include:
- (1) Misconduct as defined in 46 CFR 5.27;
  - (2) Negligence as defined in 46 CFR 5.29;
  - (3) Incompetence as defined in 46 CFR 5.31;
  - (4) Violation of law or regulation as defined in 46 CFR 5.33; and
  - (5) Conviction for a dangerous drug law violation, use of dangerous drugs, or addiction to the use of dangerous drugs as defined in 46 CFR 5.35.
- b. Multiple Charges. In some cases, the evidence at hand may indicate that more than one offense has been committed; for example, evidence may indicate that a mariner should be charged with both misconduct and incompetence. It is permissible and appropriate to prefer as many charges as necessary based upon the evidence obtained in the investigation.

### 3. Specifications.

- a. General Considerations. A specification identifies the basis for the

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2.D.3. a. (cont'd) charge (which is broadly stated). It enables the respondent to identify the alleged offense so that the respondent can prepare an adequate defense. The language of the specification should be simple and concise. It must allege the elements of the offense and jurisdiction, but need not allege matters in aggravation. It should be specific; such phrases as "various other dates" are unacceptable. The IO must prove all facts alleged in a specification; therefore, facts that have no bearing on the elements of the offense should not be included (care must be taken, however, not to omit necessary information). For example, in a case of assault and battery, it is necessary to indicate the nature of the offense by stating ".by striking and beating with his fists" to state explicitly the nature of the charge. In cases involving intoxication, inclusion of that fact in the specification puts the respondent on notice that he or she cannot claim a failure to perform was not wrongful; because the mariner was available to perform the duty but was too incapacitated to do so. Matters in aggravation should not be included in the specification.

b. Multiple Offenses. At times, a mariner may be absent from the mariner's vessel, or fail to perform duties, for a number of consecutive days. In these cases, it is proper to allege a continuous offense in one specification (i.e., "... did fail to perform your duties on the following dates..."). Except in such cases, only one offense may be set forth in each specification. However, a respondent may, by the facts of a particular situation, be found guilty of more than one instance of misconduct in the course of a voyage. In other cases, the IO may be confronted with facts constituting several offenses, arising from the same event or series of events. In such cases, the different offenses amounting to misconduct may be set forth in as many specifications as necessary. Caution must be taken not to "pile up" specifications nor to be redundant. If a specification contains elements of other offenses included in the offense charged only the offense which includes the others need be set forth. For example, assault alleged in one specification of assault and battery need not be repeated separately, because assault is a lesser included offense.

4. Guidelines For Negligent Operation Proceedings. The guidelines listed herein are not to be construed as limiting the IO's discretion in any way; they neither obligate the IO to prefer charges in certain circumstances nor do they restrict the IO's authority to prefer charges when such action is deemed appropriate. Furthermore, the examples and principles cited are not intended to be all-inclusive or rigidly applied to all situations; specifically, the absence in a real life scenario of one or more of the examples of prudent practices may or may not constitute negligence. Instead, these guidelines are meant to reemphasize the use of careful investigative procedures when considering suspension and revocation action and to reiterate sound hearing techniques for presenting negligence cases.

a. Negligence Versus Error In Judgment. When investigating marine casualties or incidents involving potential negligent navigation, a careful evaluation of all appropriate factors should be made to discern whether a mariner's conduct constitutes negligence or error in judgment. In this respect the IO should carefully study both individual decisions as well as the entire context of a mariner's sequential actions preceding the accident. Listed below are some general elements which may be considered when making this determination:

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- 2.D.4. a. (1) The prudent mariner is not expected to exhibit complete infallibility or perfect judgment. However, the prudent mariner should seek out all reasonably available information in advance on potential events or conditions which may affect the vessel's safety. Examples of this could include, but are not limited to, obtaining broadcast and local notices to mariners; initiating timely radio communications concerning vessel traffic conditions, or other situations which may affect safe navigation such as bridge openings, and lock and dam schedules; obtaining on-scene and forecast environmental conditions; researching physical restrictions posed by confined waters and bridges; and considering the available maneuvering options in advance.
- (2) The prudent mariner should also be continually aware of the vessel's physical and maneuvering characteristics, its operational capabilities and limitations, and the vessel crewmembers' duties and capabilities. The prudent mariner should be especially aware of his own limitations. He should plan appropriately as indicated above prior to entering unfamiliar waters; or if faced with an unfamiliar situation he should consider requesting the assistance of more experienced personnel.
- (3) The prudent mariner should then use reasonable foresight based on the available information in anticipating potential navigational dangers or predicaments and in considering various courses of action to best avoid hazardous situations.
- (4) The fact that a navigational accident causes damage is not necessarily indicative of negligence having occurred nor is the fact that little or no damage results necessarily indicative of no negligence having occurred. Again the IO should primarily focus on the mariner's actions or omissions preceding the accident. However, when negligence is detected, the degree of damage may be evaluated along with other appropriate factors in determining whether to initiate S&R proceedings or other remedial actions.
- b. Evidence Of Negligence And Misconduct. Investigations should not be limited to negligence when specific elements of misconduct may be involved. These may include violation of the Navigation Rules, navigation safety regulations, or other established laws or regulations. Common examples of conduct which may constitute negligence, misconduct, and violation of law or regulation include, but are not limited to, the failure to maintain a proper lookout, failure to test steering or propulsion systems before entering port or getting underway, failure to have available or to use required navigational charts, publications, or equipment.
- c. Specific Acts Versus Presumption. Charging a mariner with a particular act of negligence based on specific evidence is always preferable to charging the individual with negligence based solely on a presumption. For this reason and whenever practicable, evidence should be vigorously sought and fully developed concerning any specific acts or omissions, which singly or in combination constitute negligent behavior. See Appeal Decisions 2455 and 2465.
- d. Respondent's Rebuttal. When only a presumption of negligence exists, the IO has the discretion to determine whether or not charges are appropriate. As previously indicated, this decision should be based

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- 2.D.4. d. (cont'd) on a careful evaluation of all pertinent information available, however, if charges are preferred and the respondent presents evidence at a hearing concerning his version of events, the IO should be ready to rebut that evidence. The IO should not rely on the ALJ to announce during the hearing whether the respondent has provided a "credible, nonfault explanation" for his actions. The IO should therefore expect as a worst case scenario that the ALJ will consider the presumption of negligence to have been rebutted and that the burden to proceed will shift back to the Coast Guard. As a minimum, the IO should be well prepared to strenuously cross-examine the respondent or the respondent's witnesses. Other options include the calling of Coast Guard rebuttal witnesses, expert or otherwise, and the presentation of any additional Coast Guard rebuttal evidence, to counter the respondent's explanation.
- e. Opening Statement. Whether charging a mariner with actual or presumed negligence, the IO should briefly, but clearly, outline in his opening statement at the hearing the basis for the Coast Guard's determination that the respondent's acts or decisions were negligent; the nature of the applicable standard of care by which the respondent's action were measured; and the exact nature of the evidence which will be presented to prove the charge. The importance of this initial step in the hearing cannot be overemphasized. It affords the IO the first and best opportunity to focus the ALJ's attention on the exact issues the Coast Guard feels are pertinent and to begin establishing the validity of the Coast Guard's case.
- f. Standard Of Care. The IO may establish an applicable standard of care in several ways. These include, but are not limited to, submission of expert witness testimony concerning prudent marine practices; reference to existing laws or regulations such as the Navigation Rules or navigation safety regulations which require specific acts under various conditions; reference to existing Commandant's Decisions on Appeal which address prudent marine practices; reference to other well known publications which address the subject such as Griffin On Collision, Knight's Modern Seamanship, Tug. Tow and Pilotage, and United States Coast Pilots.
- g. Official Notice. While 46 CFR 5.541 specifies certain items which the ALJ is required to consider without the IO submitting them in evidence, the ALJ is not restricted from taking official notice of other information as long as the IO can demonstrate that the material is relevant and commonly known or accepted. IOs should use this mechanism whenever appropriate to further focus the ALJ's attention on areas of relevant interest, whether specified in regulation or not.
5. Guidelines For Reports Of Sexual Offenses And Harassment. As the marine industry has become more diversified, incidents of sexual abuse and harassment have grown. Congress, in 1989, enacted legislation that requires incidents of sexual abuse aboard U.S. documented vessels be reported to the Coast Guard. For incidents of sexual harassment there are no specific laws or regulation written that effect the marine community. The lack of specific laws and regulations should not dissuade IOs from investigating reports of sexual harassment made by mariners.
- a. Investigation. Reports of sexual abuse and harassment should be taken seriously and investigated immediately. When conducting investigations dealing with a sexual nature, IOs shall take care to

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- 2.D.5. a. (cont'd) ensure the victim does not suffer any further embarrassment. 46 U.S.C. 10104-- Requirement to Report Sexual Offenses, requires a master, or other individual in charge, to report complaints of sexual offenses to the Coast Guard. Complaints may also be received from the victim, witness, or other law enforcement agencies. 18 U.S.C., Chapter 109A-- Sexual Abuse, defines the sexual offenses which are required to be reported under 46 U.S.C. 10104. The offenses described in Chapter 109A are: aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, abusive sexual contact, and definitions.
- b. Action. If an investigation detects a violation described in 18 U.S.C. 109A has occurred S&R proceedings shall be initiated against the individual who Limited the act. The charge should be Violation of a Law or Regulation. Misconduct should not be used, as misconduct under 46 CFR, Table 5.569, carries only a 1-3 month suspension. To reflect the seriousness of an offense listed in the Sexual Abuse Act, the recommended sentencing guidelines for a conviction is, at a minimum, imprisonment for not less than 6 months., and/or up to a \$5000.00 fine. Accordingly, a requested sanction of Revocation would be appropriate. S&R proceedings shall also be initiated against the master, or other individual in charge if the investigation also finds-that these individuals failed to report the offense to the Coast Guard. A report of sexual abuse, made by any person, should be reported to an U.S. attorney, as the allegation constitutes a Federal crime. If an investigation finds that sexual harassment has occurred aboard a documented vessel, S&R proceedings shall be initiated against the person who committed the act. The basis for the charge of misconduct is 42 U.S.C. 2000e, and 29 CFR 1604.11, which prohibit sexual harassment in the workplace. If the investigation finds that the master knew the sexual harassment was on going, and took no action to stop it, the master should also be charged with misconduct for violating 42 U.S.C. 2000e and 29 CFR 1604.11 (see 2.D.6.d).
- c. Failure To Report A Sexual Offense. 46 U.S.C.10104(b) authorizes up to a \$5000.00 civil penalty against a master, or other individual in charge, who knowingly fails to report a complaint of sexual abuse to the Coast Guard. The IO shall open a Marine Violation (MV) case against the master, or other individual in charge, if the investigation finds that the master, or other individual in charge knew of the incident, and the complaint was made to the Coast Guard by the victim, witnesses, or other law enforcement agency.
6. Sample Charges And Specifications. In the following examples, the charges of misconduct, negligence, incompetence, violation of law or regulation, and dangerous drug offenses are explained and illustrated, and sample specifications are set forth. These examples are not inclusive of every situation that may be encountered; they are intended to illustrate the most common types of situations that have been encountered.
- a. Misconduct. Generally, a specification under a misconduct charge must, on its face, allege facts which fulfill the standards of 46 CFR 5.27. The words of the specification must allege on the face of the specification that what was done was wrongful. Thus, if the actions alleged could, on the face of the specification alone, be other than wrongful, the word "wrongfully" should be included. The following examples provide specifications alleging offenses which amount to misconduct.

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- 2.D.6. a.(1) Failure To Perform Duty/Failure To Perform Duty By Reason Of Intoxication. The offense of failing to perform duty is distinct from incompetence in that the former is a failure to perform, whereas the latter is inability to perform. A person may neglect a duty by never entering upon it; such is an omission of action, rather than an act. A duty may be imposed by law, regulation, or custom in effect at the time of the offense. To sustain a specification of failure to perform duty by reason of intoxication, it must be affirmatively proven that the intoxicated state of the respondent was directly or indirectly coupled with the person's failure to perform. When there is an intervening cause (confinement on the ship or other relief from duty) for failure to perform, the respondent should be charged with the offense(s) on which the relief from duty was based. If applicable, a separate specification should allege inability to perform duties due to intoxication, or other cause resulting from the misconduct. (NOTE: See Appeal Decision No. 1533.1 Sample specifications:
- (a) ". . . Did, on or about July 1, 1995, while the vessel was at sea, wrongfully fail (or refuse) to perform your duties as watertender on the 1200-1600 watch."
  - (b) ". . . Did, on or about 0800, August 1, 1995, while the vessel was at London, England, wrongfully fail (or refuse) to report to work as a deck department day worker."
  - (c) ". . . Did, on or about April 1, 1995, while the vessel was at the port of Oslo, Norway, wrongfully fail (or refuse) to stand your 0400-0800 gangway watch by reason of intoxication (or by reason of being under the influence of liquor)."
  - (d) "... Did, on or about April 1, 1995, wrongfully fail to perform your duty as 1200 to 1600 lookout by sleeping in the forecandle head."
- (2) Disobedience Of A Lawful Command. The authority of the ship's master to issue orders is well established (see 46 U.S.C. 11501). A command need not be issued directly by the master, but may be transmitted by the master through subordinate officers. No statute permits a mariner, either expressly or implicitly, to disobey a lawful order of a superior; a mate or engineer as well as the master (certain statutory safeguards provide a remedy to mariners in cases of abuse). The relationship of master to mariner is entirely different from that of the employer and employee ashore. A mariner who questions a master's order does so at risk. The IO, of course, should decide if the command was legal and should not base charges on an illegal command. The specification must tell what the command was and, unless obvious, the manner in which it was disobeyed. Sample specifications:
- (a) ". . . Did, on or about 1300, July 1, 1995, while the vessel was at sea, wrongfully disobey a lawful command of the master to take your regularly assigned lifeboat station, by failing to do so."
  - (b) ". . . Did, on or about 1300 August 1, 1995, while the vessel was at the Houston, Texas, City Dock, wrongfully

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2.D.6. a. (2) (b) (cont'd) disobey a lawful command of the chief engineer to change and clean fuel oil strainers on your watch, by failing to do so."

(3) Assault/Assault And Battery. In the following examples, several types of assault or assault and battery have been set forth. Assault has been defined as an attempt to touch another without permission, or as a placing of another in fear of bodily harm. Battery is, then, a consummation of the first type of assault. Assault with dangerous weapon is a serious breach of safety; assaults by mariners on the master or other officers, whether or not resulting in jury, are grave offenses. Sample specifications:

(a) ". . . Did, on or about April 1, 1995, while the vessel was at sea, wrongfully assault the master, Philo Pfarkley, by brandishing a 12-inch wrench in a threatening manner and offering to strike him."

(b) ". . . Did, on or about 1 June 1995, while the vessel was at sea, wrongfully assault and batter a member of the crew, Frank Jones, by beating him with your fists."

(c) ". . . Did, on or about July 1, 1995, while the vessel was at sea, wrongfully assault a member of the crew, Frank Jones, by threatening him with a 9mm pistol."

(4) Desertion. This is the abandonment of a ship in which a mariner has engaged to perform a voyage, before the expiration of the mariner's contract and without leave. In maritime law, desertion means not merely an unauthorized absence from the ship without leave, but unauthorized absence with no intention of returning to its service. Intent, being a state of mind, is not open to direct proof but must be inferred from other facts. Thus, to sustain an offense of desertion, proof of the permanent absence from the vessel is essential to distinguish desertion from failure to join. Removal of all personal effects may indicate the intent to permanently abandon. However, the leaving of any of a mariner's effects aboard the mariner's vessel does not necessarily rebut an indicated intent not to return. An individual may desert whether or not the mariner takes his or her personal effects, and removing personal effects does not always establish desertion. There are many other ways of proving intent (e.g., statements, how long the individual was gone, and where the mariner went). In the case of desertion, 46 U.S.C. 11501 provides for the "forfeiture of all or any part of the clothes or effects (which the deserter] leaves on board." (Obviously, if Congress had intended that desertion would not have occurred if clothes or effects were left on board, there would not be a provision for the forfeiture of such effects.)  
Sample specification:

(a) ". . . Did, on or about April 1, 1995, wrongfully desert the vessel, at London, England."

(5) Theft And Robbery. Theft (larceny) is the taking and carrying away of another's property with intent to permanently deprive. Robbery is the taking of property by force or putting in fear, from the person or presence of another. Wrongful possession of another's property is also misconduct. Sample specifications:

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- 2.D.6. a. (5) (a) Did, on or about June 1, 1995, while the vessel was at Liverpool, England, wrongfully have in your possession certain stores of said vessel, to wit  
..."
- (b) ". . . Did, on or about April 1, 1995, while the vessel was at sea, wrongfully take, and carry away, personal property of another member of the crew, Dick Jones, to wit: a radio, watch, and two rings."
- (c) ". . . Did, on or about March 1, 1995, while the vessel was at sea, rob another member of the crew, John Sebastiani, of his wallet."
- (6) Failure To Account. The Coast Guard considers that a person serving on a ship who receives money from others and fails to make a proper accounting for it at the prescribed time continues to act under the authority of his or her MMCs, to the extent that the person may be charged with this offense after completion of the voyage. Sample specification:
- (a) ". . . Did, on or after a voyage which extended between April 1, 1995, and July 1, 1995, wrongfully fail to make a proper accounting to Elizabeth Smith, a passenger lawfully entitled thereto, for certain funds which you collected in the performance of your duties as purser during the course of said voyage."
- (7) Possession Of Alcoholic Beverages. The possession of alcoholic beverages aboard commercial vessels is not expressly prohibited by law or regulation, except in certain instances as specified in 33 CFR 95.045. However, a vessel owner or master may prohibit such possession or use, either verbally, by written order, or through an employment contract with crewmembers (Shipping Articles, Form CG-705A, specifically warns crewmembers against having or bringing aboard "grog," i.e., any intoxicating beverage). Sample specifications:
- (a) ". . . Did, on or about April 1, 1995, while the vessel was at New York, N.Y., wrongfully bring liquor aboard (or cause liquor to be brought aboard)."
- (b) ". . . Did, on or about June 1, 1995, while the vessel was at sea, wrongfully have intoxicating beverages in your possession."
- (8) Possession, Use, Sale, Or Import Of Narcotics. The Comprehensive Drug Abuse Prevention and Control Act of 1970 prohibits most activities involving narcotics (including opiates and cocaine) and marijuana. 21 U.S.C. 841 prohibits unauthorized manufacture, distribution, dispensing, or possession with intent to do any of the above, of controlled substances (including narcotics and marijuana). 21 U.S.C. 952 prohibits importation of controlled substances without a permit, or except in accordance with regulations as the Attorney General shall prescribe. 21 U.S.C. 955 prohibits possession of narcotics and marijuana when arriving or departing the United States unless listed on the manifest. 21 U.S.C. 957 prohibits import of controlled substances by anyone not registered to do so. 21 U.S.C. 802 defines "controlled substance," "marijuana,"

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- 2.D.6. a. (8) (cont'd) and "narcotic drug." 21 U.S.C. 812 lists controlled substances, dividing them into five schedules. The complete schedules are listed in 21 CFR 1308. Marijuana, THC, and heroin are in Schedule I; cocaine is in Schedule II. In view of these comprehensive provisions, particularly 21 U.S.C. 844, possession of narcotics or marijuana is presumed to be wrongful in the absence of evidence to the contrary. Possession, use, and any kind of dealing with narcotics or marijuana by U.S. merchant mariners is considered among the most serious offenses within the jurisdiction of the Coast Guard, and those for which S&R actions are usually required. 46 U.S.C. 7704 requires revocation of the MMCs, if within 10 years before the beginning of the proceeding a mariner is convicted of violating a dangerous drug law of the United States or of a state. CDOA 2535, (SWEENEY) defines cure as it applies to cases involving dangerous drugs. Dangerous drugs is defined to include marijuana for this purpose. Although that CDOA was subsequently reversed by the NTSB, the action of the NTSB was done for reasons unrelated to the definition of cure. 46 U.S.C. 7704 requires revocation of the MMCs if the holder has been a user of, or addicted to, a dangerous drug, unless satisfactory proof of cure is made to the ALJ. In cases where the charge has been proved before an ALJ, the sanction of revocation shall be pursued by the IO. If the respondent presents evidence of cure and the ALJ finds the person cured, than any sanction less than revocation will be determined by the ALJ. When a mariner is convicted of a narcotics offense that occurred while the mariner was employed on a U.S. vessel, the IO may proceed under either 46 U.S.C. 7703 or 7704. When a mariner is convicted of a dangerous drug offense that occurred while the mariner was not employed as a mariner on a U.S. vessel, the IO shall proceed under 46 U.S.C. 7704 (see subparagraph 2.D.6.e. below). Sample specifications:
- (a) ". . . Did, on or about April 1, 1995, while the vessel was at Galveston, TX, wrongfully have in your possession a narcotic drug, to wit: cocaine."
  - (b) ". . . Did, on or about August 1, 1995, while the vessel was at New Orleans, LA, wrongfully sell and/or deliver to a crewmember, Tad Sludge, a quantity of certain narcotics, to wit: opium."
  - (c) ". . . Did, on or about September 18, 1995, receive a conviction from the State of Louisiana, for the sale and possession of opium while acting as a crewmember of the M/V SEA LION on August 1, 1995.
- (9) Failure To Respond To Summons Or Subpoena.  
The authority of the Coast Guard to compel the attendance of witnesses or the production of other evidence at an investigation or hearing is provided by 46 U.S.C. 7705. If a mariner serving under authority of his or her MMCs is subpoenaed to appear as a witness or produce evidence, and fails to appear, S&R proceedings may be initiated. [NOTE: A subpoena for the purpose of serving a Decision and Order (D&O), or of obtaining surrender of a credential which has been ordered suspended or revoked, is not lawful and does not serve as a basis for this specification.]  
Sample specification:

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2.D.6. a. (9) (a) Did, on or about October 1, 1995, while the vessel was at New Orleans, LA, wrongfully fail to appear as a witness as directed in a subpoena dated March 31, 1995, duly issued and served by Ensign Frank Benson, Investigating Officer."

(10) Harassment Of Passengers. This is a most serious offense. It has long been held that passengers on vessels are entitled to protection from invasion of their privacy and from personal rudeness (see Chamberlain v. Chandler (1823), Fed Cas 2575, and Nieto v. Clark [1858], Fed Cas 10,262). Because of the serious nature of these types of offenses, evidence to support such allegations must be clear and convincing. However, the IO may encounter great difficulty in preferring such charges. In cases involving minors, parents are reluctant to permit them to appear as witnesses or to be interrogated. Also, when these situations arise on the outbound voyage, passengers debarking in foreign ports can submit their testimony only by deposition. Several cases on appeal (see COMDTINST M16722.3 (Series), Index of Commandant's Decisions on Appeal and Review of Suspension and Revocation Proceedings, section 6.251) involve varying degrees of harassment, from wrongfully entering passengers' staterooms and addressing them with improper language to committing overt acts of physical contact. Where the act of physical contact is sexual in nature, the IO shall reference 2.D.6.d, as sexual abuse or contact is a violation of law. IOs should familiarize themselves with the cases reported in COMDTINST M16722.3 (Series), for comparison with the evidence available in cases which may arise. Sample specification:

(a) ". . . Did, on or about May 1, 1995, while the vessel was at Hamilton, Bermuda, wrongfully enter the stateroom of a female passenger, Marilyn Closett, and address her in improper language."

(11) Sexual Harassment. Congress has enacted several laws to protect workers from intimidating, hostile and offensive work places, and the marine work place is not exempt from these laws. Marine employers shall follow the rules established by the Equal Employment Opportunity Commission (EEOC) to protect workers from such an environment. Complaints made by mariners should be investigated promptly and tactfully. IOs should advise victims unless a witness, or other proof can be found to verify that, words or gestures occurred, a case may be hard to prove. If the investigation finds the master of the vessel failed to stop the behavior of the offending person, S&R proceedings shall be initiated (see 2.D.6.d). Sample specifications:

(a) ". . . Did, on or about Aug 4, 1995, while the vessel was off loading cargo, wrongfully made sexual gestures towards Seaman Wendy Bronson, making for an offensive work environment, and causing her to leave her station as a line handler."

(b) ". . . Did, on or about March 15, 1995, while the vessel was underway, wrongfully use your position as watch supervisor, by telling AB Adam West, that if he wanted to have preferred duties, he should leave his stateroom door unlocked for your "payback" visits."

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2.D.6. a. (11) (c) Did, on or about Aug 4, 1995, as Master of the M/VSEA LION, while the vessel was moored at Pier 24, Port of Chicago, failed to act upon the complaint of sexual harassment made by Seaman Bronson against 3rd mate Kelly during cargo operations.

(12) Improper Treatment Of Crew. Maltreatment of crewmembers by the master and officers, and the abandonment of mariners in a foreign port, are offenses punishable by fine or imprisonment. To constitute an offense under criminal statutes, maltreatment must be cruel and unusual punishment, induced by malice or hatred; the abandonment of a mariner in a foreign port must be done maliciously and without justifiable cause. The "borderline" in determining maltreatment is a fine distinction between extreme and unjustifiable acts and the authority under 46 U.S.C. 11501 of the master to punish mariners for disobedience or continued disobedience of lawful orders. For example, the holding in irons of a mariner for continued refusal to bring coffee to the chief mate was held to be cruel and unusual punishment predicated on an unlawful order. In other cases, where mariners were placed in irons for disobedience of a lawful order and punishment was temperately applied, no offense was committed. [NOTE: Abandonment of mariners in foreign ports, as defined by 18 U.S.C. 2195, rarely arises since removal of such persons overseas is generally based on bad conduct that justifies removal for the safety of the vessel. It is usually done through the U.S. consul or vice consul at the port of removal.] Sample specification:

(a) ". . . Did, on or about June 1, 1995, while the vessel was at sea, wrongfully imprison a member of the crew, Bill Ding, by confining him in irons in the Number 2 lifeboat."

(13) Smuggling Or Failure To Declare Dutiable Merchandise In Domestic Or Foreign Ports. The Coast Guard acts in conjunction with the U.S. Customs Service in the protection of revenue and prevention of smuggling activities; this is a deeply rooted mission, from the birth of the Revenue Cutter Service. As in the prohibition against the importation of dangerous drugs, smuggling statutes provide that possession shall be deemed evidence sufficient for a finding of guilty unless mitigating factors can be shown. These provisions include smuggling into the U.S. and other countries, and situations short of actual importation, where there has been an attempt or intent to evade payment of lawful duties. Charges under 46 U.S.C. Chapter 77 involving the illegal importation of merchandise, brought other than on complaint of a Customs officer, should be processed in cooperation with the Customs Service at the port where the offense occurred. Sample specification:

(a) ". . . Did, on or about July 1, 1995, while the vessel was in San Diego, CA, wrongfully bring [attempt to bring] into the United States certain merchandise [articles, commodities] which could not lawfully enter the United States until certain formalities required by the U.S. Customs Service had been met, to wit: payment of tax or duty [declaration, invoice, or description of said merchandise [articles, commodities] on a manifest of ship's cargo, stores or crew curios.]11

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2.D.6. a. (14) Stowaways/Aiding Illegal Entry Of Aliens. Stowing away, or the aiding, assisting, or abetting of any person who stows away, on a U.S. vessel with the intent to obtain transportation is prohibited by 18 U.S.C. 2199. The bringing into the U.S., harboring, or concealing, or attempting to do so, on board any vessel, of any alien not duly admitted by an immigration officer or not lawfully entitled to enter or reside in the U.S. is prohibited by 8 U.S.C. 1324. A case may occur in which a person has been discovered to be on board a vessel illegally, and the person's residence status is undetermined at the time of the investigation. In another instance, a conviction for harboring or concealing an alien may have been obtained under 8 U.S.C. 1324, or criminal prosecution for one or more reasons has been undertaken by the U.S. attorney. In cases involving alien smuggling rings, evidence at the S&R proceedings must be supplied through the testimony of the immigration officer, or the master or other ship's officer, having direct knowledge of the offense, rather than relying on the disposition of the case by the federal district court. To provide sufficient flexibility in unclear cases, it will be necessary to prefer dual specifications (see samples (a) and (b) below). A situation may arise where a mariner aids a stowaway (other than an illegal alien) by furnishing food and a place of concealment, although there is no evidence to show that the mariner aided the stowaway to board the vessel. While this is not specifically covered in 8 U.S.C. 1324, it is considered misconduct equivalent to aiding the stowaway to board the vessel. Sample specifications:

- (a) ". . . Did, on or about April 1, 1995, while the vessel was at San Francisco, CA, bring in (attempt to bring in) to the United States, or conceal or harbor [attempt to conceal or harbor], an alien not duly admitted by an immigration officer or not lawfully entitled to enter the United States."
  - (b) ". . . Did, on or about June 1, 1995, while the vessel was in Hong Kong, without the consent of the master or owner, with intent to obtain transportation there for, aid [abet, assist] to stow away aboard said vessel a person, Chang Duc Thi."
  - (c) ". . . Did, on or about September 1, 1995, while the vessel was at Djakarta, Malaysia, wrongfully aid and assist a stowaway, Li Quing Dyk, illegally then and there on board, by furnishing him with food and shelter."
- (15) Failure To Join. In the majority of instances, proof can be established by introduction of the Shipping Articles showing the mariner's signature to sign on the vessel, and the corresponding entry by the master stating the mariner's absence at the end of the voyage or at the time the crew "pays off." This evidence should be supplemented by certified copies of relevant Official Logbook entries made in accordance with 46 U.S.C. 11502. Sample specification:
- (a) ". . . Did, on or about August 1, 1995, wrongfully fail to join the vessel at Wilmington, DE."

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- 2.D.6. a. (16) Absence Without Leave (AWOL) And Absence Over Leave (AOL). Although both of these constitute unauthorized absences, the former includes the element of unauthorized departure from the vessel. Consequently, if a mariner is charged with absence and evidence indicates that the mariner had authority to depart but did not return when due back, the specification should reflect ACL. No specific intent need be proved; the act supplies the intent. If a mariner on authorized leave is unable to return through no fault of his or her own, the mariner has not committed an offense. For example, if it is verified that the mariner's absence was solely due to the mariner's arrest and detention by civil authorities, followed by acquittal in a civil court, the mariner should be found not guilty of the specification; the same rule applies to an illness which prevents the mariner's return. However, when such absence is caused by misconduct for which the mariner is convicted in a civil court or there is evidence produced during the hearing for AOL, it does not provide a defense to the charge of unauthorized absence. Sample specifications:
- (a) ". . . Were, on or about April 1, 1995, wrongfully absent from your vessel without leave, within 24 hours of the vessel's sailing from London, England."
  - (b) ". . . Did, on or about April 12, 1995, wrongfully remain absent from your vessel beyond your authorized leave."
  - (c) ". . . Were, on or about April 12, 1995, while the vessel was at sea, wrongfully absent from your duties without authority."
- b. Negligence. 46 CFR 5.29 sets forth the definition of negligence. A watch officer who fails to post a lookout while the vessel is underway at night or under conditions of restricted visibility is negligent. A lookout who is not alert and fails to see an approaching vessel which is visible, and consequently fails to give warning to the bridge, is likewise guilty of negligence. Sample specifications:
- (1) ". . . Did, on or about January 11, 1995, while the vessel was approaching the Galveston, Texas, Sea Buoy, fail to adequately fix the position of the vessel, contributing to the grounding of the vessel."
  - (2) ". . . Did, on or about April 13, 1995, while the vessel was at sea, fall asleep while on lookout duty on the forecandle head."
  - (3) ". . . Did, on or about June 29, 1995, while the vessel was navigating on the high seas [in navigable waters of the United States], during conditions of restricted visibility, fail to obtain or properly use information available to you from radar observations to determine if a close quarters situation was developing and/or risk of collision existed from a vessel detected by radar."
- c. Incompetence. As indicated in 46 CFR 5.31, the charge of incompetence is based simply on inability on the part of a mariner to perform the duties required by virtue of the MMCs. The inability to perform may be due to professional deficiencies, physical disability,

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2.D.6. c. (cont'd) mental incapacity or due to drug or alcohol abuse (see 2.C.4. or 2.C.5.) It must be further verified that the disability continues to exist or may be presumed to exist at the time of the hearing. In each instance, the charge will simply be "incompetence"; the specification will set forth the appropriate facts. Professional deficiency is, generally speaking, shown by a course of actions over a period of time indicating that the mariner should not be allowed to continue to serve in his or her rating. In some cases, such as ignorance of the Navigation Rules resulting in a collision, it may be indicated by one incident. Sample specifications:

- (1) ". . . Did, on 15 February 1995 incorrectly plot the 2400 dead reckoning position for the vessel and was incompetent by his acts and omissions, while standing deck watches on a foreign voyage, which demonstrated that he did not possess and exercise the professional skills of an ordinary, prudent, licensed third mate on 15 February 1995."
- (2) ". . . Did, on or about January 19, 1995, February 1, 1995, and March 1, 1995, while the vessel was at sea, suffer from seizures and were thus unable to perform your duties as able seaman and at present are still susceptible to seizures."
- (3) ". . . Were, on or about January 14, 1995, February 1, 1995, and March 1, 1995, while the vessel was at sea, unable to perform your duties of able seaman due to your demonstrated irrational behavior and at present you suffer from mental illness."
- (4) ". . . Were, on or about 17 March 1995, found to be mentally incompetent by Dr. Smith, of the Jupiter Medical Center, for abuse of (alcohol) (name of drug).

d. Violation Of Law Or Regulation. The IO's decision to use Violation of Law or Regulation, vice Misconduct or Negligence, should be based on the severity of the violation. Example, a master involved in a collision who failed to properly post a look out, as required by NavRule 5, can be charged with Violation of Law or Regulation, Misconduct, or Negligence. The IO should research applicable laws and regulations, and their intent with regards to promoting marine safety, and the protection of navigable waters. The IO must look at the facts involved in the casualty and decide which charge to use. Recent legislation, i.e., Oil Pollution Act of 1990, and the Sexual Abuse Act of 1986 have been codified in laws applicable to marine safety. Other laws such as the Civil Rights Act of 1964(42 U.S.C. 2000e), although not codified in laws dealing with marine safety, exist and are applicable to promoting marine safety. The IO should also seek a comparable sanction, i.e., if the law requires imprisonment, revocation should be sought. The following specifications deal with acts that may not be codified in laws or regulation specifically dealing with marine safety, but are of growing concern within the marine industry:

- (1) Sexual Harassment. 42 U.S.C. 2000e and the regulations published in 29 CFR, Subtitle B, Chapter XIV--Equal Employment Opportunity Commission, Part 1604, Section 1604.11 deal specifically with sexual harassment. The tie to marine safety is made through the effects sexual harassment have on an individual. Sexual harassment creates an intimidating, hostile and offensive work environment, which effects a crewmember's

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2.D.6. d. (1) (cont'd) work performance. 42 U.S.C. 2000e requires that employers must ensure the work place is free from such behavior. If an investigation indicates a master was aware of a crewmember being sexually harassed, and no action was taken to stop it, charges shall be preferred. Sample specification:

(a) ". . . As master, Did, on or about May 1, 1995, receive a report of sexual harassment; to wit: a report made by Ordinary Seaman Smith, that AB Brian Jackson made suggestive comments which were considered lewd and sexual in nature, and you failed to take action, which created a [hostile, intimidating, offensive) work environment, thus effecting the work performance of Seaman Smith, a violation of 29 CFR 1604.11, and 42 U.S.C. 2000e, Title VII.

(2) Failure To Report A Sexual Offense. 46 U.S.C. 10104 requires the master, or person in charge, to report to the Coast Guard all complaints of sexual offenses which occur aboard U.S. documented vessels. The failure to report a sexual offense differs from failure to take action regarding sexual harassment. Sexual offenses, as described in the Sexual Abuse Act of 1986, (18 U.S.C., Chapter 109A), are far more serious than sexual harassment because physical contact is involved. The sentencing guidelines for sexual offenses are also more severe than sexual harassment. If an investigation indicates that the master, or person in charge, of a documented vessel fails to notify the Coast Guard of a complaint dealing with a sexual offense, S&R proceedings shall be initiated, and revocation sought. Sample specification:

(a) ". . . Did, on or about May 1, 1995, receive a report of a sexual offense described in 18 U.S.C., Chapter 109 A; to wit: a report made by Ordinary Seaman Smith, that Bos'n Jabowski forced her to have sex by threatening her with bodily injury on May 1, 1995, and that you failed to report the incident to the Coast Guard, a violation of 46 U.S.C. 10104(a).

(3) Sexual Abuse. The guidance for specific violations covered under the Sexual Abuse Act of 1986 are found in 18 U.S.C., Chapter 109A. Where as 46 U.S.C. 10104 requires the master, or person in charge, to report a complaint of a sexual offense, the person who commits the act must be charged with a violation of law, with the specification of sexual abuse under 18 U.S.C., Chapter 109A. This is a very serious offense, as the criminal penalties associated with the act are very severe. IOs shall be careful conducting investigations of cases involving sexual abuse due to the nature of the acts. Care shall be taken to ensure that the victim is not further harmed through improper questioning. Sexual offenses on documented vessels is a Federal crime under 18 U.S.C., Chapter 109A, and an U.S. attorney should be notified. In all cases of sexual abuse, revocation should be sought due to the serious nature of the acts. Sample specifications:

(a) ". . . Did, on or about May 1, 1995, while the M/V SEA PRINCE was moored in Norfolk, VA., offered Seaman Smith brownies laced with LSD, and then had sex with Seaman Smith when she was in an impaired state, a violation of 18 U.S.C. 2241(b)(2)(B)."

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- 2.D.6. d. (3) (b) ". . . Did, on or about May 1, 1995, force Ordinary Seaman Smith, to have sex by threatening her with death; to wit: I'll kill you if you don't give me what I want", a violation of 18 U.S.C. 2242."
- (c) ". . . Did, on or about April 15, 1995, while the M/V SEA PRINCE was at sea, were found by the master to have molested a minor female passenger, [NAME OF PERSON], by placing your hand on her private parts in a lewd and lascivious manner, a violation of 18 U.S.C. 2243"
- (d) Did, on or about May 1, 1994, while the M/V SEA PRINCE was at sea, threaten to "bust" Seaman Smith's skull if she continued to fight off your attempts to fondle Seaman Smith's buttock and breasts, after Seaman Smith asked you to stop, a violation of 18 U.S.C. 2144(2)."
- (4) Possession Of A Dangerous Weapon Or Explosive Compound. The carrying or possession by any person of any dangerous weapon or explosive compound aboard a merchant vessel, without previously obtaining the permission of the owner or master of the vessel is prohibited by 18 U.S.C. 2277. The wearing of sheath knives aboard ship without the consent of the master is prohibited by 46 U.S.C. 11506. This prohibition is repeated on the Shipping Articles, of which the master must inform every mariner offering to serve aboard his or her vessel. Sample specifications:
- (a) ". . . Did, on or about April 1, 1995, while the vessel was at sea, have in your possession a dangerous weapon, to wit: a .32 caliber automatic pistol, without permission of the master, a violation of 18 U.S.C. 2277."
- (b) ". . . Did, on or about July 1, 1995, while the vessel was at sea, wrongfully have in your possession an explosive compound, to wit: nitroglycerine, without permission of the master, a violation of 18 U.S.C. 2277."
- (5) Possession Or Selling Of A Switchblade Knife. The possession or sale of a switchblade knife aboard a U.S. vessel, in any location, is prohibited by 15 U.S.C. 1243. In such cases, the fact that permission was improperly granted by the master is immaterial. Sample specifications:
- (a) ". . . Did, on or about October 1, 1995, while the vessel was at sea, wrongfully have in your possession a switchblade knife, a violation of 15 U.S.C. 1243."
- (b) ". . . Did, on or about November 1, 1995, while the vessel was at St. Thomas, V.I., wrongfully sell to John Pibbs, a fellow crewmember, a switchblade knife, a violation of 15 U.S.C. 1243."
- (6) "Use Of Alcoholic Beverages. The use of alcoholic beverages aboard commercial vessels is not expressly prohibited by law or regulation, except in certain instances as specified in 33 CFR 95. Sample specifications:

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- 2.D.6. d. (6) (a) ". . . Did, on or about August 1, 1995, while the vessel was at sea, wrongfully consume intoxicating beverages, to wit: approximately two cans of beer, while you were standing the 2400-0400 engineroom watch, a violation of 33 CFR 95.045."
- (b) ". . . Were, at or about 1700, 1 October 1995, while the vessel was at sea, wrongfully intoxicated as defined by 33 CFR 95.020, to wit: the alcohol concentration in your blood was determined by breath analysis to be .07 per cent, a violation of 33 CFR 95.045."
- (c) ". . . Were, at or about 2200, 25 December 1995, while the vessel was at sea, wrongfully intoxicated as defined by 33 CFR 95.020, to wit: your superiors observed that your (manner, disposition, speech, muscular movement, general appearance, or behavior, as appropriate) was apparently affected by the consumption of an intoxicant (specify intoxicant, if known), a violation of 33 CFR 95.045."
- (7) Damaging Vessel, Stores, Or Cargo. Willful damage to a vessel, its stores, or its cargo is prohibited under 46 U.S.C. 11501. Sample specifications:
- (a) ". . . Did, on or about April 1, 1995, while the vessel was at sea, willfully damage the Number 4 lifeboat davit with a cutting torch, a violation of 46 U.S.C. 11501."
- (8) Resisting Coast Guard Personnel In Performance Of Duty. The forcible assault, resisting, opposing, impeding, intimidation of, or interference with any federal officer (including Coast Guard marine safety personnel) engaged in performance of official duties is prohibited by 18 U.S.C. 111 and 2231. The use of deadly force or dangerous weapons in connection with these offenses carries additional heavy penalties. While such offenses occur infrequently, they interfere with law enforcement activities and shall be charged whenever they occur. Sample specification:
- (a) ". . . Did, on or about April 1, 1995, while the vessel was at Seattle, WA, wrongfully and forcibly [assault, oppose, impede, or intimidate] a U.S. Coast Guard officer, Lieutenant Samuel Griffin, during the performance of his official duties, a violation of 18 U.S.C. 111, by [details]."
- (9) Mutiny And Conspiracy To Commit Mutiny. The elements of inciting or conspiring to Mutiny (18 U.S.C. 2192) and the act of Mutiny (18 U.S.C. 2191) are many and varied, ranging from the refusal or neglect of duty to open rebellion or usurpation of the master's command. The offenses may occur while the vessel is in a harbor (foreign or domestic) or on the high seas. The Supreme Court has held that a rebellion by mariners against their officers on board a vessel anywhere within the admiralty jurisdiction of the United States is to be punished as mutiny. This cannot be changed by the court and cannot be held inapplicable, in determining the right of mariners to strike when their vessel is docked at a domestic port, especially since Congress refused to adopt proposed measures limiting the scope

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2.D.6. d. (9) (cont'd) the statute to vessels underway on the high seas of (Southern Steamship Co. v. NLRB, 62 S.Ct. 886, 316 U.S. 31 [1942]). In this case, it was held that, where strikers deliberately defied direct commands to make ready for departure, and undertook to impose their will upon the captain and officers, the strike constituted mutiny under 18 U.S.C. 2192 and 2193. It is the Commandant's policy to seek revocation of MMCs in cases of mutiny or conspiracy to commit mutiny (46 CFR 5.61). [NOTE: Preferment of these charges should be reserved for aggravated acts, attended by open revolt, usurpation of command, tumultuous rioting, conspiracy to commit such acts, and like offenses. Simple disobedience of orders should be treated as misconduct.] Sample specification:

(a) ". . . Did, on or about October 31, 1995, while the vessel was at Staten Island, NY, combine, conspire, or confederate with other members of the crew to make revolt or mutiny on board, a violation of 18 U.S.C. 2192."

(10) Unlawful Killing Of Another On Board Documented Vessels. This specification is patterned after those for murder and manslaughter under 18 U.S.C. 1111 and 1112 respectably. It is the Commandant's position that the wrongful taking of human life on board ship or on shore, with or without malice, intentional or not, should result in revocation of MMCs. If a mariner kills another human while a shore, the charge should be misconduct. Sample specification:

(a) ". . . Did, on or about November 1, 1995, while the vessel was at sea [in foreign or domestic port], intentionally killed John Jones, a fellow crewmember, with a fire axe, while on board the M/V CHERVON STAR, a violation of 18 U.S.C. 1111."

e. Dangerous Drug Offenses. Being a user of, or addicted to dangerous drugs and convictions for dangerous drug offenses may be charged under 46 U.S.C. 7704 regardless of whether the individual was serving under authority of his or her MMCs at the time.

(1) Use Or Addiction To Dangerous Drugs. IOs shall seek revocation of MMCs if a chemical test administered under 33 CFR part 95 or 46 CFR part 16 indicates a mariner is a user of dangerous drugs (see 2.B.3.f.). Mariners suspected of use or addiction shall be charged in accordance with 46 CFR 5.35. Mariners should be given the opportunity to enter into a settlement agreement (see 2.C.12.) if he or she is willing to enter a rehabilitation program. If the positive chemical test was the result of post casualty testing the IO shall take the case before an ALJ. ALJs may stay the order of revocation pending the mariner's completion of a drug rehabilitation program. If a mariner commits an act of misconduct regarding possession, use, sale, or association involving marijuana, 46 CFR 5.59(a) allows the ALJ to grant a sanction less than revocation upon showing by the mariner that the possession, use, sale, or association was the result of experimentation and that the mariner has submitted proof at the hearing of rehabilitation. IOs shall not use a

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- 2.D.6. e. (1) (cont'd) misconduct charge if evidence of use is obtained by chemical tests administered under 46 CFR part 16 or 33 CFR part 95.
- (2) Conviction For A Dangerous Drug Law. Mariners found convicted of any Federal or State laws regarding dangerous drugs within 10 years before the beginning of the proceeding shall be charged in accordance with 46 CFR 5.35. Once charged the IO may offer the mariner an opportunity to accept a voluntary surrender in lieu of a hearing (see 2.C.11.). IOs shall request revocation as required by 46 U.S.C. 7704(b) as the appropriate sanction. IOs do not have discretion regarding the sanction imposed for convictions relating to wrongful possession, use, sale, or association with dangerous drugs. Occasionally, in the past, the Commandant has vacated orders of revocation for marijuana convictions which had been entered more than 3 years after the offense for which convicted where evidence of rehabilitation appeared in the record (see Appeal Decision 2303 (Hodgman) 2303 and 2338 (Fifer), aff'd sub. nom. Commandant v. Fifer, National Transportation Safety Board (NTSB) Order No. EM-111 (1984)). More recently, however, the Commandant (see Appeal Decision 2428 (Neat)) has determined that the suspension and revocation appeal process should no longer be used as a forum for granting or denying waivers requested by Appellants. The Commandant has allowed individuals whose MMCs were revoked or surrendered for convictions relating to wrongful simple possession or use to apply for new MMCs in less than 3 years set by 46 CFR 5.901.
- (3) Investigating Officer's Discretion. IOs may exercise discretion in preferring charges under 46 U.S.C. 7704(b) only for marijuana convictions. This is an important responsibility; such discretion is not granted the ALJ, who must revoke if he or she finds a charge proved for a dangerous drug law conviction. Of primary importance is the period of time between the date of conviction and the date of investigation for 46 U.S.C. 7704 action. Other cases involving marijuana where discretion is recommended are those which indicate possession of minimal amounts, first offense, or an indication of experimentation. Prior to preferment of charges, the IO shall take into account the intent of 46 U.S.C. 7704, the safety of life and property at sea and the prevention of illegal drug trafficking, and answer the following questions:
- (a) Is the marijuana conviction several years old?
- (b) Did the marijuana conviction occur while the holder of MMCs rather than acting under the authority of his or her MMC?
- (c) Did the marijuana offense involve simple possession (personal quantity) or one time use (experimentation) rather than trafficking?

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- 2.D.6. e. (3) (d) Is this the only narcotic related offense on the mariner's record?
- (e) Is the mariner no longer involved with narcotics?

If the answers to these questions are yes, the IO should consider not bringing charges under 46 U.S.C. 7704. When no charge is made, the final disposition of the case shall be an investigator's Letter Of Warning. (\*\*NOTE\*\* This is the only time a Letter of Warning shall be used for other than minor offenses, see 2.C.2.). Details of the case shall be made in the PACA, and PANS product sets in MSIS. If charges are preferred, the IO shall place in the record (memo to file) the facts underlying that decision. This will facilitate the Commandant's review of the decision to bring charges in case of appeal. See Appeal Decisions 2208 (Rogers) and 2348 (Manley) and NTSB Order No. EM-85 in the Rogers case. The relevant facts (Q&A's above) may be placed in the record by the IO's unsworn statement, but if the respondent contests them by sworn testimony or other evidence, the IO should consider introducing evidence. Sample specifications:

- (a) ". . . In that you being the holder of captioned documents, were found to have failed a chemical test for dangerous drugs; to wit: COCAINE, as determined by analysis of a urine specimen you provided on July 1, 1994, at Jupiter Medical Center, 2210 Hospital Drive, Lompoc, CA., as required by Title 46 Code of Federal Regulations 16.210(a) - Pre-employment Testing Requirements, raising the presumption of use, established by Title 46 Code of Federal Regulations 16.201(b).
- (b) ". . . Were on September 1, 1991, convicted of possession of narcotics, to wit: heroin, by the U.S. District Court in Portland, OR."

### 7. Special Circumstances.

- a. Oil Pollution. Charges served in cases of oil pollution may fall under negligence or misconduct, according to the circumstances. Each case in which S&R proceedings are being considered must be reviewed by an IO As in other S&R investigations, any course of action detailed in 46 CFR 5.105 is available. This is a discretionary decision of the IO, based on facts developed by investigation. Sample specifications:

- (1) [Negligence] ". . . Did, on or about 1 April 1995, fail to adequately supervise cargo loading operations of the Tank Barge XYZ347, which resulted in an overflow of oil into the XYZ River, a navigable water of the United States."
- (2) [Misconduct] ". . . Did, on or about 1 July 1995, while assigned as person in charge of cargo oil transfer, wrongfully absent yourself from the immediate vicinity of the vessel KRONENBOURG, which was discharging crude oil, and thus were not available to shut down cargo operations in a timely manner after the cargo hose burst, as a result of which oil entered the navigable waters of the United States."

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2.D.7. b. Cases Involving Pilots. The United States Court of Appeals for the Ninth Circuit decided that a state pilot, not required to hold a license under federal law, is not acting under the authority of the pilot's federal license, although it is required by the state before it will issue the state license. See Soriano v. U.S., 494 F. 2d 681 (9th Cir. 1974). The U.S. District Court for the Eastern District of Louisiana decided that former 46 U.S.C. 214 does not, by itself, authorize proceedings against federal licenses held by pilots acting under authority of state licenses. See Dietze V. Siler 414 F.Supp. 1105, (E.D. La., 1976). The Commandant's policy is to follow the Soriano and Dietze decisions in all cases involving pilots acting under the authority of state commissions. This policy does not affect investigative procedures concerning casualties and civil violations involving state pilots. Pilots acting under authority of federal licenses are subject to investigation and charging under 46 U.S.C. Chapter 77 or civil penalty action, as appropriate. Pilots acting solely under the authority of a state license are subject to civil penalty action for violation of applicable statutes. Any evidence of criminal violation of federal statutes shall be referred to the local U.S. attorney. If a violation is within the jurisdiction of a state or locality, the evidence should be referred to the cognizant state or district attorney. See also Commandant's Decision on Review 17 (POWER).

8. Equal Access To Justice Act. Implementing regulations are contained in 45 CFR 6. See also paragraph 2.C.8 below. The Act provides for retroactive payment of attorney fees and certain defense costs to certain persons charged under 46 U.S.C. Chapter 77. To be eligible, the charges must have been dismissed, and the respondent must allege that the charge was not substantially justified and must certify that he or she meets qualifying requirements of the act. The ALJ hearing the S&R case will also rule on the fee claim; the IO for the case may be required to act as the "operating administration counsel" as defined in the Act and in 49 CFR 6. [NOTE: The burden of proving that the charge was "substantially justified" rests upon the Coast Guard. "Substantially justified" means reasonable or "having a basis in law and fact." In light of possible additional costs imposed by successful claims under the Equal Access to Justice Act, it is essential that IOs exercise careful judgment in preferring charges.] However, the mere fact that the respondent prevails at the hearing does not mean that the charges were not substantially justified. In all cases, the IO shall file a brief opposing the claim for fee. Failure to do so may result in a fee award because the claim is unopposed, even if the Coast Guard's action was "substantially justified." Questions should be discussed with the district commander (dl).

### E. Procedures Prior To Hearing.

1. Field Request For Mariner's Prior Record ("MERMARPER"). The IO may investigate prior disciplinary information on merchant mariners. This information is known as a "MERMARPER". MERMARPER records initiated prior to implementation of MINMOD (May 1992), are maintained in Commandant (G-MAO-1) on 3x5 index cards. A MERMARPER request to Commandant (G-MAO-1) should indicate the complete name of the subject, the birth date, the subject's correct MMD, license number, and social security number; requests concerning more than one individual at a time may be combined. Investigators need check the information available on MSIS, including Wanted and Locator lists as well as to contact Commandant (G-MAO-1) for a MERMARPER. MERMARPER requests may be made to Commandant (G-MAO-1) by telephone, MSIS mailbox or E-mail. The mariner's prior

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2.E.1. (cont'd) disciplinary Record should be obtained through MSIS and from Commandant (G-MAO-1) prior to preferring charges, to determine whether:

- a. A violation of a probationary order is involved;
- b. An outstanding order is pending service;
- c. Recidivism is a factor in the current offense;  
or
- d. It should be considered as matters in aggravation (see paragraph 2.F.17 below).

The prior records will neither prove nor disprove the facts of the current offense, and shall not be used as the sole basis for preferring charges. If the current charges are proved in a hearing, however, the prior record will be introduced as a matters in aggravation.

2. Review Of investigative Case Files. The IO presenting the case shall be thoroughly familiar with all of the available evidence. The IO shall ensure that all documentary evidence such as Shipping Articles and log entries have been properly extracted and certified.
3. Prehearing Interviews. The IO should attempt to anticipate the sequence of events in the hearing. The IO should interview witnesses beforehand to evaluate the information that they will give under oath. The names, addresses, and telephone numbers of potential witnesses who were not subpoenaed previously should be readily available. If, during the course of the hearing, testimony from such persons is necessary, the IO may request a continuance of the hearing and issuance of subpoenas from the ALJ (see paragraph 2.E.7 below).
4. Prehearing Conferences And Stipulations. 46 CFR 5.501(c) includes authority for ALJs to conduct preheating conferences for the settlement or simplification of issues involved in a case with the consent of the IO and the respondent. This authority comports with the provisions of the Administrative Procedure Act, which specifically permits such proceedings (see 5 U.S.C. 556 (c)(6)). Accordingly, this regulatory change has rendered moot the holding of Appeal Decision 2166 (REGISTER), as it relates to preheating conferences. In order to establish maximum flexibility in the conduct of such conferences, no fixed rules are established; however, the following guidelines have been provided to the ALJs and will normally apply:
  - a. Authority For Prehearing Conferences. It should be noted that preheating conferences may be requested by the ALJ, IO, or respondent (see 46 CFR 5.501(c)), and that a conference cannot be held unless both the IO and the respondent or an authorized representative are present, either in person or via a telephone conference call (see 46 CFR 5.501(c)(1)). At the outset of the conference, the judge will normally advise the participants that the proceeding is being conducted in accordance with the provisions of 46 CFR 5.501(c), and that admissions or statements made at the conference are not admissible in evidence at a hearing for any reason (see 46 CFR 5.501(c)(2)). Although the conference may be informal, all remarks should be addressed to the Judge. He or she should permit reasonable discussion; however, when a subject is fully ventilated, the Judge will rule and move on.

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- 2.E.4. b. Discussions At Prehearing Conferences. Matters appropriate for discussion and agreement at the preheating conference include, but are not limited to:
- (1) Stipulations of facts;
  - (2) Agreements to amend the pleadings;
  - (3) Requests for the issuance of subpoenas;
  - (4) Matters of which official notice may be taken; and
  - (5) Arrangements for the taking of depositions either written or videotaped. In the case of videotaped depositions, issues such as a common tape format should be settled. Also, details for the presentation of telephonic testimony at the hearing itself should be arranged.
- c. Record Of Prehearing Conference. A conference report consisting of a list of the parties noting their appearances, agreements reached, the Judge's rulings, and other matters decided upon will be prepared by the Judge and served on all persons who entered appearances. The ALJ in his or her opening statement at the initial session of the hearing will enter into the record, the time, date, place, and persons present at the preheating conference (see 46 CFR 5.501(c)(3)).
- d. Stipulation Of Facts. Agreements to stipulate certain facts in issue at the preheating conference are proper and a well recognized method of expedition in administrative procedures. Should the parties agree to stipulate facts or amend the pleadings, either may introduce the stipulation at the hearing which, upon the consent of the other will become a part of the hearing record (see 46 CFR 5.501(c)(4)).
- e. Prehearing Agreements. Cases arise where the parties concerned in an effort to save time and serve the best interests of all concerned, agree to stipulate the facts of an alleged offense in exchange for a recommended sanction. The Commandant has approved this procedure provided no assertion is made during the hearing that is inconsistent with such stipulation and recommendation, and the agreement is reduced to writing and signed by all parties thereto. (See Appeal Decision 1671 (DURDEN)). To avoid the possible perception of a "rubber stamp" hearing, the record of proceedings in such cases must reflect in crystal clear terms that the ALJ is authorized to accept or reject such recommendation at his or her discretion.
5. Organization Of Evidence. The IO must prove to the ALJ, by substantial evidence of a reliable and probative nature, that the allegations made against the mariner are true. Prior to the hearing, the IO should prepare the evidence in chronological order. It is helpful to prepare a list of questions for each witness. IOs are reminded that there is no substitute for adequate planning and careful preparation of a case.
6. Notification To Other Agencies. Often the subject matter of a hearing will be of interest to other agencies, such as the Federal Communications Commission (FCC), the Immigration and Naturalization Service (INS), the FBI, or local law enforcement agencies. As appropriate, local representatives of these interests should be advised of the time and place of such hearings.

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- 2.E.7. Issuance Of Subpoenas. At any time prior to the hearing, the IO may issue subpoenas to secure the attendance of witnesses or the production of books, papers, and other relevant evidence that may be needed by the IO or by the person charged. During the hearing, the ALJ may issue subpoenas for such purposes upon the ALJ's own motion, or upon request of the IO or the respondent.
8. Withdrawal Of Charges Prior To Hearing. Occasionally, an IO may want to withdraw charges prior to the convening of a hearing: a last minute voluntary deposit or voluntary surrender agreement may be completed, additional evidence may indicate that the charges are unwarranted, or it may be determined that charges were not properly served in accordance with 46 CFR 5.107. If a copy of a charge sheet has been forwarded to the ALJ, the IO must advise the ALJ in writing, with a copy to the respondent, that the charges are being withdrawn; a hearing should not be convened for this purpose. (NOTE: It is important to distinguish withdrawal of charges for such reasons from dismissal of charges, with and without prejudice.)
- F. Hearing Process.
1. Decorum. The Commandant has long stressed the remedial nature of the hearing; thus, a balance of dignity and informality is desirable. Coast Guard personnel shall be attired in the uniform of the day and shall conduct themselves in an appropriate manner at all times. The ALJ may announce any special instructions for the hearing. The OCMI should take particular care that hearing rooms are appropriate for the particular case, preserving the dignity of the hearing. A hearing cannot properly be convened in an office with persons crossing through and telephones ringing continuously. There must be sufficient room for the ALJ, IO, and the respondent and counsel. Cases having significant public interest should be heard in spaces adequate to accommodate spectators and media representatives. Where at all possible, hearing rooms located at field units shall be arranged to meet these requirements. [NOTE: Facilities maintained by other agencies may be used at the discretion of the OCMI.]
2. Convening Of The Hearing.
- a. Court Reporters. The Chief Administrative Law Judge office is responsible for funding court reporting, and for funding the preparation of an original and one copy of a case transcript if requested by the Commandant for review under 46 CFR Subpart K. Transcripts will be forwarded to Commandant (G-MAO-1) via the ALJ. On rare occasions (i.e., extremely complex cases or when it becomes necessary for a different ALJ to assume a hearing in progress), the ALJ may also request a transcript prior to the issuance of the D&O. Requests for transcripts by respondents, or others when authorized by the ALJ, should be handled per 46 CFR 5.701(d). Since transcripts are not normally prepared until an appeal is received, arrangements should be made with the reporter so that the transcripts can be reproduced up to 60 days following the delivery of the ALJ's D&O. (NOTE: Several appeal cases have been overturned simply because a proper transcript could not be produced.)
- b. Hearings In Absentia (46 CFR 5.515). Whenever a respondent, after being duly served with notice of the time and place of a hearing and the charges and specifications, fails to appear, the hearing may be conducted in absentia; a notation to that effect shall be made in the record. The ALJ shall then order into the record all facts concerning the issuance and service of the charge sheet

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- 2.F.2. b. (cont'd) (see section 2-D above). The IO (or other witnesses in the case of service by certified mail) who served the charge sheet shall testify under oath regarding this service, including the recitation of rights to the mariner.
- c. Time And Place Of Hearing (Venue). The hearing shall be held at the time and place specified on the charge sheet served upon the mariner.
- d. Change Of Venue Or Time. Once charges have been served, a request to move the hearing to any place other than that specified on the charge sheet or to change the time or date must be made to the ALJ initially convening the hearing. The ALJ will consider the nature of the request and the stated reason(s) for it; unless a change is ordered by the ALJ, the hearing will be held as scheduled. When a mariner requests a change of-venue directly from the IO, the mariner shall be directed to contact the ALJ at the address and telephone number provided by the IO.
3. Production Of MMCs. Since charges may be brought against all MMCs issued to the mariner, the respondent must understand the requirement to bring all of his or her MMCs to the hearing. Failure to produce them will delay the orderly procedure of the hearing. [NOTE: An officer may be licensed for deck and engineering duty.] For the record, the respondent shall be asked whether he or she has produced all MMCs which have been issued to him or her. Outstanding MMCs shall be produced prior to conclusion of the hearing or otherwise accounted for.
4. Charges And Specifications.
- a. Dismissal. If, at any point during the hearing, the IO determines that he or she has incorrectly charged a person or that a charge or specification has no basis, the IO shall move to dismiss the charge/specification, with or without prejudice. Dismissal with prejudice means that the respondent may not be charged again for that offense; dismissal without prejudice means that the respondent may be charged again for that offense at a later date. If the IO determines that a chargeable offense was committed, but the charge sheet was incorrectly drafted or served, the IO should request dismissal without prejudice and serve a new charge sheet.
- b. Amendment. The ALJ may, on his or her own motion or the motion of the IO or respondent, permit the amendment of charges and specifications to correct minor errors by deletion or substitution of words or figures, provided that a legally sufficient specification remains. When errors of substance are found in charges or specifications, the ALJ shall order the defective charge or specification dismissed with or without prejudice. The IO may then prepare and serve a new charge/specification on the respondent, if appropriate.
5. Answer. The ALJ shall read each charge and specification to the respondent and seek from the respondent or the respondent's counsel a definite answer to each in accordance with 46 CFR 5.527. If the respondent refuses to make a definite answer, the ALJ shall enter an answer of "denial" and proceed with the hearing. If the respondent fails to appear without valid prior notice, the judge may declare the hearing convened in absentia and proceed (see subparagraph 2.F.2.b above), entering answers of "denial" to all charges and specifications.

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### 2.F.6. Opening Statements.

- a. By The IO. If the respondent denies the charge, the IO shall make a statement outlining the matters expected to be proved, including relevant details that were not included in the specifications. The IO should explain his or her theory of the case, the elements of the offense, and the evidence which will prove each element. If the respondent admits or answers "no contest," the opening statement need only summarize the evidence upon which the charges and specifications are based. See 46 CFR 5.529.
- b. By/On Behalf Of The Respondent. The respondent or the respondent's counsel shall have an opportunity to state the respondent's side of the case; this opportunity may be waived or deferred. If the respondent answers "admit" or "no contest," the respondent may present evidence or make a statement regarding mitigating circumstances which he or she believes to be material. Should this evidence or statement be inconsistent with an answer of "admit" or "no contest," the ALJ must reject the answer, change it to "denial" and proceed with the hearing.

### 7. Introduction Of Evidence. See also Chapter 1 of this volume for a discussion of evidence.

#### a. Official Marine Records.

- (1) Shipping Articles, Form CG-705A, 735T, or Equivalent. These constitute the contractual agreement between the master and members of the crew; 46 U.S.C. 10302 sets forth the particulars to be included for foreign or intercoastal voyages. (See NVIC 1-86.) When the vessel will be making a foreign voyage, they are referred to as "foreign" articles; when the vessel is engaged on a coastwise voyage, they are called "coastwise" articles. Shipping Articles or property authenticated extracts, made on Form CG-2639H, are admissible as evidence in S&R proceedings.
- (2) Official Logbooks. Under 46 U.S.C. 11301, vessels making foreign and intercoastal voyages are required to have an "Official Logbook" and to make certain entries in them. Logbook entries may be introduced in hearings. Those concerning offenses listed in 46 U.S.C. 11501 and made in accordance with 46 U.S.C. 11502 may constitute prima facie evidence of the facts they recite. Official logbook entries concerning offenses which are not enumerated in 46 U.S.C. 11501 do not constitute prima facie evidence. Nevertheless, they are admissible under 46 CFR 5.545(b) as business entries. Extracts of logbooks should be made by photocopying or other similar means when entries are readily legible. When they are not, a typewritten extract shall be made. (NOTE: If logbook entries are relied upon to prove a specification, they should be examined carefully to ensure that they recite sufficient facts to prove all matters alleged. The bare conclusion, even in a logbook, that the mariner committed a certain offense, is not sufficient.) Photocopies shall be certified on the reverse side as in the following example: "I hereby certify that I have seen the original logbook and that the obverse of this sheet is true and correct copy of page 47, book I, the Official Logbook of the M/V SEALAND TRADER, for the voyage commencing February 1, 1994 [dated and signed by the IO, including rank and duty station]."

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- 2.F.7. a. (2) (cont'd) When the extracts are typewritten, only those entries pertinent to the case need be extracted. They shall be certified as in the following example: "I hereby certify that I have examined the Official Logbook, compared the above extract with it, and found it to be a true and correct copy of all entries pertaining to Joe Doakes on page 17, book II of the Official Logbook of the (vessel name) for the voyage commencing June 31, 1995 [dated and signed by the IO, including rank and duty station]."
- (3) Other Logbooks. The regulations now clarify that any logbook kept on the vessel may be admitted in evidence. See 46 CFR 5.545(b). Accordingly, deck logs, weather logs, and engineroom logs may be introduced as an exception to the hearsay rule, under the Federal Rules of Evidence, as a record of a regularly conducted activity.
- b. Depositions. A deposition is the recording and transcribing of testimony under oath of a person who is not present at the hearing. Depositions are generally required because the witness is located beyond the range of a subpoena to require the witness to attend the hearing. A deposition taken under oath and bearing the signature of the deponent is admissible in a proceeding. This testimony is generally taken through oral examinations similar to those employed at the hearing. It may also be videotaped or taken via telephone conference call (see 46 CFR 5.553). For simplification, where only specific answers are required, prepared questions and cross-questions from the respondent are approved by the ALJ, read to the deponent and answered, and returned to the judge, who will admit them subject to the rules of evidence. These are called interrogatories or cross-interrogatories. Live testimony via telephone may be the preferred alternative to a deposition. See paragraph 2.F.9 below. Assistance in preparing for a deposition may be obtained from the district commander (dl).
- (1) Who May Take Depositions. Within the U.S., or a territory or insular possession subject to the dominion of the U.S., depositions may be taken before any officer authorized to administer oaths. Within the Coast Guard, this includes commissioned and warrant officers and those persons specifically engaged in the performance of duties under 46 U.S.C. Chapter 77. Outside the Coast Guard, depositions may be taken before any person authorized by law to administer oaths, such as a judge, magistrate, commissioner, clerk of court, notary public, or judge advocate of an armed service. Within a foreign country, a deposition may be taken before any officer of that nation's government (unless prohibited by that nation's laws) or a U.S. consular officer. Any party may submit written interrogatories to be asked of an absent witness; the opposing party may also do so within a reasonable period of time (these are called cross- interrogatories). After the ALJ has reviewed the interrogatories from both parties (if any) the ALJ may ask additional questions to clarify the testimony. Both parties may submit cross-interrogatories to the ALJ's questions, and should state in writing the intent to waive that right, if they elect to do so.
- (2) Requests For Depositions. 46 CFR 5.553 provides that testimony may be taken by deposition upon application by either party or order of the ALJ. The IO, respondent, or counsel desiring the

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- 2.F.7. b. (2) (cont'd) deposition shall submit to the ALJ a prompt written application that includes the elements contained in 46 CFR 5.553. This provides the respondent with reasonable notice and opportunity to be present or to file interrogatories and cross-interrogatories, if desired. If the application is granted, the ALJ will serve a notice that names the deponent, the time and place of the deposition, and the officer before whom the deposition is to be taken. See Figure 2-3 for a sample notice to take deposition.
- (3) Procedure. Upon determining that good cause appears therefore, the ALJ enters an order designating the person before whom the deposition is to be taken, together with such other information, directions and orders as will enable the person so designated to obtain the deponent's testimony. His order and a list of interrogatories and cross-interrogatories, if any, are forwarded to the person designated to take the deposition. The ALJ also issues subpoenas for the witnesses sought to be deposed. It should be noted that an ALJ's subpoena authority is coextensive with that of a district court of the United States, in civil matters, for the district in which the proceeding is conducted. See 46 U.S.C. 7705, 46 U.S.C. 6304, and 46 CFR 5.301. The person designated to preside at the deposition shall have the subpoenas served upon the witnesses. The person presiding over the deposition shall place the witness under oath and proceed. The testimony shall be taken stenographically and transcribed at Coast Guard expense unless the parties agree to record the evidence by other means. See subparagraph 2.F.7.c below concerning videotaped depositions.
- (4) Objections. All objections made at the time to the qualifications of the presiding officer or the manner of taking the deposition, to the evidence presented, or to the conduct of any party or any other aspect of the proceedings, shall be noted by the presiding officer. These will be ruled upon by the ALJ upon resumption of the hearing.
- (5) Changes In Testimony. When the testimony is fully recorded, the interrogatories or deposition shall be submitted to the deponent for review (if necessary, it shall be read to the deponent). Any changes in substance which the witness desires to make shall be entered by the presiding officer, with a notation of the witness' reasons for making them. The interrogatories or deposition shall then be signed by the witness. If the witness refuses or otherwise fails to sign, this fact and the reason therefor shall be noted by the presiding officer.
- (6) Returns. The return of depositions shall be in accordance with 46 CFR 5.553.
- c. Videotaped Depositions. 46 CFR 5.553 authorizes testimony at a deposition hearing to be recorded on videotape for subsequent presentation at an S&R hearing. Visual observation of a witnesses demeanor can assist the ALJ in making credibility evaluations. Applications procedures are the same as for a "regular" deposition. Videotaping expenses are to be borne by the party requesting the recording. Testimony may be taken through oral examination or by interrogatories. The person requesting the videotape deposition is responsible for procuring appropriate equipment for playback at the hearing. The IO should verify this to ensure that delays, or worse, do not result from the attempted use of incompatible equipment.

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- 2.F.7. d. "Depositions" Under 46 CFR 4.12. The "deposition" referred to in 46 CFR 4.12 is not a true deposition because it is not cloaked with the authority of an ALJ. Rather, it is intended to provide the marine board or IO the testimony of a witness who will not voluntarily appear and who is beyond subpoena range. This type of "deposition" can be obtained through running oral examination or by use of interrogatories. As part of the investigation record, its quality is not as great as would be the witness' personal appearance and testimony.

### FIGURE 2-3

#### SAMPLE NOTICE TO TAKE DEPOSITION

In the matter of License/Certificate of Service/Merchant Mariner's Document No. ####, Issued to Sammy Nebraska

Sir:

Please take notice that Howard Coon and Steve Edoar, witnesses called by Sammy Nebraska in the above entitled matter, whose testimony is necessary in the cause and who are located at the Seamen's Relief House, and who will be examined pursuant to the provisions of Title 46, Sec. 5.553, Code of Federal Regulations, before (persons name), USCG, or before some other officer authorized by Law to take depositions, at the U.S. Coast Guard Marine Safety Office, City of Kalamazoo, MI, at 10:00 am, January 23, 1995, at which time and place you are hereby notified to be present and interrogate said witnesses, if you so desire.

Dated at Kalamazoo, MI, the 19th day of January 1995.

Sincerely,

\_\_\_\_\_  
Administrative Law Judge  
U.S. Coast Guard

Copy: [Counsel for respondent]  
[Respondent]

8. Prima Facie Evidence. Prima facie evidence is that which is sufficient on its face to establish a fact as alleged. For example, an official logbook entry made in substantial compliance with 46 U.S.C. 11502 will establish, prima facie, the facts it contains (see 46 CFR 5.545). A prima facie case, by contrast, is a collection of evidence which is sufficient for a finding that a specification is proved. However, it is subject to rebuttal by the defense, after which the ALJ must decide whether to believe all the evidence of the prima facie case. An official logbook entry does not establish a prima facie case unless it contains every element of the specification. An IO has the burden of proving the case by a preponderance of the evidence. See Appeal Decision 2472 (GARDNER).
9. Examination Of Witnesses. Testimony at hearing sessions may be received from witnesses actually present or telephonically from witnesses whose

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2.F.9. (cont'd) attendance is not available. Telephonic testimony is authorized by 46 CFR 5.535(f) and ALJs have been encouraged to use this means to assist in achieving financial savings and judicial efficiency. The specifics should be resolved via a prehearing conference or at a hearing session prior to the call being initiated. Experience has shown this means to be effective for "routine" testimony from distant witnesses including those aboard vessels equipped for voice communications via satellite. Telephone testimony becomes more complicated when complex legal issues and/or exhibits are involved. The following examination procedures apply whether witnesses are present or their testimony is taken via telephone.

- a. Preliminary Examination. The IO has the burden of establishing a prima facie case by the introduction of testimony of witnesses and documentary evidence (such as excerpts from Official Logbooks). When issuing subpoenas for witnesses, the IO must consider the time necessary for direct and cross-examination, to conserve the time of all parties involved. For example, if the IO believes that the testimony of a single witness will consume most of a day, the IO should avoid summoning other witnesses for that day.
- b. Direct Examination. The IO must present evidence from witnesses through proper questioning; the IO will be aware of the testimony which can reasonably be expected from the Coast Guard's witnesses. It is helpful to have a prepared outline of the questions which the IO will ask of each witness. This enables the IO to review those questions in advance to ensure they are not legally objectionable. In questioning a witness, the IO must avoid "leading the witness"; that is, asking questions which suggest a desired answer. Before questioning a witness with respect to a document to be entered into evidence, the IO must "lay a foundation" by showing the document to the witness and asking if the witness recognizes it and, if so, what he or she recognizes it to be; the document is then submitted into evidence. If the document is admitted into evidence by the ALJ, the IO may thereupon question the witness with respect to it. If there is an objection, either to the form of a question or to an answer by the witness, the ALJ will afford an opportunity to both sides to argue on the validity or nonvalidity of the objections. All elements of each specification must be established through direct examination of witnesses and introduction of evidence.
- c. Cross-Examination. When the IO has completed questioning, the defense may cross-examine. The scope of cross-examination should be confined to matters brought up in the direct examination, although proper questions may be asked to impeach the credibility of the witness. As a practical matter, however, respondents (and nonprofessional counsel) frequently introduce matters not brought out in direct examination. Although this is technically improper, it may be allowed unless the issue becomes so clouded that the record is distorted or unnecessarily expanded. Leading questions are proper on cross-examination and may be employed freely, except for the purpose of eliciting new matter.
- d. Recross And Redirect Examination. After cross-examination, the IO may question the witness further on redirect examination; the respondent may then recross-examine. There is no limit to the number of times that either part has to examine a witness, although parties are generally satisfied with a brief redirect or recross-examination. However, ALJs may limit reexamination. In particular, redirect is often restricted to matters included in the preceding crossexamination.

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- 2.F.9. e. **ALJ's Examination/Excusal Of The Witness.** The ALJ may, at any time, question a witness to clarify the issue before the ALJ. It is suggested that the ALJ wait until both direct and cross-examination are completed. When both parties and the ALJ have concluded their examination, the witness should be excused. The witness shall be admonished not to discuss the testimony, or any matter of which he or she has become aware through the hearing, with anyone until the conclusion of the hearing or unless directed to do so by competent authority.
- f. Medical Evidence In Incompetency Cases. The testimony of a physician or clinical records may not be required in all hearings. When such evidence is necessary for the presentation of the Coast Guard's case, and is so ordered by the ALJ, the costs associated with the examination and production of records or testimony will be borne by the Coast Guard. The respondent may produce medical evidence in his or her own behalf, at his or her expense.
10. Continuances And Adjournments. For good cause the IO or the respondent may move to "continue" the hearing from day to day, or to adjourn the hearing to another date or location. In ruling on this motion, the ALJ must first consider the future availability of witnesses and the prompt dispatch of the vessel(s) involved. When such motions are made by the respondent, the IO should prepare to counter them if such an order would be detrimental to the Coast Guard's case. When a hearing is continued or adjourned, the ALJ will return all MMCs to the respondent upon demand, provided that a prima facie case has not been established that the respondent poses a definite danger to the safety of life or the vessel. The IO should file a motion for the ALJ to retain the MMCs in such a case.
11. Disposition Of MMCs During Continuance Of Drug Hearings. 46 U.S.C. 7704(c) requires that the MMCs of a mariner be revoked if it is shown that the holder has been a user of, or addicted to a dangerous drug, unless "the holder provides satisfactory proof that the holder is cured". The hearing may be continued when an individual has initiated the process of cure, but has not completely satisfied the specific requirements outlined in CDOA 2535 (SWEENEY).
- a. The disposition of a mariner's MMCs was specifically addressed in USA/USCG vs. MMD issued to David D. Clay, issued in Alameda, CA on 17 March 1992. In this case, it was resolved that since the Investigating Officer has presented a prima facie case of drug use, that the mariner in question would pose a danger to public health, interest or safety at sea. Based on that determination, it was inappropriate to allow the mariner to retain his MMD during the continuance, and the MMD was withheld in accordance with 46 CFR 5.521(b). This decision, reviewed under the provisions of 46 CFR 5.801, was affirmed by the Vice Commandant on 30 March 1992.
- b. In Suspension & Revocation hearings involving the charge of use of dangerous drugs, which are continued pending a determination of "cure", the Investigating Officer should argue against the return of the mariner's MMCs based on the fact that a mariner who uses dangerous drugs poses a danger to public health, interest or safety at sea.
- c. In accordance with 46 CFR 5.707(a), persons whose MMCs have been revoked as a result of dangerous drug use are not entitled to temporary MMCs while the revocation is being appealed. Similarly,

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- 2.F.11. c. (cont'd) persons who are seeking a continuance of a hearing in order to perfect "cure" should not be entitled to the use of their MMCs during the continuance. OCMI's shall immediately advise Commandant (G-MAO-1) of any request for issuance of temporary MMCs or return of MMCs during a continuance that does not conform to this policy.
12. Motion To Dismiss. The IO presents evidence first, then rest the case. At the conclusion of the IO's presentation, the respondent may move to have any or all of the charges and specifications dismissed, on the grounds that the evidence fails to establish a prima facie case against the respondent. This motion may be made orally during the hearing, or in writing. Usually, this argument is a summation of all of the evidence submitted by the IO with the conclusion that the evidence is insufficient to prove the charges and specifications; the IO may submit an oral or written rebuttal of this claim. The ALJ may deny or grant any or all such motions, or may reserve a decision until the defense has completed its case. In deciding on the motion, the ALJ will determine if there is any substantive evidence which properly and reasonably establishes all essential elements of the charge or specification in question. If substantive evidence of the charge or specification exists, the motion will be denied.
13. Actions By Respondent/Counsel. The respondent's case is presented in the same manner as is the Coast Guard's, except that the examination roles are reversed (the IO has the right of cross-examination). When the respondent is represented by an attorney, the ALJ will usually refrain from direct involvement in the presentation of the defense. In those cases where a respondent represents himself or herself, or is represented by someone who is not an attorney, the ALJ may interject during the hearing to ensure that all relevant facts within the witness' knowledge are presented. When the testimony of the last defense witness is completed, the ALJ will ask the respondent if he or she "rests"; if the answer is affirmative, no further testimony will be taken for the respondent.
14. Rebuttal. When the defense has rested, the ALJ will afford the IO an opportunity to present evidence to rebut the defense testimony. The IO should make full use of the rebuttal process to further strengthen the case or impeach the testimony of witnesses, including the respondent's. Care should be taken that this presentation is truly rebuttal evidence, not a reopening of the Coast Guard's case.
15. Closing Arguments. After all evidence has been presented, the parties may present oral or written argument in the following order:
- a. Opening summation by the IO;
  - b. Argument by the respondent or the respondent's counsel;  
and
  - c. Closing argument by the IO
16. Submittal Of Proposed Findings Of Fact, Briefs. The ALJ will afford the IO and the respondent the opportunity to submit (orally or in writing) proposed findings and conclusions, with supporting reasons, within an established period of time. Failure to comply within this time shall be regarded as a waiver of this right.
17. Arguments In Mitigation Or Aggravation. If yes, the ALJ renders a decision of "Proved," the IO may enter the mariner's record in mitigation or aggravation (see paragraph 2.E.1 above). Any prior civil penalty

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2.F.17. (cont'd) action and an final judgment of conviction in state or federal courts is entered at this point (see 46 CFR 5.565). In addition to obtaining a mariner's MERMARPER, the IO should also verify the mariner's civil penalty history in MSIS. The IO may also include a recommended order to the ALJ. In keeping with the Coast Guard's objectives, certain offenses should result in outright suspension or revocation of the MMCs. The IO's recommendation can be amplified by calling particulars of past offenses to the attention of the ALJ. For example, a finding of "Proved" in an assault and battery case may be argued to be aggravated because of the mariner's prior record of assault and battery, which demonstrates a tendency for repeated violence. The IO may also offer evidence of other matters in aggravation such as a pilot's disciplinary record with a state pilot commission. In accordance with 46 CFR 5.565, the IO may also enter as part of the individual's prior record, information concerning the following:

- a. Any final judgments of convictions in state or federal courts;
- b. Final agency action resulting in civil penalty or warnings being imposed against the respondent in proceedings administered by the Coast Guard under 33 CFR 1.07; and
- c. Any official commendatory information concerning the respondent of which the IO is aware.

### G. Post-Hearing Procedures.

1. Preparation Of File. At the conclusion of the hearing, or as soon thereafter as practicable, the ALJ will assemble the hearing report consisting of the Report of Hearing, Form CG-2639D, D&O, and Notification with Charge and Specification(s), Form CG-2639, in that order, and distribute copies as indicated on the Report of Hearing Form.
2. Reviewing The File. The OCMI copy of the hearing report shall be reviewed and filed at the field office. IOs and ALJs must give careful consideration to the additional routing of cases and records, so that district program managers receive all information to activities under their control (e.g., cases involving damage to aids to navigation should be brought to the attention of the district aids to navigation branch). IOs shall maintain close active liaison with ALJs to assist, as necessary, in assuring that D&O's are served and that orders for outright suspension or revocation are complied with. If attempts for service and/or, when applicable, surrender are unsuccessful, IOs shall add the mariner to the Locator List. When it becomes apparent the no appeal will be filed, or the time limit for appeal expires, ALJs will forward the hearing record to the IO per COMDTINST 5900.7 (series). Hearing records shall be maintained by Investigation Departments per COMDTINST M5212.12 (series), Paperwork Management Manual.
3. Notifying RECs And NMC4A Of Personnel Actions. When personnel action is taken for the following situations:
  - a. Letters of Warning;
  - b. Suspension;
  - c. Revocation;
  - d. Surrender; or

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### 2.G.3. e. Voluntary Deposits (involving incompetence)

The IO shall forward a memorandum/rapid draft which shall include a brief description surrounding the reason for (a) through (e) to the issuing REC with a copy to Director, National Maritime Center (NMC4A). It is imperative for the issuing REC to receive this data promptly to prevent the possible issuance of duplicate MMCs. When any mariner's MMCs is suspended, surrendered or revoked for any reason and not delivered into Coast Guard custody, this fact should also appear in the memorandum/rapid draft.

4. Deposit Of MMCs After Suspension. MMCs that have been ordered to be surrendered for periods of outright suspension shall be deposited with the cognizant OCMI. A receipt shall be issued to the mariner and the MMCs retained locally. The MMCs should be returned upon expiration of the suspension period by being picked up in person or by being sent by certified mail, return receipt requested, to the mariner or to someone so designated by the mariner in writing. However, it is contrary to the policy of the Commandant to return MMD's to seamen outside of the United States. This policy was initiated to prevent MMD's from falling into unauthorized hands. [NOTE: Mariners may be shipped as replacements at foreign ports without MMD's]. Any request for the return of MMD's to a foreign address shall be denied. Mariners claiming that their MMCs have been lost may apply for duplicates during the suspension period but duplicates shall not be issued until the suspension expires. The suspension period shall not start until duplicate license and/or MMD requests are filed with the appropriate REC. For mariners choosing not to apply for duplicate MMCs, an affidavit shall be required in a form similar to Figure 2-4.
5. Disposition Of MMCs After Revocation. If review indicates that revocation has been ordered but not yet complied with, the IO shall actively pursue this matter. If unsuccessful, the IO shall add the mariner to the Locator List. Revoked MMCs should be held pending any appeal that may be made. If no appeal is made or, if an appeal made is unsuccessful, revoked MMCs shall be voided by permanent means and forward as described in 2.C.7. If the mariner claims that his or her revoked MMCs were previously lost, he or she shall be required to file an affidavit to that effect using the format (or equivalent) in Figure 2-4. The affidavit is to be signed in the presence of an IO or notarized. The original shall be attached to the memorandum/rapid draft (see 2.G.3.) with copies to the ALJ, and the unit file.
6. IO's Post-Hearing Comments. The Commandant's decision on appeal indicate that a novel case appears very rarely. When this occurs, or when the IO believes that a particular issue or point should be brought to the attention of the Commandant, the IO may submit comments in a letter, via the OCMI and district commander. Many IOs have expressed frustration over the inability to appeal decisions that were adverse to their cases. Although such decisions will not be overturned as a result of the IO's comments, corrective actions to improve the Coast Guard's position in subsequent hearings may be taken, or the ALJ may be apprised of the dynamics involved. [NOTE: The OCMI may direct preparation of the transcript even if no appeal has been indicated, if this will help the IO develop his or her comments.]
7. Newly Discovered Evidence. At any time before a final decision on appeal, or within 1 year of the date of service of the ALJ's decision, a respondent may petition to reopen the hearing on the basis of new evidence in accordance with the regulations. If the decision has not



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- 2.H.2. Availability Of Records. When the mariner has filed a notice of appeal, the ALJ will direct the preparation of a transcript of the testimony taken in the case (see subparagraph 2.F.2.a above). The transmittal letter forwarding the case to Commandant (G-MAO-1) shall indicate the date the transcript was furnished or mailed to the respondent or the respondent's counsel. [NOTE: The record is not usually transcribed in cases where no appeal has been taken.]
3. Mariner's Actions Prior To Appeal. When a mariner applies for temporary MMCs, the notice of appeal must be filed before any temporary MMCs are issued (see paragraph 2.H.6 and 7 below).
4. Appeal To The NTSB. Provisions in 49 CFR 825 allow appeals to the NTSB of decisions of the Commandant to sustain orders of suspension, revocation, or denial of MMCs. A stay of the suspension or revocation order may be granted when the mariner is otherwise eligible for temporary documents while the mariner appeals his or her case to the NTSB (see 46 CFR 5.715). This permits the mariner to continue service while the appeal is pending (the same as when an appeal to the Commandant is pending).
5. Appeal To The Federal Court. The appellant may further seek relief from an adverse decision in the federal court. When a mariner files suit in federal court seeking to have an adverse decision overturned, the district commander (dl), Commandant (G-MAO-1) and (G-LCL) shall be immediately notified. Generally mariners are required to exhaust all administrative remedies (that is, appeal to the Commandant and the NTSB) prior to filing such suits. The Coast Guard is bound by the decision of the federal judge in such a case.
6. Issuance Of Temporary MMCs. An original temporary license or document, permitting a mariner to continue service while a decision on the mariner's case is undergoing appeal, may be authorized only by the ALJ hearing the case or by the Commandant. Such a request shall be made in writing, as required by 46 CFR 5.707. A copy of the request shall be forwarded to Commandant (G-MAO-1) for inclusion in the appeal file. An I application may be accepted by an OCMI for transmittal to the ALJ who heard the case. If the transcript of the hearing record has been forwarded to the Commandant, or if the request is denied by the ALJ, the request shall be forwarded to Commandant G-MAO-1). After authorization by the ALJ or the Commandant, temporary (NOTE: In determining whether to issue by the provisions of 46 CFR 5.707(c).] a period not to exceed 6 months. Where period, the mariner may request renewal an application with any OCMI. The OCMI MMCs will be issued by a REC. temporary MMCs, the ALJ is guided. The temporary MMCs are valid for the appeal process exceeds this of any temporary MMCs by filing shall contact Commandant(G-MAO-1) for authority to renew the temporary MMCs. When granted, the expired MMCs shall be surrendered and a replacement issued for the period authorized. At the time of renewal, the previously issued MMCs must be surrendered to the REC and forwarded to Commandant (G-MAO-1) for inclusion in the appeal file. A standardized temporary MMD form has been developed for field use (see Figure 2-5). To allow the mariner to post the license in a conspicuous place, as required by 46 U.S.C. 7110, the temporary license is issued on Form CG-2849, License to U.S. Merchant Marine Officer. The face of the license is completed in the same manner as is an original, and is signed and dated by the OCMI or the OCMI's representative, with the following modification to be placed above the signature block:

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- 2.H.6. (cont'd) "Temporary License issued under 46 CFR 5.707, to expire six months from date of issue. This License replaces License Number 123456 issued at (PORT) on (DATE)."

If the final decision on the appeal upholds the original order to suspend or revoke the mariner's MMCs, both must be surrendered immediately. If the original license will expire in less than 6 months, the validity of the temporary license is limited accordingly. If the Commandant authorizes renewal of a temporary license but the original has expired, the licensee shall apply for renewal of the original license before the temporary license is issued (see 46 CFR 10.209). If the suspension or revocation order under appeal is directed against the license only, the appellant need not deposit his or her permanent MMD as well. The IO should coordinate the issuance of temporary MMCs with the REC where the original license was issued.

7. Temporary MMCs Issued During Appeal To The NTSB. Subject to the provisions of 46 CFR 5.715, temporary MMCs may be authorized by the Commandant while a mariner is appealing a decision to the NTSB. Temporary licenses shall be issued as described above, and temporary MMD shall be issued in the format shown on Figure 2-6. The temporary MMCs shall be valid for a maximum of 6 months (or until a decision has been reached). If review has not been completed and an order not served by the NTSB within 6 months, the temporary MMCs may be renewed as described above. At the time of issuance, the previously issued MMCs shall be surrendered to the issuing REC and forwarded to Commandant (G-MAO-1) for inclusion in the appeal file.

### I. Internal Administrative Procedures.

1. Cases Forwarded To Commandant. When a mariner under investigation cannot be located, and evidence gathered indicates that laws or regulations under 46 U.S.C. Chapt. 77 have been violated, the IO should develop the case as fully as possible. The IO shall place the mariner on the Seaman Wanted list in the PACA product set in MSIS. The IO shall hold the case for one year by entering a prompt date of one year from date of entry. If the mariner can not be located during the one year period, the case should then be forwarded to Commandant (G-MAO-1). The case shall include all the evidence collected, i.e., (but is not limited to) Official Logbook entries, abstracts of Shipping Articles, statements of witnesses, and their names, addresses, and telephone numbers. Referral of cases to Commandant (G-MAO-1) should be limited to those cases warranting S&R proceedings. The criteria here are: Would I take this person to a hearing if the person were available? Do I have the evidence necessary to dispose of the case successfully? Except in unusual circumstances, cases should not be forwarded to Headquarters unless the answer to both questions is "yes." If any evidence required to dispose of a serious case is missing, the situation should be fully explained in the PANS product set.
2. Completed Case File. When final personnel action has been completed, the IO shall review the case file and remove unnecessary material, such as notes or reminders, intraoffice notes expressing unsubstantiated opinions, and the like. The requirements of the Freedom of Information Act (FOIA) Privacy Act, and the regulations promulgated thereunder should be considered in reviewing the file. After receipt of a request for release of a file, it is highly improper to remove any part of it (see Volume I of this manual).

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**FIGURE 2-5**

**STANDARD TEMPORARY MMD**

UNITED STATES COAST GUARD TEMPORARY MERCHANT MARINER'S DOCUMENT (MMD)

Office: \_\_\_\_\_, Place: \_\_\_\_\_, Date: \_\_\_\_\_

\_\_\_\_\_, the holder of MMD \_\_\_\_\_ having filed a written request with the Administrative law Judge (ALJ) at \_\_\_\_\_, on \_\_\_\_\_, 19\_\_, for the issuance of a Temporary MM as a substitute for the document which the applicant held prior to the date of an order entered by a Coast Guard AIJ at \_\_\_\_\_, on \_\_\_\_\_, 19\_\_, the said applicant is hereby granted this Temporary NM in accordance with Section 5.707 of Title 46 of the Code of Federal Regulations. This Temporary MMD is considered identical in type and character to the applicant's permanent document. This Temporary NM is issued to be effective for a period of 6 months from the date of issuance hereof, and it will expire on \_\_\_\_\_ 19\_\_, or upon publication and delivery upon the applicant of the Commandant's decision on the appeal of the holder of this MMD from the above order of the AIJ, whichever occurs first. If this MMD expires before the Commandant's decision is rendered, it may be renewed upon request to any Officer in Charge, Marine Inspection, Coast Guard Marine Safety/Inspection Office.

WARNING: Title 18, United States Criminal Code, provides for severe monetary penalties and imprisonment of persons who violate Section 2197 thereof, which deals with the unlawful use of this NM. Use beyond its expiration date my subject the holder of this document to the penalties of the above statute and, in addition the holder may be subject to a charge of misconduct under the provisions of Chapter 77 of Title 46 of the U.S. Code. Upon expiration of this NM, it shall be forthwith surrendered to the United States Coast Guard.

Identification  
Merchant Mariner's Document

Merchant Mariner's Document No.  
Issued at:

On \_\_\_\_\_, 19\_\_  
Endorsed as:

Born:	Height:
Place:	Weight:
Citizenship:	Color Hair:
Social Security No.:	Color Eyes:
Address:	

\_\_\_\_\_  
Signature of Seaman

Issued By: \_\_\_\_\_  
Title

THE ISSUANCE OF THIS MMD DEFERS THE RUNNING OF THE SUSPENSION/REVOCATION PERIOD ORDERED, UNTIL SUCH AS THIS DOCUMENT IS SURRENDERED TO THE U.S. COAST GUARD.

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FIGURE 2-6

STANDARD TEMPORARY MMD FOR USE DURING APPEAL TO NTSB

UNITED STATES COAST GUARD TEMPORARY MERCHANT MARINER'S DOCUMENT (MMD)

Office: \_\_\_\_\_ Place: \_\_\_\_\_ , Date \_\_\_\_\_

\_\_\_\_\_, the holder of MMD \_\_\_\_\_, having filed a written request with the Commandant, U.S. Coast Guard, on \_\_\_\_\_, 19\_\_, for the issuance of a Temporary MMD as a substitute for the document which the applicant held prior to the date of an order affirmed by the Commandant on \_\_\_\_\_ 19\_\_, the said applicant is hereby granted this Temporary MMD in accordance with Section 5.715 of Title 46 of the Code of Federal Regulations. This Temporary MMD is considered identical in type and character to the applicant's permanent document. This Temporary MMD is issued to be effective for a period of 6 months from the date of issuance hereof, and it will expire on \_\_\_\_\_, 19\_\_, or upon publication and delivery upon the applicant of the National Transportation Safety Board's decision on the appeal of the holder of this MMD from the decision of the Commandant, whichever occurs first. If this MMD expires before the National Transportation Safety Board's decision is rendered, it may be renewed upon request to any Officer in Charge, Marine Inspection, Coast Guard Marine Safety/Inspection Office.

WARNING: Title 18, United States Criminal Code, provides for severe monetary penalties and imprisonment of persons who violate Section 2197 thereof, which deals with the unlawful use of documents issued to merchant seamen. The use of this MMD beyond its expiration date may subject the holder of this document to the penalties of the above statute and, in addition the holder may be subject to a charge of misconduct under the provisions of Chapter 77 of Title 46 of the U.S. Code. Upon expiration of this MMD, it shall be forthwith surrendered to the United States Coast Guard.

Identification
Merchant Mariner's Document

Merchant Mariner's Document No.
Issued at:
On \_\_\_\_\_, 19\_\_
Endorsed as:

Born: Height:
Place: Weight:
Citizenship: Color Hair:
Social Security No.: Color Eyes:
Address:

\_\_\_\_\_  
Signature of Seaman Issued By: \_\_\_\_\_ Title

THE ISSUANCE OF THIS MMD DEFERS THE RUNNING OF THE SUSPENSION/REVOCATION PERIOD ORDERED, UNTIL SUCH TIME AS THIS DOCUMENT IS SURRENDERED TO THE U.S. COAST GUARD.

3. Commendations Of Mariners. OCMI's may submit letters or other types of reports commending merchant mariners and officers to Headquarters. The Commandant encourages such submittals. All marine safety personnel should recognize cases of outstanding performance of duty by mariners and make suitable reports to Director, National Maritime Center (NMC4A). They may also request information as to the prior record of a mariner for the completion and forwarding of such reports.

4. Seaman Locator List. The Seaman Locator List has been established to assist in locating merchant mariners wanted for surrender of MMCs which

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- 2.I.4. (cont'd) have been revoked or suspended, or for serving Decisions of ALJs. The list is no longer maintained by Commandant (G-MAO-1). Units are responsible for entering and removing names from the Seaman Locator list in MSIS. Investigation officers should routinely check the Locator/Wanted lists during any personnel investigation. IOs shall contact the port responsible for placing a mariner on the list for details of action required. The following actions will normally be required:
- a. Service Only. Maintain contact with mariner and request unit to forward the D&O for service.
  - b. Service And Surrender. Request the D&O. Pending receipt of the D&O, a written notice should be provided the mariner using a form similar to Figure 2-7. Maintain contact with the mariner and encourage him or her to surrender any MMCs held. Notify REC not to issue duplicate, renewal, or upgraded MMCs pending receipt and service of the D&O.
  - c. Surrender. Verify that the service of the D&O was made. Seek surrender advising mariner that any use or service under revoked or surrendered MMCs is considered to be a violation of 18 U.S.C. 2197 and possibly other statutes as well. If the mariner persists in refusing to surrender, consider referring case to the U.S. attorney after consulting with the district legal officer. If the mariner claims that his or her MMCs are lost, require that an affidavit be filed. See Figure 2-4. Notify RECs not to issue duplicate, renewal, or upgraded MMCs.

**FIGURE 2-7  
SAMPLE NOTICE OF SUSPENSION OR REVOCATION**

30 November 1994

Mr. John Butts  
69 Haight Street  
San Francisco, CA 99999

NOTICE

By order of the U.S. Coast Guard Administrative Law Judge at San Diego, CA, your Merchant Mariner's Document, Number 123-45-6789, was (revoked (suspended for 60 days)) on 29 January 1994. You are therefore precluded from sailing aboard U.S. Merchant Vessels. The judge's Decision and Order is being sent to this office and will be provided to you upon receipt.

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- 2.I.5. Seaman Wanted List. The list contains the names of mariners sought in connection with pending personnel investigation. In some cases, the person listed may be sought as a witness, though in nearly all cases the person is a potential respondent. Units are responsible for entering and removing names on the Seaman Wanted List in MSIS when:
- a. The person's testimony is needed to support an otherwise actionable case; or
  - b. Sufficient information is available to support an actionable case against the MMCs.
6. Release of Seaman Locator/Wanted Lists. The Seaman Locator list is releasable to the public. The Seaman Wanted list is not re-leasable to the public. Personal information (SSNs, etc.) shall be redacted.
7. Headquarters Assistance. Close liaison between field offices and Commandant (G-MAO-1) is desirable. Officers assigned to Headquarters have the advantage of being exposed to a wide variety of cases and situations. In addition, they will be aware of the latest policy concerning various matters. IOs are encouraged to telephone Commandant (G-MAO-1) when necessary to discuss problems of mutual concern.
8. Training. Each OCMI shall adhere to the guidance provided in the Marine Safety Training and Qualification Program to the fullest extent possible. See Volume I of this manual.
- J. Issuance Of New MMCs After Revocation Or Surrender.
1. Administrative Clemency. Mariners who have voluntarily surrendered their MMCs or had them revoked may apply for new MMCs in accordance with Subpart L of 46 CFR Part 5. Such applications, submitted with supporting documentation, may be accepted by an OCMI when the time limits prescribed by 46 CFR 5.901 have been met and all materials required by 46 CFR 5.903 have been submitted. Additionally two Applicant Fingerprint Forms (FO258) are required. Procedural guidance is on the back of the form. See also Volume III of this manual. Reason submitted is "Admin. Clemency". Mariners whose prior applications for new MMCs were denied by the Commandant may submit a subsequent application 1 year after the prior submission, or in accordance with the denial letter from G-MAO-1. In such cases, the provisions of 46 CFR 5.903 shall be met, except that supporting evidence of character and employment need cover only the period following the denial of the previous application, unless these areas were identified as contributing to the previous denial. All arrests, periods of confinement or probation subsequent to the revocation or surrender shall be noted in the application. Local background checks are not authorized unless the applicant authorizes the Coast Guard to do so. The time necessary to process a clemency application can be shortened if the fingerprint cards are forwarded to Commandant (G-MOA-1) about six months prior to the applicant completing the entire application package. This allows the initiation of the time-consuming FBI record check and possible retrieval of seamen's records from the Federal Records Center.
  2. Review Of Application. The Commandant decides on applications for clemency after review and recommendation by the Administrative Clemency Review Board (ACRB). The Board must conduct an in-depth review of all material submitted with an application for administrative clemency. Consequently, applications should normally be processed by an

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2.J.2. (cont'd) investigating or licensing/documents officer. The Board's recommendation on whether new MMCs should be issued will be based upon whether the applicant can provide satisfactory proof that the bases for the revocation or surrender no longer exists. Information concerning past service as a merchant mariner is contained in records at Headquarters; therefore, the field reviewer need not examine this aspect in detail. Rather, the reviewer's attention should be directed toward such things as the applicant's shoreside employment, attitudes, involvement with law enforcement authorities, social habits, and relationships with fellow employees during the period of surrender or revocation. Of particular concern is whether past traits or habits which led to the remedial action against the applicant's MMCs have been overcome or eliminated.

- a. Applicant's Letter. The applicant should include in the letter described in 46 CFR 5.903 any factors not otherwise covered in the application. The applicant should make specific reference to the cause of the surrender or revocation and note how his or her lifestyle has changed (sobriety, a disinclination toward violence, no further drug use, etc.), and whether the applicant is requesting a waiver of the mandatory waiting periods. Any periods of unemployment must be satisfactorily explained in this letter.
- b. Letters From Employers. If the applicant cannot comply with the provisions of 46 CFR 5.903(c)(1), the field reviewer shall ensure that all periods not covered are satisfactorily explained.
- c. Character References. Letters of character reference are often received that extol the virtues of an applicant who has constantly been in trouble with the authorities. **To be of value, character references should acknowledge the applicant's prior problems and speak directly about the applicant's success in overcoming them.** They must be current and be provided by individuals who have had recent contact with the applicant.
- d. Statement Of Fitness For Sea Duty. When revocation was based upon a physical or mental incompetence charge, the applicant must submit (at the applicant's expense) clinical records or a physician's statement attesting to the applicant's present physical or mental capacity for return to sea duty. If revocation was for a narcotic related offense or alcohol abuse, the documentation must include evidence of rehabilitation. Proof of rehabilitation for drug use includes the completion of a drug rehabilitation program, one year of nonassociation which includes an appropriate number of random, unannounced drug test conducted after completion of the rehabilitation program, and attendance at AA/NA meeting, or having been subject to long-term (two years or more) random testing. If the surrender or revocation was due to a drug conviction and there was no evidence of use involved, an evaluation conducted by a drug abuse center may be substituted for the completion of a rehabilitation program. If a waiver is request all elements described in 46 CFR 5.901(d) or (e) must be satisfactorily addressed. Individuals applying for administrative clemency are not required to obtain the drug free certificate from an MRO. The "SWEENEY" requirements for cure are considered far more stringent than those of the MRO's certificate.

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3. Verification Of Material. All letters submitted in accordance with 46 CFR 5.903 must be verified for authenticity by the field reviewer. A notation on the bottom of each letter will advise the ACRB that the verification was made.
- 2.J.4. Forwarding To Headquarters. Upon reviewing the application, supporting material, and evidence developed, the OCMI shall forward the file, and MSIS case which includes the IO's and OCMI's recommendation, to Commandant (G-MAO-1). The recommendation should clearly appraise the reliability of supporting material and the applicant's degree of rehabilitation.
5. Referral To The Administrative Clemency Review Board (ACRB). Commandant (G-MAO-1) will refer all applications received to the Board, which is convened at Headquarters by the Commandant. The application file must include the mariner's application and supporting documents, the OCMI's recommendation, an up-to-date resume of the applicant's criminal record, if any (including reports of arrest and disposition for violent or moral offenses), and a complete record of past S&R action.
6. Recommendation Of The ACRB. The ACRB members (usually three) review the applicant's file and forward their recommendations to Commandant (G-MAO-1). Applicants are notified by letter, signed by Commandant (G-MAO-1), which either authorizes the issuance of new MMCs as previously held, or identifies those factors which resulted in denial as well as the appropriate action to be taken in the future to enable approval to be considered. A copy of the letter is sent to the OCMI.

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CHAPTER 3. MARINE CASUALTY INVESTIGATIONS

A. General.

1. Authority For Investigations. The authority to require notice and reporting of a marine casualty is contained in 46 U.S.C. 6101; the implementing regulations are found in 46 CFR 4.05. The authority to investigate marine casualties and boating accidents is derived from 46 U.S.C. 6301 et seq.; the implementing regulations are contained in 46 CFR 4. The authority to require the reporting of casualties involving Outer Continental Shelf (OCS) Activities is the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331 et seq.) and the implementing regulations are found in 33 CFR 146.30, 146.35, and 146.303. The authority to investigate casualties involving activities on the OCS is derived from 43 U.S.C. 1333 and 1348.
2. Objectives Of Marine Casualty Investigations. An important purpose of marine casualty investigations is to obtain information for the prevention of similar casualties, as far as practicable. It is necessary for the causes of casualties to be determined as precisely as possible so that factual information will be available for program review and statistical studies. It is not sufficient to know only how a casualty occurred; it must also be clear why it happened. Based on this information, appropriate corrective measures, regulations, and standards of safety may be developed and instituted, and legislation for marine safety may be recommended, if needed. In many cases, human factors that are not readily apparent are the underlying causes of casualties. An equally important purpose of these investigations is the determination of whether there is any evidence of violation of law or regulation, any basis for the institution of civil penalty action under any of the laws administered by the Coast Guard, or suspension and revocation (S&R) proceedings under 46 U.S.C. 7703. Marine casualties are not investigated for the purpose of determining issues on behalf of private interests. (See 46 CFR 4.07-1 and 46 U.S.C. 6301.) Then evidence of a criminal act is developed from an investigation of a marine casualty, such evidence shall be referred to the Department of Justice (DOJ), as required by 33 CFR I.O.7-90 and 46 CFR 4.23-1. (See paragraph 3.B.13 below concerning referral of information to U.S. attorneys.)
3. Legal Assistance To Investigators. The investigating officer (I.O.) should ask the district legal officer for help in resolving legal questions that arise in the course of an investigation.
4. Investigative References.
  - a. Statutes/Regulations. I.O.'s should have a thorough knowledge of the marine safety statutes (Titles 33 and 46 U.S. Code (U.S.C.)), and their implementing regulations, found in Titles 33 and 46 Code of Federal Regulations (CFR). As custodians of records, I.O.'s should be thoroughly familiar with Department of Transportation

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- 3.A.4. a. (cont'd) (DOT) regulations contained in 49 CFR 7 and 49 CFR 10, which implement the Freedom of Information Act (FOIA) and Privacy Act, respectively (see Volume I of this manual). I.O.'s should also have at hand for reference purposes Titles 33, 43, and 46 U.S. Code Annotated, or U.S. Code Service, with the latest supplements, as well as the National Transportation Safety Board (NTSB) regulations governing the investigation of certain casualties (49 CFR 845).
- b. Policy Publications. In addition to chapter 1 of this volume, the following texts should be studied and used to supplement this chapter with respect to investigative fundamentals, principles, techniques, and procedures, and their specific applications to the maritime industry:
- (1) Arzt, "Marine Laws, Navigation and Safety";
  - (2) Bowditch, "American Practical Navigator";
  - (3) Administrative Investigations Manual, COMDTINST M5830.1 (series);
  - (4) Dutton, "Navigation And Piloting";
  - (5) The Energy Research & Development Administration Accident/Incident Investigation Manual (ERDA 76-20);
  - (6) Farwell-Prunski, "The Rules of the Nautical Road," or other authority on the Navigation Rules;
  - (7) Gilmore and Black, "Law of Admiralty";
  - (8) Griffin on Collision;
  - (9) Knight, "Modern Seamanship";
  - (10) Kulhmann, "Professional Accident Investigation Manual";
  - (11) Manual for Courts-Martial, United States, 1984 (revised);
  - (12) Norris, "The Law of Seamen";
  - (13) Parks, "Law of Tug, Tow and Pilotage"; and
  - (14) Index of/and Commandant's Decisions on Appeal of Suspension and Revocation Proceedings.

### 5. Common Terminology.

- a. Vessel. This term, as defined in 1 U.S.C. 3, includes "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." It

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- 3.A.5. a. (cont'd) includes seaplanes and nondisplacement craft used or capable of being used as a means of transportation on water. A vessel under new construction is not considered a "vessel" until it is launched. However, drydockings subsequent to the original launching do not interrupt a ship's status as a vessel.
- b. Commercial Vessel. This term distinguishes vessels engaged in mercantile or commercial service from those that are operated solely for recreational purposes.
- c. Marine Casualty Or Accident. A marine casualty or accident is defined in 46 CFR 4.03-1. Notice requirements for marine casualties are contained in 46 CFR 4.05-1. Certain marine casualties have been classed to facilitate advance reporting to Commandant (G-MMI-1) and appropriate agencies outside the Coast Guard. The classifications are as follows:
- (1) Major Marine Casualty. This term includes marine casualties or recreational boating accidents (see chapter 6 of this volume) that meet the criteria contained in the joint Coast Guard (CG)/NTSB regulations (46 CFR 4.40); these require the Commandant to notify the NTSB of the casualty. These criteria, set forth in 46 CFR 4.40-5(d), state that a major marine casualty involves a vessel other than a public vessel (as defined in 46 CFR 4.03-40) and results in one of the following:
- (a) The loss of six or more lives;
  - (b) The loss of a mechanically-propelled vessel of 100 or more gross tons (GT);
  - (c) Property damage initially estimated at \$500,000 or more;
  - (d) "Serious threat" (as determined by the Commandant with concurrence by the NTSB chairperson) to life, property, or the marine environment by hazardous materials.
- See paragraph 3.B.2 below concerning direct notification to Commandant (G-MMI-1) of all major marine casualties, and paragraph 3.B.16 below for further discussion of the NTSB.
- (2) Public/Nonpublic Vessel Casualty. Under the CG/NTSB joint regulations, the Commandant must notify the NTSB of all casualties that involve a public and a nonpublic vessel and at least one fatality or \$75,000 in property damage. (See 46 CFR 4.40-10(b)(2).) See paragraph 3.B.2 below for guidance concerning direct notification to Commandant (G-MMI-1) of all public/nonpublic vessel casualties. Guidance on investigating public/nonpublic vessel casualties is found in subparagraph 3.B.16.e below and paragraph 3.B.20 below.

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- 3.A.5.c. (3) Serious Casualty. The International Maritime Organization (IMO) has defined a "serious casualty" as an occurrence involving vessels of 1,600 CT or more that results in the total loss (including constructive total loss) of one or more vessels or a loss of life on vessels of 500 CT or more. A copy of all investigative reports on U.S. vessels involved in casualties meeting this definition will be submitted to the IMO by Commandant (G-CI).
- (4) Significant Marine Casualty. Significant marine casualties are those casualties that involve important safety issues or cause substantial media interest. Significant marine casualties generally involve the following:
- (a) Multiple deaths or a single death caused by unusual circumstances;
  - (b) Hazard to life, property, or the marine environment (e.g., sinking of a chlorine barge); or
  - (c) Loss of any inspected vessel.

See paragraph 3.B.1 below concerning immediate notification of Commandant (G-MMI-1) for all significant casualties.

d. Navigable Waters Of The United States. See 33 CFR 2.05-25.

e. Parties In Interest.

- (1) Designation. A party in interest, as defined in 46 U.S.C. 6303 and 46 CFR 4.03-10, includes any individual, organization, or entity that a marine board or an I.O. finds to have a direct interest in the investigation being conducted, as well as those specifically listed. Such direct interest should include a demonstrable connection with the casualty or accident under investigation. Additionally, in exercising the discretion to designate parties in interest, the following criteria should be considered (although not an exhaustive or exclusive listing, one or more of these criteria should normally support such designation):
- (a) The individual, organization, or other entity is an owner, charterer, agent of such owner or charterer, licensed officer, or holder of any certificate of service, or any other person whose conduct is under investigation;

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- 3.A.5.e.(1)
- (b) The individual, organization, or other entity is a lawful representative of a person who lost his or her life in the casualty under investigation, and who would have been designated a party in interest under subparagraph 3.A.5.e.(1)(a) above;
  - (c) The individual, organization, or other entity is a manufacturer, owner, shipper, time or space charterer, or other cargo interest, when there is an indication that cargo caused or contributed to the cause of the casualty;
  - (d) The individual, organization, or other entity is an underwriter or insurer of a party in interest as designated under subparagraphs 3.A.5.e.(1)(a) or (c) above, when the underwriter or insurer has, at the time of investigation, succeeded to the rights of the party in interest by means of subrogation (see subparagraph 3.A.5.i below); or
  - (e) The individual, organization, or other entity can demonstrate the potential for contributing significantly to the completeness of the investigation, or otherwise enhancing the safety of life and property at sea, through participation as a party in interest (e.g., a maritime labor union, pilot's association, standards making organization, or an individual or corporation incurring damages as a result of the casualty).

When a person or entity not initially designated as a party in interest seeks such designation, the marine board or I.O. should require the applicant to demonstrate the reasons for that person's or that entity's entitlement to designation as a party in interest, by a presentation of facts that the applicant expects to be elicited solely or primarily through the applicant's participation as a party in interest.

- (2) Rights. Each designated party in interest at a marine casualty investigation, whether conducted by an I.O. or a marine board shall be accorded all the rights set forth in 46 U.S.C. 6303. Specifically, those rights are to be represented by legal counsel, to cross-examine witnesses, and to call witnesses in his or her own behalf. These rights should be explained at the beginning of the investigation and again, as necessary, when parties in interest are designated during the course of the investigation. A party in interest may be required to speak through a single representative.
- (3) Designation By NTSB. Under the NTSB rules, those persons, agencies, companies, and associations whose participation in the hearing is deemed necessary in the public interest and

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- 3.A.5.e. (3) (cont'd) whose special knowledge will contribute to the development of pertinent evidence are designated parties. A party under NTSB procedures is afforded rights similar to a party in interest.
- f. Report Of Investigation. A report of investigation is an account of the results of investigation submitted by the I.O. or marine board to the Commandant, as required by 46 CFR 4.07-10 and 4.09-20. This may take the form of a narrative report, a letter of transmittal, or a "CG-2692 Report" that includes Form CG-2692, Report of Marine Accident, Injury, or Death, with apparent cause(s) and signature/endorsement portions completed. The report of investigation does not include enclosures. The report of investigation is complete and available for public release when:
- (1) Endorsed by the officer in charge, marine inspection (OCMI), for all CG-2692 reports and letters of transmittal; and
  - (2) Action is completed by the Commandant on all narrative reports, including Marine Board Reports.
- g. Subpoena To Compel The Production Of Evidence. This is a subpoena served upon the custodian of certain records or documents that are desired for evidence purposes. It orders the custodian to appear with specified books, papers, records, or documents so that they may be used as evidence and be admitted into the record.
- h. Subrogation. This is the substitution of one person in the place of another with reference to a lawful claim, demand, or right, so that the person who is substituted succeeds to the rights of the other in relation to the debt or claim and the rights, remedies, or securities.
6. Drug/Alcohol Use. 46 U.S.C. 2302(c) provides penalties for individuals who are intoxicated while operating a vessel, under standards prescribed by the Secretary. 46 U.S.C. 6101(b) further requires that marine casualty reports include information on whether or not the use of alcohol contributed to a casualty. A final rule issued in the Federal Register on 14 December 1987 set intoxication standards based on blood alcohol concentration (BAG) levels and/or observed behavior; amended the casualty reporting requirements to include information on whether the use of drugs or alcohol contributed to a casualty; defined what constitutes reasonable cause for chemical testing of individuals by Coast Guard personnel, other law enforcement personnel, and commercial marine employers; and established certain operating rules for commercial marine personnel serving aboard inspected vessels. On 26 February 1988, the Commandant issued ALCOAST 024/88 entitled Interim Policy on Enforcing Intoxicated Operation Rules, and indicated that more detailed guidance would be forthcoming. Accordingly, the I.O. shall follow the guidelines contained in ALCOAST 024/88 when investigating marine

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- 3.A.6. (cont'd) casualties until further notice. Questions which are not addressed adequately therein may be referred to Commandant (G-MMI-1) at FTS 267-1417.
7. Awards And Commendations. Recommendations by marine boards or I.O.'s for official recognition of heroic, distinguished, or meritorious acts should be made the subject of a separate report, and should not be included in a report of investigation. (See subparagraph 3.E.3.1.(3) below.)
- a. Commandant's Awards. The Commandant is authorized by 14 U.S.C. 500 to award Gold or Silver Lifesaving Medals to persons who, at the risk of their own lives, rescue or endeavor to rescue any other person from drowning, shipwreck or other peril of the water. To be eligible, the rescue or attempted rescue must take place in waters within the U.S. or subject to U.S. jurisdiction, or, if the rescue or attempted rescue occurs outside U.S. waters, one of the parties must be a U.S. citizen or from a vessel or aircraft owned or operated by citizens of the U.S. Administrative procedures pertaining to such awards are prescribed in the Medals and Awards Manual, Commandant Instruction (COMDTINST) M1650.25 (series) and 33 CFR 13.
- b. Maritime Administration (MARAD) Awards. The Secretary of the Department of Transportation (SEC DOT) is authorized by 46 App. U.S.C. 249-249b to issue the Merchant Marine Distinguished Service Medal to U.S. merchant mariners who distinguish themselves by act, conduct, or valor beyond the line of duty, and the Merchant Marine Meritorious Service Medal to U.S. merchant mariners who perform a meritorious act or service in the line of duty. In addition, the SEC DOT may issue a plaque to any U.S. or foreign ship that participates in an outstanding or gallant manner in a marine disaster or emergency for the purpose of saving life or property. The SEC DOT may also award an appropriate citation or ribbon to each person serving aboard such a ship at the time for which cited. Communications in this regard by other than Coast Guard personnel should be addressed to: Chairperson, Merchant Marine Awards Committee, Office of Maritime Manpower, Maritime Administration, Washington, DC 20590. Recommendations by Coast Guard personnel should be addressed to Commandant (G-MMI-1) for forwarding to MARAD. Such recommendations should be fully documented by logbook entries and statements of witnesses.
- c. Department Of State (DOS) Awards. The DOS, on the basis of recommendations submitted by consular officers, issues awards to masters or crews of foreign vessels when U.S. citizens or seamen have been rescued from a shipwreck or other catastrophe at sea. Acknowledgment of such services will usually be made in the name of the President by the DOS, and awards will be made to the persons effecting the rescue in accordance with their rank and merit of action.

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- 3.A.7. d. Letters Of Commendation. In cases that do not warrant consideration for a medal or award, or in which the MARAD Merchant Marine Awards Committee has not approved recommendation for an award, the I.O. or the OCMI may recommend that the district commander issue a Letter of Commendation or Appreciation to a merchant mariner.
- e. Public Service Awards. Engraved certificates may be awarded by the Coast Guard to private citizens, groups, or organizations that contribute significantly to Coast Guard services or operations. This demonstrates the Commandant's interest in improving effectiveness and in encouraging citizens and organizations to assist in the accomplishment of Coast Guard missions. Administrative procedures are prescribed in the Public Affairs Manual, COMDTINST M5728.2 (series).

B. Administrative Procedures For Marine Casualty Investigations.

1. Significant Marine Casualties. Immediately upon receipt of information concerning a significant marine casualty (see subparagraph 3.A.5.c.(4) above), the OCMI shall inform Commandant (G-MMI-1), FTS 267-1417, and the district commander by the most rapid means available (usually by telephone). Since Headquarters Flag Plot, Commandant (G-TGC-1), serves as the Commandant's operations center, the following notification procedures shall be followed after normal working hours and on weekends:
- a. Place the call to the Flag Plot duty officer, Commandant (G-TGC-1), at (FTS) 8-267-2100, commercial (202) 267-2100 or (toll free) 800-424-0201;
- b. Advise the duty officer that you are reporting a significant marine casualty; and
- c. Request the call to be patched to Commandant (G-MMI-1) personnel at home.

Notification should be based on reliable information, and should not be delayed while filing reports that may be required. Essential information, including the names of the vessels involved, their Official Numbers (O.N.'s), nationality, the location, known and possible deaths and serious injuries, the nature of the casualty, and the Marine Safety Information System (MSIS) case number should be clearly set forth. It is imperative that Commandant (G-MMI-1) be advised of the essential facts without delay, even though some information may be missing or of questionable accuracy. Initial notification should state the type of investigation to be conducted or contain a recommendation to convene a marine board, and should be confirmed by message or MSIS mailbox as soon as possible. (See Figure 3-1 for a sample notification checkoff list.) Similar notification shall be made to the district commander (m). Investigation of a significant marine casualty shall commence

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FIGURE 3-1

SAMPLE NOTIFICATION CHECKOFF LIST FOR  
SIGNIFICANT, MAJOR MARINE AND PUBLIC/NONPUBLIC VESSEL CASUALTIES

DATE \_\_\_\_\_ TIME \_\_\_\_\_

MC# \_\_\_\_\_

REPORTING OFFICE \_\_\_\_\_ PERSON REPORTING \_\_\_\_\_

VESSEL DATA:

Name (s) :  
O.N. :  
Nationality:  
Gross Tonnage:  
Length:  
Year Built:  
Homeport:  
Owner/Agent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE/TIME OF CASUALTY:

LOCATION:

LOSS OF LIFE/INJURIES:

APPROXIMATE DAMAGE:

POLLUTION OR POTENTIAL POLLUTION:

NATURE OF CASUALTY (CAUSES AND OTHER PERTINENT INFORMATION IF KNOWN):

COURSE OF ACTION:

ROUTINE \_\_\_\_\_ FORMAL \_\_\_\_\_ RECOMMEND MARINE BOARD \_\_\_\_\_

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- 3.B.1. (cont'd) immediately upon receipt of information concerning the incident. The immediate employment of a sufficient number of I.O.'s after a marine casualty facilitates the swift gathering of evidence and information. The importance of getting witnesses' first impressions and reactions before they are dispersed or otherwise employed is obvious. In smaller offices this may require an all hands evolution. Assistance should be requested from the district office or Headquarters, if necessary.
2. Notification Of Major Marine And Public/Nonpublic Vessel Casualties. Direct notification of Commandant (G-MMI-1) is likewise required for major marine casualties and public/nonpublic vessel casualties. The same procedures outlined in paragraph 3.B.1 above shall be used to report these casualties. Commandant (G-MMI-1) will notify the NTSB of the occurrence of such casualties. (See paragraph 3.B.16 below for further discussion of the NTSB.)
3. Investigative Reports And Forms. All commercial vessel casualty investigations shall be reported to the Commandant, either by a narrative report (including marine boards of investigation), a letter of transmittal, or a "Form CG-2692 Report," as applicable. Forms CG-2692 and CG-2692A, as required by 46 CFR 4.05-10, are also used as enclosures to all narrative and letter of transmittal reports. (See section 3.E below.)
4. Recreational/Commercial Vessel Casualty Investigations.
- a. Accident Reporting Requirements. In accordance with 46 CFR 4.01-3, dual reporting is not required. Therefore, if an accident involves a vessel that is subject to the reporting requirements of 33 CFR 173, Form CG-3865 or a state boating accident report form, as appropriate should be submitted. Such vessels include:
- (1) Vessels that are state numbered and used for recreational purposes;
  - (2) Vessels that are state numbered, uninspected, and used for commercial purposes;
  - (3) Documented yachts; and
  - (4) Commercial vessels that are documented and uninspected, used for recreational purposes at the time of the accident.

If the vessel involved is required to have a valid Certificate of Inspection (COI), the requirements of 33 CFR 173 do not apply, and the casualty shall be reported on Form CG-2692. Policy questions concerning recreational boating accident investigations should be directed to the Commandant (G-NAB-2).

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- 3.B.4. b. Reports Of Casualties Involving Recreational/Commercial Vessels. All investigative reports concerning recreational boats used commercially at the time of a casualty that meet the reporting criteria in 46 CFR 4, and accidents between commercial and recreational vessels, shall be submitted to Commandant (G-MMI-1). Form CG-3865, Boating Accident Report, or a state accident report form shall be attached to the investigative report for those cases involving state numbered commercial and recreational vessels but not listed as an enclosure. An extra copy of the report, with all enclosures and attachments, shall be included for forwarding to Commandant (G-NAB). (See section 3.F below concerning investigative records.)
- c. Casualties Involving State Numbered Commercial Vessels. Casualties involving state numbered commercial vessels that meet the reporting criteria of 46 CFR 4.05-1 shall be investigated and reported to Commandant (G-MMI-1) in accordance with the provisions of this chapter. In these cases, Form CG-2692 shall be submitted in lieu of, or in conjunction with, the Boating Accident Report, Form CG-3865.
- d. Notification Required When Report Is Not Completed Within 6 Months. Reports of marine casualty investigations conducted under 46 CFR Part 4 should be completed and submitted to Commandant (G-MMI-1) within 6 months of the date of the casualty. Timely submittal of these reports will provide for improved administrative control and prompt correction of hazardous conditions. If this submission date cannot be met, a letter is required from the OCMI or the chairperson of the marine board to Commandant (G-MMI) stating the cause for the delay and the estimated date of completion. If the report cannot be completed by the stated date, a follow-up letter is required.
5. Marine Safety Information System (MSIS).
- a. The MSIS provides the decision support and reporting mechanism for the basic data elements of the Marine Casualty Program. The MSIS Marine Casualty Product Set, which is designed to capture and report basic data relevant to marine casualty investigations, shall be used by field units to manage and report marine casualties. The open unit casualty log is kept in the Marine Casualty Status at Port log (MCSP) and the closed log is kept in the Marine Casualty Port log (MCPL). Specific guidance is provided in COMDTINST M5230.17 (series).
- b. A particular casualty is generally not a unique event. In many instances, a casualty may be one of a series of similar occurrences or part of a pattern. This pattern may involve a vessel, a vessel class, or a particular item of equipment. MSIS contains information about vessel design class memberships and sister vessels. Casualty logs (Vessel File Marine Casualty log (VFMC), Vessel File Open Case log (VFOC), and Vessel File Damage/Defects (VFDL)) provide

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- 3.B.5. b. (cont'd) vessel-specific histories of casualties and deficiencies. These histories may suggest a pattern involving repeated vessel or equipment failures. Investigators should use the information available in MSIS to uncover repeat occurrences or patterns of similar casualty incidents. An examination of casualty histories on similar vessels may suggest possible causes or additional areas to consider. Additional information about cases listed in MSIS is available from Commandant (G-MMI).
6. Casualties Involving Aids To Navigation. Whenever a vessel strikes an aid to navigation that is under the jurisdiction of the Coast Guard, or the vessel is in any way connected with such an incident, the incident must be reported to the nearest OCMI. If it is a reportable marine casualty as defined in 46 CFR 4.05, the report shall be made on Form CG-2692. In all cases, the OCMI shall notify district (oan) personnel or the appropriate group command of the circumstances. A collision with an aid that damages or alters it is a violation of 33 U.S.C. 408, whether or not the act was willful. 14 U.S.C. 84 prohibits willful damage of aids to navigation (33 CFR 70 also applies in such cases). The compensation for damages is considered appropriate in all cases; however, consideration of further action under S&R, civil penalty, civil court, or criminal proceedings (14 U.S.C. 84 or 33 U.S.C. 411) should be considered on a case-by-case basis.
7. Report Of Structural Failure. Instances of structural failure may require reporting on Form CG-2752, Report of Structure Failure, Collision Damage, or Fire Damage to Inspected Vessel, in accordance with instructions contained in Volume II of this manual.
8. Casualties Involving Hazardous Materials. The Hazardous Materials Branch, Commandant (G-MTH-1), should be notified immediately of a casualty involving a product regulated under 46 CFR, Subchapter O as a hazardous bulk solid, or any packaged or containerized hazardous material. Commandant (G-TGC-1) Flagplot can contact off-duty members of Commandant (G-MTH-1) as necessary. (See paragraph 3.B.1 above and 46 CFR 4.05-30 for further guidance.)
9. Incidents Not Classed As Marine Casualties. Casualty investigation reports should not be submitted to Commandant (G-MMI) unless the incidents they document fall within the classifications in 46 CFR 4.05-1. Less serious casualties are often investigated for enforcement purposes and occasionally because of special local interest. Investigations conducted for enforcement purposes (i.e., civil or criminal penalties, S&R, and aids to navigation) have special reporting procedures that should be followed. Safety related incidents that may become apparent as a result of one of these types of investigations should be reported, with recommendations, to the appropriate command by letter.

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- 3.B.10. Failure To Report Marine Casualties. Under the authority of 46 U.S.C. 6103, an owner, charterer, managing operator, agent, master, or individual in charge of a vessel who fails to report a casualty, as required under 46 U.S.C. 6101 or a regulation prescribed thereunder, is liable for a civil penalty of \$1,000. The regulations of 46 CFR 4 require both notice and a written report. If these are not filed in a timely manner, the OCMI shall require a satisfactory explanation. When deemed appropriate, S&R or civil penalty proceedings should be initiated for failure to report a casualty.
11. Coordination With Other Coast Guard Activities. I.O.'s, as well as other marine safety personnel, must establish liaison with other Coast Guard activities and commands. Arrangements should be made so that the appropriate Coast Guard command will be notified of damages to aids to navigation, marine casualties, assistance cases, serious motorboat accidents or violations, and other information discovered in carrying out marine safety functions. An I.O. should not hesitate to avail himself of the services of the district legal officer, nor should he fail to consult with other officers for expert advice on technical matters. Through the chain of command, an I.O. should avail himself of Coast Guard facilities whenever beneficial to casualty investigations. For example, Coast Guard stations frequently have land vehicles, convenient space for holding small investigations, and a wealth of local information.
12. Coordination With The Department Of Interior (DOI).
- a. Both the Coast Guard and the DOI's Minerals Management Service (MMS) (formerly the Conservation Division, U.S. Geological Survey) have jurisdiction to investigate casualties occurring on structures on the OCS. Section VI of the CG/DOI Memorandum of Understanding (MOU) of 18 December 1980, and the regulations governing OCS policy (33 CFR 140-147), provide guidance for conducting investigations of this nature. Figure 3-2 reproduces this section of the MOU.
  - b. Investigations should be conducted so as to avoid a duplication of effort. However, the Coast Guard and MMS have differing responsibilities. A Coast Guard report is required for those incidents meeting the requirements of 33 CFR 140.201, 33 CFR 146.30, or 33 CFR 146.303. If the casualty is one in which MMS is the lead agency, the Coast Guard report may indicate that the cause of this casualty is being investigated by the MMS.
13. Coordination With The Department Of Justice (DOJ). Whenever a marine board of investigation has been convened, the recorder of the board must initiate notification of the U.S. attorney for the district in which the board is being convened. Liaison with DOJ will be conducted through the Coast Guard district commander (d1) for the district in which the board is being convened. The U.S. attorney should be informed of the nature of the casualty and the time and place at which hearings will begin. Similar notice should be given in all cases involving government vessels or potential claims against the government. Investigations indicating

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FIGURE 3-2

SECTION VI OF CG/DOI MEMORANDUM OF UNDERSTANDING

A. RESPONSIBILITY

Investigation and public report by the [Minerals Management Service] or the Coast Guard are required for fires, oil pollution, deaths and injuries associated with OCS activities. In addition, the agencies investigate certain other incidents relating to other regulatory responsibilities (e.g., loss of well control, sinking, capsizing, or major damage to a vessel or facility). To avoid duplicative efforts and simplify administration, the primary agency regulating a particular facility, system, or operation will be responsible for leading the investigation and reporting on incidents involving that facility, system, or operation. Where only one agency has an investigative interest in an incident, that agency will investigate and report. Where both agencies have investigative interest in an incident, one agency will assume lead responsibility with supporting participation by the other agency. Assumption of lead agency responsibility, the extent of supporting participation, and procedures for coordination will be determined by the circumstances of the particular incident. Normally, all investigations that involve both agencies will be coordinated by applying the following guidelines in numerical order to determine lead agency.

B. GUIDELINES

1. Collisions - The Coast Guard will normally be the lead agency.
2. Fires and Explosions - The [Minerals Management Service] will normally be the lead agency for incidents of fire or explosion involving drilling or production operations. Coast Guard participation will be requested in all investigations of fires or explosions that involve death or injuries or vessels, equipment, or operations for which the Coast Guard is responsible under Paragraph IV.B.2 or C.2 of this Memorandum.
3. Deaths and Injuries - The Coast Guard will normally be the lead agency for all incidents involving death or injuries. [Minerals Management Service] participation will be requested in investigations of all deaths and injuries associated with oil or gas drilling or production operations or equipment, including hydrogen sulfide exposure.
4. Pollution - The [Minerals Management Service] will normally be the lead agency for incidents involving pollution from all OSC facilities. Coast Guard participation will be requested in all investigations of pollution.

FIGURE 3-2 (cont'd)

B. 5. Facilities, Material, and Equipment

- a. The Coast Guard will normally be the lead agency for incidents involving damage to MODU's, MWSU's, or other vessels or OCS facilities, and failure or damage to propulsion, auxiliary, or emergency systems and equipment covered under Paragraph IV.B.2 of this Memorandum.
- b. The [Minerals Management Service] will normally be the lead agency for all other incidents involving failure of or damage to fixed OCS facilities.

C. CONDUCT OF INVESTIGATIONS

1. The lead agency responsible for an investigation under these guidelines will conduct, review, approve, and release the investigation report in accordance with the normal procedures of the agency. Comments by the supporting agency will be included in the investigation report.
2. If both agencies participate in an investigation, the lead agency will forward an information copy of the final report to the supporting agency.
3. Reports prepared by a single agency need not be routinely forwarded to the other agency, but will be available upon request.

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3.B.13. (cont'd) evidence of criminal violation shall be referred to the U.S. attorney in accordance with 33 CFR 1.07-90. Such referrals shall be made by the district commander (dl) as soon as there is sufficient evidence to support the violation. Where 33 CFR 1.07-90 requires the Commandant's approval prior to referral, the completed Commandant's Action will constitute authority for such referral. If, for any reason, referral to the U.S. attorney cannot await Commandant review of the casualty report, verbal authority may be requested from Commandant (G-MMI). A U.S. attorney is not precluded from initiating action without formal Coast Guard referral. The principles of good liaison dictate that the U.S. attorney is advised promptly of matters that may ultimately come under his or her cognizance. When evidence of criminal liability is also within the cognizance of other agencies such as the Federal Bureau of Investigation (FBI), state, or local law enforcement agencies, such evidence may be referred to that agency in a timely manner without approval of the Commandant.

14. Coordination With The Department Of Defense (DOD). The following procedures shall be applied in cases of U.S. public vessels involved in a reportable marine casualty (see 46 CFR 4.05-1) with a merchant or recreational vessel of the U.S. or a foreign vessel operating in navigable U.S. waters:

a. General Procedures. When vessels of the U.S. Navy, including Military Sealift Command (MSC) vessels, are involved, the Judge Advocate General's Corps officer of the naval district in which the casualty occurred shall be advised. When vessels of the U.S. Army Corps of Engineers (USACE) or another governmental department are involved, the district Army engineer or appropriate command shall be advised. The participation of appropriate witnesses shall be requested; if this request is denied, Commandant (G-MMI-1) shall be advised immediately. The investigation shall proceed without these witnesses, in accordance with the procedures set forth in this chapter. [NOTE: As provided by 46 CFR 4.11-1, military personnel and civil service employees serving aboard vessels controlled by the Army or Navy may not be subpoenaed to appear as witnesses in an investigation without the consent of the governmental agency concerned.]

b. Contract Operated United States Naval Ship (USNS) Vessels. By agreement with the Commander, MSC, the Coast Guard will investigate all reported marine casualties (see 46 CFR 4.05-1) involving contract operated USNS vessels (i.e., vessels owned by the MSC and used for public purposes, although their operation and manning are contracted with private companies), except in specific cases when the MSC requests that there be no investigation. Civil service and military manned vessels and their masters/commanding officers will not report marine casualties to the Coast Guard, and the Coast Guard will not investigate such casualties except when specifically requested by the Commander Military Sealift Command. When a casualty investigation is conducted, the MSC will assist the Coast Guard to the extent practicable in the investigation and in

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- 3.B.14. b. (cont'd) obtaining necessary witnesses. In those cases when the MSC decides that a marine casualty should not be reported to the Coast Guard (or, if reported, that it should not be investigated), a Coast Guard investigation will not be conducted. When requested not to investigate, the OCMI should advise Commandant (G-MMI-1) by message or other appropriate means. [NOTE: This policy does not affect the Coast Guard's policy to investigate casualties when a contract operated USNS vessel is involved in a casualty with another vessel over which the Coast Guard has jurisdiction.]
- c. Noncooperation. When a DOD agency declines to participate or make witnesses available, the Coast Guard will still conduct an investigation under 46 U.S.C. Chapter 63. In such cases, the investigative record should include only a Form CG-2692 report or a letter of transmittal or a narrative report with Form CG-2692, as appropriate. The I.O. may interview personnel and examine records of the involved private vessel to obtain necessary information for the investigation. However, those statements and copies of documents shall not be included in the record.
- d. Disciplinary Action. The Coast Guard has authority to take disciplinary action under 46 U.S.C. Chapter 77 against licenses or certificates, held by any Civil Service or contract crewmember signed on vessels of the MSC, when possession of a valid license of seaman's document issued by the Coast Guard is a condition of employment. The Coast Guard will normally not initiate action in cases of Civil Service employees unless requested to do so by MSC.
15. Coordination With The Department Of Labor/Occupational Safety And Health Administration (OSHA). Under 33 U.S.C. 941, the Secretary of Labor conducts investigations of accidents and deaths involving employees covered by that Act. This investigative authority parallels, in many instances, that of the Coast Guard under 46 U.S.C. 6301. [NOTE: See 46 CFR 4.01-3 for the reporting exclusion with respect to deaths of shipyard or harbor workers.] To avoid duplication, OSHA has requested local notification of all casualties involving longshoremen or ship repairmen. Prior to convening of Coast Guard investigation of such casualties, the appropriate OSHA official shall be informed and invited to attend, although not as a party in interest. The investigation will be conducted under the authority of 46 U.S.C. 6301 in accordance with this chapter. The OSHA official should be consulted concerning the official's particular interest in the casualty, and opportunity should be afforded the official to elicit facts or develop information necessary for the official's purposes. However, the conduct and scope of investigation will remain the responsibility of the Coast Guard. It should be noted that the Coast Guard's I.O.'s rights of access and subpoena authority cannot be extended to cover other agency personnel. Similarly, OSHA will inform the OCMI of any investigation it conducts under 33 U.S.C. 941 that may be of interest. A Coast Guard representative may be designated to attend. Relevant Coast Guard investigative records shall be made available to the local Labor

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- 3.B.15. (cont'd) Department office in accordance with 49 CFR 7. Additionally, the Coast Guard and OSHA signed an MOU on 19 December 1979 "to establish procedures to increase consultation and coordination . . . on the Outer Continental Shelf (OCS)." Specifically, Sections IV-B(2) and (3) of the MOU, entitled "Investigation of Accidents" and "Investigation of Allegations" state respectively that:

"In accordance with regulations issued under its authority, the Coast Guard will investigate deaths, injuries, and other casualties or accidents occurring as a result of operations conducted pursuant to the OCS Act. In the course of all such investigations, formal and informal, the Coast Guard will cooperate with OSHA with respect to identifying violations of applicable OSHA regulations related to the casualty or accident. Such cooperation will include promptly making investigation information available to OSHA; inviting OSHA attendance at Coast Guard formal hearings; and developing lines of inquiry suggested by OSHA."

"Where a Coast Guard investigation identifies an apparent violation of an applicable OSHA regulation, the Coast Guard will promptly notify OSHA and subsequently will cooperate with OSHA with respect to any enforcement action OSHA may undertake. This cooperation may include, but is not limited to, providing transportation, as available; provided, however, that OSHA remains responsible for obtaining its own legal right of access to any facility."

"The Coast Guard will review any allegation from any person of the existence of a violation of an occupational safety or health regulation or other unsafe working condition on the OCS and take appropriate action under the circumstances. Copies of complaints of occupational safety or health violations on the OCS received by OSHA will be referred to the appropriate Coast Guard district commander for action. The Coast Guard will notify OSHA as promptly as possible of the disposition of allegations forwarded by OSHA."

16. National Transportation Safety Board (NTSB). The NTSB is an independent federal agency, created under the Independent Safety Board Act of 1974 as amended (49 App. U.S.C. 1901 et seq.). It may investigate (or cause to be investigated) major marine casualties and casualties involving public/nonpublic vessels. It may also investigate any "other accident which occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy" of the Act. Joint CG/NTSB regulations governing the conduct of investigations are contained in 46 CFR 4.40 and 49 CFR 850.
- a. Initial Procedures. In accordance with 46 CFR 4.40-10, the Coast Guard must determine if a marine casualty meets the criteria for NTSB notification. Consequently, the OCMI must determine and inform Commandant (G-MMI-1) if a casualty:

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- 3.B.16.a.
- (1) Is a major marine casualty;
  - (2) Involves a public and a nonpublic vessel and at least one fatality or \$75,000 in property damage;
  - (3) Involves a Coast Guard and a nonpublic vessel and at least one fatality or \$75,000 in property damage; or
  - (4) Is a major marine casualty that involves significant safety issues relating to Coast Guard safety functions (search and rescue (SAR), aids to navigation (ATON), vessel traffic systems (VTS), etc.).

(See 46 CFR 4.40-10, "Preliminary Investigation By The Coast Guard.") The OCMI shall advise Commandant (G-MMI-1) immediately of the results of the preliminary investigation, and shall direct on-scene investigation activities pending final determination of the type of investigation to be conducted. Commandant (G-MMI-1) will formally notify NTSB and provide preliminary information.

- b. Coast Guard Investigations. When requested by NTSB in accordance with 46 CFR 4.40-25, the Coast Guard will conduct the investigation of major marine casualties and certain public/nonpublic vessel casualties for the NTSB. In some instances, the NTSB will designate a representative to participate in every phase of the investigation, including on-site investigation, conducted under the provisions of 46 CFR 4.40-25. Consistent with the Coast Guard's responsibility to direct the course of the investigation, the NTSB representative may make recommendations about the scope of the investigation, call and examine witnesses, and submit or request additional evidence. A copy of the record (i.e., the testimony, exhibits, statements, photographs, etc.), of each investigation in which the NTSB participates, including those conducted by marine boards of investigation shall be transmitted directly to the NTSB throughout the course of the investigation.
- c. NTSB Investigation Under The CG/NTSB Joint Regulations. In accordance with the CG/NTSB MOU and 46 CFR 4.40-15(b), the NTSB shall conduct the investigation of certain major marine and public/nonpublic vessel casualties. Except for the preliminary investigation, a separate Coast Guard casualty investigation will not be conducted, nor will parties in interest be designated by the Coast Guard. Although these investigations are conducted by the NTSB in accordance with their procedures, the Coast Guard will participate fully as a party. The OCMI should maintain daily contact with Commandant (G-MMI) during the investigation.

- 3.B.16.c. (1) On-Scene Coast Guard Activities. Upon the occurrence of a major marine or a public/nonpublic vessel casualty that meets the criteria of 46 CFR 4.40-15(b), the appropriate Coast Guard commands shall continue routine on-scene activities (SAR, pollution response and emergency services, succor survivors, manage traffic in the affected waterway, or accommodate salvage activities). The OCMI/captain of the port (COTP) should take reasonable measures to secure the scene from sightseers and looters until the NTSB investigators have had an opportunity to view the scene and document the evidence. The requirements for securing accident sites can vary widely, from preserving lifesaving equipment used in the casualty to securing the entire vessel or a structure such as a highway bridge. In performing this task, local law enforcement agencies may be of assistance. Coast Guard personnel may not detain a vessel or subpoena witnesses except for specific Coast Guard purposes (e.g., COTP or OCMI authority related to vessel safety or subpoena power under S&R proceedings). Coast Guard personnel have no authority for detention or subpoena power under 49 App. U.S.C. 1901 et seq. However, a subpoena issued prior to assignment of NTSB investigators should be considered a valid subpoena. If excessive delay in the arrival of the NTSB investigators is anticipated, such that one or more of the vessels or witnesses involved will have departed the scene, Coast Guard personnel shall obtain written or oral statements from the appropriate parties and perform other tasks identified by the NTSB as essential. Efforts should be made to provide the support requested by the NTSB, within operational constraints and resource limitations. Upon request of the NTSB, this may include transportation to and from the scene, providing vessel documentation and inspection records, providing personnel licensing histories (except as prohibited by the Privacy Act), identifying Coast Guard personnel who may be fact witnesses to the investigation, and turning over documentary evidence such as logs and voice recordings.
- (2) NTSB Investigation. After the NTSB investigator in charge (IIC) has had an opportunity to determine the central issues of the accident, the various parties participating in the investigation may be assigned to groups, each responsible for gathering certain facts. The number of NTSB investigators assigned and the number of investigative groups formed generally will depend upon the severity of the casualty. In many cases, there will be only one "group." The NTSB prefers that individuals possessing various skills, such as experienced investigators or technicians, be assigned to represent parties within the assigned groups. The Coast Guard will always be designated as a party and, as such, will provide personnel to participate in investigative groups. The OCMI will normally appoint at least one I.O. to participate in witness interviews. When several groups are formed to investigate a

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- 3.B.16.c. (2) (cont'd) severe casualty, the Commandant or district commander will appoint an individual to serve as Coast Guard liaison with the NTSB team. Additional personnel may be designated to participate in the investigative groups. Such personnel should have some training and experience in the subject matter to be investigated by the group. Examples of groups that may be proposed include weather, witnesses, structures, recorded communications, course recorder, operations, engineering, and human factors. NTSB procedures require that each group shall be led by an NTSB investigator. Under the direction of the group chairperson, each group will perform the task(s) assigned to it.
- (3) NTSB Hearings. It is likely that the NTSB will hold a formal hearing or deposition soon after the on-scene investigation (in approximately 2 to 6 weeks). It is at this time that verbatim testimony and exhibits are formally entered into evidence. As a party to the investigation, the Coast Guard will provide a spokesperson; normally, this shall be the senior officer participating in the on-scene investigation. The NTSB interprets the word spokesperson to mean "the only person allowed to talk on behalf of the party at the hearing." The Coast Guard spokesperson should be prepared to ask questions of witnesses and otherwise participate and fully represent the Coast Guard's interest in the hearing. The policy of the NTSB is to allow only one spokesperson, for the complete formal hearing. Certain exceptions have been permitted, such as where the subject matter concerned two program areas. One officer was allowed to examine witnesses of concern to his program while the spokesperson questioned the other witnesses. If exceptions are deemed necessary, approval should be obtained from the IIC. The NTSB rules at 49 CFR 845.13 require that the spokesperson be a suitably qualified technical employee who does not occupy a legal position. In general, the spokesperson will not be an attorney.
- (4) Testimony By Coast Guard Personnel. Since the NTSB does not exclude witnesses from the hearing during the testimony of other witnesses, the Coast Guard spokesperson should take advantage of this opportunity to familiarize Coast Guard witnesses with both the hearing procedure and the testimony of other witnesses. Coast Guard personnel called as witnesses shall be provided legal counsel.
- (5) Proposed Findings, Conclusions, And Recommendations. At the conclusion of the NTSB proceedings, each party has the opportunity to submit proposed findings of fact, conclusions, and recommendations. The Coast Guard spokesperson shall prepare and submit proposed findings of fact, conclusions, and recommendations setting forth the Coast Guard's positions on the casualty, and the evidence developed by the investigation.

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- 3.B.16.c. (5) (cont'd) (Recommendations for further investigation under civil, criminal, S&R, or court martial proceedings are not appropriate in this forum.) A copy of all proposed findings of fact, conclusions, and recommendations shall be submitted to the district commander in whose district the investigation is held and to Commandant (G-MMI).
- (6) Effects Upon Coast Guard Actions. Should information gathered during the preliminary or NTSB investigation indicate that civil or criminal penalty proceedings, S&R proceedings under 46 U.S.C. Chapter 77, or court-martial proceedings under the Uniform Code of Military Justice (UCMJ) are warranted, an appropriate Coast Guard investigation must proceed independently of NTSB activities. Such action shall not be held in abeyance pending the NTSB report. Coast Guard personnel participating in the NTSB investigation shall not be assigned to conduct UCMJ investigations. However, evidence developed during the course of an NTSB investigation may be used to document a report of violation or for discovery purposes in S&R proceedings. A "party" to an NTSB investigation is normally a marine organization or agency that can aid in developing the facts of the casualty. Individuals normally are not designated as parties.
- d. Independent NTSB Investigation. An independent investigation of any other marine casualty may be conducted by the NTSB, at its option, under 49 CFR 845.
- e. Investigative Reports For Major Marine And Public/Nonpublic Vessel Casualties. Unless a casualty investigation is conducted by the NTSB or by a marine board of investigation, the cognizant marine safety office (MSO)/marine inspection office (MIO) shall conduct a thorough investigation into the circumstances of the casualty. For those casualties not investigated by NTSB, a copy of the investigative report is sent by Commandant (G-MMI) to NTSB for review. The NTSB review should be considered when determining the type of investigative report to prepare. For those casualties investigated by NTSB, a copy of the NTSB investigative report will be reviewed by Commandant (G-MMI) to determine what action, if any, shall be taken with respect to the NTSB's safety recommendations. This report will be retained by Commandant (G-MMI-1). The Coast Guard spokesperson shall prepare a narrative report and shall complete and/or correct Form CG-2692 for each vessel involved in the casualty. The report and the original of these forms will be forwarded to Commandant (G-MMI-1) via the cognizant OCMI.

- 3.B.17. Casualties Involving Foreign Vessels In U.S. Waters. An I.O. has authority to investigate any casualty in the navigable waters of the U.S. involving a vessel of foreign registry, and may employ as necessary the power of subpoena for purposes of the investigation. (See 46 CFR 4.03-1(a).) There is no jurisdiction under S&R proceedings over the personnel of a ship of foreign registry, and the I.O. has no authority to prefer charges against foreign personnel in such instances. The I.O. does, however, have the authority to cite them under the civil penalty proceedings for violation of statutes and regulations. In all formal investigations of casualties in U.S. waters involving foreign vessels or personnel, the nearest consular office(s) of the flag state administration(s) should be informed via telephone or message. This courtesy encourages good relations with foreign governments and may be of benefit if translative services are required. In cases of collision involving U.S. and foreign vessels, should foreign witnesses fail to appear at the hearing to give testimony, the I.O. shall take immediate steps to have them subpoenaed. (See subparagraph 3.B.21.c below.)
18. Casualties In Foreign Waters Between U.S. And Foreign Vessels. When a collision occurs between a U.S. vessel and a foreign vessel on waters over which the U.S. has no jurisdiction, the Coast Guard conducts an investigation upon return of the U.S. vessel, if not convenient to investigate sooner. In these cases, the conclusions about cause(s) often are based only on the testimony and evidence given by the personnel of the U.S. vessel. A statement to this effect should be included in the report when applicable. Generally, the record is considered incomplete until foreign witnesses have been heard or a transcript of the foreign investigative record has been received and included in the Coast Guard record. However, the I.O. shall develop the report based upon the evidence available to the I.O. and shall submit the report without waiting to obtain foreign statements or transcripts, unless it appears that such witnesses or transcript will be received or forthcoming within a reasonable time. When investigation has been initiated by the Coast Guard in a foreign port, a notation to this effect shall be entered in the U.S. vessel's official logbook. This notation shall indicate the date(s) on which the investigation was conducted, the nature of actions taken thus far, whether further actions are pending, and whether Form CG-2692 has been submitted by the vessel's master.
19. Collisions In International Waters Between U.S. And Foreign Vessels. When a collision occurs between a U.S. vessel and a foreign vessel in international waters, investigation shall proceed as though the casualty occurred in U.S. waters, if the foreign vessel comes to a U.S. port. If it does not, the investigation shall proceed as though the casualty had occurred in foreign waters. The I.O. may use subpoenas to obtain information from foreign personnel and vessel records in U.S. jurisdiction.

3.B.20. Casualty Investigations Involving Coast Guard And U.S. Commercial Vessels. Reportable commercial vessel casualties, as defined in 46 CFR 4.05-1, that involve Coast Guard vessels shall be reported promptly to Commandant (G-MMI-1). Unless a marine board of investigation is convened or the NTSB will conduct the investigation in accordance with the CG/NTSB MOU and 46 CFR 4.40-15(b), the commander of the district in which the casualty occurred or where the involved commercial vessel first arrives shall immediately convene an investigation under the provisions of 46 U.S.C. 6301, 46 CFR 4, and the Administrative Investigations Manual, COMDTINST M5830.1 (series). [NOTE: This policy is intended to require a single investigation, although separate investigations may be convened when deemed appropriate.] When the district commander determines that the casualty involves an unusual occurrence or substantial damage to either vessel, the investigation shall be conducted formally. Appropriate persons from each vessel shall be designated parties in interest pursuant to 46 CFR 4.03-10 and COMDTINST M5830.1 (series). Consideration should be given to the ranks of parties in interest when appointing I.O.'s. To fulfill the requirements of COMDTINST M5830.1 (series), the following additional instructions apply:

- a. A signed copy of the report marked "duplicate original" shall be submitted to Commandant (G-L).
- b. In every case of injury to Coast Guard personnel resulting in loss of time in excess of 24 hours, or where entitlement to disability benefits is likely to result, a misconduct/line of duty determination must be made in accordance with COMDTINST M5830.1 (series).
- c. Whenever a member of the Coast Guard subject to the UCMJ is suspected of wrongdoing, the member shall be afforded the warning provided by the UCMJ and the military Miranda/Tempia warning before questioning. (See chapter 1 of this volume.) These warnings shall be made separately, distinctly, and in addition to any statement of rights given pursuant to 46 CFR 4.07-35.
- d. If there is evidence of wrongdoing by Coast Guard personnel chargeable under the UCMJ, appropriate conclusions shall be made setting forth the evidence. Such conclusions shall be in a form similar to that described in subparagraph 3.E.3.j below. In such cases, the investigative report shall also contain the following recommendation: "It is recommended that further investigation under the Uniform Code of Military Justice be initiated in the case of [name] concerning his/her part in this casualty." However, Coast Guard marine boards shall not include such recommendations in their reports. If separate investigations are ordered, the I.O. conducting the investigation pursuant to 46 U.S.C. 6301 and 46 CFR 4 shall submit the report to Commandant (G-MMI) in accordance with the provisions of section 3.E below.

3.B.21. Use Of Subpoenas.

- a. Service On U.S. Citizens. Whenever an I.O. has reason to believe that a witness will not appear voluntarily at the stated time and place of an investigation, a subpoena should be served on the witness. This form should be prepared in duplicate; the original for service and the duplicate copy showing the following on the bottom:

- (1) Date and place of service, and signature (if witness will sign); or
- (2) The fact that the original was delivered by certified mail, with return receipt signed by addressee only.

Personal service is generally best; where circumstances make this impractical, service can be performed through certified mail, with a return receipt signed by addressee only requested. The duplicate copy of the subpoena or certified mail receipt may be used in evidence if the witness fails to appear. If the subpoena is not served, a written statement shall be provided, including information from the U.S. Postal Service, explaining the nondelivery or stating the reasons for failure to serve the subpoena. [NOTE: Court enforcement of the subpoena is limited to within 100 miles of the investigation site or within the boundaries of the local federal district court, whichever is greater.] A notation of the time and date of service shall be made by the serving officer. When the witness appears, the marine board recorder or I.O. shall endorse the original subpoena to show the time and place that the witness participated to substantiate the claim for payment. The witness should also complete Form SF-1157, Claim for Fees and Mileage of Witness, in order that the recorder or I.O. may process it for reimbursement. In cases where the person subpoenaed resides far from the location of the hearing or the person's financial position makes the person reluctant to appear, government transportation requests may be issued to furnish transportation. [NOTE: Although a subpoena can be enforced judicially only within the jurisdiction of the federal district court, payments for witnesses' travel beyond the limits of the judicial district are not prohibited.]

- b. Use Of The Subpoena To Compel The Production Of Evidence. The marine board or I.O. is empowered by 46 U.S.C. 6304 to require production of books, papers, documents, and any other evidence. When such evidence is desired, a subpoena shall be served upon the custodian(s) of such materials. The material should be described in sufficient detail as to be identified readily.
- c. Service On Foreign Persons. The Coast Guard's subpoena power extends to foreign nationals within U.S. jurisdiction. These persons occasionally refuse to appear or testify before a marine board or an I.O., believing that they are not answerable. In such

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- 3.B.21. c. (cont'd) cases, the marine board recorder or the I.O. should present all facts, including copies of the subpoena(s) issued, to the U.S. attorney through the cognizant district commander (dl). The U.S. attorney will then seek a "show cause" order from the cognizant federal district court. (See 46 U.S.C. 6304(b).)
22. "Fifth Amendment" Refusal To Testify. Occasionally, a witness refuses to answer questions posed by a marine board or I.O., on the grounds that the answers would be self incriminating. Unless it reasonably appears that answers would expose the witness to criminal prosecution, as distinguished from the "remedial" suspension or revocation of seamen's papers, the witness has no protection under the Fifth Amendment to the Constitution, and must answer the questions. If it appears to the chairperson or the I.O. that a witness is recalcitrant in refusing to answer questions, the district legal officer should be consulted. An order may be sought from the federal district court directing the person to testify in accordance with the subpoena, or if appropriate, immunity may be granted by the DOJ.
23. Coast Guard Personnel Testifying As Witnesses In Civil Litigation.
- a. Restrictions. The requirements of 49 CFR 9.9 and 33 CFR 1.20 should, in every case, be met before an I.O. appears as a witness in civil litigation as a representative of the Coast Guard. The appearance of an I.O. as a witness, particularly on behalf of private parties in civil litigation, inevitably disrupts the performance of duty and may have adverse effects on the public interest (although such an appearance may be considered "in the public interest" in some cases). It is the Commandant's policy to permit the taking of an I.O. 's deposition at the unit, provided a subpoena is issued and the deposition deals exclusively with facts under personal observation during the performance of duty. Under no circumstances will an I.O. be authorized to testify as an "expert" witness in purely private litigation.
- b. Responding To Subpoena. When a subpoena for the appearance of a Coast Guard member as a witness is received, the OCMI should notify the district legal officer promptly (when members or employees serving at Headquarters are subpoenaed, Commandant (G-LCL), will be notified). The following information shall be provided:
- (1) Name and duty station of the member;
  - (2) Identification of the casualty involved by name of vessel(s), date, and place of occurrence;
  - (3) Where and when the member is to appear;

- 3.B.23.b. (4) Identity of litigant requesting the appearance of the member and his or her interest; and
- (5) Whether or not the OCMI perceives any objection to the appearance of the member as a witness.

c. Response To A Subpoena To Compel The Production Of Evidence. When a subpoena is issued for production of Coast Guard records or other documentary materials, the cognizant district commander (dl) should be notified to determine if the subpoena is valid. Certified copies of all relevant materials shall be prepared for submittal to the court. Despite promises of court clerks and attorneys, records may be lost, purloined, or simply never returned. Hence, original documents and photographs must be preserved for Coast Guard record purposes. In most jurisdictions, certified copies of documents under seal are self-authenticating and admissible. (See Federal Rule Civil Procedure 902.) This also obviates the need for a Coast Guard witness to admit the exhibits into evidence in most cases. If certified copies of the required materials have not been prepared in time to respond to the subpoena, the custodian should explain to the court that he or she is not authorized to release original records; that they may be examined and introduced in evidence, but must be retained by the Coast Guard. However, the custodian shall affirm that duplicate copies will be prepared and promptly forwarded for the court record.

C. Marine Boards Of Investigation.

1. Designation Of Marine Board. If, as a result of preliminary evidence, recommendation of a district commander, or information from any other source, it appears that a marine casualty is of such magnitude or significance that a detailed formal investigation will promote safety of life and property at sea and serve the public interest, the Commandant may designate a marine board of investigation to look into the casualty. The authority for this process is found in 46 CFR 4.09-1. The decision to convene a marine board is influenced primarily by the lessons to be derived from the casualty. If the information to be derived has considerable significance, or indicates vessel class problems or areas of technical importance, convening of a marine board ensures that every aspect of the case is probed. Additionally, broad or intense public interest may warrant the formalities of a marine board investigation. A marine board is usually composed of two or three members. The senior member shall be chairperson, the junior member the recorder. The Commandant may also designate specialists or technical experts to assist the board. Designation of board members will be initiated by message, and subsequently confirmed by precept. Designation of marine board members is based on the nature of the casualty and the availability of qualified personnel. A senior officer of wide experience is selected as chairperson, usually a district (m) chief. The second member generally has a broad marine safety background, with experience as an OCMI, or senior inspector of materiel (SIM). Often, it is important for this member to have professional

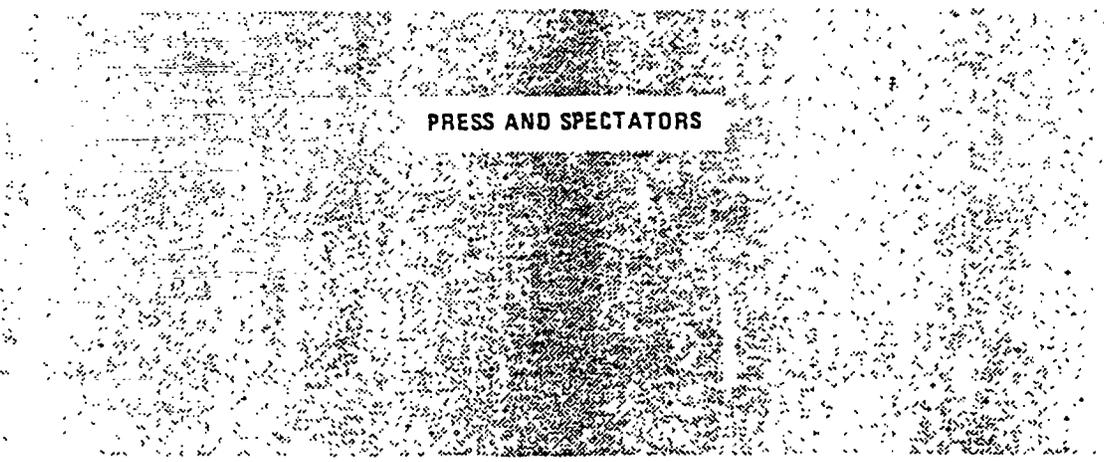
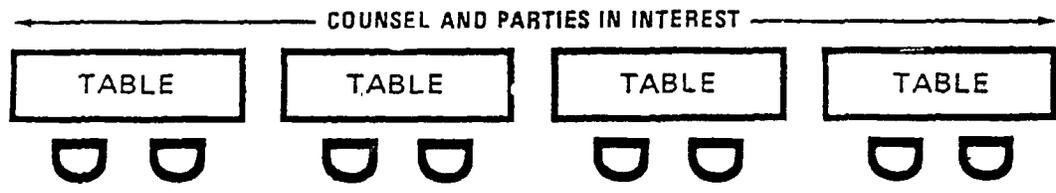
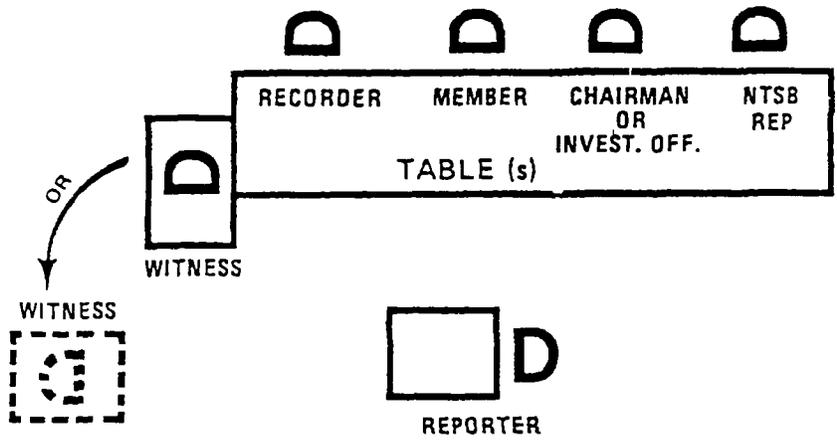
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- 3.C.1. (cont'd) qualifications complementing those of the chairperson (e.g., if the chairperson's experience is primarily in deck operations, the middle member should be a marine engineer). The recorder is qualified as an I.O.
2. Preliminary Investigation. When a significant casualty occurs, use of a sufficient number of field investigators is vital in swiftly gathering a maximum of factual material. This information serves to determine the general topics about which witnesses will testify and the most appropriate order of their appearance. In the case of survivors arriving as a group, it is sometimes best to serve subpoenas for appearance at the unit or another suitable place for preliminary interrogation. The unit investigation shall not be stopped when it appears that the casualty will become a "marine board case." Prior to the convening of the board, the recorder shall be provided with all available information on the casualty. The OCMI shall continue to provide investigative assistance as necessary after the board has convened.
3. Preconvening Check-Off List.
- a. Logistic Arrangements. The recorder shall proceed promptly to the site where the marine board will be convened and arrange logistic support for the hearing.
- (1) The first priority is a suitable place to conduct the hearing. This may be a courtroom or large conference room, having space nearby to seat witnesses awaiting call.
- (a) In large rooms, a public address system should be used so that all participants can hear easily.
- (b) An easel is useful for display of sketches, pictures, and charts.
- (c) Name cards are useful for the identification of board members.
- (d) The U.S. flag and the Coast Guard ensign shall be provided. See Figure 3-3 for a suggested floor plan.
- (e) There should also be a separate room where the board members can meet out of session and have telephone access.
- (2) Commercial court reporting services may also be required. The hiring of such services by the district commander will be authorized in the Commandant's precept.
- (a) Stenotype recording is the preferred method of reporting; tape recording with multiple microphones has proved extremely unreliable, and a closed microphone system is often distracting to witnesses.

SUGGESTED MARINE BOARD ROOM ARRANGEMENT

U.S. FLAG

COAST GUARD ENSIGN



Suggested Marine Board Room Arrangement

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- 3.C.3.a.(2)
- (b) Special turn around service (overnight, 24 hours, etc.) incurs additional costs and is usually unnecessary. This service should only be procured if in the opinion of the chairperson a review of the transcript is necessary in order to properly question a future witness.
  - (c) The number of copies of the transcript required will vary according to the nature of the case. The normal requirement is one copy for each board member (CG and NTSB) and for the Commandant.
- (3) The recorder shall also arrange for document reproduction facilities; interpreter's services, as required; and a press release indicating the time at which the board will convene.
- b. Responsibilities Of The Recorder. The recorder is responsible for the following:
- (1) Custody of the following:
    - (a) Several current copies of appropriate charts.
    - (b) Most recent inspection records.
    - (c) Plans of vessel(s).
    - (d) Record of previous casualties, possibly related.
    - (e) Message traffic on casualty.
    - (f) Copies of statements of persons interviewed.
    - (g) List of physical evidence.
    - (h) List of witnesses and status. (Will they be leaving the area and, therefore, need to be called early or have depositions taken?)
    - (i) Course recorder tapes, automatic bell recorder record, charts, bell books, logs, and other vessel records. (These shall be taken into custody if still aboard the vessel.)
    - (j) Photos of casualty; detailed photographs of significant areas that can assist witnesses in testifying.
    - (k) Photos of vital controls (e.g., engine-order telegraph settings in bridge and engine room, rudder angle indicator, position of rudder, sound powered phone selector settings, etc.)

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- 3.C.3.b.
- (2) Following up on the recovery of survivors (their identification, where and when located, and by whom); elements/materials that may help identify victims should be called to the attention of the coroner or local authorities.
  - (3) Notifying the cognizant U.S. attorney of the nature of the casualty, and the time and place at which the hearing will be convened. Notification should be given to the U.S. attorney in all cases involving government vessels or potential claims against the government.
  - (4) Advising parties in interest of their designation.
  - (5) Advising parties in interest and others who will testify as to what documents (logbooks, charts in use, blueprints, notes, etc.) they should bring with them.
  - (6) Preparing information for the chairperson's opening statement.
  - (7) Supervising arrangement of tables and seating; arranging for pitcher of drinking water for witnesses.
  - (8) Arranging for an orderly to handle the call and return of witnesses, run errands, etc.
  - (9) Calling Commandant (G-MMI-1) each day with a summary of the day's proceedings (to be relayed to the Commandant). This should outline the important points of testimony without evaluation or comment. If practical, the call should be made about 0730 eastern time, so that the information can be promptly presented to the Commandant at the morning briefing. See subparagraph 3.C.13.c below.
  - (10) Promptly advising the chairperson if it appears that substantial additional expenses must be incurred. After due consideration by the board, Commandant (G-MMI-1) should be fully advised.

#### 4. Special Considerations.

- a. Visiting The Casualty Site. Prior to convening the board, every effort should be made by the board members to visit the scene of the casualty. Much time and effort can be saved by determining details of construction, layout of the vessel, geography, etc. Once the board convenes, the process is complicated by bringing parties in interest to the scene and handling requests from the press. Preconvening visits to the scene should be noted on the record upon convening.

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3.C.4. b. Custody Of Physical Evidence. Custody of physical evidence by Coast Guard units is a very delicate matter. An appropriate chain of custody, adequate security, and authorization for release is vital to prevent inadvertent or deliberate tampering with the evidence and obstruction of the investigation. A record should be kept of all physical and documentary evidence held by the Coast Guard, including the date, time, location found, by whom found, and witnesses. In a case involving petroleum products or hazardous materials, samples of the product should be obtained as soon as possible for laboratory analysis.

5. Assistance To The Board. Prior to convening of the investigation, the Board shall be provided with all necessary assistance by the district commander. Legal assistance shall be provided to the marine board during the investigation and, if Coast Guard personnel are called to testify, they shall be provided legal representation. If the board intends to call Coast Guard personnel as witnesses, the chairperson should obtain permission from the district commander. If additional legal resources are necessary, they shall be provided by the Maintenance and Logistics Command. Technical assistance from the Marine Safety Center (MSC) personnel shall be provided as requested by the chairperson; if necessary, additional assistance may be obtained from Commandant (G-MTH). The district commander shall provide clerical personnel to the board for use as necessary. The hiring of commercial court reporting services will be authorized by the inclusion of the following paragraph in the Commandant's precept:

"When deemed appropriate for the proper and orderly functioning of this board, the district commander is authorized to negotiate for commercial court reporting services pursuant to 10 U.S.C. 2304(a)(4). This authorization satisfies the requirements of USCG Procurement Regulations 11-3.204(b)(1) for Commandant (G-CPM) approval prior to negotiation of contracts for personal and professional services. If district funds are not available, comply with the Manual of Budgetary Administration, COMDTINST M7100.3."

6. Financial Support. A marine board is normally funded by the district commander in whose district the investigation will be convened accounted for under Operating Guide (OG) 30.00. The procedures in the Manual for Budgetary Administration, COMDTINST M7100.3 (series) (paragraph 6-B.5.d.) shall be complied with. These procedures include intra-allotment transfers (revising other operating guides and authorizing variance adjustments to OG 30.00) and advancement of funds from future quarters. When these procedures cannot meet monetary demands or when extraordinary expenses are incurred (e.g., extensive court reporting services, metallurgical reports, technical research), additional funds may be requested from Commandant (G-CPM). The district commander should keep accurate documentation of the expenses incurred during a marine board's investigation to justify reimbursement.

3.C.7. Relations With The News Media.

- a. Public Awareness. Often, there is considerable local or national interest in casualties under investigation by marine boards. Reporters are entitled to attend open sessions of a board, as are members of the public; cooperation with news media interests is encouraged to the extent that they do not detract from the decorum of the proceedings or inhibit a witness' willingness to testify. Studies have shown that television coverage of an event is the most effective and most utilized means of providing the public with information. Therefore, coverage of marine casualty investigations will serve to increase the public's awareness of those conditions and practices that precipitate marine casualties, as well as adding to their sense of trust and understanding about the operations of the Coast Guard's marine safety program.
- b. Expanded Media Coverage. "Expanded media coverage" is defined as coverage of proceedings by audio or video recording, television or radio broadcasting, cable television transmission, still or motion picture photography, or by any other audio or video medium of communication to the public. The Coast Guard's policy is to permit expanded media coverage of marine casualty investigations conducted under the provisions of 46 U.S.C. 6301, et. seq., to the maximum extent possible and consistent with the proper and orderly functioning of the investigation. In this respect, guidelines concerning expanded media coverage are set forth below. Although media interest is likely only in the more serious casualties for which a marine board of investigation or a formal investigation is convened, this policy and the guidelines apply to any marine casualty investigation in which media interest is expressed.
- c. News Release. For a marine board of investigation or other formal marine casualty investigation where there is a probability of substantial media interest, the board chairman or I.O. should discuss the possibility of expanded media coverage with all parties. Objections by the parties must be submitted in accordance with subparagraph 3.C.7.h.(2) below. The board chairman or I.O. will then provide a brief news release to the appropriate district public affairs office for dissemination to the media (see Figure 3-4). The release should contain highlights of the casualty known to date, state the commencement time and location of the investigative proceedings, and indicate the procedures to be followed by the media for obtaining permission to conduct expanded media coverage. It should also specify that media representatives will be required to make pooling arrangements, use existing lighting, and have their equipment in place prior to the commencement of the proceedings.

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FIGURE 3-4

SAMPLE NEWS RELEASE  
U.S. TANK VESSEL OOPS COLLIDES WITH THE  
U.S. FISHING VESSEL BADLUCK IN THE GULF OF MEXICO

At 10:00 p.m. local time on November 8, 1988, the U.S. tanker OOPS collided with the fishing vessel BADLUCK in the Gulf of Mexico approximately 45 miles south of New Orleans. Coast Guard search units recovered two of the five persons on board in good condition within two hours of the collision. The remaining crewmen of the BADLUCK are still unaccounted for and Coast Guard search efforts are continuing. The tanker OOPS sustained no damage or injuries to its crew. The Coast Guard Marine Inspection Office in New Orleans, Louisiana, will convene a formal investigation to determine the cause of this casualty. The Coast Guard investigation, which will be open to the public, will commence at the Coast Guard Marine Inspection Office, F. Edward Hebert Building, 600 South Maestri Place, New Orleans at 10:00 a.m. on November 10, 1988.

Media agencies desiring to participate in coverage of the proceedings must provide a written request at least one day in advance to the investigating officer, via the Eighth Coast Guard District public affairs officer, Hale Boggs Federal Building, 500 Camp St., New Orleans, LA 70130. The request must include the subject and time of the proceedings; a description of the type of coverage planned; and whether pooling arrangements have been made (it is solely the media's responsibility to make arrangements for the pooling of audio, video and still photographic equipment). When a pooling arrangement has been made designated media representatives should be listed. It should be noted that no additional lighting will be permitted and that all equipment must be in place prior to the commencement of the proceedings.

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- 3.C.7. d. Guidelines. Expanded media coverage shall be presumed to be permissible unless the board chairman or the I.O. makes a finding establishing:
- (1) A substantial probability that expanded media coverage would interfere with the rights of the parties to a fair investigative hearing;
  - (2) A substantial probability that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the proceedings;
  - (3) That a particular participant would be more adversely affected by expanded media coverage than would be members of the public in general (e.g., a very young child), and that the expanded media coverage would more adversely affect that participant than would traditional media coverage (e.g., a witness who was disfigured during the marine casualty in question); or
  - (4) A violation of the guidelines or additional rules imposed by the board chairman or I.O.
- e. Limitations On Expanded Media Coverage. Notwithstanding an authorization to conduct expanded media coverage of a proceeding, the following limitations apply:
- (1) Bench conferences shall not be recorded by audio or by extreme close-up video or photography;
  - (2) Confidential communications between counsel and client or co-counsel shall not be recorded by audio or by extreme close-up video or photography; and
  - (3) Extreme close-up photography of parties to the investigation or members of the board of investigation is not permitted.
- f. Conduct Of Media Representatives. Media representatives shall conduct themselves in a manner consistent with the decorum and dignity of the hearing. The following practices shall be observed in this regard:
- (1) All equipment employed to provide expanded media coverage shall be positioned in as inconspicuous an area as possible and operated to minimize any distraction
  - (2) Identifying marks, call letters, logos, symbols, and legends shall be concealed on all equipment. Personnel shall not wear clothing bearing any insignia or identification of the individual or media organization involved; and

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- 3.C.7.f. (3) Equipment involved in expanded media coverage shall not be placed in, or removed from, the hearing room except prior to the commencement or after adjournment of proceedings each day, or during a recess. Neither television film, magazines, video cassettes, nor still camera film or lenses shall be changed within a hearing room except during a recess in the proceedings.
- g. Conditions For Coverage. Expanded media coverage shall be conducted only under the following conditions:
- (1) Equipment Limitations.
- (a) Video. Only one television organization at a time shall be permitted to operate a television camera in the hearing room. That organization shall employ only one television camera and one camera operator who shall remain in a single location while the hearing is in session.
- (b) Audio. The media shall use the hearing room's audio system if technically feasible, ensuring that this does not interfere with the investigative body's use of the system. If the hearing room's system is not technically suitable, then all audio recording shall be done on one audio system, installed by the media at their expense. Microphones and related wiring shall be unobtrusive and shall not interfere with the movement of those in the hearing room. When requested, copies of recorded testimony will be provided to the investigative body.
- (c) Still Cameras. All photographs shall be taken by one still photographer using an unobtrusive tripod and cameras which make as little noise as possible. The photographer shall remain in a single location while the hearing is in session.
- (d) Lighting. No additional lighting equipment shall be permitted.
- (2) Pooling Arrangements. The media shall be solely responsible for designating one representative to conduct each category of expanded media coverage listed in this instruction. It is also the media's responsibility to arrange an open and impartial distribution scheme and to establish a distribution point outside of the hearing room. If an agreement cannot be reached on these matters, then there shall be no expanded media coverage of the type for which no pooling arrangement was made. Neither the board chairman nor the I.O. shall be called upon to resolve disputes arising in this connection.

3.C.7. h. Procedures To Be Followed For Obtaining Authorization For Expanded Media Coverage.

- (1) Request For Expanded Media Coverage. A request for expanded media coverage shall be submitted to the board chairman or I.O. at least one day in advance of the proceeding. All parties to the investigation will be notified of such requests prior to commencement of the proceeding. A board chairman or an I.O. may permit coverage without the requisite notice if extraordinary conditions establish that the necessity to give notice was not foreseeable. The request shall include:
  - (a) The subject, date, and time of the proceeding;
  - (b) A description of the type (audio, video, or still photography) of expanded media coverage which is planned; and
  - (c) Whether a pooling arrangement has been reached, and if so, the designated media representatives.
- (2) Objections. Any party or witness may lodge a written objection to expanded media coverage of a proceeding with the board chairman or I.O.
- (3) Authorization. The board chairman or I.O. shall rule on a request for expanded media coverage within a reasonable time prior to the proceeding. The ruling shall be made on the record, and the reasons for approval or denial of the request set forth briefly.
- (4) Appeals. The media or any party may appeal an adverse ruling to the convening authority of the proceeding in question.

8. Preliminary Meeting. Prior to the formal opening of proceedings, the marine board members should meet with all involved attorneys to discuss how the proceedings will be conducted. The chairperson will announce the ground rules for the proceedings, which include but are not limited to the following:

- a. A prohibition of smoking while the board is in session (this shall be announced at the opening of the hearing);
- b. Provision for appropriate rest breaks;
- c. Provision that, if more than one counsel is present on behalf of a party in interest, only one of them may act as a spokesperson and be identified as such;

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- 3.C.8. d. Procedures for making and distributing duplicates of exhibits required by parties in interest during recesses or when the board is not in session;
- e. Resolution of witness scheduling and special problems regarding availability of witnesses or evidence;
- f. Visits to the casualty site by the board and parties in interest; and
- g. Procedures for handling objections. Any matters of contention should be resolved at the preliminary meeting, so that the record is not cluttered with subsequent objections.

9. Convening The Hearing. The chairperson shall open the proceedings by a self-introduction, then introduce other members of the board, Coast Guard legal or technical assistance representative(s), and the NTSB representative. The chairperson shall accord the NTSB member opportunity to make recommendations about the scope of the investigation, call and examine witnesses, and submit or request additional evidence.

- a. Oaths/Affirmations. The members of the marine board shall be sworn in as follows. [NOTE: The words "so help you God" are omitted when an affirmation is given.]:

"Do you, RADM Smith, CAPT Jones, and Mr. Adams, swear/affirm that you will faithfully perform all the duties incumbent upon you as members of this marine board of investigation, and that you will examine and inquire into the matter now before you without partiality [so help you God]?"

After the chairperson and other board member(s) are sworn in by the recorder, the chairperson will swear in the recorder in the same manner.

- b. Opening Statement. After the board members have been sworn in, the chairperson shall make an opening statement. The following is a sample statement, which may be adapted as appropriate:

"Good morning, ladies and gentlemen. I am RADM Smith, Commander of the Fifth Coast Guard District. I have been directed to serve as chairperson of this marine board of investigation, which has been convened by the Commandant of the Coast Guard under the authority of 46 U.S.C. 6301 and 46 CFR 4, to investigate the circumstances involving the [statement of the casualty]. The officer on my right is CAPT Jones, Chief of the Marine Safety Division of the Eighteenth Coast Guard District. The officer on his right is LCDR Davis, who is attached to the Marine Safety Office at Sanibel, FL, and who is serving as recorder. CAPT Jones, LCDR Davis, and I, as the members of this marine board of investigation, will submit our report of findings, conclusions, and recommendations to the Commandant of the Coast Guard.

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3.C.9. b. (cont'd)

[If the NTSB participates: "Present at this investigation is Mr. Adams, representing the National Transportation Safety Board. The NTSB is also charged with the responsibility for the determination of cause or probable cause of major marine casualties, under the provisions of Section 304(a)(1)(E) of the Independent Safety Board Act of 1974. For this reason, Mr. Adams will participate fully in this investigation and may make recommendations about the scope of the investigation, may call and examine witnesses, and may submit or request additional evidence."]

"I would like to request the cooperation of all persons present to minimize any disruptive influence on these proceedings in general and on the witnesses in particular. Smoking will not be permitted while the board is in session. The news media may question witnesses concerning the testimony that they have given only after they have been released by me. Such interviews will be conducted outside this room (at this point, the chairperson should discuss the extent of media coverage that will be permitted under the provisions of paragraph 3.C.7 above and should discuss on the record reasons for permitting or denying such coverage).

"This investigation is intended to determine the causes of this casualty and the responsibility therefore to the fullest extent possible, subject to final review and approval by the Commandant of the Coast Guard, and to obtain information for the purpose of preventing or reducing the effects of similar casualties in the future. It is also intended to determine if any incompetence, misconduct, or willful violation of the law on the part of any licensed officer, pilot, seaman, employee, owner, or agent of such owner of any vessel involved, any officer of the Coast Guard or other officer or employee of the U.S., or any other person caused or contributed to the cause of this casualty; or if there is evidence that any act was committed in violation of any provisions of the U.S. Code or the regulations issued thereunder. This board is also empowered to recognize any commendable actions by persons involved and to make appropriate recommendations in this regard.

"All witnesses will be examined under oath or affirmation. When testifying, the witness is subject to the federal laws such as 18 U.S.C. 1001 for perjury or making false statements under oath.

3.C.9. b. (cont'd)

"All parties in interest have a statutory right to employ counsel to represent them, to cross-examine witnesses, and to have witnesses called in their behalf. Witnesses who are not parties in interest may be advised by their counsel concerning their rights. However, such counsel may not examine or cross-examine other witnesses or otherwise participate. A party in interest is an individual, organization, or other entity that, under the existing evidence or because of his or her position, may have been responsible for or contributed to the casualty. A party in interest may also be an individual, organization, or other entity having a direct interest in the investigation and demonstrating the potential for contributing significantly to the completeness of the investigation, or otherwise enhancing the "safety of life and property at sea," through participation as party in interest. The following individuals and firms have been designated as parties in interest [state names].

"The sources of information into which this board will inquire are varied. The investigative resources of the Coast Guard have made attempts to locate every available piece of information pertinent to the casualty. This board will hear all such evidence. Should any person have, or believe he or she has, information not yet adduced that may be of direct significance, I urge that person to communicate with the recorder.  
[If applicable: "At this time, I would ask all to stand for a moment of silence, in respect to those persons lost as a result of this casualty."]

"This concludes my opening statement. Thank you for your attention. I will give representatives of the media an opportunity to ask questions at this time. Following a 10-minute recess the recorder will call the first witness. This board is now recessed."

10. Conducting The Hearing.

- a. Witnesses. When the recorder calls the first witness, all other witnesses (with the exception of parties in interest) should be excluded from the room to a designated waiting area that is out of earshot of the hearing. Appearances of parties in interest and/or counsel should be noted. If a witness is named a party in interest, this fact should be stated in the record. The witness shall be required to stand while the oath or affirmation is administered, after which the witness may sit down.

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- 3.C.10.a. (1) If the witness does not have religious objections, the recorder shall administer the following oath:
- "Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?"
- (2) If the witness objects to taking an oath on religious grounds, the following affirmation shall be used:
- "A false statement given to an agency of the United States is punishable by fine and/or imprisonment under 18 U.S.C. 1001. Knowing this, do you solemnly affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?"
- (3) Every interpreter employed during an investigation shall be sworn in or affirmed: "Do you, Mr. Jaye, swear/affirm that you will faithfully perform the duties of interpreter in this investigation [so help you God]?"
- (4) The board shall then proceed with identification and examination of the witness. Subparagraph 3.D.6.b below provides guidance concerning the order of calling witnesses. Chapter 1 of this volume provides guidance concerning the use of Miranda and Miranda/Tempia warnings.
- (5) The cooperation and memory of a witness can best be served by making the person feel at ease. Often when questioning is prolonged or the witness is very nervous, a short recess will ease the witness' tension. The witness should be treated in a firm but courteous manner. All questions should be delivered firmly and clearly, and an adequate answer shall be insisted upon before proceeding to the next question. Generally, the following information should be obtained from a witness:
- (a) Name and home address of the witness.
  - (b) Whether or not the witness, when designated a party in interest, has counsel.
  - (c) Information from the witness' document or license.
  - (d) The witness' age and experience. Experience includes how long the witness had been sailing prior to the casualty, the position held at the time of the casualty, and the length of employment in that position on the vessel involved.
  - (e) Witness status on board the vessel if a crewmember, where the witness was and how occupied at the time of the casualty.

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- 3.C.10.a.(5) (f) A subjective statement of the circumstances that resulted in the casualty. The witness should not be interrupted during this statement. Notes should be made upon which to base specific questions after completion of the statement.
- (g) Sufficient questions to elicit as much information concerning the casualty as the witness can supply. It is incumbent upon the board members to prepare themselves for the question they wish to ask. In this regard preliminary statements, voyage records such as logs, charts, course recorders, notes, governing guidance, regulations and/or statutes, blue prints, inspection records, message traffic, and other available documents should be reviewed as appropriate. Questions concerning how these records may be vital to the investigation particularly in discovering discrepancies and in understanding abbreviations in logs, charts, notes, and in determining compliance with laws and regulations. When possible noncompliance with the statutes or regulations is uncovered or when human error appears to be a cause of the casualty, questions should be asked aimed at determining why the noncompliance or human error occurred. The use of diagrams by the witness can be useful in visualizing the location of objects in relation to one another. Their use should not be overlooked for establishing vessel track lines in collision and grounding cases nor for explaining vessel, machinery, and piping arrangements.
- b. Concluding The Examination. Direct examination is continued until the members of the board are satisfied. Nothing should be assumed when questioning a witness; assumptions can result in failure to obtain vital facts. After direct examination, counsel for the witness is then permitted to ask questions, followed by counsel for other parties in interest. Subsequent questions may be raised by the board at any time. It is always advisable, before concluding an interview, to ask the witness for any information concerning the casualty that has not been elicited. If a witness is recalled, the witness shall be informed: "You are cautioned that the oath (affirmation) you took previously is still binding." [NOTE: In view of the Coast Guard's many missions, the investigation should thoroughly cover, if applicable, port and environmental safety, VTS, SAR, and ATON elements in addition to basic requirements of 46 U.S.C. 6301. Objections by attorneys may sometimes require deliberation by the board. When this occurs, the board shall go off the record.]
- c. Exhibits And Evidence. Exhibits may be entered into the record at any time. Documentary evidence should be captioned and signed by the identifying witness for later identification. Documentary evidence produced in accordance with 46 CFR 4.05-15(a) or 4.09-5 should be reproduced or read into the record and then returned to the owner. For protection at a later date, the recorder should note (off the

- 3.C.10. c. (cont'd) record) when, where, and to whom evidentiary material is returned. Real evidence such as items of equipment, debris, life preservers, etc., may be received or exhibited in evidence if relevant to an issue in the investigation. Body wounds or scars may also be displayed. Real evidence should be clearly and accurately described in the testimony. Where possible, real evidence should be reduced to photographs, lab reports, etc., and the original pieces returned to their owners. The resulting documents should then be marked as exhibits and made part of the record. Photographs of material conditions constitute a highly valuable form of evidence, provided they are not susceptible to misinterpretation. Photographs should be identified as to what they portray, with the date, place, and the photographer's name. Good photographs are always in demand for technical studies and for reproduction in connection with safety articles in Coast Guard publications. If the witness is asked to draw a sketch, it should be drawn off the record. This has been found beneficial because a witness, in making a sketch, will often mumble to himself or say aloud things that are out of context and which are nonsensical in the record. When the witness has finished, the chairperson shall return to the record, ask the witness to explain what was drawn, and have the witness sign and date the sketch.

[NOTE: Whenever possible, one color should be used to draw or mark exhibits. If various colors are used, adequate differentiation between colors (e.g., "red is dotted line, "green is dashed line"), must be provided so that later black and white reproduction of the document will be understandable.] It is imperative that the witness clearly and concisely refer to the exhibit in an exact manner in order to produce a meaningful record. For example, if a compartment in an exhibit is marked "Compartment A," the witness should refer to it as such, rather than "this" or "that" compartment. Also blow-ups of exhibits should be used to facilitate convenient reading and access by all parties.

11. Initiation Of S&R Proceedings. If a marine board determines that initiation of S&R proceedings is warranted by the evidence developed in its investigation, the district commander shall be advised. This may be done during or immediately following the investigation, before the witnesses have dispersed. The district commander will refer the case to the appropriate OCMI for action. If the marine board's proceedings would not be adversely affected, the recorder may be designated as I.O. for the S&R proceedings if the recorder is attached to the cognizant unit, due to his or her familiarity with the case.
12. Preparation Of The Report. The timely submission of reports of marine boards of investigation will maximize their impact on safety and the Coast Guard's public image. Every effort shall be made to complete these reports within 6 months. If this deadline cannot be met, a written explanation for the delay along with the expected completion date shall be submitted to Commandant (G-MMI). District commanders and commanding officers (CO's) with marine board members attached shall facilitate completion of marine board reports to the extent possible. Before returning to their permanent duty stations following the initial open

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3.C.12. (cont'd) sessions, the board members should decide whether additional evidence is needed, whether tests or studies need to be conducted, and how best to complete the report. Assignments should be made as to who will do what. Arrangements for tests or studies should be made early so as not to delay the submission of the report. Recommendations should be precise, meaningful, and capable of achievement. It should be kept in mind that each recommendation will be responded to by the Commandant. Special attention shall be given to the requirements for conclusions and recommendations. (See subparagraphs 3.E.3.i through 3.E.3.l and paragraph 3.E.4 below.) After the first draft has been circulated, the members should review it and note any suggested changes. The members should then meet, discuss changes, and work up the final report. [NOTE: The nature of the case may be such that the report will require several drafts and more than one reviewing meeting.] The final report generally shall be prepared in accordance with subparagraphs 3.E.1.a and 3.E.3 below, and submitted to Commandant (G-MMI-1).

13. Investigation Record.

a. Components. The marine board's record of proceedings is submitted directly to the Commandant in accordance with 46 CFR 4.09-20 and includes the following:

- (1) The precept and any modification thereto;
- (2) The complete transcript of testimony and statements;
- (3) Exhibits;
- (4) The narrative report, signed by all members of the board; and
- (5) Pertinent nonevidentiary materials and the entire administrative letter file.

The form of the record is described in section 3.F below.

b. Number Of Copies. In all cases, the original and three copies of the narrative report, and the original copy of the record, are required by the Commandant. One copy of record materials shall be provided to the NTSB. In cases involving Coast Guard or other public vessels, when it appears that there will be litigation involving the government, an additional copy of the record should be forwarded to Commandant (G-MMI-1). In all cases in which evidence of criminal liability has been uncovered, a duplicate original of the complete record will be transmitted to the district commander for referral to the U.S. attorney. The Commandant's Action is necessary before formal referral by the district commander. Parties in interest will not be furnished a free copy of the transcript. They may obtain copies of the transcript in accordance with the provisions of 49 CFR 7 and COMDTINST M5260.2 (series).

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3.C.13. c. Daily Status Reports. The chairperson shall appoint the recorder or another member of the board to prepare a daily summary of each day's session. This summary should report important testimony without evaluation or comment, clearly phrased in the language of an objective reporter and recounting no more than: "Master X said that he was on the right side of the channel"; "The coroner said that Pilot Y's blood alcohol level was 0.10 percent"; and "The chairperson denied a request by Attorney Z that his client be named a party in interest," etc. It may also be desirable to include an advance list of the next witnesses to testify. The daily status report shall be submitted by message, MSIS mailbox or telephone directly to Commandant (G-MMI-1), or by telephone to Headquarters Flag Plot, at FTS 8-267-2100, with a request that the report be taped and forwarded to Commandant (G-MMI-1). If the report is being relayed over telephone, care should be taken to spell out the names of witnesses, vessels, and any unusual terminology.

D. Unit Level Casualty Investigations.

1. Investigative Options.

a. Criteria. The degree of formality in unit level investigations varies, from a formal investigation that follows marine board procedures to a simple review of the notice of casualty. In determining an appropriate level of investigative effort, the OCMI must consider the advantages to be gained and the resources available. Maximum investigative efforts should be applied to those cases where recommendations for changes to Coast Guard policy or regulations are likely to result, or that indicate problems of vessel class, equipment, or operation that provide safety lessons having broad application. Such cases include the following:

- (1) Major marine, serious, and significant casualties (see subparagraph 3.A.5.c above);
- (2) Other casualties requiring district review of the investigative report (see paragraph 3.E.7. below); and
- (3) Other casualties from which investigation is likely to yield useful information concerning marine safety problems.

Time and effort to process numerous reports from which no new data are anticipated should be minimized. Examples of such relatively minor cases include injuries from slips and falls on wet decks, structural deterioration on an uninspected vessel, and nets in the screw or minor engine problems on uninspected vessels.

b. Formal Investigations. In many cases circumstances surrounding a casualty do not justify the appointment of a marine board, and a formal investigation following marine board practices is indicated. Under such conditions and at the discretion of the district commander, qualified I.O.'s may be directed to conduct the formal investigation.

- 3.D.1. b. (cont'd) Formal investigations are inquiries in which all parties in interest are designated as a matter of course by the I.O. and the proceedings are conducted formally (i.e., the testimony is taken under oath and recorded verbatim).
- c. Routine Investigations. Routine investigations are inquiries in which parties in interest are not normally designated as a matter of course by the I.O. Such designation may be made, however, upon request by an individual, organization, or entity who meets the requirements of subparagraph 3.A.5.e above. Procedures for routine investigations are dependent on the significance of the case and the availability of witnesses and resources. Witnesses are often contacted separately. Facts may be elicited by correspondence, telephone or personal interviews, signed or unsigned statements, interrogatories that may or may not be taken under oath, or other means.
2. Preparation For A Formal Investigation.
- a. Public Sessions. All marine casualty investigations are open to the public, except when classified material or material affecting national security is being considered. Anyone may attend and take notes, including attorneys and members of the media.
- b. Hearing Room. Ordinarily, a room at the unit will be used for a formal investigation. The recommended floor plan for a marine board in Figure 3-3 may be used (modified as necessary) for this purpose. The room should be so arranged and situated that the proceedings can be conducted with a minimum of confusion or interruption, and large enough to comfortably accommodate all who are required or who desire to attend, including media representatives. All persons participating in the examination of witnesses, including parties in interest, should be seated at tables with sufficient space for writing and reference materials. It has been found desirable to provide individual tables for each party in interest and his or her counsel. The hearing reporter should be placed so that he or she may easily hear and record verbatim testimony (the individual may be the best judge of this location). A place shall be provided at the head table for the NTSB representative when the NTSB chooses to have a representative present. The witness may be located in one of the positions shown in Figure 3-3; it is desirable for the I.O. to face the witness on direct examination.
- c. Investigative Materials. Prior to opening the proceedings, the I.O. shall review the checklist provided in subparagraph 3.C.3.a above to ensure that the appropriate measures are taken.
3. Visiting Location Of Casualty. At times, it may be necessary to visit the location of the casualty or other places to view the damage. In such cases, all parties in interest and counsel should be advised of the time and place of the visit beforehand. If their participation cannot be arranged, the I.O.'s visit to the scene shall be noted in the record.

- 3.D.4. Interviews Of Witnesses. To a great extent, the facts obtained in an investigation are elicited from the testimony of witnesses. Hence, the completeness of the proceedings frequently hinges on the I.O.'s ability to interview effectively. One witness may remember details and be able to enlarge on them so that his or her testimony is extensive and illuminating; another may have to be closely questioned to derive useful information. When reluctant or hostile witnesses are encountered, the guidance in paragraph 3.B.22 above should be followed. It is beneficial to interview witnesses before a formal investigation to determine the area of knowledge on which they will testify. This will aid in determining the appropriate order of their appearance. Such procedure will also help the witness feel at ease at the time of his actual testimony and provide an opportunity to review records he or she is expected to testify about. Such preliminary interviews are generally not too detailed, since the appropriate time for detailed testimony is at the formal investigation. At this point, consideration should be given to scheduling the appearance of witnesses in groups or in an orderly sequence. It is preferable to schedule the most important witnesses first, especially if there is a probability of their becoming parties in interest. In such cases, the availability of counsel should be considered.
5. Subpoenas. See paragraph 3.B.21 above concerning the use of subpoenas.
6. Conducting A Formal Investigation.
- a. Opening Statement. The I.O. should have a list of all witnesses, the interests with which they are connected, the names of all counsels and the interests they represent, and arrangement for an orderly appearance of witnesses (through agreement with counsel or subpoena). It is important that the opening statement required by 46 CFR 4.07-7 be delivered in the presence of all persons concerned with the investigation (parties in interest, witnesses, counsel, etc.). This statement should fully apprise all persons concerned of the nature and purpose of the proceedings, the authority therefore, and the rights of all parties. I.O.'s may use or adapt the following sample opening statement as appropriate:

"This investigation is convened under the authority of 46 U.S.C. Chapter 63 and the regulations thereunder, to investigate the (statement of casualty). It is intended to determine the cause of the casualty to the extent possible and the responsibility therefore, and to obtain information for the purpose of preventing or reducing the effects of similar casualties in the future. This investigation is also intended to determine whether any incompetence, misconduct, or willful violation of the law on the part of any licensed officer, pilot, seaman, employee, owner, or agent of such owner of any vessel involved; any officer of the Coast Guard, or other officer or employee of the United States; or any other person caused or contributed to the cause of this casualty; or whether any act was committed in violation of any provisions of the U.S. Code or the regulations issued thereunder.

3.D.6. a. (cont'd)

"All parties in interest have a statutory right to employ counsel to represent them, to cross-examine witnesses, and to have witnesses called in their own behalf. Witnesses who are not parties in interest may be assisted by their counsel for the purpose of advising them concerning their rights. However, such counsel are not permitted to examine or cross-examine other witnesses or otherwise participate. All witnesses will be examined under oath. When testifying under oath, a witness is subject to the federal laws such as 18 U.S.C. 1001 for perjury and making false statements under oath."

The sample opening statement in subparagraph 3.C.9.b above, modified as necessary, may be used when the NTSB participates or when circumstances warrant a more formal introduction. It must be modified when an investigation is convened to investigate a casualty to an offshore structure. After making the opening statement, any questions concerning the purpose of the investigation, the rights of parties, or powers of the investigating body should be permitted. When the persons involved in the investigation and their counsel are not familiar with the proceedings, the I.O. may read the appropriate sections of 46 CFR Part 4 and explain each section after it is read, rather than using a prepared statement. Appearances of parties in interest and/or their counsel should be noted in the record.

- b. Order Of Calling Witnesses. Generally, the preliminary development of information indicates the order in which witnesses should be called to testify. Usually, parties in interest are examined first; when more than one interest is involved, as in collision cases, the I.O. will decide on the order of testimony. It must always be remembered that the investigation is intended to develop information to fulfill Coast Guard responsibilities; it is not a forum in which criminal or civil liability will be determined. It is appropriate procedure to call one or more principal witnesses from one side (such as a master or pilot), and corresponding witnesses from the other side, to establish both versions of the incident. Other witnesses, generally named by the principal witnesses or determined by the preliminary stages of the investigation, are then called in the order of importance.

c. Oaths/Affirmations.

- (1) Oaths. When the witness does not have religious objections, the following oath may be given by the I.O.:

"Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?"

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- 3.D.6.c. (2) Affirmations. If the witness objects to taking an oath, the following affirmation shall be used:

"A false statement given to an agency of the United States is punishable by fine and/or imprisonment under 18 U.S.C. 1001. Knowing this, do you solemnly affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?"

- (3) "Miranda Warnings." Prior to the testimony of a witness, when there is evidence that leads the I.O. to believe that the witness has committed a criminal offense, the "Miranda" warning shall be given. (See chapter 1 of this volume.)
- (4) Swearing In Of Interpreters. Every interpreter, before serving in an investigation, shall be likewise sworn or affirmed (the words "so help you God" are omitted when an affirmation is given):

"Do you, Mr. Johnson, swear [affirm] that you will faithfully perform the duties of interpreter in this investigation [so help you God]?"

- d. Direct Examination Of Witness. The witness shall be required to stand while the oath or affirmation is administered; after that, the witness may sit down. The cooperation and memory of a witness can best be served by making the witness feel at ease. Often when questioning is prolonged or the witness is very nervous, a short recess will ease the witness' tension. The witness should be treated firmly but courteously. All questions should be delivered firmly and clearly, and an adequate answer insisted upon before proceeding to the next question. If a witness is named a party in interest, this fact should be stated in the record. The following information should be obtained at the start of questioning for the record:

- (1) Name and home address of the witness.
- (2) Whether or not the witness, when designated a party in interest, desires counsel.
- (3) Information from seamen's papers, if any.
- (4) The witness' age and experience. This includes how long the witness had been sailing prior to the casualty, the position held at the time of the casualty, and the period of employment in that position aboard the vessel.
- (5) Witness status aboard the vessel if a crewmember, and where the witness was and what he/she was doing at the time of the casualty.

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- 3.D.6.d. (6) A statement in the witness' own words of the circumstances that resulted in the casualty. The witness should not be interrupted during this account; notes should be made upon which to base specific questions after the statement is completed. Questions requiring the use of diagrams should not be overlooked, particularly in collision cases.
- e. Concluding The Examination. Direct examination is continued until the board or I.O. is satisfied. Nothing should be assumed when questioning a witness; assumptions may result in failure to obtain vital facts. If the witness uses a term that is not understood by the I.O., request the witness to explain. After direct examination, counsel for the witness may pose questions, followed by counsel for other parties in interest. Additional questions, if necessary, may then be raised by the board. It is always advisable, before concluding an interview, to ask whether the witness has further information concerning the casualty. In those cases when a witness is recalled, the witness should be advised:
- "You are cautioned that the oath [affirmation] you took previously is still binding."
- f. Exhibits And Evidence. Exhibits may be entered into the record at any time. Documentary evidence should be captioned and signed by the identifying witness for identification. In addition, documentary evidence produced in accordance with 46 CFR 4.05-15(a) or 4.09-5 should be reproduced or read into the record and then returned to the owner. For protection at a later date, the I.O. should make note (off the record) of when, where, and to whom evidentiary material is returned. Real evidence such as pieces of equipment, debris, life preservers, etc., may be received or exhibited in evidence if relevant to an issue in the investigation. Body wounds or scars also may be displayed. Real evidence should be clearly and accurately described in the testimony. Where possible, it should be photographed, noted in lab or other reports, and returned to the owner. The resulting documents should then be marked as exhibits and made part of the record. Photographs of material conditions constitute an effective and valuable form of evidence, provided they are not susceptible to misinterpretation. Photographs should be identified as to what they portray, with the date, place, and the photographer's name. Good photographs are always in demand for technical studies and for reproduction in connection with articles in Coast Guard safety publications.
7. Transmittal Of I.O.'s Report. The I.O. shall submit the investigative report to the Commandant, via the OCMI, in accordance with 46 CFR 4.07-10. The report of the casualty investigation will vary in content, depending on the amount of evidentiary material, etc. (See section 3.F below.)

3.E. Investigation Reporting Procedures.

1. Report Of Marine Accident, Injury, Or Death, Forms CG-2692 And CG-2692A, RCS No. G-MMI 2115-4017.

a. Purpose. Form CG-2692 is used to report vessel casualties, losses of life, and injuries. (See 46 CFR 4.01-3 for reporting exclusions.) Form CG-2692A is used along with Form CG-2692 to report casualties that involve more than one barge. A separate form is required for each vessel involved in a casualty (unless the Barge Addendum, Form CG-2692A, is appropriate). For example:

- (1) A tug is pushing a tow of nine barges. One of the lead barges collides with a lock guide wall. Form CG-2692 is submitted for the tug (the involved barge's information is also contained in Section II of the report form submitted for the tug).
- (2) A container ship is being assisted by three tugs while approaching a berth. Tug A is pushing on the port bow of the container ship with no lines attached; Tug B is secured to the port quarter of the container ship; Tug C is standing by to assist if needed. The container ship collides with the dock. Forms CG-2692 are required for the container ship and Tugs A and B.
- (3) A barge breakaway involves a fleet of 10 barges. Six barges are recovered without causing or sustaining damage. Of the four other barges, two go aground with no structural damage; one collides with a dock and sustains \$15,000 damage (there are no damages to the dock); and one collides with a bridge, causing \$50,000 total damage to itself and to the bridge. Information must be submitted on the two barges that grounded and the two barges that caused or sustained damage. If possible, this should be done on one Form CG-2692, with the additional barge entries recorded on the Barge Addendum in the same manner that a towboat would report a casualty resulting in damage to two or more barges in its tow. (See the instructions on Form CG-2692 for additional guidance.) If four different barge owners were involved in the example above and each submits a Form CG-2692, the forms should be submitted together as one marine casualty report.

Form CG-2692 is required when a person aboard any U.S. vessel, wherever located, dies or is incapacitated by an injury for over 72 hours. A separate form must be submitted for each person killed or injured, whether or not a vessel casualty is involved. When multiple injuries or deaths are involved, the owner, agent, master, or person in charge of the vessel(s) involved must submit a separate form for each vessel and for each incapacitating injury or death. When a death occurs aboard a foreign vessel in U.S. waters, it shall be reported in the same manner as for U.S. vessels. Such circumstances may involve factors from which valuable safety lessons can be learned (e.g., release of hazardous gases may not have harmed the vessel but injured or killed persons aboard).

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- 3.E.1. b. Completion Of Form CG-2692. Form CG-2692 (and the Barge Addendum, as required) is used by vessel personnel to report casualties or accidents. It is also used by I.O.'s to guide the initial course of investigation and, in some instances, to submit the case. Data from the form is used by Commandant (G-MMI) to supply statistical tabulations for studies of marine casualties. The I.O. shall ensure that each block of the form contains the best information available and must include enough information to identify the casualty, the vessel(s) and personnel involved, dollar damage and data that relates to the cause or contributing cause(s) of the casualty. No spaces should be left blank, the entry "None," "Not Applicable," or "Unknown," should be used when the information is not available. When forms are received incomplete or in error, the I.O. should ensure that the information is corrected before forwarding to Headquarters. In those cases where return of the form for correction is not feasible the I.O. may make corrections. Data corrected by the I.O. should be initialed. When a report of casualty is received in a letter because the accident or casualty form was not available, the person submitting the letter report should be required to execute the appropriate form(s). If the individual refuses, appropriate civil penalty proceedings should be initiated. The I.O. shall complete Form CG-2692 when all attempts to obtain one from vessel personnel have failed.
- (1) Information collected on vessels is primarily indexed by the official number, which in all cases must be verified for accuracy. In those cases where no official number exists for the vessel, state numbers, Lloyd's numbers, or CG assigned numbers should be used as unique identifiers.
  - (2) The I.O. should ensure that the information in block 5 is correct as many owners of uninspected small vessels frequently mistake the certificate of documentation for the USCG Certificate of Inspection.
  - (3) Vessel particulars in blocks 7, 8, 9, 10, 11, and 12 are also valuable identifiers and every effort should be made to fully and accurately document this information.
  - (4) Latitude/longitude to the nearest tenth of a degree should be entered in block 16 (Location) for all vessel casualties except those occurring on inland waters having charted mile marker systems. In such cases, the name of the waterway and the milepost, to the nearest tenth of a mile, shall be inserted. For injuries and deaths that do not result from a vessel casualty, the name of the body of water only may be inserted. If the casualty occurred in a VTS monitored area that fact should be noted in this box.

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- 3.E.1.b. (5) Block 17 indicates actual or reasonably estimated monetary damages, to be provided by the submitter or the I.O. This figure should represent the actual damage in dollars directly attributable to the casualty. (See 46 CFR 4.05-1(f) for definition of damage costs.) The entry "unknown" is not acceptable here.
- (6) Many tow boat operators misuse the term pilot in block 20. Care should be taken to ensure that this block is filled out only if a licensed pilot is aboard.
- c. Form Of Report. After a complete investigation is conducted, the form of the report (Form CG-2692, letter of transmittal or narrative report) must be selected. In general, the choice depends on the complexity of the report. For example, if the cause of the casualty can be summed up in a few words, a Form CG-2692 should be used; if a paragraph or several paragraphs are necessary, a letter of transmittal should be used. If a detailed analysis of the casualty is required, and/or whenever the I.O. recommends any actions be taken by the district commander or Commandant, a narrative report should be used. Specific guidance on the use of each form of report is given in the following subparagraphs.
- d. Form CG-2692 Used As A Report Of Investigation. In some cases, the cause(s) of a casualty will be self-evident or readily developed from the information available, as indicated on the casualty or accident form. In such cases, submittal of a completed Form CG-2692, with certain additional entries, will constitute a completed investigation. It may be used anytime a letter of transmittal or narrative report is not required. The following are additional entries:
- (1) Case number;
  - (2) The reporting office;
  - (3) Apparent causes;
  - (4) Casualty Code:
    - (a) Vessel total constructive loss;
    - (b) Seaworthiness affected; and
    - (c) Seaworthiness not affected;
  - (5) The I.O.'s name and signature;
  - (6) The OCMI's endorsement; and

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- 3.E.1.d. (7) Comments on any recommendations made in block 44, if space permits, or on a separate page. However, if a recommendation is of such a nature that it warrants a more detailed discussion, the use of a letter of transmittal should be considered.
- e. Completion Of "Apparent Causes" Section, Form CG-2692. To the extent determinable, the I.O. shall state the "apparent cause" of the casualty in the space provided on Form CG-2692. This term implies a simple statement of how and why the casualty occurred, without regard to the more restrictive legal connotation of "proximate cause." The determination of apparent cause should not, however, be a mere restatement of the casualty or a statement so broad as to be of little value. (See subparagraph 3.E.2.b.(2) below for additional guidance.) Similarly, the I.O. should describe any contributing causes. A sample "2692 report" is provided in Figure 3-5. Material required to be included in the report (steering gear information, death certificate, etc.) should be attached to the Form CG-2692.

2. Letter Of Transmittal Reports.

- a. Purpose. A letter of transmittal report is the means of providing more information than can be included on a Form CG-2692 report, but the detail descriptions in the narrative report are unnecessary. Unless a narrative report is required, a letter of transmittal shall be submitted in all cases of persons missing at sea. (See subparagraph 3.E.3.a below). It may be used to comment on safety recommendations contained on Form CG-2692 or in witness statements; to make minor recommendations to the OCMI only, such as forwarding a copy of the report to the owner or other entity; or anytime a narrative report is not required.
- b. Contents. The letter of transmittal should be brief. A short narrative description of the casualty is desirable if it is necessary to provide a clear understanding of the casualty. The report must contain the following:
- (1) The date of transmittal; the case number; the standard heading; the vessel(s) involved; O.N.'s; nationality (if foreign); type of casualty; geographical area where casualty occurred; date of casualty; and extent of personnel injuries.
  - (2) A statement concerning the apparent cause of the casualty, to the extent determinable, including sufficient information to determine how and why the casualty occurred. If the cause cannot be determined, a statement to this effect shall be made. This shall be followed by the best deduction as to cause based upon the information obtained. When gathering information in any investigation, the I.O. should attempt to identify the underlying reasons for the casualty. Determination of cause should not be a mere restatement of the casualty or a statement so broad as to be

SAMPLE FORM CG-2692 REPORT  
AND FORM CG-2692A REPORT

**INSTRUCTIONS**

**FOR COMPLETION OF FORM CG-2692  
REPORT OF MARINE ACCIDENT, INJURY OF DEATH  
AND FORM CG-2692A, BARGE ADDENDUM**

**WHEN TO USE THIS FORM**

1. This form satisfies the requirements for written reports of accidents found in the Code of Federal Regulations for vessels, Outer Continental Shelf (OCS) facilities, mobile offshore drilling units (MODUs), and diving. The kinds of accidents that must be reported are described in the following instructions:

**VESSELS**

2. A vessel accident must be reported if it occurs upon the navigable waters of the U.S., its territories or possessions; or whenever an accident involves a U.S. vessel wherever the accident may occur. (Public vessels and recreational vessels are excepted from these reporting requirements.) The accident must also involve one of the following (ref. 46 CFR 4.05-1):

A. All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel.

B. Loss of main propulsion or primary steering, or an associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function.

C. An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route including but not limited to fire, flooding, failure or damage to fixed fire extinguishing systems, lifesaving equipment or bilge pumping systems.

D. Loss of life.

E. Injury causing any person to be incapacitated for a period in excess of 72 hours.

F. An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000. Damage cost includes the cost of labor and material to restore the property to the condition which existed prior to the casualty, but it does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

**MOBILE OFFSHORE DRILLING UNITS**

3. MODUs are vessels and are required to report an accident that results in any of the events listed by Instruction 2-A through 2-F for vessels. (Ref. 46 CFR 4.05-1, 46 CFR 109.411)

**OCS FACILITIES**

4. All OCS facilities (except mobile offshore drilling units) engaged in mineral exploration, development or production activities on the Outer Continental Shelf of the U.S. are required by 33 CFR 146.30 to report accidents resulting in:

A. Death.

B. Injury to 5 or more persons in a single incident.

C. Injury causing any person to be incapacitated for more than 72 hours.

D. Damage affecting the usefulness of primary lifesaving or firefighting equipment.

E. Damage to the facility in excess of \$25,000 resulting from a collision by a vessel.

F. Damage to a floating OCS facility in excess of \$25,000.

5. Foreign vessels engaged in mineral exploration, development or production on the U.S. Outer Continental Shelf, other than vessels already required to report by Instructions 2 and 3 above, are required by 33 CFR 146.303 to report casualties that result in any of the following:

A. Death.

B. Injury to 5 or more persons in a single incident.

C. Injury causing any person to be incapacitated for more than 72 hours.

**DIVING**

6. Diving casualties include injury or death that occurs while using underwater breathing apparatus while diving from a vessel or OCS facility.

A. **COMMERCIAL DIVING.** A dive is considered commercial if it is for commercial purposes from a vessel required to have a Coast Guard certificate of inspection, from an OCS facility or in its related safety zone or in a related activity, at a deepwater port or in its safety zone. Casualties that occur during commercial dives are covered by 46 CFR 197.486 if they result in:

1. Loss of life;

2. Injury causing incapacitation over 72 hours;

3. Injury requiring hospitalization over 24 hours.

In addition to the information requested on this form, also provide the name of the diving supervisor and, if applicable, a detailed report on gas embolism or decompression sickness as required by 46 CFR 197.410(a)(9).

Exempt from the commercial category are dives for

1. Marine science research by educational institutions.
2. Research in diving equipment and technology.
3. Search and Rescue controlled by a government agency

**B ALL OTHER DIVING.** Diving accidents not covered by Instruction (6-A) but involving vessels subject to Instruction (2), **VESSELS**, must be reported if they result in death or injury causing incapacitation over 72 hours. (Ref 46 CFR 4.03-1(c)).

### HAZARDOUS MATERIALS

7. When an accident involves hazardous materials, public and environmental health and safety require immediate action. As soon as any person in charge of a vessel or facility has knowledge of a release or discharge of oil or a hazardous substance, that person is required to immediately notify the U. S. Department of Transportation's National Response Center (telephone toll-free 800-424-8802 - in the Washington, D.C., area call 202-426-2675) Anyone else knowing of a pollution incident is encouraged to use the toll-free telephone number to report it. If etiologic (disease causing) agents are involved, call the U.S. Public Health Service's Center for Disease Control in Atlanta, Ga. (telephone 404-633-5313). (Ref 42 USC 9603, 33 CFR 153; 49 CFR 171.15)

### COMPLETION OF THIS FORM

8. This form should be filled out as completely and accurately as possible. Please type or print clearly. Fill in all blanks that apply to the kind of accident that has occurred. If a question is not applicable, the abbreviation "NA" should be entered in that space. If an answer is unknown and cannot be obtained, the abbreviation "UNK" should be entered in that space. If "NONE" is the correct response, then enter it in that space.

9. When this form has been completed, deliver or mail it as soon as possible to the Coast Guard Marine Safety or Marine Inspection Office nearest to the location of the casualty or, if at sea, nearest to the port of first arrival.

10. Amplifying information for completing the form:

A. Block 16 - "LOCATION" - Latitude and longitude to the nearest tenth of a minute should always be entered except in those rivers and waterways where a mile marker system is commonly used. In these cases, the mile number to the nearest tenth of a mile should be entered. If the latitude and longitude, or mile number, are unknown, reference to a known landmark or object (buoy, light, etc.) with distance and bearing to the object is permissible. Always identify the body of water or waterway referred to

B. Tug or towboat with tow - Tugs or towboats with tows under their control should complete all applicable portions of the CG-2692 SECTION II should be completed if a barge causes or sustains damage or meets any other reporting criteria. If additional barges require reporting, the "Barge Addendum," CG-2692A, may be used to provide the information for the additional barges.

C. Moored/Anchored Barge - If a barge suffers a casualty while moored or anchored, or breaks away from its moorage, and causes or sustains reportable damages or meets any other reporting criteria, enter the location of its moorage in Block (1) of the CG-2692 and complete the form except for Blocks (2) through (13). The details will be entered in SECTION II for one barge and on the "Barge Addendum" CG-2692A, for additional barges.

D. SECTION III - Personnel Accident Information - SECTION III must be completed for a death or injury. In addition, applicable portions of SECTIONS I, II and IV must be completed. If more than one death or injury occurs in a single incident, complete one CG-2692 for one of the persons injured or killed, and attach additional CG-2692's, filling out Blocks (1) and (2) and SECTION III for each additional person.

E. BLOCK 44 - Describe the sequence of events which led up to this casualty. Include your opinion of the primary cause and any contributing causes of the casualty. Briefly describe damage to your vessel, its cargo, and other vessels/property. Include any recommendations you may have for preventing similar casualties. **ALCOHOL AND DRUG INFORMATION** Provide the following information with regard to each person determined to be directly involved in the casualty: name, position aboard the vessel, whether or not the person was under the influence of alcohol or drugs at the time of the casualty, and the method used to make this determination. If toxicological testing is conducted the results should be included, if results are not available in a timely manner, provide the results of the toxicological test as soon as practical and indicate that this is the case in block 44 of the casualty form.

**NOTICE:** The information collected on this form is routinely available for public inspection. It is needed by the Coast Guard to carry out its responsibility to investigate marine casualties, to identify hazardous conditions or situations and to conduct statistical analysis. The information is used to determine whether new or revised safety initiatives are necessary for the protection of life or property in the marine environment.

DEPARTMENT OF TRANSPORTATION U S COAST GUARD CG-2692 (Rev 6-87)		REPORT OF MARINE ACCIDENT, INJURY OR DEATH			RCS No. G-MMI 2115-003 UNIT CASE NUMBER MC88001234	
SECTION I GENERAL INFORMATION						
1 Name of Vessel or Facility MUD D. PUDDLE		2 Official No D123456	3 Nationality US	4 Call Sign TDM 203	5 USCG Certificate of Inspection issued at NA	
6 Type (Towing, Freight, Fish, Drill, etc.) Towing		7 Length 53	8. Gross Tons 134	9 Year Built 1985	10 Propulsion (Steam, diesel, gas, turbine...) Diesel	
11 Hull Material (Steel, Wood...) Steel	12 Draft (ft - in) FWD 4'3" AFT 4'0"		13. If Vessel Classed, By Whom (ABS, LLOYDS, DNV BV, etc.) N/A	14. Date of occurrence 23 April 1988	15. TIME Local 0932	
16 Location (See Instruction No. 10A) Chesapeake Bay 39°30.3'N 76°25.8W				17 Estimated Loss or Damage TO		
18 Name Address & Telephone No of Operating Co Bats, Incorporated P. O. Box 000 Rainind, KY 42101 502-333-4444				VESSEL \$ 500 CARGO \$ <del>50,000</del> <i>PS</i> OTHER \$ <u>50,000</u> <i>J.S.</i>		
19. Name of Master or Person in Charge Batman Robins		USCG License <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	20 Name of Pilot N/A		USCG License <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
19a Street Address (City, State, Zip Code) 1600 Frank St. Baltimore, MD 21111		19b Telephone Number (301) 555-6666	20a Street Address (City, State, Zip Code) N/A		20b Telephone Number ( ) N/A	
21 Casualty Elements (Check as many as needed and explain in Block 44)						
NO OF PERSONS ON BOARD <u>9</u>		<input type="checkbox"/> FLOODING, SWAMPING WITHOUT SINKING	<input type="checkbox"/> FIREFIGHTING OR EMERGENCY EQUIPMENT FAILED OR INADEQUATE (Describe in Block 44)			
<input type="checkbox"/> DEATH - HOW MANY? <u>none</u>		<input type="checkbox"/> CAPSIZING (with or without sinking)	<input type="checkbox"/> LIFESAVING EQUIPMENT FAILED OR INADEQUATE (Describe in Block 44)			
<input type="checkbox"/> MISSING - HOW MANY? <u>none</u>		<input type="checkbox"/> FOUNDERING OR SINKING	<input type="checkbox"/> BLOW OUT (Petroleum exploration/production)			
<input checked="" type="checkbox"/> INJURED - HOW MANY? <u>1</u>		<input type="checkbox"/> HEAVY WEATHER DAMAGE	<input type="checkbox"/> ALCOHOL INVOLVEMENT (Describe in Block 44)			
<input type="checkbox"/> HAZARDOUS MATERIAL RELEASED OR INVOLVED (Identify Substance and amount in Block 44)		<input type="checkbox"/> FIRE	<input type="checkbox"/> DRUG INVOLVEMENT (Describe in Block 44)			
<input type="checkbox"/> OIL SPILL - ESTIMATE AMOUNT		<input type="checkbox"/> EXPLOSION	<input type="checkbox"/> OTHER (Specify)			
<input type="checkbox"/> CARGO CONTAINER LOST/DAMAGED		<input type="checkbox"/> COMMERCIAL DIVING CASUALTY				
<input type="checkbox"/> COLLISION (Identify other vessel or object in Block 44)		<input type="checkbox"/> ICE DAMAGE				
<input checked="" type="checkbox"/> GROUNDING <input type="checkbox"/> WAKE DAMAGE		<input type="checkbox"/> DAMAGE TO AIDS TO NAVIGATION				
		<input type="checkbox"/> STEERING FAILURE				
		<input type="checkbox"/> MACHINERY OR EQUIPMENT FAILURE				
		<input type="checkbox"/> ELECTRICAL FAILURE				
		<input type="checkbox"/> STRUCTURAL FAILURE				
22 Conditions						
A. Sea or River Conditions (wave height, river stage, etc.) 1'6"	B WEATHER <input checked="" type="checkbox"/> CLEAR <input type="checkbox"/> RAIN <input type="checkbox"/> SNOW <input type="checkbox"/> FOG <input type="checkbox"/> OTHER (Specify)	C. TIME <input checked="" type="checkbox"/> DAYLIGHT <input type="checkbox"/> TWILIGHT <input type="checkbox"/> NIGHT	D VISIBILITY <input checked="" type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR	E. DISTANCE (miles) <u>10</u> (of visibility)	F. AIR TEMPERATURE <u>58</u> (F)	G. WIND SPEED & DIRECTION NW 25
				H. CURRENT SPEED & DIRECTION 5 2		
23 Navigation Information						
<input type="checkbox"/> MOORED, DOCKED OR FIXED		SPEED <u>slow</u> AND COURSE <u>up</u>	24. Last Port Where Bound Norfolk, VA Baltimore, MD		24a Time and Date of Departure 1600 19 April 1988	
<input type="checkbox"/> ANCHORED <input type="checkbox"/> UNDERWAY OR DRIFTING	25a	25b	25c	25d. (Describe in Block 44)		
FOR TOWING ONLY	NUMBER OF VESSELS TOWED	Empty Loaded Total	TOTAL H P OF TOWING UNITS	MAXIMUM SIZE OF TOW WITH TOW-CAT(S)	Length	Width
	0	4 4	2800	755	20	<input checked="" type="checkbox"/> PUSHING AHEAD <input type="checkbox"/> TOWING ASTERN <input type="checkbox"/> TOWING ALONGSIDE <input type="checkbox"/> MORE THAN ONE TOW-BOAT ON TOW
SECTION II BARGE INFORMATION						
26 Name JOY 5		26a Official Number D888888	26b. Type T/B	26c. Length 200	26d Gross Tons 5842	26a. USCG Certificate of Inspection issued at. Norfolk, VA
26f. Year Built 1985	26g <input checked="" type="checkbox"/> SINGLE SKIN <input type="checkbox"/> DOUBLE SKIN	26h Draft FWD 5' AFT 5'	26i Operating Company 90 Water St. Oaktree, Inc. Norfolk, VA			
26j Damage Amount BARGE \$ <u>50,000</u> CARGO \$ <u>none</u> OTHER \$ <u>none</u>			26k. Describe Damage to Barge Forward Rake, stbd cargo tank holed Forward Rake after bulkhead torn over 10'			

SECTION III PERSONNEL ACCIDENT INFORMATION			
27 Person Involved <input checked="" type="checkbox"/> MALE or <input type="checkbox"/> FEMALE <input type="checkbox"/> DEAD <input type="checkbox"/> INJURED <input type="checkbox"/> MISSING	27a Name (Last, First, Middle Name) SMITH, Leroy H. 27b Address (City, State, Zip Code) 225 8th St., Raleigh, NC 29201	27c Status <input checked="" type="checkbox"/> CREW <input type="checkbox"/> PASSENGER <input type="checkbox"/> OTHER (Specify)	
28 Birth Date 14 April 1938	29 Telephone No 919 424-1540	30 Job Position Deckhand	31 (Check here if off duty) <input type="checkbox"/>
32 Employer (If different from Block 18, fill in Name, Address, Telephone No.) Same as 18			
33 Person's Time	YEAR(S)	MONTH(S)	34 Industry of Employer (Towing, Fishing, Shipping, Crew Supply, Drilling, etc.) Towing
A IN THIS INDUSTRY	5	3	35 Was the Injured Person Incapacitated 72 Hours or More? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
B WITH THIS COMPANY	2	8	
C IN PRESENT JOB OR POSITION	2	8	
D ON PRESENT VESSEL/FACILITY	1	10	
E HOURS ON DUTY WHEN ACCIDENT OCCURRED			
36 Date of Death N/A			
37 Activity of Person at Time of Accident Handling Lines			
38 Specific Location of Accident on Vessel/Facility Main Deck Aft			
39 Type of Accident (Full, Caught between, etc.) Caught in line		40 Resulting Injury (Cut, Bruise, Fracture, Burn, etc.) Crushed	
41 Part of Body Injured Fingers (Left Hand)		42 Equipment Involved in Accident Tow Line	
43 Specific Object, Part of the Equipment in Block 42, or Substance (Chemical, Solvent, etc.) that directly produced the Injury Tow Line			
SECTION IV DESCRIPTION OF CASUALTY			
44 Describe how accident occurred, damage, information on alcohol/drug involvement and recommendations for corrective safety measures. (See instructions and attach additional sheets if necessary.) At 0932 the hydraulic steering gear of the M/V MUD D. PUDDLE ruptured a seal in the starboard ram causing a total loss of hydraulic pressure. The seal was installed 10 years ago. The operator ordered the towline shortened as the barge drifted up on the tug. While Leroy Smith was doing this, the wind caught the barge and suddenly tightened the towline, crushing the fingers of Smith's left hand between the hawser and the towing bit. The barge pulled the tug to the eastern side of the bay in spite of the use of the tug's engine and the barge ran aground on Taylor's Island at approximately 1000, 23 April 1988.			
45 Witness (Name, Address, Telephone No.) John W. Toms, 822 South St., Washington, DC 20590 (202) 842-1222			
46 Witness (Name, Address, Telephone No.) Sam S. Green, 9424 Elm St., Norfolk, VA 21210 (804) 981-1010			
SECTION V PERSON MAKING THIS REPORT			47c Title
47 Name (PRINT) (Last, First, Middle) HENRY, John (N)	47b Address (City, State, Zip Code) 2120 Front St. Baltimore, MD 21111	Operator	
47a Signature <i>J. Henry</i>		47d Telephone No 301 242-8290	47e Date 23 April 1988
FOR COAST GUARD USE ONLY		REPORTING OFFICE Baltimore, MD	
APPARENT CAUSE was a failure of a seal in the hydraulic steering ram due to age and normal wear and tear which resulted in the grounding of the barge. Smith's injury was due to his own carelessness. (See attached sheet for technical data on steering).			
CASUALTY CODE (A) B C	INVESTIGATOR (Name) <i>John Q. Jones</i> JOHN Q. JONES	DATE 25 APR 88	APPROVED BY (Name) <i>Albert E. Potts</i> ALBERT E. POTTS
			DATE 26 APR 88

DEPARTMENT OF TRANSPORTATION U. S. COAST GUARD CG-2692A (Rev. 6-82)		<b>BARGE ADDENDUM</b>			REPORTS CONTROL SYMBOL G-MMI-2115-0003	
NOTE: This form may be used to report data for barges causing or sustaining damage in the accident described on form CG-2692. This form may only be used in addition to form CG-2692, never alone.						
NAME OF VESSEL Use Same Name as Block 1. of CG-2692.					DATE OF ACCIDENT 23 April 1988	
<b>FOR BARGE CAUSING OR SUSTAINING DAMAGES</b>						
26. Name EPIC 32		26a. Official Number D543210 J <sup>2</sup>		26b. Type T/B	26c. Length 297	26d. Gross Tons 1991
26f. Year Built 1975		26g. <input type="checkbox"/> SINGLE SKIN <input checked="" type="checkbox"/> DOUBLE SKIN		26h. Draft FWD 9'0" AFT 9'0"	26i. Operating Company EPIC, Incorporated	
26j. Damage Amount		26k. Describe Damage to Barge				
DAMAGE TO BARGE \$ 20,000		Holed fwd strb				
CARGO \$ None		Rake				

<b>FOR BARGE CAUSING OR SUSTAINING DAMAGES</b>						
26. Name EPIC 33		26a. Official Number D553436		26b. Type T/B	26c. Length 147	26d. Gross Tons 834
26f. Year Built 1975		26g. <input type="checkbox"/> SINGLE SKIN <input checked="" type="checkbox"/> DOUBLE SKIN		26h. Draft FWD 9'0" AFT 9'0"	26i. Operating Company EPIC, Incorporated	
26j. Damage Amount		26k. Describe Damage to Barge				
DAMAGE TO BARGE \$ 30,000		Holed, fwd port wing tank				
CARGO \$ None		Internals Upset				

<b>FOR BARGE CAUSING OR SUSTAINING DAMAGES</b>						
26. Name		26a. Official Number		26b. Type	26c. Length	26d. Gross Tons
26f. Year Built		26g. <input type="checkbox"/> SINGLE SKIN <input type="checkbox"/> DOUBLE SKIN		26h. Draft FWD AFT	26i. Operating Company	
26j. Damage Amount		26k. Describe Damage to Barge				
DAMAGE TO BARGE \$						
CARGO \$						

<b>FOR BARGE CAUSING OR SUSTAINING DAMAGES</b>						
26. Name		26a. Official Number		26b. Type	26c. Length	26d. Gross Tons
26f. Year Built		26g. <input type="checkbox"/> SINGLE SKIN <input type="checkbox"/> DOUBLE SKIN		26h. Draft FWD AFT	26i. Operating Company	
26j. Damage Amount		26k. Describe Damage to Barge				
DAMAGE TO BARGE \$						
CARGO \$						

<b>FOR BARGE CAUSING OR SUSTAINING DAMAGES</b>						
26. Name		26a. Official Name		26b. Type	26c. Length	26d. Gross Tons
26f. Year Built		26g. <input type="checkbox"/> SINGLE SKIN <input type="checkbox"/> DOUBLE SKIN		26h. Draft FWD AFT	26i. Operating Company	
26j. Damage Amount		26k. Describe Damage to Barge				
DAMAGE TO BARGE \$						
CARGO \$						
SIGNATURE (or Person making this Report)						

MARINE SAFETY MANUAL

- 3.E.2.b. (2) (cont'd) of little value. Statements such as "faulty navigation," "materiel failure," and "unseaworthy" are insufficient. For example:
- (a) "The cause of the sinking was the flooding of the engine compartment due to the fracture of a deteriorated plank," not simply "flooding of the engine compartment."
  - (b) "The cause of the collision was the failure of the vessel to give way in a crossing situation," not simply that "Vessel A collided with Vessel B."
  - (c) "The cause of the collision was an error in judgment on the part of the operator of Vessel A, in that he misjudged his speed in overtaking Vessel B," not simply "an error in judgment."
  - (d) "The cause of the grounding was the operator's incorrect plotting of a line of position," not simply "faulty navigation."
- (3) A statement concerning contributing causes of the casualty. Some examples of contributing causes include, but are not limited to: adverse weather conditions, strong currents, noise, fatigue, intoxication, inadequate training or supervision, lack of experience, physical/psychological impairment, inadequate manning level, or improper design/maintenance of the vessel. If no contributing causes can be identified, the report should state: "Insofar as can be determined, there were no contributing causes to this casualty."
- (4) If the initial casualty causes a "chain of events" that are themselves reportable casualties, the causes of these casualties should be stated. Examples include fire resulting from a collision, personal injuries resulting from a grounding, or fire resulting from a machinery failure.
- (5) Statement(s) concerning the action taken, including:
- (a) The investigative status. This will normally be shown as "Investigation completed; a narrative report will not be submitted."
  - (b) Action taken or recommended regarding the casualty.  
[NOTE: Recommendation to the OCMI may be addressed on a letter of transmittal. Recommendation to the district commander or Commandant should be addressed in a narrative format. See paragraph 3.E.4 below.]

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- 3.E.2.b.(5)
- (c) Comment on any corrective safety measures recommended by vessel personnel in block 44 of Form CG-2692. Such recommendations should be inquired into for the Commandant to properly assess their value. (See subparagraph 3.E.4.a below.)
  - (d) When applicable to inspected vessels, a statement concerning permanent repairs. Failure to mention the status of permanent repairs frequently requires additional correspondence to ensure proper follow up of such matters.
  - (e) Referral to another department, office, or agency of any evidence of violation of laws or regulations that are not within the scope of marine safety.
  - (f) Referral to district (oan) personnel of a casualty involving an aid to navigation, or evidence that buoys or other aids to navigation are found to be off station.
  - (g) When a structural failure or equipment failure is involved, whether or not Form CC-2752 or CC-2752A, as appropriate, has been submitted. (See paragraph 3.B.7 above and Volume II of this manual.)
  - (h) When any uncharted or incorrectly charted objects are involved, or when a grounding takes place that indicates an incorrect charted depth, notification of the USACE, U.S. Naval Oceanographic Office, MMS, or National Oceanic and Atmospheric Administration (NOAA), as appropriate.
- (6) In each case involving a steering casualty, a detailed investigation shall be conducted and the following information shall be included in the investigative report:
- (a) Nameplate data (e.g., manufacturer(s) of system components).
  - (b) Type of steering gear (e.g., electric, hydraulic, steam, or manual).
  - (c) Major component involved in failure (e.g., rams, power unit, or control equipment).
  - (d) Specific component that failed (e.g., motor, pump, or rotary hydraulic power unit).
  - (e) Subcomponent that failed (e.g., relay, electrical windings, pistons, packing, keys, or bolts).
  - (f) Description of failure (narrative).

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- 3.E.2.b.(6) (g) Description of damage resulting from failure (narrative).
- (h) Apparent cause of failure (how and why). [NOTE: If system failure appears to be the result of a design or manufacturing defect and therefore an equipment class failure, the incident should be reported to Commandant (G-MMI-1) immediately.]
- (i) Description of repairs effected.
- (j) History of similar failures.
- (7) In each case involving a diving casualty, a detailed investigation shall be conducted, and the following information shall be included in the investigative report:
- (a) Commercial Diving: Number of people in the dive team; job titles; specific details of equipment.
- (b) Recreational Diving From Commercial Vessels: Number of persons involved; specific details of equipment.
- (8) When there is evidence of violation of law or regulation, the specific statute or regulation should be enumerated.
- (9) A statement closing the casualty aspect of the case. This statement should include information required by subparagraphs 3.E.3.k and 3.E.3.1 below.
- c. Sample Letter Of Transmittal Reports. Figure 3-6 is a sample report of a simple navigation case resulting in S&R proceedings. Figure 3-7 is a sample report of a navigation case with related personal injury, resulting in civil penalty proceedings.

3. Narrative Reports.

- a. When Required. A narrative report is generally required in circumstances such as those set forth below:
- (1) The casualty involves the loss of an inspected vessel. A shorter report may be submitted when in the judgment of the OCMI the circumstances do not require detailed explanation (e.g., a small passenger vessel is left unattended for a long period of time and sinks at the dock).
- (2) As a result of the casualty investigation, the I.O. wants to make recommendations for action on the part of the Commandant or district commander.

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FIGURE 3-6

SAMPLE LETTER OF TRANSMITTAL REPORT  
SIMPLE NAVIGATION CASE  
WITH SUSPENSION AND REVOCATION ACTION

From: Investigating Officer  
To: Commandant (G-MMI-1)  
Via: Officer In Charge, Marine Inspection, New Orleans, LA

Subj: COLLISION OF THE STEAM SHIP CAREFUL, O.N. 123456 WITH THE MOTOR VESSEL  
GUMBALL, O.N. 654321, AT MILE 1 AHP MISSISSIPPI RIVER ON 2 DECEMBER  
1988, WITH NO PERSONNEL INJURIES

1. Investigation of the subject case is completed; a narrative report will not be submitted.
2. The apparent cause of this casualty was the failure of the operator of the GUMBALL to keep clear when burdened in an overtaking situation. Inland Rules applied at the time.
3. A contributing cause was the operator's unfamiliarity with the vessel's handling characteristics, in that he had been on board the GUMBALL for only one day prior to the casualty.
4. There is evidence of violation of 33 U.S.C. 2013, Rule 13 of the Inland Navigation Rules on the part of the operator of the GUMBALL.
5. It is recommended that further investigation under the suspension and revocation (or civil penalty) procedures be initiated in the case of E. Fudd, operator of the GUMBALL, concerning his part in the casualty.
6. Repairs to the CAREFUL were completed on 21 January 1989 to the satisfaction of the Officer in Charge, Marine Inspection, New Orleans, LA.
7. With the above exception, there is no evidence of actionable misconduct inattention to duty, negligence, or willful violation of law or regulation on the part of licensed or certificated personnel; nor evidence of failure of inspected equipment or materiel; nor evidence that any personnel of the Coast Guard or of any other federal agency, or any other person contributed to this casualty. Therefore, it is recommended that this casualty investigation be closed.

HARRY CALLAHAN

Encl: (1) CAREFUL Form CG-2692  
(2) GUMBALL Form CG-2692

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FIGURE 3-6 (cont'd)

FIRST ENDORSEMENT on Investigating Officer's ltr of (date)

From: Officer In Charge, Marine Inspection, New Orleans, LA

To: Commandant (G-MMI-1)

Subj: COLLISION OF THE STEAM SHIP CAREFUL, O.N. 123456, WITH THE MOTOR VESSEL  
GUMBALL, O.N. 654321, AT MILE 1 AHP MISSISSIPPI RIVER ON 2 DECEMBER  
1988, WITH NO PERSONNEL INJURIES

1. Forwarded approved.
2. Further investigation has been initiated in the case of E. Fudd, operator of the GUMBALL, for possible violation of 33 U.S.C. 2013.

A. C. BOSS

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FIGURE 3-7

SAMPLE LETTER OF TRANSMITTAL REPORT  
SIMPLE NAVIGATION CASE  
WITH PERSONNEL INJURY

From: Investigating Officer  
To: Commandant (G-MMI-1)

Via: Officer In Charge, Marine Inspection, New Orleans, LA

Subj: FISHING VESSEL JANET LUCILLE, O.N. 123456; COLLISION WITH FISHING VESSEL  
BLOOMER, O.N. 654321, IN THE GULF OF MEXICO ON 3 DECEMBER 1988, WITH  
PERSONNEL INJURY

1. Investigation of the subject case is completed; a narrative report will not be submitted.

2. The apparent cause of this casualty was the failure of the lookout on board the JANET LUCILLE to maintain a proper lookout. International Rules applied at the time.

3. Insofar as can be determined, there were no contributing causes to this casualty.

4. There is evidence of violation of 46 U.S.C. 2302, negligent use of a vessel, on the part of the operator of the JANET LUCILLE.

5. It is recommended that further investigation be initiated in the case of T.T. Thomas, operator of the JANET LUCILLE, concerning his part in this casualty.

6. As a result of this casualty, I.M. Hutt, operator of the BLOOMER, suffered a broken arm which rendered him incapacitated for a period exceeding 72 hours.

The injury was a result of Mr. Hutt's being knocked to the deck of the BLOOMER by the force of the collision.

7. With the above exception, there is no evidence of actionable misconduct, inattention to duty, or negligent or willful violation of law or regulation on the part of licensed or certificated personnel; nor any evidence of failure of inspected equipment or material; nor evidence that any personnel of the Coast Guard or of any other federal agency, or any other person contributed to this casualty. Therefore, it is recommended that this casualty investigation be closed.

B. C. JONES

Encl: (1) JANET LUCILLE Form CG-2692  
(2) BLOOMER Form CG-2692

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FIGURE 3-7 (cont'd)

FIRST ENDORSEMENT on Investigating Officer's ltr of (date)

From: Officer In Charge, Marine Inspection, New Orleans, LA

To : Commandant (G-MMI-1)

Subj: FISHING VESSEL JANET LUCILLE, O.N. 123456; COLLISION WITH FISHING VESSEL  
BLOOMER, O.N. 654321, IN THE GULF OF MEXICO ON 3 DECEMBER 1988, WITH  
PERSONNEL INJURY

1. Forwarded approved.

2. A report of violation in the case of T.T. Thomas, operator of the JANET  
LUCILLE, has been forward to the Commander, Eighth Coast Guard District.

A. C. BOSS

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- 3.E.3.a. (3) The circumstances surrounding a death or a person missing at sea are controversial and/or require the resolution of conflicting evidence.
- (4) The casualty involves complex or unusual circumstances which require detailed descriptions. Examples might include an engine room fire requiring casualty control procedures on the part of the crew; a casualty involving hazardous materials; or a major collision.
- (5) The casualty involves Coast Guard activities. Examples might include failure of inspected equipment; collisions or groundings in a VTS area; or collisions between Coast Guard cutters and private vessels which are not investigated by the NTSB and which are combined with a Coast Guard supplement investigation.
- (6) The casualty is one which has significant public interest. The narrative report shall consist of findings of fact, conclusions, and recommendations. In addition, the narrative report should also incorporate the appropriate requirements of paragraph 3.E.2 above. The finding of fact section should contain the facts of the case that are pertinent to the purpose of the investigation. In most cases, they will be a summary or a consolidation of the evidence received. The findings of facts are supported by the evidence considered by the I.O. The conclusions are the opinions of the I.O. based on his or her interpretation of the facts. Conclusions must always be supported by the findings of fact. Recommendations should flow logically from the conclusions. A narrative report should normally contain the elements outlined in the following subparagraphs.
- b. Subject. The subject description of the report shall indicate the name(s) and O.N.'s of the vessel(s) involved; the nature of the casualty, its location, and the date; and personnel injuries or loss of life if sustained. For example, "NEVERSAIL, O.N. 123456 and CAREFUL, O.N. 789100; collision in the Gulf of Mexico on 1 January 1988, with loss of life."
- c. Summary. The findings of fact in the narrative report should be numbered consecutively and should begin with a summary of the "who," "what," "when," "where," and "results" of the casualty, as in this example:

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3.E.3. c. (cont'd)

"The U.S. tankers HEAT and VICTORY collided at 1325 EST on 10 November 1988, approximately 1 mile south of Maidens' Woe lighted buoy (LL 00000), Enteric Bay, Delaware. Fire and explosions ensued on both vessels, resulting in six crewmembers from the HEAT known dead, and three from the VICTORY missing. The latter three have not been recovered and it is presumed that they perished. A total of 10 other crewmembers from both vessels suffered varying degrees of injury, mostly from flash burns, and were hospitalized. Both vessels incurred severe hull damage and were towed to Philadelphia after the fires were extinguished."

d. Vessel And Cargo Data.

- (1) Tabulated Data. The summary paragraph should be followed by a description of the vessel(s) involved, as in the following example. The name and address of the U.S. agent of a foreign vessel involved in a reportable casualty shall also be provided.

Name:	HEAT	VICTORY
O.N.:	113111	311713
Service:	T-2 Tanker	Victory Tanker
Gross Tons:	10,500	7,500
Net Tons:	6,400	4,500
Length:	500 ft.	500 ft.
Breadth:	65 ft.	60 ft.
Depth:	39 ft.	34 ft.
Propulsion:	Turboelectric	Steam
H.P.:	6,000	6,000
Homeport:	New Orleans, LA	New York, NY
0/0:	Socrates, Inc. 25 South St. Yscloskey, LA	Taenia Corp. River St. Hoboken, NJ
Master:	Achilles Archimedes 1 Park Ave. New York, NY	V. Buffo RFD #3 Webfoot, ME
License:	Master Oceans, #12825	Master Oceans, #12792

- (2) Narrative Descriptions. In addition to the tabular data, a narrative description of the vessel or its equipment that may have played a role in the casualty is desirable. If the vessel's cargo plays a role in the casualty, a description of it shall be included in the report. Such description should include the type of cargo, trade name (if any), stowage arrangements, the quantity, the shipper(s), and conditions of carriage (heated or cooled, pressurized, inhibited, etc.). Copies of cargo manifests shall be obtained for the record.

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- 3.E.3. e. Record Of Dead And Injured. A list of those persons killed and incapacitated for more than 72 hours as a result of the casualty shall be compiled, using a tabular format similar to subparagraph 3.E.3.d.(1) above. This list should contain the name, license/certificate number, age, home address, next of kin, and position of service of each person listed.
- f. Weather/Tide. A description of the weather prior to and at the time of the casualty, particularly visibility, where pertinent, follows the list of dead and injured. When weather is found to be a factor, the marine board/I.O. shall note the weather forecast for the casualty period and determine whether it was obtained by the operator prior to sailing. Sea conditions, air and water temperatures, tides and currents, and related information should be included.
- g. Human Factors. A high percentage of casualties are due to human error. However, quite frequently I.O.'s fail to document the underlying reasons why the human error occurred. To provide a better understanding of these causes, a description of the human factors should be set forth in the facts. The following guide indicates some of the factors to be investigated and included in the facts, as applicable:
- (1) Equipment design, adequacy, and performance;
  - (2) Crew training and experience:
    - (a) General
    - (b) Equipment specific;
    - (c) Environment specific;
    - (d) Rules and regulations; and
    - (e) Company policies;
  - (3) (In) sufficiency of personnel;
  - (4) Fatigue;
  - (5) Use of drugs or alcohol, including prescription medication;
  - (6) Physical qualifications;
  - (7) Calculated risk; and

- 3.E.3.g. (8) Management controls:
- (a) Rules and regulations;
  - (b) Company policies; and
  - (c) Operational commitments.

h. Body Of The Report.

- (1) Findings Of Fact. Next, there should follow as many paragraphs as are necessary to complete the findings of fact. It should be borne in mind that the story of a casualty related in a report is the marine board/I.O.'s evaluation of the evidence obtained. Findings of fact should not be mere recitations of witnesses' testimony or a parroting of views. However, only those facts substantially supported by evidence should be included, and all facts on which conclusions are based should be included. Generally, when two or more vessels are involved, events are best presented separately and chronologically for each vessel, rather than skipping from vessel to vessel. Testimony of witnesses will rarely agree in every detail, although there should be a consensus on basic facts. When there is marked disagreement, no attempt at reconciling various versions should be attempted in the findings of fact. This should be reserved for the conclusions.
- (2) Measurements And Units Of Reference. Units of reference such as time, bearing, and distance should be stated clearly and consistently so that there is no doubt as to what is meant. Time should be described by zone (EST, GMT, etc.). Distance should be referred to in feet, yards, nautical miles, etc. Courses and bearings should be reckoned in degrees true, and marked as such on evidentiary charts, diagrams, etc. If errors or discrepancies exist in various accounts or log entries, the sequence of events should be resolved as thoroughly as possible using a standardized system of measurement. Sea positions should be stated in degrees and minutes of longitude and latitude. If positions refer to charted objects, the true bearings and distances to them shall be indicated, as well as the title and number of the chart used. Spellings of geographical names should follow that shown on a chart, Coast Pilot, or other authoritative source. Local names or those of limited use should be clearly identified as such.
- (3) Related Factors. When applicable, radar data should include the year, make, and scope size of the radar; range scales available and used; the bearing in use; and other relevant information. It is important to indicate failure to use radar prior to the casualty. (See subparagraph 3.E.3.j.(2)(b) below.) The same evaluation should be made for other

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- 3.E.3.h. (3) (cont'd) electronic equipment such as long range aid to navigation (LORAN) and fathometer. Likewise, failure to use such equipment should be indicated. Estimated time in the water until rescue or death should be indicated. If persons in distress were using lifesaving devices, the type, and whether or not they were Coast Guard approved, shall be stated. The effectiveness of nonapproved lifesaving devices is of particular interest. In cases when there has been loss of life, the requirements of paragraph 3.E.10 below should be fulfilled. If the master has made a safety recommendation in block 44 of Form CG-2692, relevant facts should be developed to allow appropriate comment thereon. When applicable to inspected vessels, a statement concerning permanent repairs should be included. Failure to mention the status of permanent repairs frequently requires additional correspondence to ensure proper follow up of such matters.
- (4) Incorrect Charts And Aids To Navigation. When any uncharted or incorrectly charted objects are involved, or when a grounding indicates an incorrectly charted depth, a statement should be made concerning notification of the USAGE, U.S. Naval Oceanographic Office, NOAA, or MMS, as appropriate. When aids to navigation are found to be off station, a statement should be made concerning notification of the Coast Guard district commander (oan).
- (5) Information Not To Be Included. Information which should not be released to the public must not be included in the report, which will be available to the public except to the extent that it contains information related to the national security. (See 46 U.S.C. 6305). This means that information whose release would compromise a promise of confidentiality, violate 46 U.S.C. 3315, violate 6102(b), reveal a trade secret, or violate the Privacy Act must not be included in the report.
- i. Analysis. Prior to stating conclusions, the I.O. has the option of inserting an analysis section. This section may be used to discuss or clarify avenues of investigation or reasoning which were pursued but not resolved; to discuss possible hypotheses which are not firmly supported by specific facts; and to describe the analytical process by which certain findings of fact lead to particular conclusions, etc. Although optional, this section should be used with discretion, and only when the I.O. feels it would enhance an overall understanding of casualty. Conclusions and recommendations shall continue to be based solely on the findings of fact, as set forth below.
- j. Conclusions. The conclusions about the casualty should be pertinent and have a basis in the findings of fact. Where there was marked disagreement about the facts, the conclusions should resolve the conflicting evidence. Conclusions should not attempt to establish a

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3.E.3. j. (cont'd) case for a hearing by making comments in the form of a legal brief with court citations, etc. Care must be taken to avoid language that, if approved by the district commander or the Commandant, might indicate that a person suspected of negligence or a legal violation has been prejudged without appropriate administrative or criminal process. This can be done by noting "evidence of negligence," for example, rather than stating flatly that the person "was" negligent.

- (1) Apparent And Contributing Causes. See subparagraphs 3.E.2.b.(2) and (3) above concerning determinations of apparent and contributing causes to the casualty.
- (2) Negligence. Generally, most casualties can be traced to some type of human error. There are many instances in which this is considered negligence, rather than an error in judgment. Court decisions and legal rulings have defined negligence as the failure to exercise care that a reasonable and prudent person would exercise under similar circumstances. The I.O. should refer to court decisions, Coast Guard Law Bulletins, and Appeal Decisions, as necessary, to determine whether evidence of negligence exists. Certain acts are not, by themselves, considered prima facie evidence of negligence; the question is whether the casualty might have been prevented through the exercise of ordinary care, caution, and maritime skill. Personnel should be held accountable for what they knew or reasonably should have known, not for what they did not know and could not reasonably have known. In summary, the determination of "evidence of negligence" must be based upon a reasonable exercise of deliberate judgment, not upon an artificial listing of possible elements. Further, such determination should not be affected by the "likely" outcome of S&R and civil/criminal proceedings. When the I.O. contemplates conclusions of evidence of negligent operation or personnel errors, the I.O. must review court decisions and legal rulings on what constitutes "negligent use" of a vessel under the scope of 46 U.S.C. 2302. 46 U.S.C. 2302 prohibits the use of a vessel in a negligent manner, so as to endanger the life, limb, or property of any person. Examples of acts that may constitute negligence are:
  - (a) Failure to make proper allowances for the effects of weather and sailing conditions that should have been reasonably foreseen.
  - (b) Failure to obtain or properly use information available to the navigator, such as radar or radiotelephone, to determine the courses and speeds of other vessels.

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- 3.E.3.j.(2)
- (c) Failure to navigate with caution in restricted visibility, notwithstanding the fact that information as to the proximity and approach of other vessels was available to the navigator through radar.
  - (d) Failure to take bearings on navigational objects while the vessel was at anchor and prior to its going aground.
  - (e) Hugging the shore in navigating a river, especially when approaching a bend or a pier, resulting in excessive shallow water effect and subsequent grounding of the vessel.
  - (f) Failure to maintain a proper watch in that the operator fell asleep at the helm, resulting in collision.
  - (g) Failure to navigate within the prescribed limits of a channel, resulting in grounding.
  - (h) Navigating in channels where the depth of water is less than or nearly the same as the vessel's draft, resulting in grounding.
  - (i) Failure to maintain the proper water level in boilers.
  - (j) Failure to properly arrange valves when using the lube oil purifier, causing the turbine to run dry.
  - (k) Failure to engage the turbine jacking gear, causing the turbine rotor to bow.
  - (l) Failure to answer bells promptly.
  - (m) Failure of engineroom watch personnel to take appropriate action in the event of an engineroom casualty, such as the failure to secure electricity during an electrical fire.
  - (n) Failure to maintain proper alkalinity and salinity levels.
  - (o) Operation of vessel's equipment with safety devices bypassed.
  - (p) Excessive speed.
- k. Marine Board Conclusions On Evidence Of Culpability. Reports from marine boards are submitted directly to the Commandant, without administrative endorsement by an OCMI or district commander. It is thus essential that referrals for further investigation under other proceedings be made prior to submittal to the Commandant. This precludes later challenges to the Commandant's authority to deal with matters arising out of the later investigation. Although

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3.E.3. k. (cont'd) conclusions concerning evidence of culpability on the part of persons or corporate entities are necessary and should be included in the report, recommendations for the commencement of other proceedings shall be referred separately to the district commander. This action will be considered final insofar as the investigation of the casualty is concerned. The fact that referral was made shall be indicated in the conclusions (which may express a finding of culpability). For example:

- (1) "There is evidence of violation of 46 U.S.C. 2302(a), negligent use of a vessel, on the part of the operator of the CRACKER BOX. This matter has been forwarded to the Commander, Eighth Coast Guard District for further investigation."
- (2) "There is evidence of violation of 33 U.S.C. 2013, Article 24 of the Inland Rules, on the part of John Doe, operator of the WINOTT. This matter has been forwarded to the Commander, Second Coast Guard District for further investigation."
- (3) "There is evidence that Captain Fred CLEON, USCG did, on 1 April 1988, while serving in command of United States Coast Guard Cutter PEQUOT (WMEC 899), while underway in the North Atlantic, negligently hazard said vessel by failing and neglecting to ascertain, or cause to be ascertained, the position, true course, and speed of THUCYDIDES, a vessel whose presence was well known to him, before changing course from 000 True to approximately 090 True; which change put USCGC PEQUOT on a collision course with THUCYDIDES, as a result of which USCGC PEQUOT collided with THUCYDIDES and was sunk with multiple loss of life; all in violation of Article 110, Uniform Code of Military Justice (UCMJ). This matter has been forwarded to the Commander, First Coast Guard District for further proceedings under the UCMJ."

1. Other Required Conclusions.

- (1) Whether there is evidence of any materiel failure (physical or design). Such conclusions should be specific, stating how failure was involved and whether or not it contributed to the casualty.
- (2) Whether there is evidence that any act of misconduct, inattention to duty, negligence, incompetence, or willful violation of any law or regulation on the part of licensed or certificated personnel contributed to the casualty. (See subparagraph 3.E.3.j above.) The decision on whether or not to proceed against a person for violation of law rests with the appropriate district commander. This decision should not be stated in the casualty investigation report, which is not the proper forum to determine the guilt or innocence of the individuals or to discuss mitigating circumstances. It should be the subject of a separate investigation.

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- 3.E.3.1. (3) Whether there is evidence of any violation of statutes or regulations. If so, reports of violation or other appropriate actions should be initiated separately.
- (4) Whether there is evidence that Coast Guard or other government personnel, or any other person contributed to the casualty.

m. Other Conclusions. If Relevant.

- (1) Involvement Of Navigational Devices. An aid to navigation that is found to be off station should not be considered a primary cause of a casualty such as grounding; mariners are cautioned not to consider the aid as being permanently fixed. In making such determinations, all facts must be weighed honestly and carefully. Although care must be exercised not to haphazardly jeopardize the legitimate rights of the government to protect itself against wrongful charges, the integrity of the Coast Guard investigative process must be maintained. Similar care is taken in cases involving uncharted or incorrectly charted objects.
- (2) Reasonable Precautions. The I.O. may determine whether the casualty could reasonably have been prevented or its effect minimized, and what precautions may be taken to prevent the occurrence of similar casualties.
- (3) Commendable Actions By Coast Guard. Merchant Marine. Or Other Persons. These may be mentioned in the conclusions. However, recommendations for awards should be made in separate administrative reports. (See paragraph 3.A.7 above.)
- (4) Involvement Of Pilots. When there is evidence of actionable acts/failure to act or contributory fault on the part of a pilot, appropriate conclusions should be made as to the pilot's part in the casualty.
- (5) Evidence Of Violation Of 33 U.S.C. 408. The I.O. shall make appropriate conclusions when a vessel causes damage to a seawall, bulkhead, jetty, dike, levy, wharf, pier, lock, or similar structure constructed by or under the control of the U.S.
- (6) Involvement Of Structural Or Equipment Failure. In such cases, a statement should be made as to whether Form CG-2752 (or CG-2752A, as appropriate) has been submitted. See paragraph 3.B.7 above and Volume II of this manual.
- (7) Human Factors. When applicable, the role of human factors in the casualty should be stated. They may also be listed as an apparent or contributing cause.

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### 3. E .4. Recommendations.

- a. Basis. Recommendations should be based upon the findings of fact and flow logically from the conclusions; unsupported and nonpertinent recommendations must be avoided. If deemed appropriate, a recommendation based on knowledge of a similar casualty or other matter not specifically a part of the instant casualty may be made provided the supporting details are made part of the findings of fact and conclusions. Recommendations should be clear, simple, and easily understood, and should generally be limited to such remedial action as is indicated in the particular case. Investigation may disclose, among other things, a specific material or personnel fault, a specific instance where applicable regulations are not sufficient, or a lack of experience on the part of a specific individual. I.O.'s are encouraged to consult with district and Headquarters level program managers prior to finalizing recommendations regarding class problems. A final recommendation should be that no further action be taken and that the case be closed.
- b. S&R And Civil Penalty Proceedings. Each OCMI has been delegated authority by the Commandant to direct Coast Guard activities relating to marine safety functions within the OCMI's zone. S&R proceedings and the imposition of civil penalties are two of the tools available to support those efforts. In cases involving licensed or certificated personnel, OCMI's must use their judgment in determining which tool will best serve the purposes of marine safety. The casualty report need not reflect this decision. When remedial action is indicated, regardless of whether the person is licensed or certificated, the recommendation should state: "It is recommended that further investigation be initiated in the case of Joe Doakes, concerning this violation." This permits the Commandant to approve the report of the casualty and act impartially later in the S&R or civil penalty proceedings. [NOTE: Marine board reports shall not contain recommendations for further investigations. (See paragraph 3.C.11 above.) Except in cases in which the person suspected of wrongdoing is deceased, the casualty report should not attempt to dismiss the further investigation.]
- c. Referral To Other Authorities. Recommendations for referral to the DOJ for possible prosecution should set forth the statute(s) violated. In most cases, the district commander shall refer the violation upon completion of his/her review or after final action by the Commandant, in those cases requiring Commandant's Action. (See paragraph 3.B.13 above.) Recommendations for referral to other authorities shall be made when there is evidence of violation(s) of laws or regulations not within the scope of the marine safety programs.

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- 3.E.5. Forwarding Of Reports To IMO. A recommendation to forward a copy of the report to IMO is required in cases of "serious casualty." (See subparagraph 3.A.5.c.(3) above.)
6. Providing The Vessel Owner With A Copy Of The Casualty Report. When the apparent or contributing cause of a casualty was a condition, act, or occurrence beyond the scope of existing law or regulation, the OCMI shall provide the vessel owner with a free copy of the casualty report. It may also be appropriate for the OCMI to furnish the owner with separate written recommendations that would prevent similar casualties from occurring. For example, if a contributing cause of a fatal accident was inadequate lighting, the owner shall be advised of the need for additional lighting in that particular area. When this procedure is followed, OCMI's shall note in their endorsement that the vessel owner was advised by separate correspondence.
7. Submittal Of Reports. Investigations are reported to the Commandant by a "2692 report," a letter of transmittal report, a narrative report, or a marine board report. Forms CG-2692 and CG-2692A are used as enclosures to the latter three reports. Form CG-3865 or a state boating accident report form is used as an enclosure to a report of a case involving state numbered commercial or recreational vessels. Normally, investigative reports are submitted directly to Commandant (G-MMI-1) by the OCMI. They are forwarded via the district commander (m) when:
- a. They contain comments or recommendations concerning the adequacy or inadequacy of Coast Guard performance or operational programs;
  - b. They involve possible culpability on the part of an officer or employee of the government;
  - c. They involve possible claims against the government;
  - d. They contain recommendations that require action, other than civil penalty action, by the district commander; or
  - e. The investigation was convened by the district commander.
- An investigative report which includes any of the above elements should be prepared in a narrative format.
8. Review And Approval Of Reports By Endorsing Officers.
- a. General Principles. An investigative report can be expected to focus attention upon the quality of the investigation, and to expose to public evaluation the consideration given and action taken by senior officers. Hence, reviewing and endorsing officers must carefully evaluate each case. They must be particularly alert to potential federal liability resulting from statements contrary to the best interest of the U.S., those of a libelous nature, and those

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3.E.8. a. (cont'd) that, in any other way, may involve the government in litigation. Endorsing officers should not disapprove a report solely because they disagree with the I.O.'s evaluation of evidence. Many such disagreements and most minor errors in findings, conclusions, and recommendations can be addressed adequately by the forwarding endorsement "Approved, subject to the following comments" and a subsequent statement of the areas of disagreement or actual error. However, if these cannot be resolved in this manner, the report must be returned for revision; reports cannot be forwarded "Disapproved." Generally, the report may be returned for revision whenever:

- (1) Facts are insufficient, incomplete, or obviously in error;
- (2) Conclusions are in conflict with or are not supported by the facts
- (3) Recommendations are unsound, not pertinent, or contain erroneous citations;
- (4) The report contains improprieties, imprudent disclosures, or extraneous matter; or
- (5) The basic purpose for the investigation has not been accomplished.

The OCMI and district commander should indicate whether the report is forwarded "Approved" or "Approved, subject to the following comments." Each should indicate their action(s) regarding recommendations that are within their authority, and comment specifically on those requiring action(s) by higher authority. (See 46 CFR 4.07-10.) [NOTE: Reports and endorsements should not refer to this manual or other Coast Guard administrative publications, as these change frequently and cannot be applied as legal standards.]

- b. Revision Of Investigative Report. When reports are returned for revision, the fundamental problem or undesirable element should be clearly established. The I.O. shall review the material and reinvestigate or reevaluate the circumstances, consulting with other experienced personnel if necessary. Persons on scene are best qualified to assess the various factors present; however, this assessment must be definitive, noncontradictory, and complete in all respects. Upon completion of this assessment, the report should be revised to reflect the results of reinvestigation or reconsideration, and resubmitted through the chain of command.
- c. Final Approval. Investigative reports are not considered complete or available for public release until approved as set forth below:

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- 3.E.8.c. (1) Commandant. In issuing a Commandant's Action, the Commandant serves as the final approving authority for all narrative reports and all marine board reports.
- (2) OCMI. By signed endorsement, the OCMI serves as the final approving authority for all CG-2692's and letters of transmittal.
- d. Release Of Reports To The Public. Investigative reports are considered complete upon the action of the approving authority. In accordance with 46 U.S.C. 6305, members of the public may obtain copies of casualty reports upon their completion. The only exception is material in the report which impacts national security. The report consists of the marine board's report, the I.O.'s letter, or Form CG-2692, and endorsements. Any material which accompanies the report but is not available for public release (see COMDTINST M5260.2 (series)) must not be listed as an enclosure. The enclosures and other material contained in the investigation file are subject to release in accordance with the FOIA and 49 CFR 7, at any point, during the investigation, prior to, or following completion and approval.
9. Civil Penalty/S&R Proceedings. Although frequently stemming from marine casualties, civil penalty and S&R proceedings are entirely separate from those pertaining to casualty investigations. The purpose of a casualty investigation is to determine the cause(s) of a casualty after ascertaining the facts. It is not a trial, nor is its purpose to determine the guilt or innocence of individuals. Therefore, these procedures should not be combined; adequate separation of these functions enables activity in one area without regard to the other. Under no circumstance should the casualty report be retained at the local level pending the outcome of the disciplinary proceedings, since the results of such proceedings are not included in the casualty report. Action on the recommendations should not be held in abeyance pending receipt or publication of the Commandant's Action when one is required. In those casualty investigations where there is evidence warranting further investigation in civil, criminal, or S&R proceedings, a separate investigation should be initiated and processed. The casualty report should conclude that there is evidence of violation, misconduct, negligence, etc. not state categorically that the person is guilty; a recommendation that further investigation is appropriate should also be included. The endorsing officer(s) should state the actions taken on such recommendations in their forwarding endorsement. See Figures 3-6 and 3-7.
10. Reports Of Deaths And Personnel Injuries. Coast Guard purposes are primarily served by investigating accidental deaths and injuries, since these are the type that may be preventable by application of Coast Guard promulgated regulations, etc. However, often the Coast Guard will be the only agency investigating circumstances in the death or injury of an

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3.E.10. (cont'd) individual at sea. Apparent natural deaths, homicides, and suicides should be investigated adequately enough to ascertain that death was in fact nonaccidental. In questionable circumstances (e.g., when a person is missing at sea), the incident should be investigated and reported in accordance with the procedures for an accidental death. When there is apparent foul play, the FBI or other appropriate law enforcement officials should be notified. Reports of nonaccidental deaths (e.g., natural death, suicide, homicide) and injuries (e.g., a broken bone sustained in a fight) shall not be submitted. However, in such instances when a case is opened and evidence is received, the investigation shall be closed with a memo to file, and the case file shall be maintained as are other investigative records. Also, a determination shall be made as to whether the incident requires further investigation under 46 U.S.C. Chapter 77 or civil/criminal penalty proceedings.

a. Accidental Death.

- (1) General Guidelines. It is important to have a complete account of the events and circumstances leading to an accidental death. This account should be concise, containing only as much relevant supporting data as necessary. Generally, there are no specific guidelines as to which type of report should be used. Care should be taken to ensure that the report type used provides an adequate medium to convey the essential information. [NOTE: When a person is lost at sea, a narrative or letter of transmittal report shall be used.]
- (2) Contents Of Report. The following items shall be included in all narrative reports, and in all letter of transmittal reports to the extent necessary to fulfill the intent of the investigation. [NOTE: "2692 reports" should contain a comparable amount of information that may be attached as enclosures to the report.]
  - (a) The name, age, home address, and next of kin of the deceased; the date, place of death, and name of the vessel(s) involved.
  - (b) Any license, certificate, or merchant mariner's document (MMD) held by the deceased shall be described, as well as the document's disposition. If available, an MMD or Continuous Discharge Book (CDB) should be retained in the office file or delivered to the next of kin after invalidation, if requested. A license should be returned to the OCMI at the port of issue, or voided and delivered to the next of kin if requested; licenses shall not be included in the public record. Passports should be forwarded directly to Commandant (G-MMI-2).

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- 3.E.10.a.(2)
- (c) Circumstances surrounding the death should be detailed, including medical treatment afforded aboard the vessel, the name of any physician or medical assistant in attendance, and the name and address of any hospital or clinic involved. Autopsy reports may be used to determine that a mariner's physical condition, the mariner's health immediately prior to the casualty, or a physical defect could have caused or contributed to the casualty. When available, police reports, postmortem examination or autopsy reports, and other such data should be used to support the report; however, these materials do not replace the I.O.'s report. In connection with this, the I.O. must take care to comply with 46 U.S.C. 6102(b) in obtaining information from boating accident reports, and to the provisions of paragraph 3.F.5 below.
  - (d) The cause of death should be set forth clearly. When the primary cause of death is drowning, failure to use or failure of a lifesaving device may be listed as a contributing cause of death (the approval number or a suitable means of identifying a nonapproved device should be noted). Contributing causes of death include, but are not limited to exposure, failure or inadequacy of lifesaving device, severe injury, entrapment in vessel embolism (bends), and pulmonary decompression barotrauma (chest squeeze). In cases where immersion hypothermia caused or contributed to a loss of life, the medical facts relative to immersion hypothermia should be set forth in the report. The apparent and contributing causes of the casualty shall also be stated along with the primary cause of death. For example, in the loss of a person overboard, the causes of the fall overboard (e.g., slippery decks, inadequate lighting) must be stated as well as the cause of death. (See subparagraphs 3.E.2.b.(2) and (3) above.)
  - (e) Statements as to disposition of the body.
  - (f) A properly certified copy of the Extract of Shipping Articles, Form CG-2639H, and copies of the Official Logbook entries in those cases for which the vessel is required to keep such documents.
  - (g) A copy of the death certificate, coroner's report, medical examiner's report, autopsy report, or other valid certification of the cause of death issued by an appropriate authority.
  - (h) If a lifesaving device was not used in a commercial vessel drowning case, conclusions as to why a lifesaving device was not used, to the extent determinable. Reasons include nonavailability of devices; quickness of accident making access impossible; injury to the extent that victim

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- 3.E.10.a.(2) (h) (cont'd) could not reach or use device; intoxication to the extent that victim could not reach or use device; health conditions prevented victim from reaching device; or victim panicked or drowned while attempting a rescue.
- (i) Information on how survivors fared, particularly concerning the adequacy of lifesaving devices or other approved equipment. Comments on improvised lifesaving methods used are also desirable.
  - (j) If the master or operator has made a safety recommendation on Form CG-2692, appropriate comment by the I.O. is required.
- b. Death Certificates. A copy of the death certificate, if reasonably obtainable from the issuing agency, should be included in each investigative report concerning loss of life. When a death certificate is not issued or is not readily available, a copy of other valid medical certification such as a coroner's report, medical examiner's report, or autopsy report may be substituted. When a death certificate has been issued, but is not readily available, the I.O. should include a statement in the investigative report indicating that the existence of a death certificate was verified and identifying the agency and location where the death certificate is maintained. In those cases when a death certificate is not issued, a conclusion by the I.O., where appropriate, that the individual is "missing and presumed dead," will assist the next of kin in settling Social Security, insurance, and related matters. It must be remembered that the I.O. has no authority to issue death certificates, or in cases of missing seamen, specific letters of presumptive death. This authority is expressly limited to those personnel and situations as set forth in subparagraph 3.F.10.c below. However, the Coast Guard will make available copies of any legally releasable records that may help determine or arrive at conclusions as to the seaman's death. Certified copies of a vessel's Official Logbook entries and the approved investigative report are frequently considered as evidence of death for certain purposes.
- c. Deaths And Injuries Not Occurring Aboard Vessels.
- (1) Incidents Ashore. Generally, the death of a mariner ashore does not constitute a reportable marine casualty. If illnesses were initially contracted or discovered aboard ship, conditions aboard should be investigated to determine whether they caused or contributed to the illness, and whether proper care was afforded while the mariner was aboard. If the mariner suffered from a chronic condition such as diabetes, tuberculosis, or high blood pressure and succumbed after extended hospitalization, the case is not reported. The U.S. Public

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- 3.E.10.c. (1) (cont'd) Health Service (USPHS) publication "Ship's Medicine Chest and First Aid at Sea" sets forth principles for proper care. A report to Commandant (G-MMI-1) is desired only if on board conditions or care afforded caused or contributed to the death. [NOTE: Generally, an investigation is justified if it appears that information for the promotion of safety of life at sea may be obtained.]
- (2) Incidents In Proximity Of Vessel. From Accidental Causes. The term "marine casualty or accident" is defined in 46 CFR 4 as any casualty involving a vessel. For the purpose of casualty investigations, the vessel is considered to be "involved" if the casualty occurs aboard or the vessel's operation or appurtenances are directly involved. The following cases are considered to involve the vessel's operation or appurtenances:
- (a) While handling a vessel's lines on the dock, pier, etc.;
  - (b) While on or handling a vessel's accommodation ladder;
  - (c) Being struck by cargo or other falling objects from the vessel while on a dock, pier, etc.; and
  - (d) Harm to any diver, including a scuba diver, while diving from a commercial vessel.
- (3) Cases Not Under Coast Guard Jurisdiction. The following cases do not involve the vessel, its operations, or its appurtenances and are therefore beyond the scope of Coast Guard casualty investigation: falling on or off a pier or dock, physical attack ashore, and traffic accidents.
- (4) Deaths, Injuries, Or Damages Resulting From Vessel Wake. Deaths, injuries, or damages ashore that are alleged to have resulted from a vessel's wake are not marine casualties, although they may be marine law enforcement cases. However, deaths, injuries, or damages to or aboard a vessel (whether or not secured to a dock, underway, or anchored) that are alleged to have been caused by another vessel's wake are marine casualties.
- (5) Deaths On Outer Continental Shelf (OCS) Facilities. A report by the owner, the owner's agent, or the person in charge of a facility on the OCS is required for any instance of death on such a facility, whether accidental or natural; the Coast Guard shall in turn investigate the incident. A death occurring as a result of operations conducted pursuant to OCSLAA, is a "casualty" and reportable in accordance with 33 CFR 146.30. (See OCSLA, Section 22(d)(2), (43 U.S.C. 1348(d)(2).) [NOTE: Often, the Coast Guard is the only agency investigating deaths on OCS structures, consequently such investigations must be as thorough as possible.]

F. Investigative Records.

1. Definitions.

- a. Duplicate Originals. When the record is prepared by typewriter with carbon paper for copies, the term "duplicate original" means the original signed ribbon copy plus one or more complete carbon copies made in the same typewriter run that bear all signatures included on the original. In duplicate copies of a complete record, copies of original signed statements and exhibits shall be authenticated by the I.O. or marine board recorder. If copies other than the original signed ribbon copy are prepared through a duplicating process, any copy bearing signatures, authenticated copies of signed statements, exhibits, etc., are likewise duplicate originals.
- b. Report Of Investigation. The report of investigation means the narrative report consisting of findings of fact, conclusions and recommendations, the letter of transmittal or the Form CG-2692 completed and corrected by the I.O., and the endorsements. The report of investigation does not include the enclosures.
- c. Complete Record. The term "complete record" means the narrative report and all evidentiary materials, testimony, statements, exhibits, the precept, Form CG-2692, attachments, and other materials forming a substantive part of the record of the proceedings.
- d. Administrative File. The marine board recorder/I.O. must keep all relevant correspondence, such as letters requesting copies of the report, in a separate administrative file. This may include any materials bearing on the case that do not form part of the complete record, as defined above. The administrative file should be in two parts. One includes all material requiring Commandant's Action upon submittal of the report; the second contains all other correspondence. Upon completion of the investigation, the file shall be forwarded to Commandant (G-MMI-1). (See paragraph 3.C.13 above.)
- e. Submission Of Investigative Reports. Report of casualty investigations should be completed and submitted to Commandant (G-MMI-1) no later than 6 months after the date of the casualty. Timely submission of these reports will provide for improved administrative control and prompt correction of hazardous conditions. If this submission date cannot be met, a letter is required from the cognizant OCMI or the chairman of the marine board to Commandant (G-MMI-1), stating the causes for the delay and the estimated date of completion. If the report is not completed by the estimated date, a follow up is required.

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- 3.F.2. Modifications Of Precept. Modifications of the precept (or convening order) of a marine board of investigation are signed and issued by the convening authority. [NOTE: This should not be confused with the individual orders to officers serving on a board.] These modifications appear immediately after the precept as a part of every record, when changes have been made in the composition of the board's membership.
  
3. Makeup Of The Investigative Record. Investigative records are frequently separated for release to parties in interest and others associated with a casualty investigation. For this reason, the format of such records differs from that established in the Administrative Investigations Manual, COMDTINST M5830.1 (series). Generally, the narrative report is formatted as a letter, from the marine board or I.O. to the Commandant. It sets forth the findings of fact, conclusions, and recommendations concerning the case at hand as discussed in section 3.E above and includes required endorsements from the chain of command. Each paragraph in each segment of the report should be numbered consecutively (Finding of Fact #1, 2; Conclusion #1, 2, etc.). Following the body of the report is the record of proceedings, consisting of the cover page, index, precept, modifications of the precept, testimony, documents, and exhibits.
  
4. Records Filed At Headquarters. For those cases where a narrative report is required, the original copy of the complete record (see subparagraph 3.F.1.c above) will be retained by Commandant (G-MMI-1).
  
5. Enclosures And Other Agency Reports. Generally, the enclosures and exhibits in every investigation record are public information and are readily available at any point during the investigation. However, materials such as postmortem examinations and autopsy reports, police reports, letters, telegrams, messages, and similar materials furnished by federal, state, or local authorities are sometimes protected from disclosure. They shall not be included in the Coast Guard's public record unless permission is first obtained from the issuing authority. When permission is granted, a statement to that effect is required in the report. Unless a document is identified by the originating authority as not releasable, it will be considered to be part of the releasable record. Coast Guard Boating Accident Reports, Form CG-3865, and state boating accident reports that are submitted to state authorities in accordance with 33 CFR 173, Appendix A(a) are protected from disclosure by 46 U.S.C. 6102(b) and shall not be included in the public record of the investigation, unless state law permits disclosure. However, they should be attached to the record for the Commandant's review. Portions of Form CG-3865 submitted to the Coast Guard in accordance with 33 CFR 173, Appendix A(b) may be protected from disclosure. (See COMDTINST M5260.2 (series) for further guidance.)

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- 3.F.6. Duplicating Processes. Commandant (G-MMI) retains marine board investigation reports permanently, and original marine board investigative records for 25 years. Other casualty investigation records are retained for 10 years. Therefore, it is imperative that original records be prepared on long lasting materials. Mimeographed, electrophotographed, and similar materials that are prone to fade over long periods of time, or processes that produce less than optimum legibility, shall not be used.
7. Transcript Of Testimony. A verbatim transcript of the record of a marine board is required. If the services of a commercial reporter are authorized, contracts should be made only with reliable firms that are familiar with such proceedings, so as to ensure the maximum accuracy of transcription. Care shall be taken that the contract includes provisions to ensure preparation of the transcript within a reasonable period of time. Overnight or simultaneous transcription is usually unnecessary and overly expensive. Qualified stenotypists should be employed wherever available through the General Services Administration (GSA) schedule contracts. (See chapter 1 of this volume.) It is generally desirable for the contract to reserve the sales privilege for the reporting service so that individuals desiring a copy of the transcript can be required to purchase the transcript directly from the reporting service. (See 49 CFR 7.99.) A verbatim transcript of witnesses' testimony, even in routine investigations, is beneficial, especially if conflicting evidence is likely. Office stenographers or electronic recording equipment are usually suitable for this purpose. Additionally, witnesses' statements may be received in longhand, submitted by the witnesses themselves or by the I.O. Parties in interest or others providing their own reporters may record the proceedings, should the record not be transcribed for official records. Such persons or their counsel should be notified so that they may make appropriate arrangements.
8. Copies Required. The number of copies of records required depends on the type of casualty and the resulting investigation. The original record and one copy of every narrative report shall be submitted to Commandant (G-MMI-1), except as follows:
- a. In cases involving Coast Guard or other public vessels, when it appears that there will be claims filed for or against the United States, two copies of the record shall be submitted with the original.
  - b. In all cases investigated by a marine board, three copies (plus original) of the report and the copy (plus original) of the record shall be submitted.

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- 3.F.8. c. In cases in which evidence of criminal liability is adduced, a duplicate original of the complete record shall also be submitted to the district commander for forwarding to the U.S. attorney. (See paragraph 3.B.13 above.)
- d. In cases that meet the definition of a "serious casualty" (see subparagraph 3.A.5.c.(3) above), an additional copy of the narrative report shall be submitted for forwarding to IMO. (See paragraph 3.E.5 above.)
9. Field Office Copies Of Investigative Reports. A copy of the record shall be retained by the OCMI for public access in accordance with 49 CFR 7 and COMDTINST M5260.2 (series). District commanders may require an extra copy of the record for the same purpose.
10. Release Of Materials.
- a. Records Availability. Unless a marine casualty report contains information related to national security, the report is available to the public upon action of the approving authority in accordance with 46 U.S.C. 6305. See subparagraphs 3.A.5.f and 3.F.1.b for definition of report. Other investigative records retained by the Coast Guard are generally available to the public, in accordance with 49 CFR 7 and COMDTINST M5260.2 (series) at any point during the investigation. However, 49 CFR 7 and COMDTINST M5260.2 (series) contain certain exemptions from public disclosure. The record of a marine casualty investigation, whether conducted by a marine board or an I.O., shall be made available at any time during the proceedings upon written request to the marine board chairperson (or, in less severe cases, the OCMI in whose zone the casualty occurred). Availability is contingent upon the following terms:
- (1) The record must be in a form suitable for release. "2692's messages, and written statements are considered readily available for release (untranscribed recordings, steno notes or tapes, and undeveloped film are not); and
- (2) The record will be made available on a not to interfere basis with the fact gathering process.
- b. Releasing Reports. All narrative reports will be considered complete and releasable to the public upon completion of the Commandant's Action. All other reports will be considered complete and releasable upon the OCMI's action as required by paragraph 3.E.8 above. However, Commandant (G-MMI-1) shall be advised of releases that will likely have regional or local impact, including a briefing on matters of a sensitive nature.

3.F.10. c. Letters Of Presumed Death. In most cases, a report of a marine casualty involving missing persons should be completed in a timely manner, so that the report itself serves as the Coast Guard's determination that persons are presumed dead. On a case-by-case basis, where special circumstances exist that would unduly delay completion of a report, the OCMI, the chairperson of a marine board, or the Coast Guard representative to an NTSB investigation may issue a letter of presumed death after careful consideration of all evidence; this authorization may not be delegated. Copies of such letters, bearing the appropriate case number, shall be forwarded to Commandant (G-MMI-1).

G. Deck Department Casualty Checklists. Most casualties are the result of a combination of factors. To evaluate the case fully, the I.O. must obtain sufficient data to reconstruct all pertinent events leading to the casualty. Many cases actually involve a combination of casualties (e.g., a collision is followed by a cargo fire and failure of lifesaving or firefighting equipment). These casualties within casualties are not investigated or reported separately, but must be evaluated with the same thoroughness as if they had occurred independently. The sample checklists that follow apply generally to common types of casualties. They are not intended to be all inclusive; circumstances may indicate other areas that require detailed examination.

1. General Checklists. [NOTE: These elements shall be considered in every casualty investigation. Items in paragraph 3.G.2 below and the following shall be applied as appropriate.]

a. Vessel Data.

- (1) Name;
- (2) O.N.;
- (3) Operator/owner;
- (4) When/where built;
- (5) When/where last inspected (COI);
- (6) When/where last drydocked;
- (7) Load Line and other certificates;
- (8) Logs (official, engine room, deck, etc.);
- (9) Type of vessel;
- (10) Length/depth/breadth; and

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- 3.G.1.a. (11) Gross tonnage;
- b. Weather Data.
- (1) State weather prior to and at the time of the casualty;
  - (2) Wind direction and velocity;
  - (3) Sea state;
  - (4) Visibility;
  - (5) Daylight, dark, or twilight (if not apparent); and
  - (6) Sea temperature.
- c. Voyage Data.
- (1) Date and place voyage began;
  - (2) Port of last departure and next port of call;
  - (3) Amount and nature of cargo (cargo diagram);
  - (4) Draft on departure and estimated draft at the time of the casualty;
  - (5) Any significant occurrences during the voyage that may have had an effect on the casualty; and
  - (6) Position of the casualty and how determined.
- d. Human Factors. A high percentage of casualties are due to human error. However, quite frequently I.O.'s fail to document the underlying reasons why the human error occurred. To provide a better understanding of these causes, a description of the human factors should be set forth in the facts. The following guide indicates some of the factors to be investigated and included in the facts, as applicable:
- (1) Equipment design, adequacy, and performance
  - (2) Crew training and experience:
    - (a) General;
    - (b) Equipment specific;
    - (c) Environment specific;

- 3.G.1.d.(2) (d) Rules and regulations; and
- (e) Company policies;
- (3) (In)sufficiency of personnel;
- (4) Fatigue;
- (5) Use of drugs or alcohol, including prescription medication;
- (6) Physical qualifications;
- (7) Calculated risk; and
- (8) Management controls:
  - (a) Rules and regulations;
  - (b) Company policies; and
  - (c) Operational commitments.

e. Firefighting Particulars (As Appropriate).

- (1) Events Leading Up To Fire.
  - (a) Stowage and type cargo;
  - (b) Tank vents (type, arrangement, condition, flame arresters/ flame screens, pressure/vacuum (P/V) valves);
  - (c) Other casualties;
  - (d) Electrical equipment (maintenance and load); and
  - (e) Previous training of crew and supervisors (formal or informal).
- (2) Fire.
  - (a) Location;
  - (b) Type and extent;
  - (c) First report (method of detection, time);
  - (d) Alarm sounded;
  - (e) Response (crew, emergency squad, etc.);

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- 3.G.1.e.(2)
- (f) Supervision at scene;
  - (g) Cooling of surrounding spaces;
  - (h) Electrical power secured;
  - (i) Ventilation, fans, hatches, etc., of affected area closed;
  - (j) Maneuvers of vessel;
  - (k) Fire extinguishing and other equipment used;
  - (l) Protective clothing and methods used;
  - (m) Performance of equipment (failure, etc.);
  - (n) Duration of fire; and
  - (o) Failure of any material, especially if it contributes or potentially contributes to the casualty, and especially if the use of alternate materials (aluminum tank tops, aluminum or fiberglass lifeboats, valve parts, etc.) might have prevented the failure.

f. Injuries And Loss Of Life When Appropriate.

- (1) How sustained; and
- (2) Details of injuries.

2. Collisions.

- a. Fault. Very rarely does a collision occur without fault of one or both of the involved vessels. In most instances, there is a violation of the Navigation Rules, sometimes deliberately, more often because the conning officer of one vessel disregarded the rules in attempting to guess the intention of the other. To determine whether this was a factor, the I.O. should ask the conning officer the reasons for his or her actions and maneuvers particularly if the conning officer's account does not appear logical or conflicts with what would have been "prudent" under the circumstances.
- b. Diagrams. In developing the collision case, the use of diagrams is highly desirable. Each principal navigation witness should be required to draw a diagram showing the relative positions of the two vessels at the time they began navigating with respect to each other. This should be followed by similar diagrams at other important points in the witness' testimony. Each diagram should be clearly labeled (e.g., "Relative positions of the two vessels when I

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- 3.G.2. b. (cont'd) sounded the first one blast signal" or "Relative positions of the two vessels when I ordered full astern," etc.). The final diagram should show the two vessels at the time of impact.
- c. Investigative Reports. Reports of collisions should include a description of the angle of impact, speed at the time of impact, and the depth of penetration. Also, in casualties due to collision or other damage resulting in holing and flooding of compartments, where available and appropriate, the following information shall be made a part of the report:
- (1) Draft leaving port, forward and aft;
  - (2) Draft at time of casualty, forward and aft (best estimate);
  - (3) Draft after casualty, forward and aft (if appropriate);
  - (4) General location of damage;
  - (5) Compartments affected;
  - (6) Number and size of openings;
  - (7) Extent of damage: longitudinal, inboard, and vertical (information should be sufficiently detailed to define fully the extent of damage); and
  - (8) Behavior of vessel: list, trim, did vessel sink/time to sink.
- d. Navigation Equipment. Determine type, condition, and whether or not in use, as applicable:
- (1) Radar;
  - (2) LORAN;
  - (3) Radio direction finder (RDF);
  - (4) Fathometer;
  - (5) Sounding machine;
  - (6) Whistle;
  - (7) Horn;
  - (8) Running lights;
  - (9) Signal lights, signal flags;

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- 3.G.2 .d. (10) Radiotelegraph and/or radiotelephone;
- (11) Compasses (magnetic, gyro, repeaters);
- (12) Course recorder;
- (13) Rudder indicator;
- (14) Tachometer;
- (15) Chart(s) in use;
- (16) Coast Pilots, sailing directions, local instructions;
- (17) Notices to Mariners;
- (18) Company instructions;
- (19) Standing orders and night orders;
- (20) Deck and engine room bell books;
- (21) Deck and engine room logs;
- (22) Steering gear;
- (23) Auto pilot; and
- (24) Bridge to engine room signal system.
- e. Speed Data.
- (1) Type and horsepower of engine(s);
- (2) Vessel speed vs. revolutions per minute (RPM);
- (3) Vessel speed vs. engine order telegraph setting (normal, steaming, and standby);
- (4) Time required by engine room to comply with various engine orders at normal, steaming, and standby; and
- (5) Time needed to go from pertinent speed to dead in water and distance covered.
- f. Additional Speed Data. The following additional data may be necessary to support the data above:
- (1) Type of reversing gear on reciprocating engine;

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- 3.G.2.f. (2) If turbine drive, vacuum in inches;
- (3) Type of main boilers and working pressures; and
- (4) Screws (numbers, type, diameter, pitch, blades, slip).
- g. Personnel Data. All navigation witnesses should be questioned as to how long they were at the helm, on watch, or up and about prior to the casualty. This may have been a factor affecting performance of duty. (See subparagraph 3.E.3.g above.)
- h. Information At Point X. Point at which vessel starts navigating with respect to the other vessel:
- (1) Tide and current.
- (2) Course and speed:
- (a) Through water; or
- (b) Over the ground.
- (3) Time:
- (a) With zone description; or
- (b) Appropriate designation.
- (4) Distance and bearing of other vessel (how determined).
- (5) Situation.
- (6) Meeting, crossing, overtaking, or special circumstances:
- (a) How determined;
- (b) Navigation lights showing, if appropriate; and
- (c) Angle between courses of two vessels.
- (7) Navigation Rules applied.
- i. Point X To Collision.
- (1) Speed through water with times of change;
- (2) True courses steered with times of change;
- (3) Bearing of other vessel in degrees with degrees taken; how bearings were determined (radar, gyro repeater, pelorus, etc.);

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- 3.G.2.i. (4) Distances of other vessel with times: how distance determined (radar, estimate, etc.);
- (5) Whistle or other signals: times given/received, when general alarm sounded;
- (6) Steps taken to avoid or minimize collision (e.g., backing down, using anchors);
- (7) Times of changes in visibility, wind, and current, if relevant;
- (8) Changes in navigation lights displayed, if any; and
- (9) Changes of watch, if any
- (a) Times; and
- (b) Licenses or certificates held by watchstanders.

j. Use Of Radar.

- (1) Type of radar:
- (a) Year and make;
- (b) Size of scope; and
- (c) Range scales.
- (2) Operating condition (in use/when turned on).
- (3) Last serviced.
- (4) Extent of sea return on each range scale.
- (5) Qualifications of operator/other duties of operator.
- (6) Plotting:
- (a) Overlay; and
- (b) Maneuvering board.
- (7) Orientation of scope (true or relative).
- (8) Instructions for operating (manufacturer's/vessel owner's).

k. Collision.

- (1) Force of impact:

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- 3.G.2.k.(1) (a) Speed of vessels at impact; and
- (b) Depth of penetration.
- (2) Locations of impact on vessels:
  - (a) Angles at impact; and
  - (b) Damage.

1. Events After Collision.

- (1) Movement after impact:
  - (a) Action taken to give aid; and
  - (b) Assistance needed or rendered.
- (2) Secondary casualties (fire or explosion).
- (3) Abandon ship signal.
- (4) Lifesaving and firefighting equipment used/effectiveness.
- (5) Crew and passengers:
  - (a) Conduct; and
  - (b) Commendatory actions.
- (6) Temperature of water.
- (7) Material faults.
- (8) Recommendations of survivors for increased safety.

3. Heavy Weather Damage.

- a. Heavy Weather "Excuse." Because heavy weather may be used as an excuse for imprudent ship handling, the I.O. must clearly establish vessel speed and sea conditions to support a conclusion as to whether the damages resulted solely from heavy weather.
- b. Heavy Weather Casualty Checklist. In addition to the items suggested in paragraph 3.0.2 above, the following items may be pertinent:
  - (1) Weather during voyage:

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- 3.G.3.b.
- (a) Generally; and
  - (b) Specifics of wind velocity, direction, gusts, etc.
- (2) Sea and swell conditions:
- (a) Direction;
  - (b) Heights;
  - (c) Distance between crests; and
  - (d) Whether or not propeller came out of water.
- (3) Manner of maneuvering vessel:
- (a) In relation to sea; and
  - (b) Response of vessel to rudder.
- (4) Damage:
- (a) How sustained;
  - (b) Effect;
  - (c) Complete description; and
  - (d) Repairs effected.
- (5) Course and speed:
- (a) Upon encountering heavy weather; and
  - (b) At time of casualty.
- (6) Personnel on watch.
- (7) Time encountered heavy weather/casualty.

4. Groundings.

- a. Causes. Some common causes of groundings in open water include errors in navigation, misreading of charts, misjudgment of set, failure to take soundings, failure to post proper lookouts, failure to use all navigational aids, missing or inaccurate magnetic deviation tables, and failure to compare gyro and magnetic compasses. In restricted waters, common causes include reliance upon buoys to the exclusion of other means of checking position, bank suction/cushion effect, and lesser depth of water than

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- 3.G.4. a. (cont'd) anticipated due to abnormally low tides or silting. Yet other groundings can be ascribed only to calculated risk that failed.
- b. Vessel Stresses From Groundings. Groundings, regardless of cause, may subject a vessel to unusual stresses that are not readily visible. The I.O. must be alert to any indications that the vessel's seaworthiness has been adversely affected by the grounding. In this regard, the SIM should be informed of all groundings and strandings involving U.S. -inspected vessels, so that structural examinations can be arranged.
- c. Investigative Reports Of Grounding. These should include a description of the angle of impact, speed at the time of impact, and the depth of penetration. Also, in casualties due to grounding or other damage resulting in holing and flooding of compartments, where available and appropriate, the following information shall be made a part of the report:
- (1) Draft leaving port, forward and aft;
  - (2) Draft at time of casualty, forward and aft (best estimate);
  - (3) Draft after casualty, forward and aft (if appropriate);
  - (4) General location of damage;
  - (5) Compartments affected;
  - (6) Number and size of openings;
  - (7) Extent of damage: longitudinal, inboard, and vertical (information should be sufficiently detailed to define fully the extent of damage); and
  - (8) Behavior of vessel: list, trim, did vessel sink/time to sink.
- d. Grounding Checklist.
- (1) Navigation Gear. Determine type(s), condition, and whether or not in use, as appropriate.
    - (a) Radar.
    - (b) LORAN.
    - (c) RDF.
    - (d) Sounding device(s).
    - (e) Compass(es).

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- 3.G.4.d.(1)
- (f) Course recorder.
  - (g) Chart(s) used.
  - (h) Coast Pilots.
  - (i) Sailing directions:
    - (i) Local instructions; and
    - (ii) Required or suggested routing.
  - (j) Notices to Mariners.
  - (k) Standing orders and night orders.
  - (l) Bell books (deck, engine room).
  - (m) Logbooks (deck, engine room).
  - (n) Steering gear/automatic pilot.
- (2) Events Leading UP To The Grounding (Open Waters).
- (a) Last position or fix:
    - (i) Time; and
    - (ii) Subsequent lines of position (LOP's), estimated positions (EP's), and dead reckonings (DR's).
  - (b) Courses and speeds from last position:
    - (i) Times of changes; and
    - (ii) Allowances for set and drift.
  - (c) Visibility.
  - (d) Wind from last position:
    - (i) Direction; and
    - (ii) Force.
  - (e) Sea conditions from last position:
    - (i) Swells (amount and direction); and
    - (ii) Current and tide.

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- 3.G.4.d.(2)
- (f) Aids to navigation seen or heard.
  - (g) Equipment failures, if any.
  - (h) Personnel on watch:
    - (i) Deck (pilot, master, mates, lookouts, etc.); and
    - (ii) Engineroom.
  - (i) Grounding:
    - (i) Time;
    - (ii) Position (how determined); and
    - (iii) Depth.
- (3) Events Leading UP To The Grounding (Restricted Waters).
- (a) Last position(s):
    - (i) How determined; and
    - (ii) Times.
  - (b) Courses and speeds/times of changes.
  - (c) Visibility.
  - (d) Sea conditions (tide and current).
  - (e) Winds:
    - (i) Direction; and
    - (ii) Force.
  - (f) Aids to navigation seen or heard.
  - (g) Deck personnel on watch (pilot, master, mates, lookout, helmsman, etc.).
  - (h) Standby conditions set.
  - (i) Traffic.
  - (j) Equipment failures.
  - (k) Anchor(s) used.

3.G.4.d.(3) (1) The grounding:

- (i) Time;
- (ii) Position (how determined);
- (iii) Depth (stage of tide); and
- (iv) Channel (width and depth).

(4) Events After Grounding.

- (a) Part of vessel aground;
- (b) Maneuvers or method adopted to free vessel;
- (c) Assistance rendered;
- (d) Length of time aground;
- (e) Soundings of compartments;
- (f) Extent of damage to vessel and cargo;
- (g) Temporary repairs;
- (h) Temperature of water, if vessel abandoned;
- (i) Lifesaving equipment used;
- (j) Commendatory acts; and
- (k) Survivors' recommendations.

5. Foundering.

- a. Various Causes. The principal causes of foundering not preceded by collisions, groundings, or other casualties are heavy weather; structural, equipment, and material defects and failures; and shifting cargo. When heavy weather is a factor, the steps taken for the security of the vessel prior to the casualty are particularly important. On occasion, vessels have gone down without survivors. In such instances, little may ever be learned of the events leading up to the casualty. However, considerable information can be gleaned from cargo plans, manifests, past inspection and survey reports, and the testimony of persons who worked on the vessel or otherwise knew it well. When a vessel is lost without survivors, persons are often ready to volunteer hearsay evidence concerning the casualty. Such information should not be rejected out-of-hand, but should be carefully explored, as it may lead to areas in which probative evidence can be obtained.

3.G.5. b. Foundering Checklist.

- (1) Hull construction:
  - (a) Load line assignment (date of last endorsement); and
  - (b) Last drydocking.
- (2) Structure and equipment failure:
  - (a) Defects discovered before casualty;
  - (b) Previous history, if any; and
  - (c) Hatches, ventilators, tonnage opening, or other deck closures.
- (3) Condition of vessel and equipment:
  - (a) General, upon leaving port;
  - (b) Booms topped or cradled;
  - (c) Bilges, strainers, roseboxes, and bilge lines;
  - (d) Heavy weather damage prior to casualty (preventive measures and repairs); and
  - (e) Previous history of vessel casualties.
- (4) Cargo:
  - (a) Plans;
  - (b) Manifest (also, dangerous cargo);
  - (c) Details of deck stowage, dunnaging, and securing;
  - (d) Shifting; and
  - (e) Hold temperatures (refrigeration ship).
- (5) Tank soundings:
  - (a) Record; and
  - (b) Accessibility of sounding pipes.

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- 3.G.5.b. (6) Hatches:
- (a) Number;
  - (b) Type closures;
  - (c) Open or closed (strongbacks in); and
  - (d) Failure of.
- (7) Weather conditions (sea, wind, air/water temperatures):
- (a) Prior to and at time of casualty;
  - (b) Adverse reports available or received;
  - (c) Reports of other vessels in vicinity; and
  - (d) At time of abandonment;
- (8) Communications (prior to and after casualty).
- (9) Manner and method of maneuvering vessel:
- (a) Prior to casualty; and
  - (b) Assistance rendered.
- (10) Abandonment:
- (a) Chronology;
  - (b) Lifesaving equipment used; and
  - (c) Effectiveness.
- (11) Conduct of crew and passengers (commendatory actions).
6. Tank Vessel Explosions And Fires.
- a. At Sea Checklist For Petroleum Tankers.
- (1) Vessel:
- (a) Location;
  - (b) Loaded or light (ballast); and
  - (c) General characteristics of construction affecting casualty.

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- 3.G.6.a. (2) Cargo:
- (a) Type and grade;
  - (b) Dry;
  - (c) Temperatures;
  - (d) Origin of cargo; and
  - (e) Chemical description.
- (3) Fire (see subparagraph 3.G.1.e above):
- (a) Specific description of spaces affected;
  - (b) Fixed firefighting equipment (steam smothering);
  - (c) Inert gas system (IGS);
  - (d) Cathodic protection;
  - (e) Globes and guards;
  - (f) Condition of wiring (discontinued leads, etc.);
  - (g) Electrical or other spark or fire producing equipment in affected spaces;
  - (h) Watertight doors, ports, etc. (open or closed);
  - (i) Tank vents (type, arrangement, and condition; flame arresters/flame screens, P/V valves);
  - (j) Space ventilators (type and condition); and
  - (k) Spark producing devices (manually or power driven), including sources for static charges.
- (4) Warning signs posted.
- (5) Repairs and/or maintenance work in progress (gas).
- (6) Tank cleaner's equipment (lights, Butterworth equipment, etc.).
- (7) Tank tops (type and condition (open or closed)).
- (8) Crew:
- (a) Conduct; and

3.G.6.a.(8) (b) Commendatory actions.

b. In Port Checklist For Petroleum Tankers.

(1) Vessel:

- (a) Location (dock, berth, anchorage, etc.);
- (b) How moored (location and type of lines, ground tackle, etc.);
- (c) Other vessels alongside;
- (d) Loading, discharging, ballasting, etc.;
- (e) General characteristics of construction affecting casualty; and
- (f) Company's standing orders concerning safety.

(2) Communications:

- (a) Proximity of fire alarm box; and
- (b) Telephone (on dock or vessel).

(3) Cargo:

- (a) Type and grade;
- (b) Dry; and
- (c) Temperature.

(4) Fire (see subparagraph 3.G.I.e above):

- (a) Crew aboard;
- (b) Specific description of spaces affected;
- (c) Fixed firefighting equipment;
- (d) IGS;
- (e) Cathodic protection;
- (f) Globes and guards;
- (g) Condition of wiring (discontinued leads, etc.);

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- 3.G.6.b.(4)
  - (h) Watertight doors, ports, etc. (open or closed);
  - (i) Spark producing devices (manually or power driven);
  - (j) Tank vents (type, arrangement, and condition; flame arresters/flame screens, P/V screens);
  - (k) Space ventilators (type and condition);
  - (l) Tank gauger's reports; and
  - (m) IGS system properly operating (if required).
- (5) Warning signs posted.
- (6) Repairs and/or maintenance work in progress (gas).
- (7) Tank cleaner's equipment (lights, Butterworth equipment, etc.).
- (8) Tank tops:
  - (a) Type, condition (open or closed); and
  - (b) Ullage opening screen in place.
- (9) Scuppers (plugged).
- (10) Equipment on dock (trains, trucks, etc.).
- (11) Crew:
  - (a) Conduct; and
  - (b) Commendatory actions.

c. Chemical Tanker Checklist.

- (1) Vessel:
  - (a) Description of cargo area;
  - (b) Description of cargo system; and
  - (c) General condition of vessel/status of cargo tanks.
- (2) Cargo:
  - (a) Flammable;

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- 3.G.6.c.(2)
  - (b) Toxic;
  - (c) Released to atmosphere;
  - (d) Inerted/inhibited;
  - (e) Reaction with other cargoes/chemical compatibility; and
  - (f) Reaction within cargo tank.
- (3) Damage:
  - (a) Explosion/fire hazard;
  - (b) Other cargo tanks affected;
  - (c) Toxic fumes produced; and
  - (d) Unusual damage/occurrences.
- (4) Firefighting:
  - (a) Dry chemical/foam monitors/hose lines;
  - (b) Type of personnel protection;
  - (c) Personnel casualties/toxic gases; and
  - (d) Efficacy of firefighting efforts.
- (5) External damage:
  - (a) Cargo released/liquid hazard/vapor hazard;
  - (b) Cargo soluble/insoluble;
  - (c) Fish kill; and
  - (d) Persons affected.
- (6) Cause of accident:
  - (a) Collision/grounding;
  - (b) Equipment malfunction;
  - (c) Mixing of incompatible cargoes; and
  - (d) External occurrence.

- 3.G.6.c. (7) Cargo tanks:
- (a) Independent;
  - (b) Deck;
  - (c) Integral;
  - (d) Coatings;
  - (e) Materials;
  - (f) Gauging/venting system; and
  - (g) P/V valves.
- (8) Description of damage:
- (a) Tanks affected;
  - (b) Schematic of damage (diagrams useful);
  - (c) Description of explosion(s); and
  - (d) Debris pattern (size and distance).

d. Liquefied Gas Tanker Checklist.

- (1) Vessel:
- (a) Description of cargo area;
  - (b) Description of cargo system;
  - (c) General condition of vessel/status of cargo tanks; and
  - (d) Inerting of cargo containment system.
- (2) Cargo:
- (a) Flammable/toxic;
  - (b) Released to environment;
  - (c) Refrigerated/pressurized;
  - (d) Inhibited; and
  - (e) Cargo compatibility.

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- 3.G.6.d. (3) Damage:
- (a) Explosion/fire damage;
  - (b) Other cargo tanks affected;
  - (c) Toxic fumes produced;
  - (d) Estimation of deflagration/detonation; and
  - (e) Cargo spillage, vessel structural damage.
- (4) Firefighting:
- (a) Water spray system;
  - (b) Dry chemical/hose lines/fixed inerting system;
  - (c) Personnel casualties/toxic gas; and
  - (d) Efficacy of firefighting efforts.
- (5) External damage:
- (a) Cargo released/gas cloud formed;
  - (b) Cargo soluble/water pollution; and
  - (c) Persons affected.
- (6) Cause of accident:
- (a) Collision/grounding;
  - (b) Equipment malfunction
  - (c) Tank overpressurization;
  - (d) Safety relief valve; and
  - (e) External fire.
- (7) Cargo tanks:
- (a) Independent tanks: pressurized, semimembrane, membrane;
  - (b) Pressure/gravity;
  - (c) Material;

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- 3.G.6.d.(7)
  - (d) Pressure rating;
  - (e) Safety relief valves; and
  - (f) Gauging system/venting system.
- (8) Description of damage:
  - (a) Tanks affected;
  - (b) Schematic of damage (diagrams useful);
  - (c) Description of explosion(s); and
  - (d) Debris pattern/size and distance.

7. Cargo Fires And Explosions.

a. At Sea Checklist.

- (1) Vessel:
  - (a) Loaded or light; and
  - (b) General characteristics of construction affecting casualty.
- (2) Cargo:
  - (a) Stowage plans;
  - (b) Manifest (including dangerous cargo);
  - (c) Temperatures, if taken;
  - (d) Containers, method of stowage, dunnage, trimming); and
  - (e) Adjacent conditions (broken, leaking, weeping containers, etc.).
- (3) Fire (see subparagraph 3.G.1.e above):
  - (a) Specific description of space(s) affected;
  - (b) Fixed firefighting equipment (type and condition);
  - (c) Globes and guards;
  - (d) Condition or wiring (discontinued leads, etc.);

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- 3.G.7.a. (3) (e) Electrical/other spark or fire producing equipment in space; and
  - (f) Ventilators (type and condition of closures).
- (4) Repairs and/or maintenance work in progress.
- (5) Condition of bilges, roseboxes, sounding tubes, and reachrods.
- (6) Crew:
  - (a) Conduct; and
  - (b) Commendatory actions.

b. In Port Checklist.

- (1) Vessel:
  - (a) Location (dock, berth, anchorage, etc.);
  - (b) How moored (location and type of lines, ground tackle, etc.)
  - (c) Other vessels alongside or in immediate vicinity;
  - (d) Loading or unloading;
  - (e) General characteristics of construction affecting the casualty; and
  - (f) Hatches (open or closed).
- (2) Local port regulations.
- (3) Cargo:
  - (a) Plan;
  - (b) Manifest (including dangerous cargo);
  - (c) Temperatures, if taken;
  - (d) Containers, method of stowage, dunnage, trimming); and
  - (e) Adjacent conditions (broken, leaking, weeping containers etc.)
- (4) Fire (see subparagraph 3.G.1.e above):

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- 3.G.7.b.(4)
  - (a) Specific description of spaces affected;
  - (b) Fixed firefighting equipment (type and conditions);
  - (c) Standby arrangement in engine room to ensure prompt operation of fire pumps;
  - (d) Globes and guards;
  - (e) Condition of wiring (discontinued leads, etc.);
  - (f) Electrical/other spark or fire producing equipment in spaces;
  - (g) Ventilators (type and condition of closures);
  - (h) Crew/stevedoring gangs aboard; and
  - (i) Flood lights and cargo clusters.
- (5) Repairs and/or maintenance work,
- (6) Bilges, roseboxes, sounding tubes, and reachrods (condition of).
- (7) Equipment on dock (trains, trucks, etc.).
- (8) Weather (preceding and at time of fire).
- (9) Crew:
  - (a) Conduct; and
  - (b) Commendatory actions.
- (10) Communications:
  - (a) Proximity of fire alarm box; and
  - (b) Telephone (on dock or vessel).

8. Electrical Casualties. The following factors involving electrical equipment, whether or not determined to be the cause of the casualty, may be pertinent. It is essential that this information, where applicable, is included in the report so that it is properly evaluated and corrected as indicated.

- a. The name of the electrical system(s) involved and circuit designation (e.g., lifeboat winch control circuit (P-415), general alarm circuit, etc.).

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- 3.G.8. b. A statement identifying the applicable Coast Guard regulations and indicating whether or not the installation met those regulations.
- c. The nameplate data or other identifying description of the equipment the manufacturer, ratings, catalog or drawing number(s), if available, and any Coast Guard approval or third party (Underwriters Laboratories (UL), Factory Mutual (FM), etc.) listing or labeling information).
- d. A statement, insofar as ascertainable, of whether or not the overcurrent devices (circuit breakers, fuses, overload trips, etc.), functioned properly in the branch circuits and in the control circuits, and the settings or ratings of these devices.
- e. A description of the appearance of the equipment, including cables and connection boxes, after the casualty; photographs if obtainable or available. This description should include reference to the presence or absence of oil, water, or other foreign matter within boxes, housings, or other enclosures, or evidence of such matter having been present. Specific mention should be made relating to missing covers, plates, etc.
- f. A general statement concerning the degree of electrical maintenance performed on the vessel in question, as reflected by the appearance of all equipment observed, including data in the vessel's logs concerning routine tests required for certain equipment, such as emergency plants, general alarm systems, etc.
- g. Any other electrical factor that caused, possibly caused, or contributed to the casualty.
9. Electrically Caused Fires. Electrical problems often cause shipboard fires. Normally, current flows through a conductor and encounters resistance just like the friction encountered by liquid passing through a pipe. Some heat is generated by this resistance, but with a properly sized conductor, it will be dissipated. However, under some conditions, excessive heat may be generated that can cause damage. Excessive heat is generated by overloads, arcing, high or low impedance faults, high resistance (low conductivity) at poor connections, or by lack of adequate cooling or dissipation of normal heat. Conditions leading to electrically caused fires most often involve cable. With miles of cable installed throughout a large vessel, there is ample opportunity for a dangerous condition to develop. The threat of fire exists whenever the protective insulation of a wire or cable is damaged by heat, moisture, oils, corrosive materials, vibration, abrasion, or impact; and where faulty installation or operating conditions result in loose connections and splices. If a fault occurs in cables bunched together, ensuing fire spreads over the grouped cables causing severe damage to the cables and exposed equipment and material. Most vessels built since 1982 use cable that is fire propagation resistant when installed in bundles. Next to wiring, motors are the most frequent source of electrical type

3.G.9. (cont'd) ignition. Fire can result from three basic causes: electrical malfunction (faults, arcing, lighting surges), overheating (by overloading, single phasing, or inadequate ventilation), and bearing failure (by inadequate lubrication).

10. Failure Of Gear And Equipment.

a. Causes. The failure of gear and equipment aboard a vessel is sometimes combined with other causes in many types of casualties. In all casualty cases when failure of gear and equipment is involved, the proximate and contributing causes of such failures should be carefully investigated.

b. Checklist.

(1) Davits:

- (a) Number and type;
- (b) Date of last inspection;
- (c) Capacity;
- (d) Date of last test;
- (e) Falls and guys (type, condition);
- (f) Winches (type, condition); and
- (g) Safety devices (type, condition).

(2) Cargo Gear:

- (a) Booms:
  - (i) Condition;
  - (ii) Rated capacity;
  - (iii) Overloading;
  - (iv) When and how tested; and
  - (v) Two-blocked against shrouds.
- (b) Falls, guys, preventers, runners, etc.:
  - (i) Type;

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- 3.G.10.b. (2) (b) (ii) Condition;
- (iii) How rigged for lift in question; and
- (iv) Improper leads.
- (c) Winches:
- (i) Type and number; and
- (ii) Condition.
- (d) Electrical devices (including controls):
- (i) Type; and
- (ii) Condition (see paragraph 3.G.8 above).
- (e) Standing rigging (including kingposts, if involved) (condition of).
- (f) Blocks:
- (i) Type;
- (ii) Condition; and
- (iii) Maintenance schedule.
- (g) Lift handled (weight).
- (h) Stoppers, if used:
- (i) Type (materials);
- (ii) Condition; and
- (iii) How secured.
- (i) Jury rigs being used (if any).
- (j) Unguarded moving parts and steam lines.
- (3) Hatch covers and beams:
- (a) Type;
- (b) Condition; and

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- 3.G.10.b.(3) (c) Stowage (too near coaming, not secured, in way of cargo, etc.).
- (4) Personnel involved:
  - (a) Ship's crew:
    - (i) Person in charge; and
    - (ii) Other persons.
  - (b) Longshoremen.
- (5) Mooring lines:
  - (a) Type (wire rope, manila, etc.);
  - (b) Condition;
  - (c) Size;
  - (d) Number in use;
  - (e) How secured; and
  - (f) Chafing gear.
- (6) Anchors:
  - (a) Type and size; and
  - (b) Condition (including pins, shackles, etc.).
- (7) Anchor cable:
  - (a) Type and size;
  - (b) Condition;
  - (c) Length; and
  - (d) Scope.
- (8) Anchor windlass (See subparagraph 3.H.2.d.(2) below.)
- (9) Survival Equipment:
  - (a) Coast Guard approval number (if approved);

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- 3.G.10.b.(9)
- (b) Name of manufacturer (if not approved);
  - (c) Size, capacity, or model number (if not approved);
  - (d) Date of manufacture;
  - (e) General condition of the equipment, including its defects and inherent capabilities; and
  - (f) Statements by survivors concerning their experience with the equipment.

H. Engineering Casualties.

1. Qualifications Of Investigating Officers (I.O.'s). To conduct a proper investigation of an engineering casualty, the I.O. should have engineering knowledge and be familiar with the various duties of engineering personnel. If the I.O. does not have sufficient engineering knowledge, the I.O. shall, to the extent necessary, seek the counsel of properly qualified persons.
2. Checklist Of Common Casualties.
  - a. General. A checklist similar to the following sample should be used to determine causes of casualties and to gather facts necessary for a complete report. Depending on the nature of the casualty, items may be added to or deleted from the checklist as the investigation develops. Evidence uncovered during the investigation may lead to more detailed questions or a greater scope of investigation, depending upon the circumstances of each case.
  - b. Boiler Casualties.
    - (1) Safety valves:
      - (a) Description:
        - (i) Type;
        - (ii) Pressure rating; and
        - (iii) Manufacturer - Coast Guard approval data.
      - (b) Escape piping:
        - (i) Properly secured (not bearing on valve); and
        - (ii) Condition.

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- 3.H.2.b.(1)
  - (c) Seals (broken).
  - (d) Valve worked on/gagged.
  - (e) Lifting gear.
  - (f) Safety valve bodies:
    - (i) Condition; and
    - (ii) Corrosion or erosion.
  - (g) Safety valve drains:
    - (i) Condition; and
    - (ii) Plugged up.
  - (h) Defective springs.
- (2) Low water:
  - (a) Water level (all boilers):
    - (i) How determined;
    - (ii) Type reading device;
    - (iii) Condition of reading device; and
    - (iv) Last reading before low water.
  - (b) Feed pumps:
    - (i) Types;
    - (ii) Condition;
    - (iii) Capacity; and
    - (iv) Pumps in use.
  - (c) Feed piping.
  - (d) Feed stops and checks:
    - (i) Condition; and
    - (ii) Position.

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- 3.H.2.b.(2)
  - (e) Feed water regulators:
    - (i) In use; and
    - (ii) How controlled.
  - (f) Standby source of feed water available, distilled water tank (how fed to boiler).
  - (g) Type of fuel.
  - (h) Description of fuel supply system.
  - (i) Tube rupture:
    - (i) Which tubes and where; and
    - (ii) Before or after low water.
  - (j) Personnel involved:
    - (i) Responsible; and
    - (ii) Actual tending.
  - (k) Economizer:
    - (i) Condition;
    - (ii) Leaks;
    - (iii) Soot accumulations; and
    - (iv) Fire.
- (3) Flareback:
  - (a) Lighting off:
    - (i) Oil or gas accumulation;
    - (ii) How lit off; and
    - (iii) Any difficulty lighting off.
  - (b) Draft (natural or forced).
  - (c) Type blower drive (automatic or hand operation at time of casualty).

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- 3.H.2.b.(3)
- (d) Burner assembly:
    - (i) Condition of register; and
    - (ii) Choked atomizer, atomizer in burner.
  - (e) Burners:
    - (i) Number in operation; and
    - (ii) Time out of service.
  - (f) Fuel:
    - (i) Contamination, proper flash point;
    - (ii) Temperature up to firing point (proper burning temperature); and
    - (iii) Leaking into furnace.
  - (g) Other boilers in use in same uptake.
  - (h) Damages:
    - (i) Tubes;
    - (ii) Brickwork;
    - (iii) Casing; and
    - (iv) Register.
  - (i) Baffle arrangement.
  - (j) Personnel:
    - (i) Responsible;
    - (ii) Qualified; and
    - (iii) Injured.
  - (k) Fuel oil heaters, type, condition of.
  - (l) Fuel oil filters:
    - (i) Condition; and
    - (ii) By-passed.

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- 3.H.2.b. (3) (m) Combustion control system and automation features.
- (4) Leaking tubes:
- (a) Boiler operation:
    - (i) Pressures;
    - (ii) Forced; and
    - (iii) Speed of raising steam or cooling of.
  - (b) Boiler last cleaned:
    - (i) Date; and
    - (ii) Method.
  - (c) Feed water contamination:
    - (i) Evidence of oxidation;
    - (ii) Presence of oil;
    - (iii) Condition of fuel oil heater;
    - (iv) Condition of feed water heater;
    - (v) Condition of inspection tank;
    - (vi) Condition of de-aerating feed tank;
    - (vii) Scale or sediment on water side of tube; and
    - (viii) Cargo heating system (cargoes of oil, etc.).
  - (d) Tubes:
    - (i) How installed (rolled or welded);
    - (ii) Excessive or improper rolling;
    - (iii) Where leaking;
    - (iv) When installed;
    - (v) Date of last hydro; and
    - (vi) Flame impingement.

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- 3.H.2.b.(4) (e) Tube sheet:
  - (i) Condition; and
  - (ii) Blisters.
- (f) Baffles:
  - (i) Condition; and
  - (ii) Location.
- (5) Melting of fusible plugs (firetube boilers):
  - (a) Water level (level in relation to plugs).
  - (b) Plugs:
    - (i) Approved type; and
    - (ii) When installed.
  - (c) Scale or sediment.
- (6) Furnaces out of round (firetube boilers):
  - (a) Waterside:
    - (i) Condition;
    - (ii) Scale;
    - (iii) Sediment; and
    - (iv) Oil.
  - (b) Furnace:
    - (i) Previous history;
    - (ii) Impingement;
    - (iii) Ringed; and
    - (iv) Fractured.
- (7) Fire on tank tops:
  - (a) Fuel leakage:

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- 3.H.2.b.(7) (a)
  - (i) Burners;
  - (ii) Pipes; and
  - (iii) Oil manifold.
- (b) Drip pans:
  - (i) Condition; and
  - (ii) Under burners.
- (c) Oil accumulation on tank tops.
- (d) Heat radiation from boilers:
  - (i) Sufficient for ignition; and
  - (ii) Boiler furnace refractory (condition).
- (e) Fire extinguisher(s) or extinguishing system:
  - (i) Type;
  - (ii) Condition;
  - (iii) Used; and
  - (iv) Availability.
- (8) Economizer fires:
  - (a) Condition of economizer:
    - (i) Soot deposits; and
    - (ii) Condition of soot blowers.
  - (b) Stack temperature record/thermometer operating correctly.
- (9) Main steam line and stop valve (leaking joints and fractures):
  - (a) Main steam line:
    - (i) Warmed up;
    - (ii) Valve cracked or by-pass used;
    - (iii) Drained;

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- 3.H.2.b. (9) (a) (iv) Water hammer present; and  
(v) Condition of pipe hangers.  
(vi) Material specifications for piping, valves, etc.  
(b) Main steam stop valve (pressure equalized).  
(c) Gauge and instrument piping to superheater:  
(i) Condition; and  
(ii) Presence of condensate (thermal cracking).

(10) Foundations:

- (a) Cracked or deteriorated; and  
(b) Expansion plates/sliding feet.

c. Condenser Tube Leaks Or Failures.

- (1) Location of failures (body or tube ends).  
(2) Baffles:  
(a) Condition; and  
(b) Displaced or improperly installed.  
(3) Impingements of steam on tubes.  
(4) Overheated at any time. (Introducing steam without adequate cooling water.)  
(5) Failures at tube sheet:  
(a) Method of securing tubes in sheet; and  
(b) Tube ends properly expanded or packed.  
(6) Packing of tube ends allowed to dry out. (Lack of water at any time.)  
(7) Electrolysis of defective metal failures. (Tube samples obtained.)  
(8) Tubes plugged to make condenser tight.

- 3.H.2.c. (9) Density of condensate before repairs made in:
- (a) Condenser; and
  - (b) Boilers.
- (10) Boiler damages.

d. Machinery Casualties.

(1) Steering gear casualties:

- (a) Refer to Chapter 14 of Volume II of this manual.
- (b) Applicable U.S. and International Convention for the Safety of Life at Sea (SOLAS) steering gear regulations:
  - (i) Arrangement and equipment required;
  - (ii) Operational tests; and
  - (iii) Proper operation.
- (c) Equipment failure:
  - (i) Primary component that failed;
  - (ii) Cause of failure; and
  - (iii) Method of failure detection (i.e., alarms, rudder angle indicator, and tests).
- (d) Adequacy of maintenance.
- (e) Steering gear history:
  - (i) Past problems for vessel and class; and
  - (ii) Modifications to steering gear.
- (f) Operator error:
  - (i) Primary system properly aligned and operating; and
  - (ii) Use and alignment of back-up system.

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- 3.H.2.d. (2) Windlass malfunction (steam):
- (a) Brake, clutch, and reduction gears (condition).
  - (b) Reversing gear:
    - (i) Condition; and
    - (ii) Functioning properly.
  - (c) Engine valves:
    - (i) Properly set; and
    - (ii) Steam and exhaust valves open.
  - (d) Throttle:
    - (i) Condition; and
    - (ii) Sufficient steam pressure.
  - (e) Wildcat and chain locker condition (chain faked down properly).
- e. Main Engine (Reciprocating) Casualties.
- (1) Cylinder head broken (piston nut or follower studs; condition of and if loose).
  - (2) Boilers (priming).
  - (3) Cylinder condensation (amount excessive):
    - (a) Engine compounded after accident; and
    - (b) Cylinders drained before turning engine over.
  - (4) Propeller striking object:
    - (a) Blades:
      - (i) Missing;
      - (ii) Fractured; or
      - (iii) Bent.
    - (b) Main engine stopped immediately.

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- 3.H.2.e.(4)
  - (c) Vibration:
    - (i) Amount; and
    - (ii) Minimum at what RPM.
  - (d) Stern bearing type; oil or water lubricated.
  - (e) Stern gland packing condition.
  - (f) Tailshaft condition.
  - (g) Main engine thrust, line shaft bearings, and strut bearings if applicable (condition).
  - (h) Vessel operation:
    - (i) Assisted to port; and
    - (ii) Speed reduction.
- (5) Cargo handling equipment:
  - (a) Cargo pump:
    - (i) Failure; and
    - (ii) Loss of suction.
  - (b) Relief valves:
    - (i) Failure to open;
    - (ii) Failure to reseal;
    - (iii) Improper setting; and
    - (iv) Bypassed.
  - (c) Heating coils, condenser, and compressors (failure).
  - (d) Quick closing valves:
    - (i) Failure to operate;
    - (ii) Sluggish; and
    - (iii) Not fully closed.

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- 3.H.2.e.(5) (e) Alarms (high level, high pressure, and temperature):
  - (i) Failure; and
  - (ii) Bypassed.
- (f) Tank gauging equipment:
  - (i) Failure;
  - (ii) Inaccurate; and
  - (iii) Not used.

f. Main Engine (Motor) Casualties.

- (1) Cylinder heads cracked or leaking:
  - (a) Type engine/speed (slow or high).
  - (b) Heads:
    - (i) Overheated at any time; and
    - (ii) Corrosion or erosion.
  - (c) Cooling water system:
    - (i) Condition;
    - (ii) Plugged or leaking; and
    - (iii) Water permitted to freeze in head.
  - (d) Intake and exhaust valves:
    - (i) Condition; and
    - (ii) Leaking.
  - (e) Piston rings (condition).
  - (f) Cylinders:
    - (i) Condition;
    - (ii) Fouling; and
    - (iii) Excessive carbon deposits.

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- 3.H.2.f.(1) (g) Engine heated or cooled rapidly.
- (2) Cylinder liners cracked or leaking:
  - (a) Liners:
    - (i) Condition;
    - (ii) Overheated;
    - (iii) Corroded; and
    - (iv) Leaky end gaskets.
  - (b) Cooling water system:
    - (i) Condition;
    - (ii) Plugged or leaking; and
    - (iii) Water permitted to freeze.
  - (c) Piston:
    - (i) Broken rings;
    - (ii) Foreign materials present; and
    - (iii) Engine heated or cooled rapidly.
- (3) Bearings hot or burned out:
  - (a) Lubricating oil:
    - (i) Condition;
    - (ii) Loss;
    - (iii) Overheated;
    - (iv) Contaminated;
    - (v) Lube oil cooler or cylinder head/lines leaking;
    - (vi) Sight glasses (condition/location); and
    - (vii) Pressure gauges.

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- 3.H.2.f.(3)
  - (b) Lubricating oil strainers:
    - (i) Condition'
    - (ii) Plugged; and
    - (iii) Permit foreign matter to pass.
  - (c) Lubricating oil pump or pressure gauge:
    - (i) Condition; and
    - (ii) Failure.
  - (d) Bearings or crankshaft:
    - (i) Out of alignment; and
    - (ii) Misalignment due to fire, overload, heavy weather, or hull damage.
  - (e) Bearing clearance (sufficient amount).
  - (f) Low oil pressure alarm:
    - (i) Condition; and
    - (ii) Operating at time of casualty.
- (4) Crankcase explosion or fire:
  - (a) Fuel leakage to crankcase (means for measuring contamination).
  - (b) Excessive lube oil temperatures.
  - (c) Overheating or seizing of bearings, pistons, or cylinder.
  - (d) Excessive carbon deposits.
  - (e) Lubrication to bearings or cylinder wall:
    - (i) Adequate; or
    - (ii) Did it fail.
  - (f) Crankcase cover:
    - (i) Relief device;

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- 3.H.2.f.(4) (f)
  - (ii) Cover removed;
  - (iii) When removed; and
  - (iv) Did removal contribute to casualty.
- (5) Crankshaft broken, bent, or cracked:
  - (a) Present and prior condition:
    - (i) Defective metal; and
    - (ii) Cause of any previous weakening (such as a crankcase fire).
  - (b) Alignment.
  - (c) Water in cylinders.
  - (d) Excessive loading of engine.
  - (e) Lubrication failure.
  - (f) Loosening of connecting or rod bolts.
  - (g) Bearings:
    - (i) Condition; and
    - (ii) Failure or pounding before casualty.
- (6) Valves burned out or broken:
  - (a) Clearances; properly adjusted.
  - (b) Evidence of tampering with adjusting nuts (lock or adjusting nuts loosened).
  - (c) Excessive carbon deposits.
  - (d) Valve parts bent, broken or weakened:
    - (i) Stems;
    - (ii) Push rods;
    - (iii) Rocker arms; and
    - (iv) Springs.

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- 3.H.2.f.(6) (e) Chains or gears to camshaft.
  - (i) Condition; and
  - (ii) Slipped or broken.
- (7) Engine castings of foundation cracked or broken:
  - (a) Extent of damage.
  - (b) Engine:
    - (i) Heated or cooled rapidly;
    - (ii) Overheated (cause); and
    - (iii) Cooling water frozen.
  - (c) Causes:
    - (i) Explosion;
    - (ii) Hull damage; or
    - (iii) Heavy weather.
- (8) Connecting or piston rod broken or cracked:
  - (a) Rod:
    - (i) Present and prior condition;
    - (ii) Defective material;
    - (iii) Weakened by previous overheating; or
    - (iv) Source of previous overheating (such as fire).
  - (b) Water in cylinder.
  - (c) Crank or wrist pin bearing burned or pounded.

I. Investigations Of Commercial Diving Casualties. The regulations for commercial diving operations are located in 46 CFR 197. In addition to the Coast Guard, OSHA and various state administrations are concerned with commercial diving activities. See Volume I of this manual concerning OSHA's presence in commercial diving, and Volume II of this manual for further information regarding inspection policies. The best reference for general background and technical information is the U.S. Navy Diving Manual, Volumes 1 and 2 (NAVSHIPS 0994-001-9010). For further information on commercial

3.I. (cont'd) diving activities contact Commandant (G-MVI-1), FTS/commercial 8/202-267-1464. In addition, the definitions in 46 CFR 197.204 are useful. Because commercial diving activities are presently a minor aspect of the marine safety program, it is intended that the regulations and this policy in this manual be used together for maximum benefit. Neither is independently sufficient for proper conduct of a diving casualty investigation. Specific references in the regulations are noted throughout this section for further guidance.

1. Qualifications Of The Investigating Officer (I.O.). Due to the specialized nature of diving, it is helpful (though not mandatory) for diving casualties to be investigated by I.O.'s with diving experience. Such experience includes U.S. Navy training, the Level II Resident Professional Training Course "Commercial Diving Indoctrination," and training/certification as a recreational diver.
2. Decompression Sickness. There are two basic medical emergencies that require treatment by recompression: gas embolism (including several related conditions) and decompression sickness. Gas embolism is the more dangerous of the two conditions. It can occur during a brief shallow dive, even in a swimming pool, with breathing equipment. Embolisms are caused by excess gas pressure inside the lungs; they develop quickly and must be treated rapidly. An embolism is most likely to occur during an improperly executed rapid ascent, as in the case of blow up or emergency free ascent. If a diver should hold his or her breath during the ascent, the increasing gas pressure in the lungs can rupture the alveoli and lung capillaries, forcing bubbles of gas directly into the bloodstream. These bubbles may then be carried throughout the circulatory system, and will continue to expand as the ascent continues. A bubble too large to pass through the blood vessel becomes an obstruction (embolus) and blocks the flow of blood. Decompression sickness can be just as serious as an embolism, but it tends to develop gradually, sometimes over a 24-hour period and even after a routine, uneventful dive. Commonly known as "the bends," it is the result of inert gas bubbles (typically, nitrogen in compressed air systems and helium in mixed gas breathing systems) forming in the blood and body tissues. These bubbles put pressure on nerves or delicate issues and block the flow of blood to vital organs. Symptoms may range from a skin rash or mild pain in the joints and muscles, to numbness, hearing loss, and vertigo. "The bends" can result in paralysis, unconsciousness, and, in extreme cases, death.
3. Investigation Considerations.
  - a. General Questions.
    - (1) Does 46 CFR 197.202 apply? If not, do OSHA rules (29 CFR 1910) apply? If so, contact the nearest OSHA office.

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- 3.I.3.a.
- (2) What weather and water conditions existed? In addition to routine factors, water temperature, current, and visibility at depth may be crucial.
  - (3) What manual or table was used to direct the dive?
  - (4) What type of diving operation was being conducted: self-contained underwater breathing (SCUBA), surface supplied air, or mixed gas? Wet or dry suits? Heavyweight, lightweight, or other gear? What were equipment details? What other clothing was worn?
  - (5) What specific type of work was being conducted: construction, salvage, or inspection? On or near pipelines, offshore rigs, platforms, vessels?
  - (6) Was diving conducted from a shore facility, offshore platform, or vessel?
  - (7) Who were the diving supervisor and person in charge? Were they designated in writing? If not, who was designated to perform these duties? Did the persons acting in these capacities perform as required? What were they doing prior to and during the casualty (see 46 CFR 197.208, 197.210, 197.402, 197.404, 197.410, and 197.420)?
  - (8) What was the makeup of the diving team? Were the members of the dive team briefed by the supervisor? What duties were assigned to each person? What were their qualifications and prior experience?
  - (9) What types of pressure vessels for human occupancy (PVHO's) were used and how were they configured? [NOTE: Simple diagrams and/or line drawings may be of value here.]
  - (10) Was notice of the casualty made in accordance with 46 CFR 197.484, 197.486, and 197.488?
  - (11) Is there any pertinent information concerning prior diving, or the medical or working history of the deceased?
  - (12) Is there information concerning treatment, if any was rendered?
  - (13) Were there any waivers or variances applicable to the diving operation in question? If so, they must have been specific and in writing, with copies available at the dive site.

3.I.3. b. Equipment Related Questions.

- (1) Were the PVHO's in compliance with 46 CFR 197.328, 197.330, 197.332, and 197.462? Note date of construction, standards built to, and other nameplate data.
- (2) Had the required periodic tests been conducted and logged (see 46 CFR 197.450, 197.452, 197.454, 197.456, 197.458, 197.460, 197.462, 197.480, and 197.482)?
- (3) Did breathing gases meet the specifications of 46 CFR 197.340?
- (4) Did the breathing gas supply system meet the requirements of 46 CFR 197.336, 197.338, and 197.340?

c. Diving Mode Related Questions.

- (1) SCUBA (see 46 CFR 197.430):
  - (a) Within decompression limits?
  - (b) Not deeper than 130 feet?
  - (c) Required equipment available?
  - (d) Standby diver and tenders on hand?
- (2) Surface supplied air (see 46 CFR 197.432):
  - (a) Not deeper than 190 feet or more than 30 minutes' bottom time to 22 feet?
  - (b) Primary and secondary breathing air supplies working properly?
  - (c) For dives below 130 feet, had the decompression chamber been prepared for use at the dive site?
  - (d) Bell or stage used where required? Specify type and how used.
  - (e) Required equipment available?
  - (f) Standby diver and tenders in dive team?
  - (g) Details of decompression profile. Which table was used?

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- 3.I.3.c. (3) Surface supplied mixed gas (see 46 CFR 197.434):
- (a) Bell or stage used where required? Type; give details and describe use.
  - (b) Saturation dives meet requirements?
  - (c) Primary and secondary gas supplies working properly?
  - (d) Required equipment available?
  - (e) Standby diver and tenders on hand?
  - (f) Details of decompression profile. Which table was used?
- (4) Liveboat (see 46 CFR 197.436):
- (a) Was the operation conducted within the allowed parameters of environmental conditions? Details of vessel involved.
  - (b) Was the dive no deeper than 220 feet? On air? Mixed gas? What was the deepest depth if not all done at one depth? What was the time at depth?
  - (c) Was required equipment available?
  - (d) Was a standby diver available?
  - (e) Were means used to prevent the diver's hose from becoming entangled in the propellers of the vessel?
  - (f) Were operations conducted under conditions for which a variance was required?
  - (g) If a variance was issued, by which office, for which unit, and on what date?

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CHAPTER 4. FACILITY CASUALTY INVESTIGATIONS  
(TO BE DEVELOPED)

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CHAPTER 5. POLLUTION INVESTIGATIONS  
(TO BE DEVELOPED)

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CHAPTER 6. BOATING CASUALTY INVESTIGATIONS

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## CHAPTER 6. BOATING CASUALTY INVESTIGATIONS

A. Legal Authority.

1. Statutory Authority. The statutory authority for prescribing the rules and regulations for the investigation of boating accidents is found in 46 U.S.C. 6301. The regulations implementing this statute are found in 46 CFR 4.
2. Statutory Requirement To Report Boating Accident. The statutory requirement to report boating accidents is contained in 46 U.S.C. 6101. The implementing regulations, including the content of the reporting form and submittal procedures, are in 33 CFR 173-174. In summary, the owner or operator of a boat or vessel involved in a boating casualty or accident shall report the casualty or accident to a state reporting authority or, if no approved state reporting authority exists, to the Coast Guard. The report shall be made on either the Coast Guard Boating Accident Report, Form CG-3865, or on a state boating accident report form (see section 6.D below for details concerning the Coast Guard report form). Reports of violation for failure to report a boating accident should be processed under 46 U.S.C. 6103, which provides for a maximum penalty of \$1,000 against the operator. This penalty procedure applies to operators of all vessels, not merely recreational craft. Public vessels are exempt.
3. Regulatory Requirement For Casualty Reporting. Regulatory requirements for casualty reporting are found in 33 CFR 173.51-59 and 174.01-12.

B. Casualty Reporting System. The Casualty Reporting System, originally implemented under the Federal Boat Safety Act of 1971 (FBSA), is a nationwide system. This system requirement is now included under 46 U.S.C. 6101-6103. It involves the boat operator, the appropriate state agencies, and the Coast Guard. A boat operator involved in an accident is required to submit a boating accident report within a certain time period to the proper reporting authority, in most cases to a state boating agency (see section 6.D below). The person whom the operator immediately notifies is usually a local police officer. In accidents of a more serious nature, the operator is required to notify the reporting authority immediately.

1. State Action. The states may investigate and report boating accidents occurring within the territorial waters of the United States. The state agency receiving the boating accident report reviews it, indicates the cause of the accident on the report, and then forwards it to the appropriate Coast Guard district boating safety division (b) or Chief, Auxiliary, Boating and Consumer Affairs Division, Commandant (G-NAB), depending on arrangements made by the district. Through the Casualty Reporting System, the states inform the Coast Guard of any boating accident problem areas (e.g., a stability problem with a certain type of boat). If a state agency notices a problem area, it notifies the Coast Guard in writing, specifying the problem and measures instituted or recommended.

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6.B.2. Coast Guard Action. The officer in charge, marine inspection (OCMI) is responsible for the investigation of those boating fatalities occurring beyond the territorial waters of the United States for which there is no state investigation, and for all boating accidents involving commercial vessels which meet the reporting requirements of 46 CFR 4.05. The district commander and the OCMI also retain the flexibility to conduct an investigation of any boating accident when the investigation of such an accident is of particular interest for the enhancement of safety or for the public welfare. The Coast Guard receives boating accident reports from the states and uses the information from the reports, as well as additional sources of information such as narrative reports, to meet its responsibilities under the provisions now codified in Title 46 U.S.C., Chapter 43. That responsibility, expressed in its most basic form, is to promote the safety of the recreational boat, its associated equipment, and the operator and passengers. The Coast Guard also has a statutory obligation to publish statistics (see 46 U.S.C. 6102). Each year, information received through the Casualty Reporting System is compiled and published in a report entitled "Boating Statistics," Commandant Publication (COMDTPUB) P16754.1 (series).

### C. How Boating Accident Information Is Used.

1. General. The Coast Guard uses information gathered from boating accidents to:
  - a. Establish regulations and safety standards for boats and associated equipment;
  - b. Implement a program designed to spot and remedy boat defects;
  - c. Formulate an effective program to educate the recreational boater;
  - d. Update statistical information;
  - e. Determine if there is evidence of violation of any law or regulation; and
  - f. Measure the effectiveness of safety programs.
2. Boating Standards.
  - a. Authority For Standards. The FBSA authorized the Coast Guard to establish safety standards for boats and associated equipment. These provisions are now included in 46 U.S.C. 4302. In undertaking this responsibility, the Coast Guard implemented a Safety Standards Program. The primary objective of this program is to reduce the risk to the consumer from unsafe design and construction of boats and associated equipment. Boating accident information is used in this program to:

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- 6.C.2.a. (1) Develop new boat safety standards;
- (2) Monitor compliance with standards; and
- (3) Determine boat defects.
- b. Development Of Standards. With regard to new boat safety standards, accident data are screened for information that may suggest the need for standards in the areas of accident avoidance, accident recovery, and program administration. Accident avoidance is concerned with how to avoid capsizing, swamping, fire, explosions, or other types of boat casualties. Accident recovery is oriented towards keeping the boat afloat after an accident, preventing drownings, and using safety equipment, such as signal flares and fire extinguishers. Program administration involves such items as the certification of boats and display of boat labels. Compliance with standards and determination of boat defects are concerned with product assurance; that is, with making sure that the boat as manufactured is safe.
- c. Action On Defects. Boating accident information is screened for indications of defective boats or boat equipment. The nature or incidence of boating accidents, as reflected in casualty reports, may provide evidence of manufacturing defects. When a defect is suspected, it is researched thoroughly because it may have serious implications for the manufacturer. The Coast Guard has the authority to require the manufacturer to:
- (1) Notify the first purchaser of the defective boat or equipment;
- (2) Notify subsequent purchasers (if known to the manufacturer);
- (3) Notify dealers and distributors of such manufacturer to whom a boat or associated equipment was delivered; and
- (4) Correct such defect at its sole cost and expense.
- d. Impact. The boating standards program has a strong and favorable impact on safe boating. Through this program the Coast Guard can take timely, effective action based on boating accident investigations. Immediate action can be taken on boat defects through the defect notification program, and future action is possible through the issuance of a safety standard to prevent the accident from recurring. One important reason for conducting boating accident investigations is to monitor the effectiveness of, and compliance with, existing standards. The investigating officer (I.O.) should be aware of the requirements in effect, as follows:
- (1) Manufacturer's certification 33 CFR 181;
- (2) Hull identification numbers (HIN's) 33 CFR 181;

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- |          |      |                            |                   |
|----------|------|----------------------------|-------------------|
| 6.C.2.d. | (3)  | Capacity plate             | 33 CFR 183;       |
|          | (4)  | Safe powering              | 33 CFR 183;       |
|          | (5)  | Flotation                  | 33 CFR 183;       |
|          | (6)  | Backfire flame arrester    | 46 CFR 25.35;     |
|          | (7)  | Ventilation                | 33 CFR 183;       |
|          | (8)  | Navigation lights          | Navigation Rules; |
|          | (9)  | Electrical system          | 33 CFR 183;       |
|          | (10) | Fuel systems               | 33 CFR 183;       |
|          | (11) | Starting in gear           | 33 CFR 183;       |
|          | (12) | Personal Flotation Devices | 33 CFR Subpart B; |
|          | (13) | Fire Extinguishing         | 46 CFR 25.30; and |
|          | (14) | Visual Distress Signals    | 33 CFR Subpart C. |

Form CG-4849A, the Boat Safety Standards Check Off List used by Coast Guard factory inspectors, shows specific items that should be checked in determining compliance with these standards, such as manufacturers certification, safe powering, and ventilation.

[NOTE: The regulations in Title 46, Code of Federal Regulations (CFR) promulgate requirements for the operator, not the manufacturer.]

3. Boating Education. Although boating accidents can be caused by mechanical or environmental factors, most accidents are caused or aggravated by some kind of human error. Accident reports, especially the narrative report, are instrumental in identifying why these errors are made. On the basis of this information, educational guides and policies can be developed. Errors in judgment, which may lead to accidents, can be made under circumstances, such as operating the boat under harsh environmental conditions, coping with emergency situations, or maintaining the boat in proper mechanical condition. It is up to the operator of the boat to select the proper course of action when confronted by a boating problem. Decisions are too often based on inadequate boating knowledge and training. Therefore, to reduce the level of human error, education of the boating public in the skills and knowledge of safe boating is needed. A sufficiently effective and visible level of law enforcement to discourage improper and hazardous operation is also needed. The education program is concerned with safe boat operation. Safe boat operation can be analyzed in terms of the behavior displayed by the boat operator. The use of alcohol and/or

- 6.C.3. (cont'd) drugs should be considered as a behavioral factor. Since the factors that affect human behavior are made up of knowledge, emotions, and skills, boating safety education must address itself to all three areas. It cannot properly do this unless the chain of events that lead up to and result in a boating accident are known. When operator behavior is a factor in an accident, the various steps or components of such behavior must be identified, as well as the operator's reasons for such actions. The same analysis applies to an accident victim's behavior, so that the chain of events that lead to a successful rescue or survival or to a fatality, injury, or property damage can be developed and examined. Information from boating accident reports is used not only to develop Coast Guard educational and public information campaigns, but is also disseminated to other agencies and organizations involved in boating education, such as the Coast Guard Auxiliary, U.S. Power Squadrons, the American National Red Cross, and state boating authorities. Educational material based on information from accident reports reaches the boater through:
- a. Press releases;
  - b. Television and radio spots;
  - c. Correspondence courses;
  - d. Formal classes;
  - e. Boat shows and convention exhibits; and
  - f. Personal appearances before civic groups, conventions, colleges and universities, and boating interest groups.
4. Boating Statistics. The Boating Accident Report (Form CG-3865 or a state form) is an important source of information for the statistics program. The better the quality of boating accident reports received at Coast Guard Headquarters, the more valid will be the statistics generated. Another source of accident information used by the statistics program is the narrative report. One use of the narrative is for studies that require specific, detailed information not found in the Boating Accident Report. The publication "Boating Statistics," COMDTPUB P16754.1 (series), is the Coast Guard's primary boating statistical report; published each year, it has wide public distribution. Many other statistical studies are completed using data provided by boating accident information sources. These studies are included in the publication list found in section 6.I below. Abstracts of specific statistical information associated with boating accidents are available upon request from Commandant (G-NAB).
5. Boating Research And Development (R&D). The R&D Program supports the Coast Guard's effort to improve boating safety. There is an interdependence between this program and the Education and Standards Programs. For the Education and Standards Programs to accomplish their

- 6.C.5. (cont'd) tasks, they depend upon the R&D Program to perform detailed analysis on both the boat and the human factors involved in accidents. The R&D Program is dependent upon accident data. The particular information source used and the data gleaned there from depend upon the individual research project. The projects usually fall into one of the following categories:
- a. Determining the causes of accidents;
  - b. Assessing the effectiveness of the standards and education programs;  
or
  - c. Developing new standards or education techniques.
6. Boating Safety Law Enforcement. On certain occasions, boating accident information may be gathered to support evidence of violation of a law or regulation. Violation reports resulting in warnings or penalties help contribute to the prevention of subsequent boating accidents. These violation reports, however, should not be confused with investigations that are made to determine cause. If a state prohibits use of its boating accident report in any action or proceeding against a person, the Coast Guard may not use it either (see 46 U.S.C. 6102(b)).
- D. Preparing And Submitting Boating Accident Reports And Investigations. This section contains explanations of the Boating Accident Report, Form CG-3865 the Narrative Report, the Simplified Narrative Report, Form CG-4885, and Addendum, Form CG-4885A, RCS-G-NAB-15007, and administrative correspondence on a problem area in boating safety.
1. Submittal Process. As detailed in 33 CFR 173, the boating accident report must be submitted to the reporting authority where the accident occurred or, if the accident occurred on the high seas, to the state where the vessel number was issued. If the vessel has no number, the report is submitted to the state where the vessel is principally used. If no state reporting authority exists, the report should be submitted to the OCMI nearest the place where the accident occurred, or nearest the port of first arrival after the accident. When the operator has not survived the casualty or is otherwise incapable of making the report, the report shall be completed and signed by the owner of the vessel. If in such cases the operator was also the owner, or when neither is capable of completing the report, the form may be completed and signed by the I.O. If someone other than the operator completes and signs the form, adequate notation must be made on the form as to the reason. If there is no state or local investigation, the district commander (b) or Commandant (G-NAB) will forward a copy of the report completed by the Coast Guard I.O. to the state reporting authority.
  2. Boating Accident Report. Form CG-3865.
    - a. Completing The Report. The Boating Accident Report form is simple and basically self-explanatory. An example of a completed boating accident report is shown in Figure 6-1. There are a few items or

SAMPLE BOATING ACCIDENT REPORT

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-3865 (Rev. 1/88)		<b>BOATING ACCIDENT REPORT</b>			FORM APPROVED OMB NO. 2115-0010		
The operator/owner of a vessel used for recreational purposes is required to file a report in writing whenever an accident results in: loss of life or disappearance from a vessel; an injury which requires medical treatment beyond first aid; or property damage in excess of \$200 or complete loss of the vessel. Reports in death and injury cases must be submitted within 48 hours. Reports in other cases must be submitted within 10 days. Reports must be submitted to the reporting authority in the State where the accident occurred. This form is provided to assist the operator in filing the required written report.							
COMPLETE ALL BLOCKS. (indicate those not applicable by "NA")							
NAME AND ADDRESS OF OPERATOR Blue Beard 00 Deadman's Way, Boatville N.B. 00000		AGE OF OPERATOR 00 DATE OF BIRTH 00/00/00		OPERATOR'S EXPERIENCE This type of boat      Other Boat Operating Exp. [ ] Under 20 Hours      [x] Under 20 Hours [x] 20 to 100 Hours      [ ] 20 to 100 Hours [ ] 100 to 500 Hours      [ ] 100 to 500 Hours [ ] Over 500 Hours      [ ] Over 500 Hours			
OPERATOR TELEPHONE NUMBER (000) 000-0000		OWNER TELEPHONE NO. (000) 000-0000					
NAME AND ADDRESS OF OWNER Wild Bill 00 Vicious Circle, Boatville N. B. 00000		RENTED BOAT? [ ] YES [x] NO	NUMBER OF PERSONS ON BOARD 2	FORMAL INSTRUCTION IN BOATING SAFETY [ ] None [ ] State [ ] U.S. Power Squadrons [ ] USCG Auxiliary [ ] American Red Cross [x] Other (Specify)			
VESSEL NO. 1 (this vessel)							
BOAT REGISTR. NO. NB 000C AB	BOAT NAME Bilge Water	BOAT MAKE Loch Ness	BOAT MODEL Henry Dun	MFR. HULL IDENTIFICATION NO. AAA 000000000			
TYPE OF BOAT [x] Open Motorboat [ ] Cabin Motorboat [ ] Auxiliary Sail [ ] Sail (only) [ ] Rowboat [ ] Canoe [ ] Other (Specify)	HULL MATERIAL [ ] Wood [x] Aluminum [ ] Steel [ ] Fiberglass [ ] Rubber/vinyl [ ] Other (Specify)	ENGINE [x] Outboard [ ] Inboard gasoline [ ] Inboard diesel [ ] Inboard-outdrive [ ] Jet [ ] Other (Specify)	PROPULSION No. of engines 1 Horsepower (total) 30 Type of fuel Gasoline	CONSTRUCTION Length 12' Year built (boat) 1970			
Has boat had a Safety Examination? [ ] YES [ ] NO For current year? [ ] YES [ ] NO Year _____ Indicate whether [ ] USCG Auxiliary Courtesy Manne Exam. [ ] State/local examination [ ] Other							
ACCIDENT DATA							
DATE OF ACCIDENT 4 July 1986		TIME 1000 am pm	NAME OF BODY OF WATER Lake No. Accident	LOCATION (Give location precisely) 50 Yards from West Bank		Lat: _____ Long: _____	
STATE New Noat	NEAREST CITY OR TOWN Boatville		COUNTY King David				
WEATHER [x] Clear [ ] Rain [ ] Cloudy [ ] Snow [ ] Fog [ ] Hazy	WATER CONDITIONS [ ] Calm (waves less than 6") [ ] Choppy (waves 6" to 2') [ ] Rough (waves 2' to 6") [ ] Very Rough (greater than 6") [ ] Strong Current	TEMPERATURE (Estimate) Air 50 °F Water 48 °F	WIND [ ] None [ ] Light (0 - 6 mph) [x] Moderate (7 - 14 mph) [ ] Strong (15 - 25 mph) [ ] Storm (Over 25 mph)	VISIBILITY Day Night [x] Good [ ] [ ] Fair [ ] [ ] Poor [ ]			
OPERATION AT TIME OF ACCIDENT (Check all applicable) [ ] Commercial Activity [ ] Cruising [ ] Maneuvering [x] Approaching Dock [ ] Leaving Dock [ ] Water Skiing [ ] Racing [ ] Towing [ ] Other (Specify)		TYPE OF ACCIDENT [ ] Drifting [ ] At Anchor [ ] Tied to Dock [ ] Fueling [ ] Fishing [ ] Hunting [ ] Skin Diving/ Swimming [ ] Being Towed [ ] Grounding [ ] Capsizing [x] Flooding [x] Sinking [ ] Fire or Explosion (Fuel) [ ] Fire or Explosion (Other than fuel) [ ] Fallen Skier [ ] Collision with Vessel [ ] Collision with Fixed Object [ ] Collision with Floating Object [ ] Falls Overboard [ ] Falls in Boat [ ] Hit By Boat or Propeller [ ] Other (Specify)		WHAT IN YOUR OPINION CONTRIBUTED TO THE ACCIDENT? (Check all applicable) [ ] Weather [ ] Excessive Speed [ ] No Proper Lookout [ ] Restricted Vision [ ] Overloading [ ] Improper Loading [ ] Hazardous Waters [ ] Alcohol use [ ] Drug Use [ ] Fault of Hull [ ] Fault of Machinery [ ] Fault of Equipment [ ] Operator Inexperience [ ] Operator Inattention [x] Other (Specify) Overpowering			
PERSONAL FLOTATION DEVICES (PFD'S) Was the boat adequately equipped with COAST GUARD APPROVED FLOTATION DEVICES? [ ] Yes [x] No Were they accessible? [ ] Yes [ ] No Were they serviceable? [ ] Yes [ ] No Were they used by survivors? [ ] Yes [ ] No What Type? [ ] I [ ] II [ ] III [ ] IV [ ] V (specify) _____ Were PFD's properly Used? [ ] Yes [ ] No Adjusted? [ ] Yes [ ] No Sized? [ ] Yes [ ] No			PROPERTY DAMAGE Estimated amount This Boat \$500.00 Other Boat \$ Other Property \$	FIRE EXTINGUISHERS Were they used? (If yes, list Type(s) and number used.) [ ] Yes [ ] No [ ] NA Types:			
Include any comments on PFD's under ACCIDENT DESCRIPTION on other side of form			DESCRIBE PROPERTY DAMAGE  NAME AND ADDRESS OF OWNER OF DAMAGED PROPERTY Wild Bill 00 Vicious Circle, Boatville N.B.				

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If more than 3 fatalities and/or injuries, attach additional form(s).					
DECEASED					
NAME Blue Beard	ADDRESS 00 Deadman's Way Boatville, New Boat	DATE OF BIRTH 0/0/00	WAS VICTIM? <input type="checkbox"/> Swimmer <input checked="" type="checkbox"/> Non Swimmer	DEATH CAUSED BY <input checked="" type="checkbox"/> Drowning <input type="checkbox"/> Other <input type="checkbox"/> DISAPPEARANCE	WAS PFD WORN? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No What Type?
NAME Wild Bill	ADDRESS 00 Vicious Circle Boatsville, New Boat	DATE OF BIRTH 00/00/00	WAS VICTIM? <input type="checkbox"/> Swimmer <input checked="" type="checkbox"/> Non Swimmer	DEATH CAUSED BY <input checked="" type="checkbox"/> Drowning <input type="checkbox"/> Other <input type="checkbox"/> DISAPPEARANCE	WAS PFD WORN? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No What Type?
NAME	ADDRESS	DATE OF BIRTH	WAS VICTIM? <input type="checkbox"/> Swimmer <input type="checkbox"/> Non Swimmer	DEATH CAUSED BY <input type="checkbox"/> Drowning <input type="checkbox"/> Other <input type="checkbox"/> DISAPPEARANCE	WAS PFD WORN? <input type="checkbox"/> Yes <input type="checkbox"/> No What Type?
INJURED					
NAME	ADDRESS	DATE OF BIRTH	NATURE OF INJURY	MEDICAL TREATMENT <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAME	ADDRESS	DATE OF BIRTH	NATURE OF INJURY	MEDICAL TREATMENT <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAME	ADDRESS	DATE OF BIRTH	NATURE OF INJURY	MEDICAL TREATMENT <input type="checkbox"/> Yes <input type="checkbox"/> No	
ACCIDENT DESCRIPTION					
DESCRIBE WHAT HAPPENED (Sequence of events. Include Failure of Equipment. If diagram is needed attach separately. Continue on additional sheets if necessary. Include any information regarding the involvement of alcohol and/or drugs in causing or contributing to the accident. Include any descriptive information about the use of PFD's.)					
VESSEL NO. 2 (if more than 2 vessels, attach additional form(s)).					
Name of Operator	Address		Boat Number		
Telephone Number			Boat Name		
Name of Owner	Address				
WITNESSES					
Name Suzy Creamcheese	Address 00 Scuttlebut Way Boatsville, N. B. 00000		Telephone Number (000) 000-0000		
Name	Address		Telephone Number		
Name	Address		Telephone Number		
PERSON COMPLETING REPORT					
SIGNATURE <i>Sgt. Heep A. Trouble</i> Sgt. Heep A. Trouble	Address King David County Police Boatsville, N. B. 00000		Telephone Number (000) 000-0000		
QUALIFICATION (Check One) <input type="checkbox"/> Operator <input type="checkbox"/> Owner <input type="checkbox"/> Investigator <input type="checkbox"/> Other			Date Submitted 0/0/88		
(do not use) - FOR REPORTING AUTHORITY REVIEW (use agency date stamp)					
Causes based on (check one) <input checked="" type="checkbox"/> This report <input type="checkbox"/> Investigation and this report <input type="checkbox"/> Investigation <input type="checkbox"/> Could not be determined	Name of Reviewing Office New Boat Toad and Frog Dept.		Date Received 0/0/88		
Primary Cause of Accident Overpowering	Secondary Cause of Accident Dangerous Maneuver		Reviewed By Sharp Cookie		

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6.D.2. a. (cont'd) areas on the form that may cause problems. These are explained below:

- (1) Include zip code and phone number on all addresses. If the operator is residing at a vacation residence, give both vacation and permanent addresses. Specify the permanent mailing address of the owner.
- (2) A borrowed boat is not a rented boat. In such cases, the RENTED BOAT block should be checked "No."
- (3) The number of persons aboard shall include skiers being towed at the time of the accident.
- (4) If the boat is documented, place the official number (O.N.) in the BOAT NUMBER block. All boats equipped with propulsion machinery must be numbered or documented. Ensure that the boat or documentation number has not expired.
- (5) If boat is unnamed, indicate this fact in the BOAT NAME block with "N/A."
- (6) The boat model is usually found on the boat "Certification Label."
- (7) The hull identification number is a 12-digit number assigned by the manufacturer, and is usually permanently affixed to the outboard side of the transom.
- (8) For TYPE OF BOAT, "Other" includes kayaks, hydroplanes, houseboats, rafts, and inflatables.
- (9) The hull material, type of engine, and length are listed on the Certificate of Number. When measuring the length of a boat, do not include the bumpkins, motor, or other extensions.
- (10) Indicate the location using known landmarks or latitude/longitude.
- (11) Fog greatly reduces visibility. Haze affects clarity of vision and subdues colors, but does not greatly reduce visibility.
- (12) In several blocks (OPERATION AT TIME OF ACCIDENT; TYPE OF ACCIDENT; WHAT, IN YOUR OPINION, CAUSED THE ACCIDENT; or WATER CONDITIONS) more than one block may be checked (consider primary cause and contributing factors or secondary causes).
- (13) Estimates of the temperature of both the air and water are important in determining possible immersion hypothermia.

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- 6.D.2.a. (14) In DAMAGE blocks, include damage as a result of the boat being towed or moved after the accident.  
[NOTE: Paragraph 6.D.3 below is a list of accident causes that may be used in the report.]

- b. Submittal Of The Report. Normally, the report will be submitted by the operator to the state. The state will then forward the report to district commander (b) or Commandant (G-NAB). However, the I.O. may be in a position to assist in completing and forwarding the report, or may be required to complete it entirely. The I.O. must ensure the accuracy of the report as prepared by the operator by reviewing and checking the information given and, if necessary, correcting wrong information or filling in empty blocks. In making such changes, the I.O. should take care that the information is not obscured and that all corrections are initialed. It is also important to attach all necessary amplifying information to the report, including the I.O.'s and witnesses' statements, photographs, blueprints, manufacturer's data, maps or charts, or any other material that may clarify information. The I.O. should ensure that each operator involved in an accident is aware of the requirement to submit a boating accident report, and should have the necessary forms available.
3. List Of Accident Causes. The causes listed below were developed for the Motorboat Accident Computer System. They can be used to supplement the causes on the Simplified Narrative Report, Form CG-4885, the Boating Accident Report, Form CG-3865, or a state boating accident report form.

a. Capsizing, Swamping, Sinking, And Flooding.

(1) Load related:

- (a) Overloading;
- (b) Improper weight distribution;
- (c) Standing or sitting on gunwale, bow, or transom;
- (d) Movement of passengers; or
- (e) Hoisting or lowering anchor.

(2) Free water in boat:

- (a) Water entered vessel over transom, gunwale, or bow; or
- (b) Water entered vessel through hull via drains/vents.

- 6.D.3.a. (3) Miscellaneous:
  - (a) Force of wake or wave striking vessel;
  - (b) Loss of stability during high speed maneuver; or
  - (c) Loss of stability in strong current, white water rapids.
- b. Fire And Explosion.
  - (1) Equipment failure:
    - (a) Fuel system (e.g., leaky fuel lines);
    - (b) Electrical system; or
    - (c) Auxiliary equipment (e.g., stoves, refrigerator, or heater).
  - (2) Miscellaneous:
    - (a) Spilled fuel; or
    - (b) Misuse of source of heat (e.g., lanterns, heaters, or stoves).
- c. Falls Overboard/Within Boat.
  - (1) Falls during sharp turns or acceleration;
  - (2) Wave or wake striking vessel;
  - (3) Falls while moving, standing, or leaning over edge of boat;
  - (4) Sitting on gunwale, transom, bow or back of seat; or
  - (5) Slippery surface.
- d. Collisions, Groundings, Struck By Boat Or Propeller.
  - (1) Failure to detect hazard:
    - (a) Improper lookout;
    - (b) Poor visibility (e.g., rain, fog, or darkness);
    - (c) View obstructed (e.g., bow in air, sun glare, or bright lights);

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- 6.D.3.d.(1) (d) Submerged object (e.g., logs, rocks, swimmer, or diver); or
- (e) Operator inattention.
- (2) Miscellaneous:
  - (a) Equipment failure (e.g., engine, steering, shift, or throttle);
  - (b) Navigation Rules violation;
  - (c) Speeding;
  - (d) Improper navigation lights;
  - (e) Starting in gear;
  - (f) Navigational error;
  - (g) Other vessel/operator at fault;
  - (h) Strong current or rough water;
  - (i) Seat breaking loose;
  - (j) Overpowered boat;
  - (k) Bridge tender error;
  - (l) Demasting;
  - (m) Inexperience of operator;
  - (n) Collision with sailboard; or
  - (o) Unfamiliarity with waters.

Many of the causes listed above (e.g., spilled fuel, operator inattention, or water entered vessel through hull via drains/vents) do not fully answer "Why" and must be further explained. For example, operator inattention may have caused an accident, but why was the operator inattentive? The answer may be fatigue, intoxication, or impairment from alcohol and/or drug use, noise level in the boat, or extreme weather. In all cases, the root cause of the accident must be identified.

4. Processing The Boating Accident Report.

- a. Checking Forms For Completeness. All boating accident report forms submitted to the Coast Guard must be checked by Commandant (G-NAB) for completeness, as well as the need for future investigative action. Indications of safety defects or standards violations

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- 6.D.4. a. (cont'd) should trigger further action. Reasonable effort should be made to have the report completed before forwarding. In this connection, the telephone number of the person making the report can be used to verify and/or obtain information.
- b. Transcribing Letter Reports To Form CG-3865. In cases where state reporting authority exists, and when a report is received in letter form, the information is transcribed onto Form CG-3865. In these cases, the form shall be signed by the I.O. transcribing the information. The I.O. shall make a notation on the form identifying the source of the information and attach any original letter reports.
- c. Logs And Year-End Reporting. Each district commander and OCMI shall maintain a log or other record of boating fatality cases that require further investigation or action. This procedure ensures that the Coast Guard will investigate all such accidents under its jurisdiction in a timely manner. The OCMI shall forward a letter report via the district commander (b) to Commandant (G-NAB) by 1 February of each year, listing all recreational boating fatality investigations pending at the end of the calendar year, regardless of the status of the investigations.
- d. Source Of Information Not To Be Identified. Under 46 U.S.C. 6102(b), if a person provides information regarding a boating accident pursuant to a state law that guarantees against public disclosure of the information, the Coast Guard must observe confidentiality upon receipt of the accident report. As a policy matter, if the source of information requests that anonymity be maintained, the identity of the individual and the contents of the report will be "unavailable for public disclosure." This restriction is designed to encourage public cooperation in casualty investigations. If the source of information, whether or not submitted in writing, has requested that the source not be divulged, then that request must be respected. See COMDTINST M5260.2 (series) regarding pledge of confidence.
- e. Approval And Release Of Investigative Reports. The "investigative report" is the I.O.'s complete report of findings of fact, conclusions, and recommendations, together with the final action by the Commandant in cases involving loss of life. The investigative report is considered complete in cases not involving loss of life upon action by the district commander. The original investigative report with "action by the district commander" is then forwarded to Commandant (G-NAB). Copies of all boating accident reports received by the district commander shall be retained for 3 years. Freedom of Information Act (FOIA) requests for copies of the investigative report may be made to the district commander (dl) or Commandant (G-TIS), and will be processed in accordance with COMDTINST M5260.2 (series).

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- 6.D.4. f. Relation Of Report To Penalty Action. Civil penalty proceedings against the operator or owner of a recreational vessel involved in an accident, who files an accident report with a state agency, shall not be based solely on that accident report. In no case should such an accident report be made a part of the penalty assessment file (see Volume 1 of this manual for penalty assessment procedures).
5. Forwarding Boating Accident Reports To The OCMI. Where the district elects to receive boating accident reports (see subparagraph 6.D.6.a below) upon receipt of a Coast Guard Boating Accident Report, Form CG-3865, a state form, or a boating accident report from another source, the district (b) personnel shall check each report to determine the location of the casualty. A copy of the report shall be immediately forwarded to the appropriate OCMI, with a letter of transmittal stating the reason(s) why it is being forwarded if the accident involves a boating fatality and falls within the following categories:
- a. The accident is one for which the district commander has used his discretion to require an investigation.
  - b. The accident involved a commercial vessel (see chapter 3 of this volume).
  - c. The accident has occurred beyond U.S. territorial waters, and a state or local investigation will not be conducted.
6. Forwarding Boating Accident Reports To Headquarters.
- a. District To Forward Within 10 Working Days. At district option, boating accident reports may be forwarded to Commandant (G-NAB) for processing. Districts may elect to receive reports and investigations from the states to preserve the integrity of state to district relationships, improve coordination of CG/state recreational boating safety (RBS) activities, or to allow rapid initiation of investigative action. Where a district elects to advise states to forward boating accident reports and reports of investigation directly to Headquarters, and further investigation of a fatality is needed, Commandant (G-NAB) will forward state materials to the OCMI for determination of jurisdiction and initiation of investigation. Jurisdictional determination by waters (i.e., exclusive state, joint, or high seas) will not be done for nonfatal accidents. State determinations are accepted. Where the district commander elects to receive boating accident reports, the district (b) shall process boating accident reports and forward them to Commandant (G-NAB) within 10 working days of receipt. Before forwarding, each fatal report shall be stamped to indicate jurisdiction (U.S. navigable waters, state waters, or high seas); the reporting category (commercial, numbered commercial, nonreportable, or nonchargeable); and the status (Coast Guard investigation pends, or no Coast Guard action necessary). Some examples of chargeable boating accidents are:

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- 6.D.6.a. (1) A sailboat capsizes; in righting the sailboat, the person suffers a heart attack and dies.
- (2) An oar or other item is lost from a vessel, and a person drowns or dies in an attempt to retrieve it.
- (3) A person is injured, burned, or dies from exposure or immersion resulting from an accident that involves the vessel or its appendages, where the vessel or its appendages contributed to the accident or casualty.
- (4) A person dies or is injured, or property damage results, from any occurrence or incident that was caused by or aggravated by the vessel, its equipment, or appendages.
- (5) A fire, explosion, sinking, or other occurrence involving a vessel if the vessel, its installed or associated equipment or appendages failed, malfunctioned, or otherwise caused or contributed to the accident or casualty.
- b. Year-End Reporting Of Pending Investigations. Annual recreational boating accident statistics are based upon cases reported to the Coast Guard during the calendar year. The OCMI shall review pending accident investigations at the end of each calendar year to ensure that Form CG-3865 or a state form has been completed and submitted for each boating fatality that has a pending investigation. Usually, the OCMI will receive a copy of the Boating Accident Report from the district commander (b). If the Boating Accident Report has not been received, the I.O. should submit one based on available information. These Boating Accident Reports shall be forwarded to the district commander (b) or Headquarters by 1 February of each year.
- c. Nonchargeable Accidents. These are accidents that fall within the reporting criteria, but could not have been prevented or their effects mitigated by any safe boating program (i.e., by safe boating courses, public information campaigns, boat construction standards, or equipment standards).
7. Investigations And Reports Not Classified As Boating Accidents. The Commandant does not require or desire the submittal of reports pertaining to marine casualties or accidents unless they fall under the classifications in either 46 CFR 4.05-1 or 33 CFR 173.55. For numbered commercial and recreational vessels, accidents must be reported that result in:
- a. Death or injury requiring medical treatment beyond first aid, or disappearance in a manner that indicates death or injury; or
- b. Property damage of over \$200.

- E. Boating Accident Narrative Report. The narrative report is the primary vehicle for communicating boating accident information. Its basis is found in 46 CFR 4.07, and follows the same format as for marine casualty investigations as explained in chapter 3 of this volume. It should be in narrative form and consist of Findings of Fact, Conclusions, and Recommendations.
1. Considerations. Completion of the narrative report is both difficult and time consuming. Figure 6-2 provides a guide to assist the I.O. in completing a narrative report. The guide is in the proper format of the narrative, as specified in chapter 3 of this volume, and includes all items required to be in a regular narrative. The narrative can essentially be completed by filling out the guide so that it may be submitted directly to the typist for final typing. Most of the guide is self-explanatory; it is merely a matter of filling in the blanks. The most difficult part is composing the narrative paragraphs in the Findings of Fact section. In many narratives, this section ends up as a jumbled sequence of events and missing or incomplete facts. This generally results from failure to organize the facts into a logical sequence of events prior to writing the report. The method developed in the guide to enable the I.O. to organize the facts prior to writing is the CAUSE and EVENT diagrams. CAUSE and EVENT diagrams can be found following Paragraph 4 in the "Findings of Fact" section of the guide. The main objective of the diagram is to place the EVENTS of the accident in a proper, logical sequence and then to modify those events with the appropriate CAUSES. On the diagram, EVENTS are placed in the boxes or rectangles. Notice the arrows going from one box to the next, indicating a chain of events of the step by step process of the accident. Above and below each box are several ellipses. The CAUSES or FACTS of the EVENT are placed in the ellipses. Arrows should be drawn between the ellipses and the event boxes to show which EVENTS are being modified. In some cases, usually at a crucial EVENT, there may be so many CAUSES modifying the EVENT that it becomes necessary to skip an event box to have enough ellipses in which to place the CAUSES. Also, the diagrams are broken up into three time frames: BEFORE, DURING, and AFTER the accident. This will help keep the events in perspective. Below each diagram are the paragraphs that correspond to that diagram. Each paragraph presents one EVENT and its modifying CAUSES or FACTS.
  2. Additional Recommendations.
    - a. Ensure that the narrative is securely bound together to prevent loss of material.
    - b. Send the report to Commandant (G-NAB) via the chain of command, including copies for the appropriate commands and the National Transportation Safety Board (NTSB).

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FIGURE 6-2

SAMPLE GUIDE FOR NARRATIVE REPORTS

(Instructions to typists: do not type items in parenthesis)

(File no.) . 16782

(Date) 4 September 1988

From: Investigating Officer  
To : Commandant (G-NAB)

Via : (1) CO, USCG, Marine Safety/Inspection Office, Boatville  
(2) Commander, Zero Coast Guard District (b)

Subj: *Motorboat,*                      *Carefully Constructed,*                      *NB 0000 AB*  
(vessel type)                                      (vessel name)                                      (vessel number)

*flooded, 300 yards from west bank of Lake No Accident.*  
(type casualty)                                      (location)                                      (body of water)

*New Boat, on 4 July 1988 with loss of life.*  
(State)                                      (date)

Findings of Fact

1. *At approximately 1000 on 4 July 1988,*  
(when)  
  
*motorboat, Carefully Constructed*  
(what)  
  
*flooded, momentarily sank, and then resurfaced*  
(type casualty)  
  
*300 yards from the west bank of Lake No Accident, Boatville, New Boat.*  
(where)  
  
*One of the three persons on board, Rotten Ending, drowned*  
(results)  
  
*as a result of this casualty.*  
(results)

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FIGURE 6-2 (cont'd)

2. Boat and equipment data:

a. General data:

(1)	name	<i>Carefully Constructed</i>
(2)	number	<i>NB 0000 AB</i>
(3)	manufacturer	<i>Obey Standards Corp</i>
(4)	manufacturer HIN	<i>OBS 1234 0474</i>
(5)	type	<i>outboard</i>
(6)	width	<i>5 ft. 4 in.</i>
(7)	length	<i>18 ft.</i>
(8)	depth amidships	<i>1 ft. 3 in.</i>
(9)	horsepower	<i>60 h.p.</i>
(10)	propulsion	<i>outboard engine</i>
(11)	fuel	<i>gasoline</i>
(12)	hull construction	<i>wood</i>
(13)	year built	<i>1984</i>
(14)	lifesaving equipment	<i>two buoyant cushions</i>
(15)	fire extinguishing equipment	<i>none</i>
(16)	owner	<i>Rotten Ending</i>

b. Additional data:

*(1)..The outboard engine was a 1976 Bicentennial Special. It has a 15 in. lower shaft unit. In order for the propeller to be under the water surface the operator had to modify the transom by cutting away the motorwell, reducing the freeboard from 4 ft. to 1 ft. 3 in.*

*(2)..The two buoyant cushions were manufactured by the body Float Corp. They were model ABC, Coast Guard approval number 000.000/000/0.*

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FIGURE 6-2 (cont'd)

(3)..The boat had not been examined by the Coast Guard, Coast Guard Auxiliary, or other civil authorities.

(4)..In a flooded condition the boat was upside down on the surface with approximately 4 ft. of the bow above the surface.

3. Personnel data:

a. General data:

(1) name	<i>Rotten Ending</i>
(2) home address	<i>Boatville, New Boat</i>
(3) telephone number	<i>(000) 000-000</i>
(4) approximate weight	<i>000 lbs.</i>
(5) boating experience	<i>20 hours (this boat)</i>
(6) boating safety training	<i>none</i>
(7) nature and extent of injuries	<i>death by drowning</i>
(8) age	<i>00</i>
(9) position (status) in boat	<i>operator</i>
(10) disposition of body	<i>Davy Jones Mortuary</i>
(11) next of kin if deceased	<i>A. B. Ending (father)</i>

b. Additional data:

(1) Below is the information on the two other POB. It is in the same format as above. It is included because of the injurious effects received from immersion hypothermia.

1 Hurricane Hodge	1 Scratchy Beard
2 Boatville, New Boat	2 Boatville, New Boat
3 (000) 000-0000	3 (000) 000-0000
4 0000 lbs.	4 0000 lbs.
6 completed Skipper's Course	5 10 hours (this boat)
7 minor scratches and bruises severe exposure sickness	7 minor scratches and bruises severe exposure sickness
8 00	8 00
9 passenger	9 passenger

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FIGURE 6-2 (cont'd)

(2) *The physical condition of the three persons on board was good and each of them could swim.*

(3) *The three POB were attired thus:*

a. *Hurricane Hodge -- Slacks, shirt, sweatshirt, insulated ski jacket, moccasins.*

b. *Rotten Ending -- Slacks, shirt, windbreaker, wool-lined boots ankle height.*

c. *Scratchy Beard -- Long underwear, slacks, shirt, windbreaker, hat with ear flaps, low quarter shoes?*

4. Weather/sea data:

a. General data:

(1) weather conditions	<i>clear</i>
(2) water conditions	<i>NW seas, 3-4 ft.</i>
(3) visibility	<i>clear/10 miles</i>
(4) estimated air temp.	<i>56 deg. F</i>
(5) estimated water temp.	<i>48 deg. F</i>
(6) weather forecasts available and media of forecasts	<i>USWB forecast local radio stations</i>
(7) weather forecasts received by operator and source/media of forecasts	<i>not sought or known by operator</i>

b. Specific data:

(1) *There was no current in the water.*

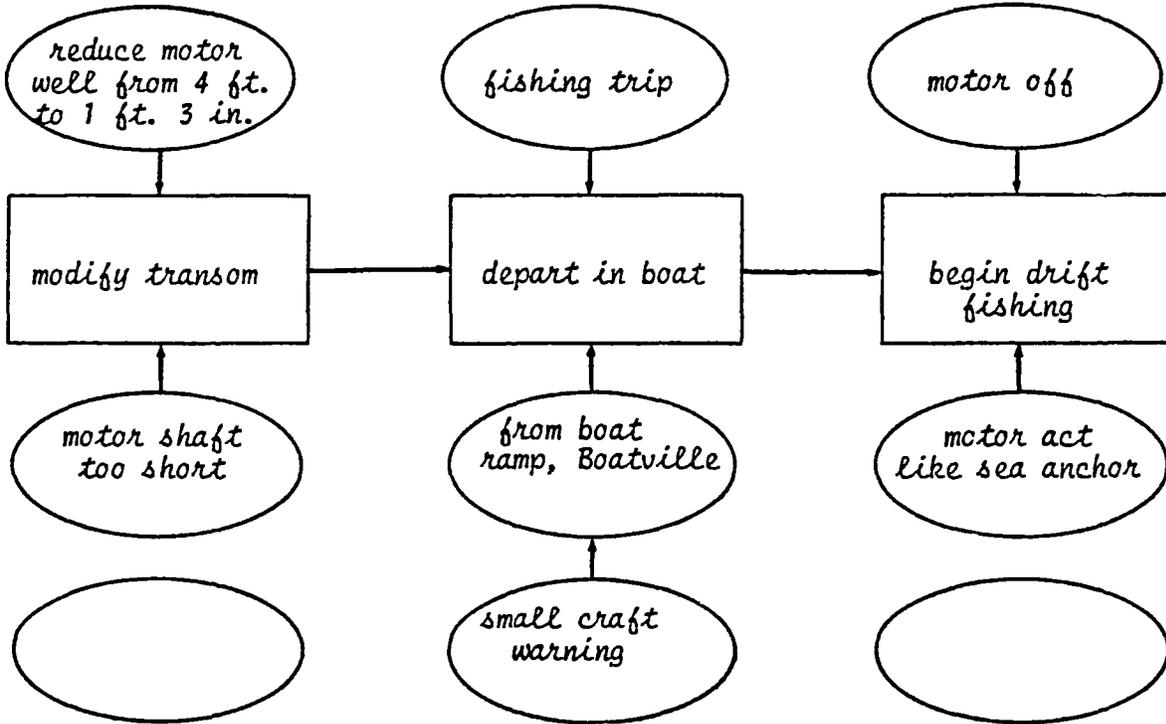
(2) *Small craft warnings were displayed.*

(3) *Wind was West/Northwest at 20 knots gusting to 28 knots.*

FIGURE 6-2 (cont'd)

(Before)

(Before is defined as a description of the events leading up to the initial boat damage or personnel injury. The top portion of this page is for diagramming, and it is not to be typed or included with the final Narrative Report.)



5. On 1 July 1988 Rotten Ending, the owner of the Carefully Constructed, purchased a new 60 h.p. outboard motor. The motor had a 15 in. shaft, replacing the old motor which had a 20 in. shaft. In order to accommodate the new motor, Ending modified the transom by cutting out a portion of the motorwell. The effect of this was to reduce the freeboard in the transom area from 4 ft. to 1 ft. 3 in.

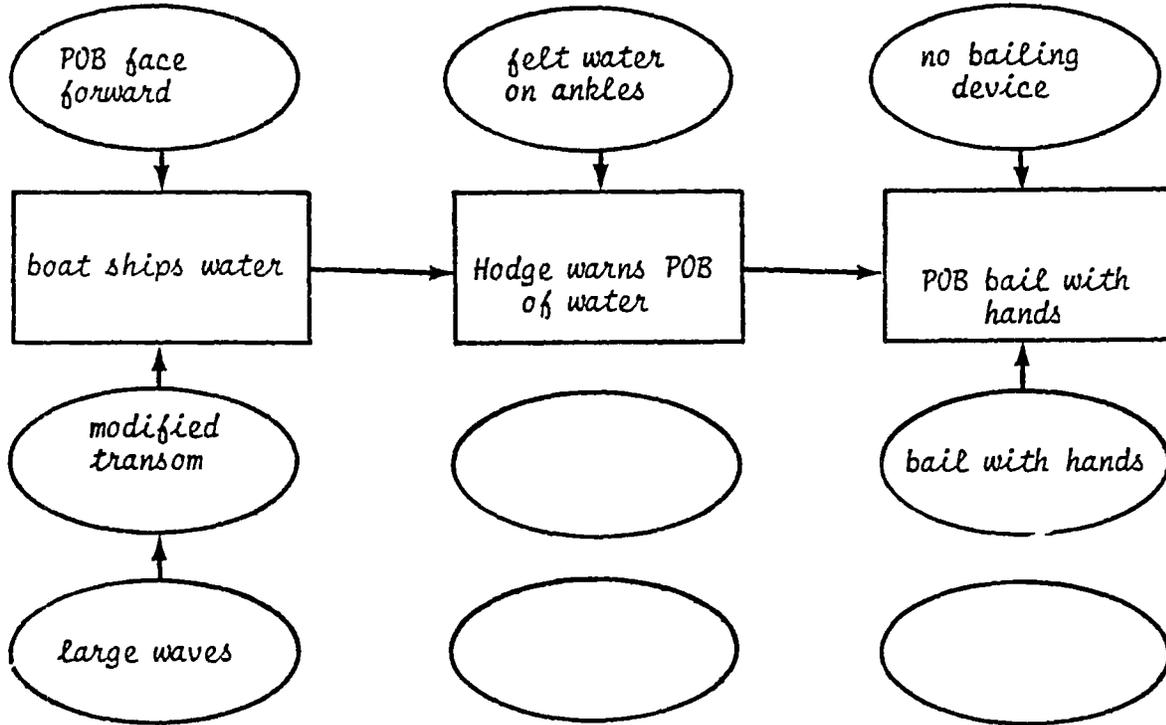
6. On 4 July 1988 at 1000 Rotten Ending, Hurricane Hodge, and Scratchy Beard launched the Carefully Constructed from the boat ramp at the Boatville Marina. They proceeded out towards the center of Lake No Accident to drift fish. The Marina was flying a small craft warning flag. The party did not recognize the meaning of the flag and ignored it.

7. Approximately 1040 they reached the fishing site about 300 yards from the west bank of the lake. Ending, the boat operator, turned off the motor, and the party began drift fishing. The motor acted like a sea anchor, keeping the stern facing the wind and waves.

FIGURE 6-2 (cont'd)

(During)

(During is defined as a description of the events from the time of the initial boat damage or personnel injury to the rescue or termination of the accident process. The top portion of this page is for diagramming, and it is not to be typed or included with the Narrative Report.)



8. Immediately after arriving at the fishing spot, the boat began shipping water over the transom in the motorwell area. The modified transom coupled with the wind and the waves resulted in a constant flow of incoming water. The POB who were facing forward did not notice the situation.

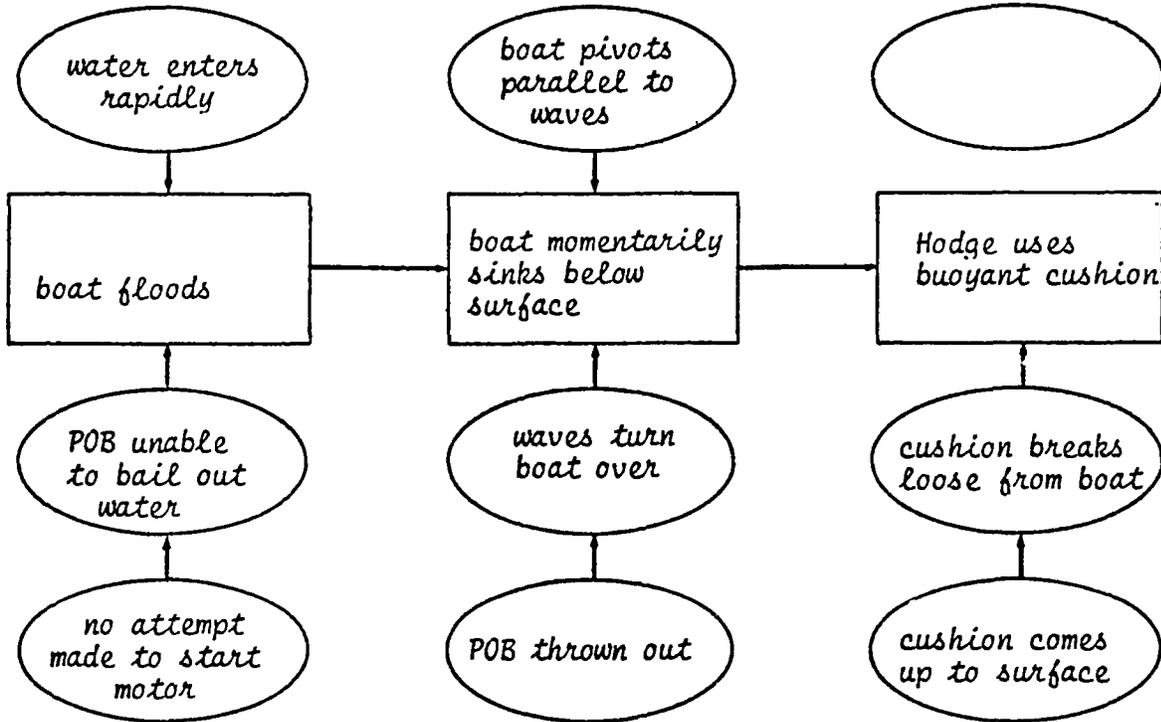
9. After 3 to 4 minutes Hodge who was sitting closest to the transom felt water on her ankles. When she looked down she discovered several inches of water around her shoes. She shouted a warning to the other POB.

10. Since they had no bailing devices on board, they began bailing with their hands. After 5 minutes they removed their shoes and used them to continue bailing.

FIGURE 6-2 (cont'd)

(During)

(During is defined as a description of the events from the time of the initial boat damage or personnel injury to the rescue or termination of the accident process. The top portion of this page is for diagramming, and it is not to be typed or included with the Narrative Report.)



11. The boat flooded with water despite the bailing efforts of the POB. At no time did Ending or any other POB attempt to start the motor.

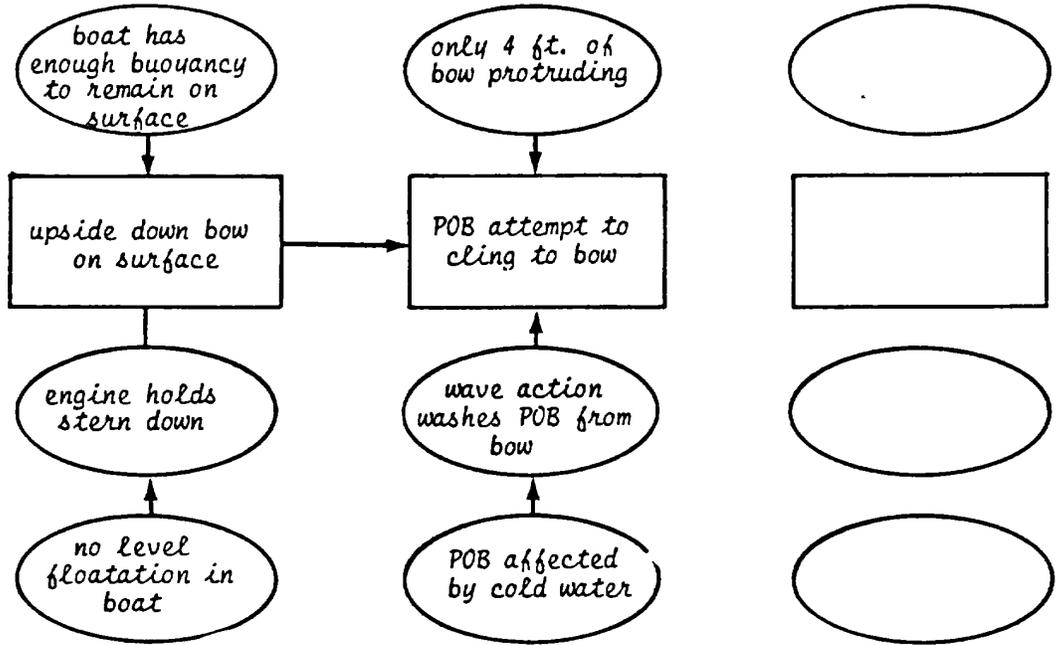
12. After 8 to 10 minutes of bailing, the boat suddenly pivoted parallel to the waves. The waves hit the boat broadside, turned it over, and threw out the POB. The boat then sank below the water surface.

13. A buoyant cushion broke loose from the boat as the boat went under. Hodge grabbed the cushion and used it for flotation.

FIGURE 6-2 (cont'd)

(During)

(During is defined as a description of the events from the time of the initial boat damage or personnel injury to the rescue or termination of the accident process. The top portion of this page is for diagramming, and it is not to be typed or included with the Narrative Report.)



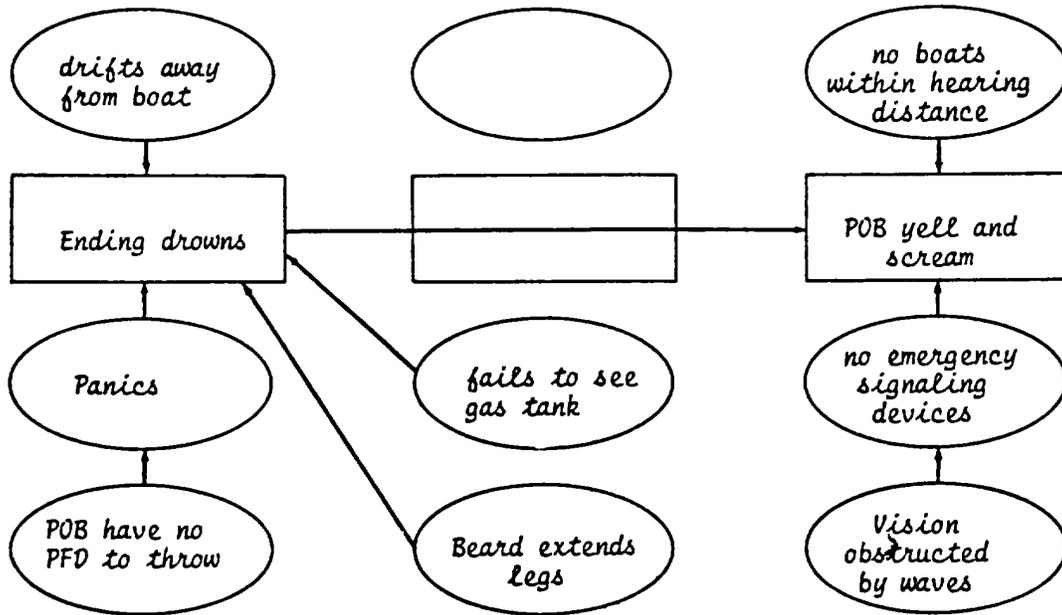
14. The boat resurfaced after a few seconds. The motor held the stern down so only the bow was protruding. Despite having no flotation, the boat's inherent buoyancy was enough to keep it afloat.

15. The POB attempted to cling to the protruding bow. The wind and wave action kept sweeping them off. The cold water and the small bow section above the water (approximately 4 ft.) further hampered their efforts.

FIGURE 6-2 (cont'd)

(During)

(During is defined as a description of the events from the time of the initial boat damage or personnel injury to the rescue or termination of the accident process. The top portion of this page is for diagramming, and it is not to be typed or included with the Narrative Report.)



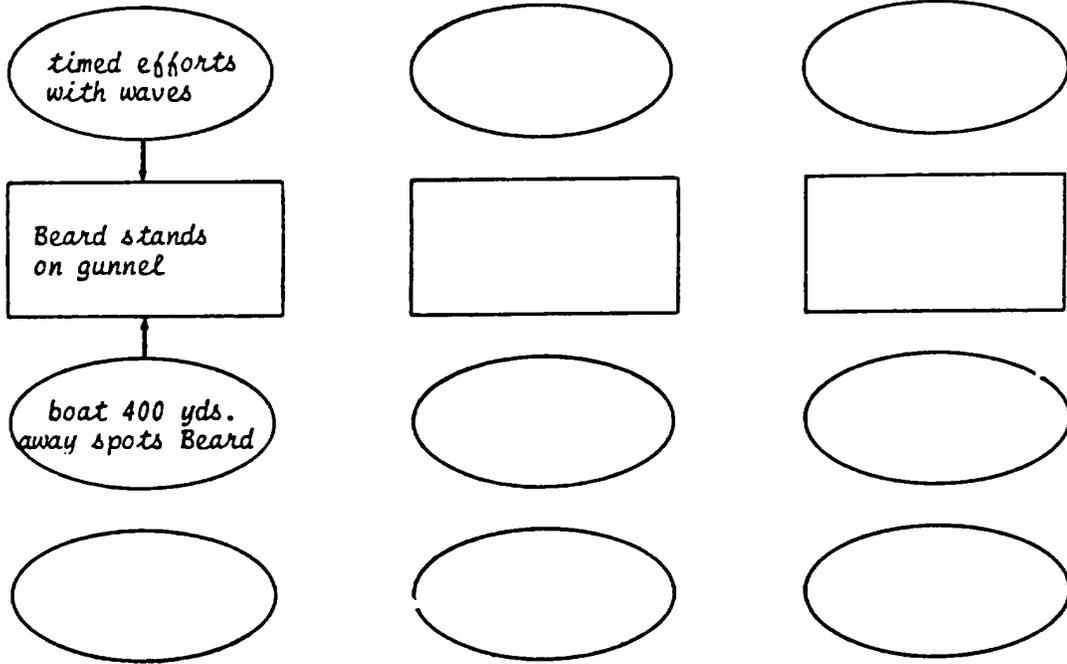
16. Ending began drifting away from the overturned boat after 20 minutes of struggling to hang on to the protruding bow section. He panicked and screamed for the other POB to throw him something. There was nothing to throw. Hodge yelled for him to grab the gas tank that was floating about 4 ft. behind him. He failed to either hear Hodge or see the gas tank, and continued struggling. Beard extended his legs to Ending by holding on to the boat gunnel and stretching himself out. Ending who was about 10 ft. from the boat by this time could not reach Beard's legs. He thrashed about wild for a few more moments before sinking below the surface.

17. The remaining POB had been in the water about half an hour by this time. They waved and screamed to attract attention. There were some boats in the area, yet, none were within hearing distance. The line of vision between potential rescue boats and the POB was blocked by the wave action. The rescue boats would be on the wave crests and the POB in the wave troughs and vice versa. No flares or other emergency signaling devices were carried on the boat.

FIGURE 6-2 (cont'd)

(During)

(During is defined as a description of the events from the time of the initial boat damage or personnel injury to the rescue or termination of the accident process. The top portion of this page is for diagramming, and it is not to be typed or included with the Narrative Report.)

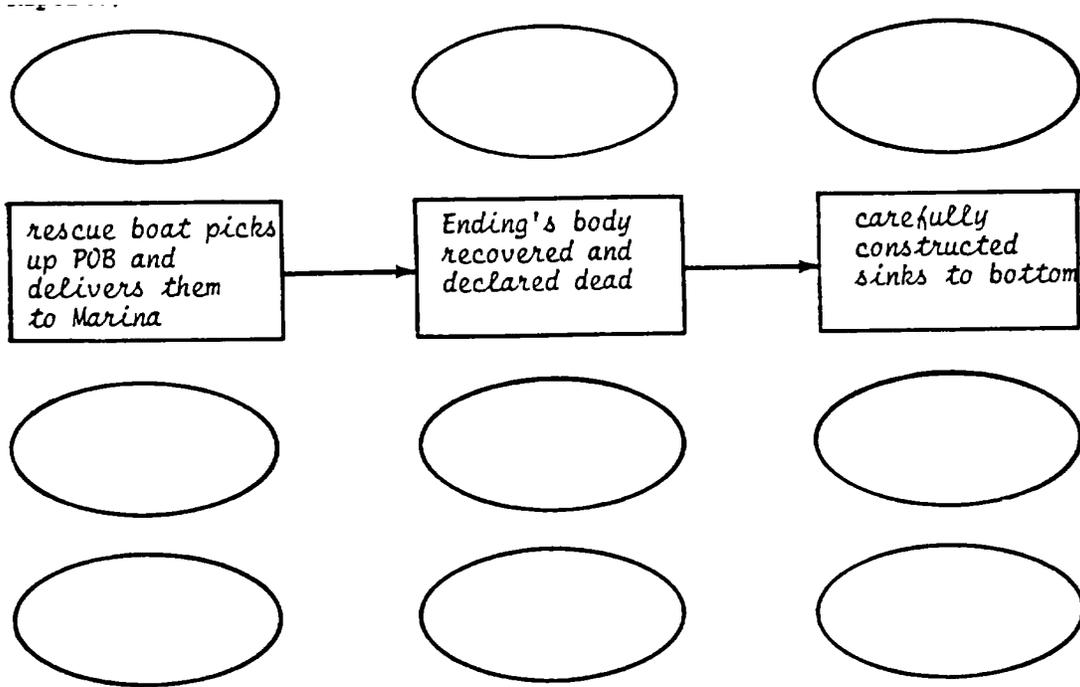


18. *Beard in desperation stood on the gunnel of the overturned boat and shouted and waved to the nearest boat, which was about 400 yards away. He timed his efforts so that both he and the boat were on a wave crest at the same time. The boat operator, Crafty Karavitis, spotted Beard and got underway to rescue the survivors.*

FIGURE 6-2 (cont'd)

(After)

(After is defined as a description of the events of the rescue, or final status of the boat and personnel. The top portion of this page is for diagramming, and it is not to be typed or included with the Narrative Report.)



19. Crafty Karavitis was the King David County prosecutor and his boat was equipped with a police radio. After picking up the survivors and before reaching the Marina, he radioed the local police station, reported the accident and requested an ambulance. The police and an ambulance met Karavitis at the Marina. The two survivors were placed in the ambulance and taken to the Boatville Hospital.

20. After the ambulance left, Police Officer Raquet Ralph and Crafty Karavitis started searching for Ending in Karavitis' boat. They found his body an hour later about 250 yds. from the west bank of Lake No Accident. Rotten Ending was declared dead and later removed by the King David County Coroner.

21. Several hours after the accident, sometime in the late afternoon, the Carefully Constructed sank to the bottom. Its position is 300 yds. from the west bank of Lake No Accident in 100 ft. of water. No attempts were made to recover the boat.

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FIGURE 6-2 (cont'd)

CONCLUSIONS

(Conclude cause(s) of the accident. If cause cannot be determined make a statement to that effect, and follow it by the best deduction as to the cause based upon the information obtained.)

*1. The primary cause of the casualty was the owner/operator modifying the transom of this boat to accommodate the new engine which decreased the effective freeboard from 4 ft. to 1 ft. 3 in.*

*2. The contributing cause of the casualty was that the owner/operator did not obtain a weather forecast, did not recognize the small craft warning flag, and departed on this fishing trip in abnormally high winds and seas.*

((if pertinent) Resolve any conflicting facts.)

.....

((if pertinent) Conclude whether there is evidence of any material failure with the boat or associated equipment. Be specific, identify what failed, the cause of the failure, and whether or not it contributed to the casualty.)

.....

((if pertinent) Conclude whether there is evidence of an act of misconduct, negligence or incompetence or willful violation of any law on the part of any person that contributed to the casualty. Cite the specific law or regulation and indicate the alleged act.)

.....

((if pertinent) Conclude whether there is any evidence on any education-related problem. Identify the problem, its probable cause, and determine whether or not it contributed to the casualty.)

*3. The owner/operator demonstrated his lack of boating knowledge by modifying his boat's transom, failing to obtain a weather forecast, and failure to recognize the small craft warnings.*

((if pertinent) Conclude whether there is evidence of violation of any law or regulation relating to the boat or its associated equipment. Cite the specific law or regulation and indicate the alleged act.)

*4. There is evidence of violation of 33 CFR 175.15 and 46 USC 4307 (b) in that both an insufficient number and incorrect type of PFD were on board.*

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FIGURE 6-2 (cont'd)

((if pertinent) Conclude whether there is evidence that any personnel of the Coast Guard or any other government agency or any other person contributed to the casualty.)

*5. There is no evidence that any member of the Coast Guard or any other government agency contributed to the casualty.*

((if pertinent) Conclude whether any aids to navigation were involved.)

.....

((if pertinent) Conclude whether any uncharted or incorrectly charted objects were involved.)

.....

((if pertinent) Conclude the precautions that might have been taken to prevent or minimize the casualty.)

*6. If the victim had worn a PFD his chances for survival would have been increased.*

((if pertinent) Conclude commendatory action on the part of Coast Guard, state marine police, or other personnel.)

.....

((if pertinent) Make additional conclusions.)

.....

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FIGURE 6-2 (cont'd)

RECOMMENDATIONS

((if pertinent) That the case be reviewed for use in development of boating standards or for use in determining possible boat defects.)

.....

((if pertinent) That further action be initiated within the Administrative Penalty Procedures.)

*1. There is evidence of violation of 33 CFR 175.15 and 46 U.S.C. 4307(b) in that an incorrect type and an insufficient number of P.F.D.'s were carried on board. It is recommended, however, that no action be taken under the Administrative Penalty Procedures because the operator is deceased.*

((if pertinent) That the case be referred to the U.S. Attorney for criminal prosecution.)

.....

((if pertinent) That the case be used in furthering the boating education program.)

*2. It is recommended that this case be reviewed for use in furthering the boating education program.*

((if pertinent) Make additional recommendations.)

.....

((if pertinent) That no further action be taken and either the case be closed or the casualty aspect of the case be closed.)

*3. It is recommended that no further action be taken and the case be closed.*

(name) *Glider Gamble*

- Encl: (1) Photographs of the accident (*20 photographs*)  
(2) Statement of *Hurricane Hodge*  
(3) Death Certificate of *Rotten Ending*

- 6.E.2. c. Ensure that all copies are readable.
  - d. Initial any corrections or additions to the narrative report or material forwarded with the narrative.
  - e. If a death certificate or statement of presumptive death is not available, include a statement at the end of the Findings of Fact portion of the report that it will be forwarded when received.
3. Supporting Materials. The types of material to be forwarded with the narrative include all reports, statements, and photographs relating to the accident. Autopsy reports, results of post-mortem toxicological tests, and other tests to determine blood alcohol concentration would aid in determining involvement of alcohol and/or drugs. It is difficult to make general statements on the handling of the material because some of it may fall under the provisions of the Freedom of Information Act (FOIA), the Privacy Act, or 46 U.S.C. 6102(b). If a question arises concerning the forwarding of material with the narrative or listing it as an enclosure, see chapter 3 of this volume (also, advice may be obtained from the district boating safety division and legal officer). The information conveyed by the narrative report is one of the best sources of boating accident information. The value of the narrative lies in the fact that it can contain an extensive analysis of a boating accident. This is possible because the I.O. is not restricted to the confines of a form, but may present his findings in a vehicle that is flexible and permits elaboration on important points. Also, the narrative is the only source of boating accident information that contains a thorough description of the events prior to, during, and after the accident. The primary target of the Boating Safety Program is this chain of events, because breaking it will either prevent or lessen the effects of an accident. It is sometimes helpful to review past errors and omissions. Section 6.0 below lists common errors found in the narrative. These were compiled from cases that were returned to I.O.'s for revision and resubmittal. This list is divided into sections corresponding to the parts of a narrative.

F. Simplified Narrative Report.

1. When Simplified Narrative May Be Used. The simplified narrative report for a boating accident consists of 3 parts: the Recreational Boating - Simplified Narrative, Form CC-4885, the Addendum to Recreational Boating - Simplified Narrative, Form CG-4885A, and the enclosures and material submitted with the Simplified Narrative. Completed examples of Forms CG-4885 and CC-4885A can be found in Figures 6-3 and 6-4. The simplified narrative may be used instead of the regular narrative report in certain fatal recreational boating accidents, when the cause is obvious or impossible to determine and the case bears little significance toward determining measures for the prevention of casualties (see paragraph 6.F.3 below). Certain types of fatalities occur while boating that can be attributed to natural causes. These include, but are not limited to, heart attacks, epileptic seizures, and

SAMPLE RECREATIONAL BOATING - SIMPLIFIED NARRATIVE, FORM CG-4885



DEPARTMENT OF TRANSPORTATION  
UNITED STATES COAST GUARD

16782  
4 September 1988

From : Investigating Officer, \_\_\_\_\_  
To : Commandant (CG-NA2)  
Via : (1) Officer in Charge, Marine Inspection Boatville, New Boat  
(2) Commander, \_\_\_\_\_ Coast Guard District ( b )

Subj: Bidge Water, NR 0000 AB, flooding and sinking 500 yards from the west bank of Lake No Accident, New Boat, on 4 July 1973, with deaths of Blue Beard and Wild Bill.

- 1. Investigation of subject case is completed, no further investigation warranted due to:
  - a.  Investigation conducted by: Sheriff Department of King David County.
  - b.  Investigation limited due to
    - NO WITNESS
    - NO SURVIVORS
    - NO VESSEL (Missing/Sunk/Removed)
  - c.  There is no actionable evidence of violation of Federal Statute, Regulations, or evidence of actionable misconduct, incompetence or negligence.
- 2. The required Boating Accident Report has been properly prepared and submitted.
- 3. The causes of the accident are concluded as
  - a. PRIMARY 13
  - b. SECONDARY 1
  - c. ADDITIONAL 2

- |                           |                        |                                |
|---------------------------|------------------------|--------------------------------|
| (1) Excessive speed       | (6) Fault of hull      | (11) Hazardous waters          |
| (2) Improper loading      | (7) Fault of machinery | (12) Excessive drinking        |
| (3) Improper lookout      | (8) Fault of equipment | (13) Other <u>Overpowering</u> |
| (4) Fault of operator     | (9) Natural causes     | (14) Unknown                   |
| (5) Fault of other person | (10) Weather           |                                |

4. It is recommended that the case be closed.

- Encl (1) Death certificates for Blue Beard and Wild Bill  
 (2) King David County Sheriff's Investigation  
 (3) Photographs of boat wreckage and accident scene (15)

Signature Sleuth Stanfield  
 Sleuth Stanfield  
 Date 5 September 1988

- OCMI ENDORSEMENT  
 1. Forwarded approved.  
 2.

Signature Captain Dunn  
 Captain Dunn  
 Date 6 September 1988

- DISTRICT ENDORSEMENT  
 1. Forwarded approved.  
 2.

Signature Decision Dave  
 Decision Dave  
 RECREATIONAL BOATING - SIMPLIFIED NARRATIVE

SAMPLE ADDENDUM TO RECREATIONAL BOATING - SIMPLIFIED NARRATIVE, FORM CG-4588A

DEPARTMENT OF TRANSPORTATION U. S. COAST GUARD CG-4885A (4-75)		ADDENDUM TO RECREATIONAL BOATING - SIMPLIFIED NARRATIVE <i>(To accompany a completely filled-out Boating Accident Report)</i>		REPORTS CONTROL SYMBOL RCS-G-8D-9007
U. S. COAST GUARD CAPACITY INFORMATION			BOAT DATA	
MAXIMUM HORSEPOWER (hp.) 10	MAXIMUM PERSONS CAPACITY (lbs.) 475	MAXIMUM WEIGHT CAPACITY (lbs.) 600	WEIGHT (with engine) (lbs.) 200	FREEBOARD (in.) (amidships) 4
			AUXILIARY COURTESY MOTORBOAT EXAMINATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNKNOWN	
EQUIPMENT DATA				
TOTAL WEIGHT OF CARRY-ON EQUIPMENT ON BOARD (lbs.) 30	LOCATION AND WEIGHT OF GEAR (If total in excess of 10% of total boat and passenger weight) N/A		TYPE AND NO. OF FIRE EXTINGUISHERS None on Board	
MANUFACTURER OF PFD'S N/A		TYPE AND NUMBER OF PFD'S None on Board		
RADIO <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO TYPE		SAILING EQUIPMENT/PUMP <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
ENVIRONMENT DATA				
FETCH (Wind distance over water) 5 Miles		TIME OF ACCIDENT (Check one) <input checked="" type="checkbox"/> DAY <input type="checkbox"/> DUSK <input type="checkbox"/> NIGHT		
WAS OPERATOR AWARE OF FORECASTED WEATHER? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO SOURCE? Radio			DISTANCE FROM NEAREST VESSEL OR OTHER SOURCE OF HELP 30 yds. N/NE	
FORECASTED WEATHER? Moderate Wind/Clear				
OPERATION OF VESSEL PRIOR TO ACCIDENT				
DISTANCE OF VESSEL FROM NEAREST SHORE <u>500 yds. N/NE</u>	LOCATION AND ACTIVITIES OF PERSONS LEADING UP TO ACCIDENT Wild Bill was seated in the forward portion of the boat. Blue Beard was in the rear operating the motor. They were traveling approximately 20 M.P.H. Blue Beard suddenly cut the power, a wave washed over the transom, and the boat flooded and sank.			
ACTIONS OF VESSEL LEADING UP TO ACCIDENT Cruising at 20 M.P.H. Sudden stop. Wave over transom. Flooded		IS THERE ANY EVIDENCE THAT THE OPERATOR WAS UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
Detailed Description of Accident (Continue on additional sheets if necessary) Wild Bill and Blue Beard were cruising along headed for Flag Island. For no known reason Blue Beard cut the power very suddenly. A wave washed over the transom reducing the freeboard of the transom to zero. Water continued to rush in flooding the boat and sinking it. Wild Bill went down with the boat. Blue Beard held on to a 5 gallon can and began swimming for shore. He drowned about 100 yds. from the bank.				
For the following accident types, fill in for only the type or types of accidents which occurred. If two accident types occurred, fill in both types i.e. collision leading to sinking.				
COLLISION/GROUNDING				
DESCRIPTION OF OTHER VESSEL OR OF OBJECT STRUCK		LENGTH OF TIME OPERATORS HAD BEEN ON WATER <input type="checkbox"/> VESSEL #1 _____ (hrs.) <input type="checkbox"/> VESSEL #2 _____ (hrs.)		
DESCRIBE ANY VISIBILITY PROBLEMS FROM OPERATOR'S POSITION				
WAS VESSEL/OBJECT SEEN BY OPERATOR PRIOR TO COLLISION? (Check all applicable) <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> NOT INTERPRETED AS HAZARD WHEN FIRST SEEN <input type="checkbox"/> VIOLATION OF RULES OF ROAD BY EITHER OPERATOR <input type="checkbox"/> UNABLE TO AVOID EVEN THOUGH REACTED WHEN FIRST SEEN <input type="checkbox"/> OTHER (Specify)				
Describe any damage to all vessels involved (Continue on additional sheets if necessary.)				

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<b>FIRE/EXPLOSION</b> N/A	
WHERE DID FIRE/EXPLOSION ORIGINATE AND WHY?	
IF PERSONS WERE BURNED, DID IT OCCUR (Check all applicable)	
<input type="checkbox"/> DURING EXPLOSION	<input type="checkbox"/> AFTER EXPLOSION
<input type="checkbox"/> DURING STEADY FIRE (without explosion)	
WAS FIRE EXTINGUISHER USED TO TRY TO EXTINGUISH FIRE?	<input type="checkbox"/> YES <input type="checkbox"/> NO
WAS FIRE SUCCESSFULLY EXTINGUISHED?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>CAPSIZING/SWAMPING/SINKING/FALLS OVERBOARD</b>	
WAS VESSEL EQUIPPED WITH A FOREDECK?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> VESSEL COVERED <input checked="" type="checkbox"/> NO
WAS VESSEL EQUIPPED WITH A MOTORWELL?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO    In. Deep <u>24</u> In. Long <input type="checkbox"/> NO
DID PERSONS ATTEMPT TO PUMP OR TO BAIL OUT BOAT?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
DESCRIBE AVAILABILITY AND LOCATION OF HAND RAILS OR HAND HOLDS	None
WAS ENGINE IN GEAR WHEN BOAT WAS LOCATED?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
IF PERSONS SWAM AWAY FROM FLOATING BOAT, OBTAIN REASONS FOR DOING SO	The boat sank
WAS GAS TANK EMPTY?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
EVIDENCE OF MALFUNCTIONING ENGINE?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>DESCRIPTION OF POST ACCIDENT EVENTS</b>	
Describe any injuries or deaths (Continue on additional sheets if necessary)	
Blue Beard and Wild Bill drowned. Neither of them could swim. Wild Bill went down with the boat almost immediately. Blue Beard used a 5 gallon can to stay afloat. He was trying to swim to shore but apparently lost his grip on the can, panicked and drowned.	
WAS RADIO USED?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
WHAT WERE THE FINAL POSITIONS OF ANY DROWNED PFD WEARERS? (Indicate number of persons for each position)	FACE DOWN <u>N/A</u> ON BACK <u>N/A</u>
WERE DISTRESS SIGNALS USED?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
HOW MANY PERSONS (Indicate number for each)	DESCRIBE THE FINAL POSITION OF VESSEL
JUMPED <u>0</u> WERE THROWN OVERBOARD <u>2</u> WORE PFD'S <u>0</u>	At the bottom of Lake No Accident
ELAPSED TIMES UNTIL MAJOR OCCURRENCES (Such as a person's drowning, vessel's sinking, person's striking for shore, etc.)	
Vessel underway - 0945	Wild Bill drowned - 1002
Vessel flooded - 1000	Blue Beard drowned 1020
Vessel sank - 1001	
Details of Rescue (Continue on additional sheets if necessary)	
Suzy Creamcheese, a witness, raced to the nearest phone booth and called the sheriff's office (1005)	
Police arrive on scene by car (1010)	
Police boat underway (1025)	
Police boat on scene (1045).	
What is the operator's opinion as to the root cause of the accident and how the accident could have been prevented? (Continue on additional sheets if necessary)	
Operator and passenger drowned. Witness Suzy Creamcheese stated that the boat had too large a motor.	
Additional Comments (Continue on additional sheets if necessary)	

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6.F.1. (cont'd) strokes. They are considered reportable in the Boating Safety Program but are not considered preventable by or chargeable to that program. Reports concerning such fatalities do not ordinarily yield information of value to the Boating Safety Program. Therefore, written reports concerning obvious nonaccidental deaths are not required. Then there is a question as to whether a death was accidental or nonaccidental, the incident shall be investigated and reported to Commandant (G-NAB).

2. Contents Of The Simplified Narrative Report.

- a. Form CG-4885. The completion of the first part of the Simplified Narrative, Form CG-4885, is straightforward and the use of a pen is recommended. The following points will aid in completing it:
- (1) On the SUBJECT line, place the number or other identification (e.g., name) of each vessel involved, the date, type of casualty (e.g., capsizing, falls overboard), and the name of each person who died.
  - (2) Always check subparagraph 1.a. Enter the state authority, other local authority, or Coast Guard I.O. who conducted the investigation.
  - (3) Check subparagraph 1.b. when any of these conditions existed. If a Coast Guard I.O. is placed in subparagraph 1.a. as conducting the investigation, the NO WITNESS and NO SURVIVORS boxes must be checked.
  - (4) Check subparagraph 1.c. in every case.
  - (5) Ensure that paragraph 2. has been accomplished.
  - (6) Complete paragraph 3. in every case by entering the appropriate numbers of the listed causes in the spaces provided. A Simplified Narrative cannot be used if safety defects are involved. Therefore, Causes 6, 7, and 8 do not apply to safety defects, but rather to nondefect type problems such as improper use, overage, or improper maintenance. For a more complete listing of cause to use with Item (13) OTHER, see paragraph 6.E.3 above.
  - (7) Paragraph 4. must be the recommendation of the I.O.
  - (8) Each endorsement shall be completed and signed in every case, unless the district commander does not receive accident reports.
  - (9) As the form is printed on carbon-sensitized paper, it is necessary to press firmly in order to have legible copies.

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- 6.F.2. b. Form CG-4885A. The completed Addendum is required except in the case of a death by natural causes. The Addendum is designed to provide important information not found on the boating accident report and is needed for boating accident research (see Figure 6-4). Suggestions on completing the Addendum are provided below:
- (1) The capacity/certification label should be used to obtain the information for MAXIMUM HORSEPOWER, MAXIMUM PERSONS CAPACITY, and MAXIMUM WEIGHT CAPACITY. The label is usually located near the operator's station. All boats under 20 feet in length and built after 1 November 1972 are required to display capacity information. Canoes, kayaks, and inflatables are exempt from this requirement. If the boat does not have capacity information, indicate this in the boxes.
  - (2) Under BOAT DATA estimate the boat weight, taking into consideration the size, construction material, and equipment. Boat weight might also be obtained from the owner, boat literature, or from a publication such as the "Used Boat Directory" listed in section 6.I below. Boat weight, however, is not a critical item of information except in capsizing/swamping accidents, and unnecessary effort should not be expended in finding it; a "ballpark" estimate is adequate. Estimate the freeboard at the time of the accident or determine this from witnesses. A boat that has successfully completed an Auxiliary Courtesy Marine Examination (CME) will have a decal, normally on the lower corner of the portside of the windshield or on the lower forward corner of a portside window. On boats with no windshield, the decal may be affixed to the dashboard or the back of a seat.
  - (3) Under EQUIPMENT DATA, estimate the total weight of the carry-on equipment. If necessary, use a sketch to show how the weight was distributed about the boat. For capsizing/swamping accidents, show the location of any item weighing 10 pounds or more. Fire extinguishers are classified according to size and type of fire (A, B, or C). All Coast Guard approved fire extinguishers bear an approval number. The manufacturer, type, and approval number must be clearly marked on each personal flotation device (PFD). The type of radio should be indicated by its transmission power, frequency range, and whether or not it can both transmit and receive. Indicate source of power for bailing equipment (e.g., electrical, manual gasoline, or diesel).
  - (4) Under ENVIRONMENT DATA, fetch is the total distance the wind travels over the water (e.g., from the side of the lake to the scene of the accident). If it comes across an extremely large body of water (e.g., the ocean) it may be indicated as cross-ocean. Fetch is not applicable to small, fast running rivers or streams.

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- 6.F.2.b. (5) Under OPERATION OF VESSEL PRIOR TO ACCIDENT, list any actions leading up to the accident. Describe any stressors (e.g., fatigue, alcohol or drug impairment). See the WITNESS/ENVIRONMENT cue card for additional stressors that may have affected the operator. Indicate any mechanical difficulties or abnormal occurrences affecting the vessel.
- (6) Under COLLISION/GROUNDING, indicate the visual contrast between the vessel and its surroundings. Indicate any obstructions to the operator's vision, including glare, reflection of lights on the windshield, persons on the bow, or inclement weather.
- (7) Under FIRE/EXPLOSION, try to determine the origin of the fire from witnesses' statements and the appearance of boat wreckage. Consider the fuel system, electrical system, stoves, lanterns, heaters, and any other items specified on the BOAT cue card.
- (8) Under CAPSIZING/SWAMPING/SINKING/FALLS OVERBOARD, make the best estimate on the foredeck and motorwell. A sketch may be helpful in describing the availability and location of handrails or handholds.
- (9) Under DESCRIPTION OF POST-ACCIDENT EVENTS, the "final position of the vessel" means after completion of the accident process, and before any rescue or recovery is effected.
- (10) If the accident type falls within any of the three sections on the Addendum, those sections should be completed. In most cases, the accident will fall under only one section. In some cases, however, more than one section will have to be completed.
- c. Enclosures. The third part of the Simplified Narrative Report contains the enclosures and material to be forwarded with it, including all reports, statements, and photographs relating to the accident. Death certificates, autopsy reports, results of toxicological tests and other tests to determine blood alcohol concentration would be helpful in determining involvement of alcohol and/or drugs. It is difficult to make general statements on the handling of the material because the material may fall under the provisions of the FOIA, the Privacy Act, or 46 U.S.C. 6102(b). If a problem arises concerning the forwarding of material with the Simplified Narrative and Addendum or listing it as an enclosure, advice should be obtained by telephone from the district boating safety division. District legal staff members are also especially helpful in these cases. The list of common errors found in section 6.G below provided for the narrative report also apply to the Simplified Narrative Report.

- 6.F.3. Conditions For Use Of Simplified Narrative Report. If all of the following conditions are met, the Simplified Narrative and its Addendum may be used in place of the regular Narrative Report:
- a. The required boating accident report has been properly prepared and submitted;
  - b. The death involved a recreational vessel and was subject to an adequate investigation by a state or local authority, or available information reveals that there are neither witnesses nor survivors and
  - c. There are no possible instances of noncompliance with manufacturers' requirements relative to federal safety standards or of safety related defects. Any suspicion on the part of the I.O. should be considered as a "possible instance."
- G. Common Errors Found In Boating Accident Investigative Reports.
- 1. General Errors.
    - a. First endorsement does not indicate approval or disapproval.
    - b. Information on Simplified Narrative Addendum conflicts with Simplified Narrative form.
    - c. Violation report attached to narrative or investigation, and not forwarded as a separate report.
    - d. Reason for disapproval not given in endorsement.
    - e. Incomplete report submitted (lacks recommendations).
    - f. Failure to forward original report with original signatures.
    - g. Failure to address evidence of a violation of federal law or regulation.
  - 2. Findings Of Fact.
    - a. Not addressing the subject of carrying passengers for hire.
    - b. Lacking information on the dispositions of missing persons prior to the accident (frame of mind, boating habits, drinking habits, condition of boat, who last saw the missing person, etc.).
    - c. Agencies that furnished assistance not identified in Findings of Fact.
    - d. Findings of Fact contained conclusions and/or recommendations.

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- 6.G.2. e. Evidence of violation of 33 CFR 175.15 (failure to carry PFD's) not addressed in the report.
- f. No explanation concerning failure to use PFD's when they were available.
- g. Boat capsized and was then righted; no explanation as to how it was righted.
- h. Confusion as to whether a canoe was in the rapids of a river with whirlpools or the whirlpool was an unusual phenomenon.
- i. Did not address the question of an overloaded boat.
- j. Did not address the question of occupants standing at the time of the casualty.
- k. Additional facts and conclusion needed concerning Coast Guard involvement.
- l. Unclear on whether engine malfunctioned or was shut off.
- m. Information needed on Coast Guard assistance or patrols during regatta.
- n. Information needed on depth of water and debris floating in water.
- o. More information needed on ski area in which boat was operating.
- p. Not addressing subject of operating unnumbered vessel.
- q. Conflict in times or date of accident.
- r. Did not address use of alcohol and/or drugs on the day of the accident.
3. Conclusions.
- a. Conclusions not supported by Findings of Fact.
- b. Not properly identifying the cause of the accident.
- c. Improper citation from U.S. Code.
- d. Lack of explicit conclusions on nature of negligent act.
- e. Cause of accident not specified in conclusions.
- f. No conclusion of "evidence of violation of 33 CFR 173.15, operating unnumbered vessel."

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- 6.G.3. g. No cause determination for victim falling overboard.
  - h. Failure to include a conclusion that would adequately support the fact that victim's chances of survival would have been improved if he had been wearing a PFD.
  - i. Failure to address possible violation of not having a proper lookout.
  - j. Improper conclusion (e.g., type of casualty substituted for cause of casualty).
  - k. Failure to address possible violation of Navigation Rules.
  - l. Failure to state the conclusion that a person is missing and presumed drowned, or failure to draw a conclusion about whether a person is presumed drowned or not.
4. Recommendations.
- a. No recommendation to close the investigation.
  - b. Recommendation points to a broad problem area that should be treated in separate correspondence.
5. Enclosures.
- a. Statement of vessel operator listed as enclosure but not forwarded with report.
  - b. Incomplete boating accident report.
  - c. Date of death on death certificate needs clarification, when certificate is enclosed.
  - d. Lack of important boat data on boating accident report.
  - e. Incorrect HIN.
  - f. Simplified Narrative indicates that there were no witnesses, conflicting with boating accident report that there were witnesses.
  - g. Failure to correct and initial error in boating accident report.
  - h. Simplified Narrative indicates falls overboard, conflicting with boating accident report that indicates capsizing.
  - i. The boating accident report incorrectly listed only one person on board (POB).

- 6.G.5. j. Explanation needed on why the boating accident report was signed by the I.O. but filled out by the operator.
- k. Failure to include Addendum (Form CG-4885A).
- l. Failure to forward available test results or autopsy reports that can aid in determining involvement of alcohol and/or drugs.

H. Administrative Correspondence Concerning Boating Accidents.

1. General. Another method of communicating information on boating accidents is through administrative correspondence. The information in this section deals with such correspondence. As specified in chapter 3 of this volume, this correspondence should deal with a broad problem area that cannot be included in the recommendations section of a narrative report. An example of a subject treated by administrative correspondence is the johnboat. This is a boat of a common type, manufactured by several different companies, that has inherent stability problems. An example of a broad problem area in boating education is hypothermia. Letters on either subject should be addressed to the Auxiliary, Boating and Consumer Affairs Division, Commandant (G-NAB), the Headquarters Division that has primary responsibility for the Boating Safety Program. On the other hand, an accident involving a specific boat type with a specific defect (e.g., a steering part on a certain manufacturer's boat) or a specific boating education problem should be explained in a narrative report.
2. Data To Be Included. When drafting a letter concerning a problem area related to boating standards or boating education, convey the following information:
  - a. Identify the boat and personnel involved
  - b. Record the time and location of the accident;
  - c. Identify the facts surrounding the problem;
  - d. Identify any evidence of the same problem occurring in other instances;
  - e. Conclude that it is a manufacturing or education problem, or both;
  - f. Recommend that the problem be reviewed by boating standards or education personnel, or both; and
  - g. Identify involvement or use of alcohol and/or drugs, if any.Administrative correspondence as described above cannot serve as a substitute for a boating accident report or any other required reports. It is, however, an important information source.

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I. Publications Relating To Boating Safety.

1. Introduction. The following is a list of publications related to boating safety. For each publication, the title and a letter indicating the source of supply is given. The supply sources can be found in paragraph 6.I.2 below. It is not expected that each I.O. will maintain a library of all publications, but the I.O. should be aware of their existence for research into a given case.

<u>TITLE</u>	<u>SOURCE</u>
Alcohol and Pleasure Boat Operators (JUN 1975) (AD A014 095).	e
(Annual) NMMA Certification Handbook, Chicago: National Marine Manufacturers Association (NMMA).	d
(Year) Blue Book, Outboard Boat Trade In Guide, Kansas City: Abos Marine Publications Division.	o
Boating Accident Investigations 1973, Fire and Explosion (MAR 1974) (AD 785 598).	e
Boating Accident Investigations 1974, Fire and Explosion (APR 1975) (AD A014 009).	e
Boating Information, A Bibliography and Source List.	h
Boating Safety Circular, USCG.	f
Boating Standards Manual, COMDTINST M16761.2 (series).	f
Boating Statistics, COMDTPUB P16754.1 (series).	f
Courtesy Examiners Manual, COMDTINST M16796.2 (series).	a
A Detailed Study of Power and Loading Related Boating Accident Data (SEP 1974) (AD 787 786).	e
Equipment Lists, COMDTINST M16714.3A (series).	g
An Experiment to Determine Relative Performance of Boat Operators in Emergency Maneuvers Using Hand and Foot Throttles (DEC 1974) (AD A014 134).	e
Fiberglass Boats (Fitting Out, Maintenance and Repair).	(Libraries)

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6.I.1. (cont'd)

<u>TITLE</u>	<u>SOURCE</u>
Fiberglass Boats Construction and Maintenance, Cobb, Jr., Boughton. New York: Yachting Publishing Co. (1965).	m
Final Report on Buoyancy and Stability Characteristics on the Human Body in Fresh Water (NOV 1971) (AD 708 188).	e
Flotation Standards Analysis Research and Development Report (JUN 1973) (AD 767 791).	e
Fire Protection Equipment List. Chicago: Underwriters Laboratories, Inc. (UL).	k
Guide for the Selection of Fiberglass Reinforced Plastics for Marine Structures. New York: Society of Naval Architects and Mechanical Engineers (SNAME).	l
Human Factor Applications in Boating Safety, Volume I (SEP 1973) (AD 780 988).	e
Human Factor Applications in Boating Safety, Volume II. (SEP 1973) (AD 781 205).	e
An In-Depth Study of Recreational Boat Fires and Explosions (AD 717 955).	e
An Investigation of Boat Ventilation Systems (APR 1970) (AD 706 729).	e
Investigation of the Performance of Personal Flotation Devices (AUG 1975) (AD A017 101).	e
Level Flotation Standards Analysis Research and Development Report (MAY 1975) (AD A014 645).	e
Manual for the Design of Glass Reinforced Plastic Structures. U.S. Navy (USN) Bureau of Ships.	c
Marine Accident Investigation Manual, U.L., 1986.	k
Marine Design Manual for Fiberglass Reinforced Plastics. Engineers of Gibbs & Cox, Inc., New York: McGraw-Hill Book Company (1962).	(Libraries)

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6.I.1. (cont'd)

<u>TITLE</u>	<u>SOURCE</u>
Marine Products List. Chicago: UL.	k
Motor Craft, NFPA 302. Boston: National Fire Protection Association (NFPA) (1972).	h
National Search and Rescue Manual, COMDTINST M16130.2 (series).	b
Federal Requirements for Recreational Boats (Pamphlet).	f
New Boat Directory. BUC International Corp.	o
Personal Flotation Devices: Requirements for Recreational Boats, USCG.	g
Portable Plastic Fuel Tanks Evaluation Report (AD 761 740).	e
Preventative Maintenance and Repair Manual for Fibrous Glass Reinforced Plastic Laminates. USN Bureau of Ships.	c
Provisional Rules for Construction of Reinforced Plastic Yachts. Lloyd's Register of Shipping, November 1961.	n
Recreational Boating in the Continental United States in 1973 and 1976: The Nationwide Boating Survey (AD A052 907).	e
A Recreational Boating Population Statistical Information System Supplement (AD 887 162).	e
A Recreational Boating Population Statistical Information System Volume I (AD 723 739).	e
A Recreational Boating Population Statistical Information System Volume II. (AD 887 225).	e
Recreational Boater Requirements and Methods of Distress Notification Using Visual Distress Signals (JAN 1975) (AD A0007 075).	e

## MARINE SAFETY MANUAL

6.I.1. (cont'd)

<u>TITLE</u>	<u>SOURCE</u>
Recreational Boat Safety Collision Research, Phase I. Vol. II. Collision Accident Investigations for 1974 Season (JUN 1975) (AD A015 820).	e
Recreational Craft Performance Study (SEP 1975).	e
A Reliability Investigation of Personal Flotation Devices Phase I (AUG 1973) (AD 770 210).	e
Visual Distress Signals for Recreational Boaters (Pamphlet).	f
Navigation Rules, International-Inland, COMDTINST M16672.2 (series).	c
SAE Handbook. New York: Society of Automotive Engineers (SAE).	l
Safe Powering Test Procedure Development Report (JAN 1973) (AD 907 513).	e
Safety Standards for Small Craft. American Boat and Yacht Council, Inc. (ABYC), New York (1972-1973).	k
A Study of Factors Influencing the Wearability of PFD's in Recreational and Work Environments (OCT 1974) (AD A011 211).	e
A Telephone Survey to Determine the Effects of Navigation Lights on Nighttime Collision (APR 1975) (AD A014 092).	e
Test and Evaluation of Small, Lightweight Boats (AUG 1972) (AD 759 475).	e
Test of Outboard Motors Starting in Gear (SEP 1973) (AD 783 641).	e
This is the Seal of Safety - Get a Free Motorboat Examination, AUX-204 (Pamphlet).	a
Maritime Law Enforcement Manual Vol. I (Boarding Guide), COMDTINST M16247.1 (series).	r
Used Boat Directory. BUC International Corp.	o

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6.I.2. List Of Publication Sources.

a. Commandant (G-N)  
U.S. Coast Guard  
Washington, DC 20593-0001

b. Commandant (G-TIS)  
U.S. Coast Guard  
Washington, DC 20593-0001

[NOTE: See the Directives, Publications and Reports Index, COMDTNOTE 5600, for the use of Form CG-4428, Request for Directives/Publications.]

c. Superintendent of Documents  
Government Printing Office  
Washington, DC 20402

d. National Marine Manufacturers Association  
401 N. Michigan Avenue  
Chicago, IL 60611

e. National Technical Information Service  
5285 Port Royal Road  
Springfield, VA 22151

[NOTE: Copies of some of the publications can also be obtained from district commanders (b).]

f. Commandant (G-NAB)  
U.S. Coast Guard  
Washington, DC 20593-0001

g. Commandant (G-MVI)  
U.S. Coast Guard  
Washington, DC 20593-0001

h. National Fire Protection Association  
60 Batterymarch Street  
Boston, MA 02110

i. American Boat and Yacht Council, Inc.  
405 Headquarters Drive, Suite 3  
Millersville, MD 21108

j. Society of Automotive Engineers  
2 Pennsylvania Plaza  
New York, NY 10001

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- 6.I.2. k. Underwriters Laboratories, Inc.  
Marine Department  
Tampa East Industrial Park  
2602 Tampa East Blvd.  
Tampa, FL 33619
- l. Society of Naval Architects and Marine Engineers  
74 Trinity Place  
New York, NY 10006
- m. Yachting Publishing Corp.  
50 West 44th Street  
New York, NY 10006
- n. Lloyd's Register of Shipping  
17 Battery Place  
New York, NY 10004
- o. BUC International Corp.  
1881 Northeast 26th Street  
Ft. Lauderdale, FL 33305
- p. International Association of Chiefs of Police, Inc.  
11 First Field Road  
Gaithersburg, MD 20760
- q. Abos Marine Publication Division  
1014 Wyandotte  
Kansas City, MO 64105
- r. Commandant (G-OLE)  
U.S. Coast Guard  
Washington, DC 20593-0001

J. Definitions.

1. Boat. Any vessel manufactured or used primarily for noncommercial use, or leased, rented, or chartered to another for the latter's noncommercial use; or engaged in the carrying of six or fewer passengers.
2. Boating Accident. A vessel is considered to be involved in a "boating accident" whenever the occurrence results in the following:
- a. Loss of life or disappearance of any person overboard under circumstances that indicate the possibility of death or injury;
- b. Injury that requires medical treatment beyond first aid; or

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- 6.J.2. c. Damage to the vessel or its equipment, or other vessels, or other property in excess of \$200, or disappearance of the vessel other than by theft.

[NOTE: The phrase "medical treatment" is a term in general usage that refers to all injuries receiving aid or attention by a physician or another person trained to practice or to administer medicine. The accident must have occurred aboard or must involve the vessel or its equipment or appurtenances.]

3. Capsizing. The overturning or upsetting of a vessel.
4. Collision.
  - a. With Fixed Object. The striking of any fixed object, above or below the surface of the water, except the bottom (the striking of reefs, shoals, or rocks on the bottom is considered "grounding").
  - b. With Floating Object. The striking of a floating object other than a vessel, above or below the surface of the water, that is not fixed or held in place by any means (e.g., barrels, logs, or other flotsam).
  - c. With Vessel. Any striking together of two or more vessels, regardless of operation at the time of the accident. This includes colliding with the tow of another vessel, regardless of the nature of the tow (e.g., skier or surfboard).
5. Documented. In receipt of a valid Certificate of Documentation issued in accordance with the provisions of 46 U.S.C. Chapter 121 and the regulations contained in 46 CFR 67.
6. Estimate Of Property Damage. The cost to repair property or restore it to its original condition, which is estimated by the owner, operator, or other person in whose opinion such cost is necessary.
7. Falls Overboard. The spilling out of a person or persons without overturning the vessel.
8. Flooding. The filling of a vessel with water, regardless of the method of ingress, although the vessel retains sufficient buoyancy to remain upon the surface.
9. Grounding. An occurrence in which a vessel runs aground, strikes, or pounds upon rocks, reefs, shoals, or the bottom.

- 6.J.10. Jurisdiction. This is the power to act or the power of a particular governmental agency to administer and enforce the law. Various states differ on waters over which they exercise jurisdiction. If federal and/or state jurisdiction is exercised over a body of water, a report of a boating accident is required to be forwarded to the Coast Guard. Vessels required to report accidents to a state reporting authority may, on occasion, be beyond the jurisdiction of that state. For example, a vessel numbered by a coastal state may sail from that state and travel beyond its territorial waters to the high seas. In such a case, the requirement to report an accident would not be affected, but the state's authority to investigate would be affected. Such a casualty or accident, when the needs of boating safety or law require it to be investigated, may be accomplished by the Coast Guard under its statutory authority. Another example would be the use of a vessel on a private pond or lake. Jurisdiction may or may not be granted to the reporting authority by the laws of that state. When jurisdiction does exist, reportable boating accidents that occur on such waters must be reported.
11. Sinking. An occurrence in which a vessel loses buoyancy and settles below the surface of the water.
12. Vessel. This term includes every description of watercraft, other than a seaplane on the water, used or capable of being used on the water. Rowboats, canoes, and rafts are included within this definition. Surfboards or small plastic toy boats (usually not over 4 feet in length) are not included within this definition, because from a practical viewpoint these "craft" are not intended to be used for transportation but merely as recreational platforms, swimming aids, or toys. [NOTE: This definition is slightly different under the Navigation Rules.]
- a. Numbered Vessel. Any undocumented vessel that is numbered by the following:
- (1) A state with a numbering system approved under 46 U.S.C. 12301-12309; or
  - (2) The Coast Guard, when the state does not have an approved numbering system.
- b. Undocumented Vessel. A vessel that does not have and is not required to have a valid marine document as a vessel of the United States.
- c. United States Vessel. Any vessel documented or numbered under the laws of the United States.
13. Water-Skiing. The use of waterskis, surfboards, sleds, discs, inflatable tubes, or any other device used for flotation of a person that is provided motion through the water by a vessel, generally through being towed.

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CHAPTER 7. LOAD LINE INVESTIGATIONS

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### CHAPTER 7. LOAD LINE INVESTIGATIONS

- A. Coast Guard Responsibilities For Load Line Enforcement. Volume IV of this manual contains information on the administration of load line laws and regulations. As discussed therein, it is the duty of U.S. Customs officers and Coast Guard marine safety personnel to observe and verify that a vessel is in compliance with 46 U.S.C. Chapter 51 and the regulations in 46 CFR Subchapter E. To do this, it is necessary to determine that the vessel has a valid load line certificate, that load lines are conspicuously marked (in accordance with 46 CFR 42.13-40), that draft marks are marked forward and aft, and that proper log entries have been made. A foreign or U.S. vessel may be checked at any time in U.S. waters to determine whether or not the applicable load line has been, is, or will be submerged. This procedure is described thoroughly in section 7.G. below. If the applicable load line is submerged or other indications of apparent violation of the Load Line Statute are observed, the matter should be immediately referred to the cognizant officer in charge, marine inspection (OCMI), who shall assign a marine investigating officer (I.O.) to conduct an investigation. If inspection indicates that further investigation should be conducted, then the following procedures should be followed:
1. The amount of the submergence that exists or will occur shall be determined;
  2. The drafts of the vessel forward and aft shall be checked and noted;
  3. The I.O. shall ascertain whether or not entries have been made in the vessel's log regarding the position of the applicable load line marks and the drafts forward and aft for the voyage in question, and make notes of such entries;
  4. The I.O. shall check whether load line entries have been made in the log for several recent voyages and make notes of such entries, particularly of variations in drafts, and submergence of load lines;
  5. The serial number of the vessel's Load Line Certificate, the date of issuance, the date of the initial or renewal survey, the date of the most recent annual endorsement, if any, and the name of the assigning authority that issued the certificate shall be noted;
  6. Using a Load Line Inspection Report, Form CG-1408, the I.O. shall report the matter to the district commander (m), via the OCMI having jurisdiction, setting forth findings even if no violation is indicated; and
  7. Water samples shall be taken and tested (see section 7.H below).

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- 7.B. Penalties. 46 U.S.C. 5116 provides for civil penalties for violations. Process violations carrying civil penalties like any other civil penalty case.
- C. Equipment Needed For Load Line Investigations. The equipment itemized below is needed to conduct a load line investigation. The district commander (m) may requisition this equipment as necessary. Upon request of the district director of Customs, the district commander (m) shall furnish required equipment to U.S. Customs Service personnel.

1. Current load line regulations (46 CFR, Subchapter E);
2. Two 50-foot tape measures with plumb bobs;
3. A 6-foot folding rule;
4. A notebook;
5. A pad of Form CG-1408, Load Line Inspection Report;
6. Hydrometers [NOTES 1];
7. Hydrosampler [NOTES 1, 2];
8. Small jars for samples of water, when hydrosamplers are not available;  
and
9. Gauge glass, 12 inches long, with 4-6 feet of rubber tubing fitted over glass (by submerging the tube, almost all wave action can be eliminated).

[NOTE 1: Items are necessary only when close reading of the position of the load line is indicated.]

[NOTE 2: Follow procedures outlined in section 7.H below.]

- D. When To Conduct The Load Line Investigation. Volume IV of this manual describes vessels that are subject to the Load Line Statute and regulations. Arriving vessels as well as departing vessels are subject to load line checks. However, the vessel is not subject to citation while in the loading and unloading process; both departure and arrival load line checks apply principally for the purposes of reserve buoyancy and safety while navigating. If a vessel appears to be overloaded while still loading, the I.O. should caution the master of the vessel and give the master an opportunity to correct the loading prior to departure. Similarly, the arrival check of drafts and marks should be made prior to the start of unloading operations. If the vessel appears to have been overloaded during its voyage, it is essential to obtain the master's explanation so that it may be checked immediately. For instance, if the explanation involves liquid ballast added during the voyage, the I.O. should have tanks sounded

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7.D. (cont'd) and attach notes to the report on the total ballast present at the time of the visit. The I.O. should also note the drafts recorded in the ship's logbooks during the last full voyage.

1. Upon The Vessel's Arrival. When an arriving vessel is reported to be overloaded, the I.O. must take maximum advantage of time. An immediate verification of the condition of the ship before unloading must be undertaken by the I.O. The I.O. shall note load line immersion on both sides of the vessel and the draft marks at bow and stern (plus the midships draft, when marked). The I.O. shall warn the master not to allow any ballast water or other material to be pumped overboard until the investigation is complete, and then record all tank levels by taking soundings or reading ullages. The I.O. should then take a minimum of five freeboard readings at the ends, amidship and quarterpoints noting the longitudinal locations, port and starboard sides, along the length of the vessel. [NOTE: Freeboard is the distance from the deck line (46 CFR 42.13-20) to the approximate mean surface of the water (see section 7.E below).] Records should also be made of cargo amounts and locations. The I.O. should check the vessel's logbook to verify the type of voyage the vessel was last on, and should verify the position of the load line marks in comparison with the Load Line Certificate. A maximum amount of accurate, on the spot data will thus be available to Coast Guard authorities taking action on the I.O.'s report. Experience with several past cases of loading violations by foreign vessels indicates that the information taken by the I.O. at the time of the violation is most important. If an I.O. fails to check all possibilities, the case may be vulnerable. [NOTE: It is necessary to fully understand the explanations that a master may offer for the apparent overloading, even when a language barrier exists.]
2. Upon The Vessel's Departure. Upon departure, loading of a vessel must be completed before load line observations are made. If loading is not completed and the vessel is down to its load line marks, the vessel's officers should be so advised; however, the responsibility for legal loading rests with the vessel's personnel. A note should be made of the advice given, with rank and name of the officer to whom it was directed, in case a violation report is written or the vessel detained. This is applicable to foreign as well as U.S. vessels.

E. Observing Load Lines For Submergence. The position of the applicable salt water load line (on the Great Lakes, the applicable load line) with respect to the surface of the water must be observed on both port and starboard sides. As there are generally some waves, half the distance between trough and crest is the approximate mean surface of the water. To apply the fresh water allowance (FWA), observe the distance between the salt water (summer) load line and its corresponding fresh water line (F), as marked on the ship. The upper edge of each line corresponds with the applicable required

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7.E. (cont'd) freeboard. The fresh water line (F) is measured in relation to the summer salt water line(s). The tropical fresh water (TF) line is measured in relation to the tropical salt water line (T). Having determined the allowance for fresh water for the particular ship, the allowable part of the full FWA is then determined. For instance, if the full FWA of the ship is 6 inches and the port allowance for the ship is 2 inches, then the water line of the ship can be legally one-third the observed distance from its applicable load line to the fresh water mark. The full FWA above the winter or winter North Atlantic (WNA) marks would be the same as the distance from the summer load line to the fresh water mark. The port allowance would again be a part of that distance above the applicable load line mark. If, as a result of this observation, the observer can state definitely whether or not the vessel is overloaded, the position of the water line in relation to the load lines and draft marks fore and aft should be recorded. Because the penalties found in 46 U.S.C. 5116 are based on the economic benefit of the overloading, means must be found to measure accurately the vertical distance between troughs and crests of waves, to obtain the position of the applicable load line with respect to the water line. For accurate measurement, the gauge glass/tubing mentioned in section 7.C above practically eliminates wave action, and the position of the water line can be determined very accurately. The specific gravity of the water should also be obtained (see section 7.H below).

F. Interpretation Of Winter Load Lines. Under the 1966 International Convention on Load Lines (ICLL), only vessels 328 feet (100 meters) or less in length are required to have a separate WNA freeboard. The minimum freeboard for vessels that are required to be marked with a WNA load line, if they are operating in either of the North Atlantic "seasonal winter" zones during a winter season, is contained in 46 CFR 42.20-75(d).

G. Reading Of Drafts In Load Line Investigations.

1. General. The draft of the vessel, forward and aft, must be noted in every case. Commonly, for U.S. vessels, the draft mark figures on the hull measure 6 inches in height and the bottom of the figure is the even foot reading corresponding to the mark. [NOTE: Some vessels may have their draft marks indicated in meters. Typically they are subdivided into two tenths of a meter increments.] Determination of the load line position by draft figures alone is not necessarily correct, as ships may hog or sag appreciably; load lines are located without accounting for hogging or sagging. Statutory civil penalties can only be imposed for submergence of the load line mark. Aside from possible hogging or sagging, it is essential to determine whether or not the applicable load line is or is not submerged. If the vessel has a list, an average must be determined for the amount of deck rise on one side and depression in the opposite side. When preparing the Load Line Inspection Report, Form CG-1408, when a vessel's load line is submerged in brackish water, the actual submergence should be noted on the report. If the vessel has a list, the position of both port and starboard lines with respect to the

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- 7.G.1. (cont'd) water should be noted. The actual drafts, port and starboard without corrections, should be entered. An FWA must be made for all U.S. navigable waters, except the Great Lakes (see 46 CFR 45).
2. Steaming Allowances. Additionally, a steaming allowance must be made for the weight of fuel and stores consumed during passage to sea. This allowance is not given for the Great Lakes and St. Lawrence Seaway (see 46 CFR 42.07-10(d)). The steaming allowance is computed as follows: estimate the total weight of the consumed fuel and stores in long tons (2,240 pounds); from the vessel's trim and stability data find the "tons per inch of submersion" or "tons per inch immersion (TPI)"; the total weight divided by tons per inch will give the inches (or fraction of an inch) that may be allowed. [NOTE: When "tons per inch" is based on short tons of 2,000 pounds, weight consumed must be in short tons as well.]
- H. Water Sampling Requirements. When it is believed that a penalty should be imposed for overloading, a sample of water should be obtained amidships by securing a bottle to a staff, or with a hydrosampler. In the former method, the bottle is stoppered with a cork having an attached string, which is held by the operator. When the bottle has been submerged by the staff to about one-half the draft of the vessel, the cork is removed by the string and the bottle allowed to fill. The same procedure is used with the hydrosampler by securing a rag or tying a knot in the sampler line to obtain the proper depth of sample water. The water in the bottle or hydrosampler is then tested with a hydrometer at the dock or carried to the office for test to determine the salinity. (See Figure 7-1 for a table of normal salinity allowances applicable to selected U.S. ports.) It is not necessary to compensate for differences in the temperatures of water when the sample is taken and when the hydrometer was read.
- I. Brackish Water Allowances. The 1966 ICLL, the 1974 International Convention for Safety of Life at Sea (SOLAS), and the regulations implementing 46 U.S.C. Chapter 51 allow the submergence of load line marks when a vessel is in fresh or brackish water (with the exception of load lines on vessels navigating the Great Lakes). Normally, since the position of the load lines is observed in port, where often seawater has been diluted with fresh water, it is necessary to determine the allowance to account for the vessel's rise when passing from brackish water in the port to salt water at sea. A vessel departing for sea should be so loaded that, after allowance is made for the lesser salinity of the water in which the observation is made, it is floating at the load line applicable to the zone or season when it first reaches ocean waters of full salinity. The FWA for a particular vessel is obtained from the Load Line Certificate and a computation made to determine the FWA to be used.

BRACKISH WATER ALLOWANCES, IN INCHES, FOR VARIOUS SPECIFIC GRAVITIES

Hydrometer Readings	Fresh Water Allowances Stated in Vessels' Load Line Certificate															
	2	2¼	2½	2¾	3	3¼	3½	3¾	4	4¼	4½	4¾	5	5¼	5½	5¾
1.000	2.00	2.25	2.50	2.75	3.00	3.25	3.50	3.75	4.00	4.25	4.50	4.75	5.00	5.25	5.50	5.75
1.001	1.92	2.16	2.40	2.64	2.88	3.12	3.36	3.60	3.84	4.08	4.32	4.56	4.80	5.04	5.28	5.52
1.002	1.84	2.07	2.30	2.53	2.76	2.99	3.22	3.45	3.68	3.91	4.14	4.37	4.60	4.83	5.06	5.29
1.003	1.76	1.98	2.20	2.42	2.64	2.86	3.08	3.30	3.52	3.74	3.96	4.18	4.40	4.62	4.84	5.06
1.004	1.68	1.89	2.10	2.31	2.52	2.73	2.94	3.15	3.36	3.57	3.78	3.99	4.20	4.41	4.62	4.83
1.005	1.60	1.80	2.00	2.20	2.40	2.60	2.80	3.00	3.20	3.40	3.60	3.80	4.00	4.20	4.40	4.60
1.006	1.52	1.71	1.90	2.09	2.28	2.47	2.66	2.85	3.04	3.23	3.42	3.61	3.80	3.99	4.18	4.37
1.007	1.44	1.62	1.80	1.98	2.16	2.34	2.52	2.70	2.88	3.06	3.24	3.42	3.60	3.78	3.96	4.14
1.008	1.36	1.53	1.70	1.87	2.04	2.21	2.38	2.55	2.72	2.89	3.06	3.23	3.40	3.57	3.74	3.91
1.009	1.28	1.44	1.60	1.76	1.92	2.08	2.24	2.40	2.56	2.72	2.88	3.04	3.20	3.36	3.52	3.68
1.010	1.20	1.35	1.50	1.65	1.80	1.95	2.10	2.25	2.40	2.55	2.70	2.85	3.00	3.15	3.30	3.45
1.011	1.12	1.26	1.40	1.54	1.68	1.82	1.96	2.10	2.24	2.38	2.52	2.66	2.80	2.94	3.08	3.22
1.012	1.04	1.17	1.30	1.43	1.56	1.69	1.82	1.95	2.08	2.21	2.34	2.47	2.60	2.73	2.86	2.99
1.013	.96	1.08	1.20	1.32	1.44	1.56	1.68	1.80	1.92	2.04	2.16	2.28	2.40	2.52	2.64	2.76
1.014	.88	.99	1.10	1.21	1.32	1.43	1.54	1.65	1.76	1.87	1.98	2.09	2.20	2.31	2.42	2.53
1.015	.80	.90	1.00	1.10	1.20	1.30	1.40	1.50	1.60	1.70	1.80	1.90	2.00	2.10	2.20	2.30
1.016	.72	.81	.90	.99	1.08	1.17	1.26	1.35	1.44	1.53	1.62	1.71	1.80	1.89	1.98	2.07
1.017	.64	.72	.80	.88	.96	1.04	1.12	1.20	1.28	1.36	1.44	1.52	1.60	1.68	1.76	1.84
1.018	.56	.63	.70	.77	.84	.91	.98	1.05	1.12	1.19	1.26	1.33	1.40	1.47	1.54	1.61
1.019	.48	.54	.60	.66	.72	.78	.84	.90	.96	1.02	1.08	1.14	1.20	1.26	1.32	1.38
1.020	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85	.90	.95	1.00	1.05	1.10	1.15
1.021	.32	.36	.40	.44	.48	.52	.56	.60	.64	.68	.72	.76	.80	.84	.88	.92
1.022	.24	.27	.30	.33	.36	.39	.42	.45	.48	.51	.54	.57	.60	.63	.66	.69
1.023	.16	.18	.20	.22	.24	.26	.28	.30	.32	.34	.36	.38	.40	.42	.44	.46
1.024	.08	.09	.10	.11	.12	.13	.14	.15	.16	.17	.18	.19	.20	.21	.22	.23
	6	6¼	6½	6¾	7	7¼	7½	7¾	8	8¼	8½	8¾	9	9¼	9½	9¾
1.000	6.00	6.25	6.50	6.75	7.00	7.25	7.50	7.75	8.00	8.25	8.50	8.75	9.00	9.25	9.50	9.75
1.001	5.76	6.00	6.24	6.48	6.72	6.96	7.20	7.44	7.68	7.92	8.16	8.40	8.64	8.88	9.12	9.36
1.002	5.52	5.75	5.98	6.21	6.44	6.67	6.90	7.13	7.36	7.59	7.82	8.05	8.28	8.51	8.74	8.97
1.003	5.28	5.50	5.72	5.94	6.16	6.38	6.60	6.82	7.04	7.26	7.48	7.70	7.92	8.14	8.36	8.58
1.004	5.04	5.25	5.46	5.67	5.88	6.09	6.30	6.51	6.72	6.93	7.14	7.35	7.56	7.77	7.98	8.19
1.005	4.80	5.00	5.20	5.40	5.60	5.80	6.00	6.20	6.40	6.60	6.80	7.00	7.20	7.40	7.60	7.80
1.006	4.56	4.75	4.94	5.13	5.32	5.51	5.70	5.89	6.08	6.27	6.46	6.65	6.84	7.03	7.22	7.41
1.007	4.32	4.50	4.68	4.86	5.04	5.22	5.40	5.58	5.76	5.94	6.12	6.30	6.48	6.66	6.84	7.02
1.008	4.08	4.25	4.42	4.59	4.76	4.93	5.10	5.27	5.44	5.61	5.78	5.95	6.12	6.29	6.46	6.63
1.009	3.84	4.00	4.16	4.32	4.48	4.64	4.80	4.96	5.12	5.28	5.44	5.60	5.76	5.92	6.08	6.24
1.010	3.60	3.75	3.90	4.05	4.20	4.35	4.50	4.65	4.80	4.95	5.10	5.25	5.40	5.55	5.70	5.85
1.011	3.36	3.50	3.64	3.78	3.92	4.06	4.20	4.34	4.48	4.62	4.76	4.90	5.04	5.18	5.32	5.46
1.012	3.12	3.25	3.38	3.51	3.64	3.77	3.90	4.03	4.16	4.29	4.42	4.55	4.68	4.81	4.94	5.07
1.013	2.88	3.00	3.12	3.24	3.36	3.48	3.60	3.72	3.84	3.96	4.08	4.20	4.32	4.44	4.56	4.68
1.014	2.64	2.75	2.86	2.97	3.08	3.19	3.30	3.41	3.52	3.63	3.74	3.85	3.96	4.07	4.18	4.29
1.015	2.40	2.50	2.60	2.70	2.80	2.90	3.00	3.10	3.20	3.30	3.40	3.50	3.60	3.70	3.80	3.90
1.016	2.16	2.25	2.34	2.43	2.52	2.61	2.70	2.79	2.88	2.97	3.06	3.15	3.24	3.33	3.42	3.51
1.017	1.92	2.00	2.08	2.16	2.24	2.32	2.40	2.48	2.56	2.64	2.72	2.80	2.88	2.96	3.04	3.12
1.018	1.68	1.75	1.82	1.89	1.96	2.03	2.10	2.17	2.24	2.31	2.38	2.45	2.52	2.59	2.66	2.73
1.019	1.44	1.50	1.56	1.62	1.68	1.74	1.80	1.86	1.92	1.98	2.04	2.10	2.16	2.22	2.28	2.34
1.020	1.20	1.25	1.30	1.35	1.40	1.45	1.50	1.55	1.60	1.65	1.70	1.75	1.80	1.85	1.90	1.95
1.021	.96	1.00	1.04	1.08	1.12	1.16	1.20	1.24	1.28	1.32	1.36	1.40	1.44	1.48	1.52	1.56
1.022	.72	.75	.78	.81	.84	.87	.90	.93	.96	.99	1.02	1.05	1.08	1.11	1.14	1.17
1.023	.48	.50	.52	.54	.56	.58	.60	.62	.64	.66	.68	.70	.72	.74	.76	.78
1.024	.24	.25	.26	.27	.28	.29	.30	.31	.32	.33	.34	.35	.36	.37	.38	.39

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7.I.1. Computations Of Port Allowances. Standard hydrometer density of ocean water (1.025) less actual density of port water is divided by .025; the quotient is then multiplied by the FWA given on the vessel's Load Line Certificate. This will give the port allowance to be used. No FWA may be granted on the Great Lakes or in the St. Lawrence Seaway from Lake Ontario to Montreal for any vessel with a Great Lakes load line. The equivalent load lines for ships with International Load Line Certificates are found in 46 CFR 45.9. The above procedure expressed by formula is:

$$\frac{\text{Sea Water Density} - \text{Density}}{(1.025) \quad \text{at Port}} \times (\text{Certificate FWA}) - \text{Vessel Port Allowance}$$

.025

Figure 7-1 sets forth the brackish water allowance for various specific gravities, making it unnecessary to figure each case by this formula.

2. Average Densities Of Harbor Waters In Percentages. The percentages of average density of harbor waters indicated in Figure 7-2 are for the guidance of load line enforcement officers when there is no question about a violation of 46 U.S.C. Chapter 51. This table gives average readings, however, and may not be accepted in legal action if seriously challenged. Therefore, when there is doubt as to the legality of the vessel's loading, and when the enforcement officer believes a penalty should be imposed, the density of the water should be obtained by hydrometer.

J. Inspection Of Foreign Vessels. ICLL 66 certificates on vessels of foreign countries that have ratified the 1966 ICLL are normally accepted as meeting the requirements for a U.S. Load Line Certificate and markings in accordance with 46 CFR, Subchapter E. [NOTE: See Volume I of this manual for countries that are party to the Convention.] Vessels of foreign countries that have not ratified the ICLL are subject to U.S. laws and regulations and must obtain a Form B Load Line Certificate to operate in U.S. waters. If there is a valid Load Line Certificate aboard the vessel, the enforcement officer's inspection shall be limited to that specified in 46 CFR 42.07-60(f) as follows:

1. That the ship is not loaded beyond the limits allowed by the certificate.
2. That the position of the load line on the ship corresponds to the certificate. [NOTE: It is important to check this as some countries allow multiple load line certificates to be issued to a single vessel with the Master logging which is in use.]
3. That the ship has not been so materially altered that it is manifestly unsafe (46 CFR 42.07-60(f) (1)).

## AVERAGE DENSITIES OF HARBOR WATERS IN PERCENTAGES

Port	Percentage of Freshwater Allowance Permissible	Port	Percentage of Freshwater Allowance Permissible
Aberdeen, Wash.	100	New York, N.Y.—Cont.	
Astoria, Oreg.	100	Newark, N.J.	50
Baltimore, Md.	100	North River:	
Bath, Maine	100	Pier 9:	
Beaumont, Tex.	100	High tide	40
Bellingham, Wash.	20	Low tide	30
Boston, Mass.		Pier 61:	
High tide	None	High tide	45
Low tide	5	Low tide	30
Brunswick, Ga.	None	Pier 97	
Charleston, S.C.	None	High tide	50
Eastport, Maine	None	Low tide	40
Everett, Wash.	20	Perth Amboy, N.J.:	
Fall River, Mass.	100	High tide	25
Galveston, Tex.	None	Low tide	40
Gulfport, Miss.	None	Staten Island	30
Honolulu, T.H.	None	Norfolk, Va.	60
Houston, Tex.	100	Olympia, Wash.	20
Jacksonville, Fla.	100	Panama City, Fla.	None
Ketchikan, Alaska	None	Pensacola, Fla.	50
Key West, Fla.	None	Philadelphia, Pa.	100
Lake Charles, La.	100	Port Arthur, Tex.	100
Longview, Wash.	100	Portland, Maine	None
Los Angeles, Calif.	None	Portland, Oreg.	100
Marshfield, Oreg.:		Port Townsend, Wash.	None
Coo's Bay logging dock:		Providence, R.I.	None
Rainy season	40	St. Croix, V.I.	None
Dry season	20	St. Thomas, V.I.	None
Coo's Bay Lumber Co. dock:		San Diego, Calif.	None
Rainy season	55	San Francisco, Calif.	
Dry season	45	Martinez:	
Coo's Bay Terminal Co. dock:		January to July	80
Rainy season	55	July to January	60
Dry season	45	Oakland:	
Empire Mill dock		Parr Terminal:	
Rainy season	20	January to July	20
Dry season	None	July to January	10
Marshfield		Pier 11	
Rainy season	55	January to July	30
Dry season	45	July to January	10
Oregon Pacific dock		Pier 26	
Rainy season	40	January to July	30
Dry season	20	July to January	10
Port dock		Pier 45	
Rainy season	40	January to July	20
Dry season	20	July to January	10
Srtka Spruce dock:		Pier 50:	
Rainy season	None	January to July	30
Dry season	None	July to January	10
Mayaguez, P.R.	None	Third and Channel Streets:	
Miami, Fla.	None	January to July	30
Mobile, Ala.	80	July to January	10
New Orleans, La.	100	Parr Terminal	
Newport News, Va.	60	(Outer Harbor):	
New York, N.Y.:		January to July	25
Brooklyn		July to January	15
Pier 4	30	San Juan, P.R.	None
Pier 33	30	Savannah, Ga.	100
East River (New York):		Seattle, Wash.	20
Pier 14	30	Tacoma, Wash.	20
Jersey City, N.J.		Tampa, Fla. (no fixed allowance - too variable)	
High tide	40	Wilmington, Del.	100
Low tide	35	Wilmington, N.C.	100

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- 7.J. (cont'd) Control of a foreign vessel shall be exercised only to the extent necessary to ensure that the ship shall be made fit to proceed to sea safely. This may be interpreted to require offloading of cargo or supplies as necessary to return the vessel to its marks in cases of overloading.
- K. Load Line Inspection Findings. During the inspection of a vessel, the following possible violations of 46 U.S.C. Chapter 51 may be noted, and the necessary remedial action shall be determined within the limitations of the acts:
1. Failure to have load lines on both sides of the vessel (46 CFR 42.07-5).
  2. Failure to have load lines conspicuously marked (plainly visible, permanently marked, and of the contrasting color) on both sides of the vessel (46 CFR 42.13-40).
  3. Failure to have a valid Load Line Certificate aboard. To be valid, even though a Load Line Certificate may not have expired, an annual load line inspection must have been made within 3 months of the anniversary date on the certificate, so endorsed on the back of the certificate by the assigning authority (46 CFR 42.09-15(d)).
  4. Failure to enter in the log the positions of the load line marks, port and starboard, and the drafts forward and aft (46 CFR 42.07-20).
  5. Submergence of applicable load lines at departure or arrival (46 CFR 42.07-10).
  6. Violation of any order of detention made pursuant to 46 U.S.C. Chapter 51.
  7. Alteration, defacement, obliteration, or concealment of load lines.
- L. Detention Of Vessels For Load Line Violations. 46 U.S.C. 5113 authorizes the Secretary of the Department of Transportation (SEC DOT) to detain a vessel believed to be in violation of the load line requirements. Every effort shall be made to prevent needless detention of vessels. Detention should be employed only in cases where the vessel appears overloaded or otherwise manifestly unsafe to proceed to sea (see 46 CFR 42.07-60).
- N. Official Logbook Examinations During Load Line Investigations.
1. General. Upon completion of a voyage in which a vessel apparently was loaded to its marks, the vessel's logbook should be examined to determine any instances of questionable or doubtful freeboards in possible violation of load line regulations. In addition to the checks and examinations of fully laden vessels departing United States ports that are presently conducted by the National Cargo Bureau (NCB), U.S. Customs Service, or Coast Guard personnel, the official logbook of a fully laden vessel that has bunkered at foreign ports, in possible violation of 46 U.S.C. Chapter 51, should be examined to determine

7.M.1. (cont'd) if further inquiry into the loading and bunkering of the vessel is warranted.

2. Evaluation Of Logbook Entries.

a. Sample Case 1.

- (1) Scenario. The examination of the official logbook at the conclusion of a voyage shows that a vessel (TPI 51.2, fuel consumption 230 barrels (bbl.) per day) departed a Gulf of Mexico port approximately 4 inches light of the load line mark for the voyage; that in 3 days the vessel arrived at a nearby foreign port within the same load line zone; and that the vessel took on approximately 4,700 bbl. of fuel oil there. The 3-day passage from the domestic port to the foreign port consumed approximately 690 bbl. of oil, at 6.6 bbl. per ton. This amounts to an approximate 100-ton reduction in displacement; divided by the TPI, this translates into an approximate decrease of 2 inches in draft. The 4,700 bbl. of fuel oil taken on, at 6.6 bbl. to the ton and 51.2 tons to the inch, translates into a decrease in freeboard of approximately 14 inches. The vessel departed the U.S. with 4 inches of freeboard to spare, and gained 2 more inches of reduced draft proceeding to the foreign port (through burning off fuel oil). When the 6-inch draft lightening is subtracted from the 14-inch decrease in freeboard, a possible overloading of 8 inches is indicated. This situation warrants further investigation.
- (2) Analysis. There may be a valid explanation in this case. The vessel may legitimately have had a quantity of slop water that was discharged during the passage; this should be indicated by entries in the engineering logbook or the Oil Record Book (ORB). Further letters of inquiry to the master or examination of NCB records, including stability and grain loading plans, may explain the situation. If the condition is explained satisfactorily, no further action is necessary. Further examination of the approved stability grain loading plans of the vessel may indicate that the load at the foreign port was in excess of the stated amount of bunkering, to eliminate a second bunkering port. Also, the cargo and stability plans may have called for the vessel to use evaporators for boiler feed from the sea, when in fact the vessel took on a significant quantity of extra fresh water just prior to sailing from the U.S.

b. Sample Case 2.

- (1) Vessel Data. This case illustrates the need to check the actual freeboard at the load line marks, rather than depend on corresponding draft marks to determine violations. The subject vessel is a 75,000 deadweight tons (DWT) tanker with the following characteristics:

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7.M.2.b. (1) (cont'd)

Length overall	810 ft.
Beam	125 ft.
Molded depth	54 ft. 6 in.
Assigned summer freeboard	13 ft. 4-1/2 in.
Deck thickness	1-3/16 in.
Keel thickness	1-1/4 in.

(2) Analysis. The actual vessel depth is 54' 6", plus 1-3/16" (deck), plus 1-1/4" (keel), for a total depth of 54' 8-7/16". The corresponding draft for summer freeboard is 54' 8-7/16", minus 13' 4-1/2", or 41' 3-15/16". Although it might appear that any mean draft less than or equal to 41' 3-15/16" does not constitute a violation, this is not true. It is not unusual for a vessel of this size to sag 6 inches. If the mean draft of the vessel was determined to be 41' 1" and it had 6 inches of sag, there would still be a violation of approximately 3 inches. This would be apparent when the load line marks were checked on both sides. Similarly, if the vessel were in a hogged condition, a mean draft greater than 41' 3-15/16" would not necessarily constitute a violation. The governing factor is always whether the actual load line (with the appropriate water density and season corrections) is immersed.

(3) Need To Check Both Sides Of The Vessel. If the vessel in Sample Case 2 were boarded at a dock and found to be loaded to its marks on the dock side, it would still be necessary to check the marks on the seaward side. For a vessel of this beam, a list of only 2 degrees causes a height difference of more than 4 feet between the sides. If the ship were listing 2 degrees away from the dock, the mean freeboard calculations would show a violation of more than 2 feet although none was apparent when boarding from the dock side [NOTE: Load line (Plimsoll) marks are placed at the midpoint of the load line length of a vessel, as defined in 46 CFR 42.13-15. This is particularly critical for measurements taken on vessels with design drag or rake of keel, such as tugboats.]

N. Marine Safety Information System (MSIS). The Coast Guard MSIS should be used as an aid in verifying suspected load line violations or in "flagging" known violators to other 1.0.'s. Any vessel involved in a load line discrepancy of certificates, freeboard/draft readings, or loading can be regarded as a "vessel of particular interest" (VPI). Data concerning such vessels should be entered into the MSIS.

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7.0. Load Line Reports.

1. No Violations. If no load line violation has been found, Form CG-1408 (Load Line Inspection Report) shall be filled out in duplicate. One copy shall be filed with the district commander (m) and the duplicate copy retained by the OCMI.
2. Violations Discovered. If a load line violation is believed to have occurred, Form CG-1408 shall be filled out in triplicate. The report shall be accompanied by explanatory comments (including hog or sag information) that are pertinent or helpful in determining the final disposition of the case. The Load Line Inspection Report form shall be submitted to the hearing officer, via the district commander (m), as an attachment (2 copies) to the Marine Violation Report and Recommendation (MVRR) filed in MSIS; the third copy shall be retained by the OCMI.
3. Violations Discovered Aboard Foreign Vessels. When detention or other intervention is taken against a foreign vessel for load line violations, the officer carrying out such action shall immediately inform the consul or other diplomatic representative of the vessel's home administration and the district director of Customs. Customs notification may be made orally; other notifications should be in writing. Information on all pertinent circumstances and the action being taken should be conveyed in the notification (see 46 CFR 42.07-60).

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CHAPTER 8. OUTER CONTINENTAL SHELF (OCS) INVESTIGATIONS

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CHAPTER 8. OUTER CONTINENTAL SHELF (OCS) INVESTIGATIONS

A. Introduction. The regulations for OCS investigations are found in 33 CFR 140.201 through .205. Section 22 of the Outer Continental Shelf Lands Act Amendments (OCSLAA) (43 U.S.C. 1348) requires investigation of every death, serious injury, major fire, pollution incident, and alleged violation of safety regulations issued pursuant to the OCSLAA that occurs as a result of activities on the OCS (including foreign activities). Subpoena power is available to aid such investigations. Under the direction of the officer in charge, marine inspection (OCMI), investigating officers (I.O.'s) shall investigate the following incidents that occur as a result of OCS activities:

1. Deaths;
2. Injuries resulting in substantial impairment of any bodily unit or function;
3. Fire that causes death, injury, or property damage exceeding \$25,000;
4. Oil spillage exceeding 200 barrels (bbl.) in 1 occurrence during any 30-day period; and
5. Any other injuries, casualties, accidents, complaints of unsafe working conditions, fires, pollution, and incidents resulting from OCS activities, as the OCMI deems appropriate to promote the safety of life, property, or the marine environment.

B. Investigative Guidelines. Insofar as practicable, OCS investigations shall be conducted pursuant to the procedures outlined in 46 CFR 4. Representatives of the U.S. Department of the Interior (DOI) Minerals Management Service (MMS) may participate in OCS investigations. Such participation includes, but is not limited to the following:

1. Participating in a joint on-scene investigation;
2. Making recommendations concerning the scope of the investigation;
3. Calling and examining witnesses; and
4. Submitting and requesting additional evidence.

Reports of investigations conducted under 33 CFR, Subpart C shall be made available to parties to the investigation and the public upon completion of agency action. In such investigations, the I.O. shall have the power to administer necessary oaths, subpoena witnesses, and require the production of books, logs, documents, and other forms of evidence. Attendance of witnesses or the production of real evidence shall be compelled by a process similar to that used in the district courts of the U.S.

8.C. Relations With The Minerals Management Service (MMS).

1. Agency Responsibilities. To avoid duplicative efforts and to simplify administrative procedures, the primary agency regulating a particular facility, system, or operation shall be responsible for leading the investigation and for reporting on incidents involving that facility, system, or operation. Where only one agency has an investigative interest in an incident, that agency will investigate and report. Where both the Coast Guard and MMS have investigative interest, one will assume the lead role while the other provides supporting participation (see Volume X of this manual for the memorandum of understanding (MOU) between the Coast Guard and MMS dated 18 December 1980). Assumption of lead agency responsibility, the extent of supporting participation, and procedures for coordination will be determined by the circumstances of the incident. Normally, all investigations that involve both agencies will be coordinated by applying the following guidelines:
  - a. Collisions. The Coast Guard is the lead agency.
  - b. Fires And Explosions. MMS is the lead agency for all fires and explosions that involve drilling or production operations. Coast Guard participation will be requested in all investigations of fires and explosions involving deaths, injuries, and vessels, equipment, or operations for which the Coast Guard is responsible.
  - c. Deaths And Injuries. The Coast Guard is the lead agency. MMS participation will be requested in all investigations of deaths and injuries associated with oil or gas drilling or production operations or equipment, including exposure to hydrogen sulfide.
  - d. Pollution Incidents. MMS is the lead agency. Coast Guard participation will be requested in all pollution investigations.
  - e. Facilities. Equipment, And Materials.
    - (1) The Coast Guard will normally be the lead agency for incidents involving damage to mobile offshore drilling units (MODU's), mobile well servicing units (MWSU's), or other vessels, or floating OCS facilities, and failure of or damage to propulsion, auxiliary, or emergency systems and equipment for which the Coast Guard establishes requirements; and
    - (2) MMS will normally be the lead agency for all other incidents involving failure of or damage to fixed OCS facilities.
2. Conduct Of Investigations. The lead agency for an investigation shall conduct, review, approve, and release its investigative report in accordance with its normal procedures; comments by the supporting agency will be included in the investigative report. If both agencies participate in an investigation, the lead agency shall forward an information copy of its final report to the supporting agency.

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- 8.C.2. (cont'd) Reports prepared by a single agency need not be forwarded routinely to the other, but shall be available upon request.
- D. Relations With The Occupational Safety And Health Administration (OSHA). An MOU between the Coast Guard and OSHA, dated 19 December 1979, provides for cooperation between the two agencies in identifying violations of safety and health regulations that have caused, or may cause injuries or deaths during activities conducted pursuant to the OCSLAA. Specifically, Paragraph IV.A.2 provides that the Coast Guard will review allegations from any person of violations of health or safety regulations or other unsafe working conditions. (See Volume X of this manual for a copy of this MOU.)
1. Investigative Activities. In the course of OCS investigations, whether formal or informal, the Coast Guard will cooperate with OSHA with respect to identifying violations of applicable OSHA regulations related to the casualty or accident. Such cooperation will include the following:
    - a. Promptly making investigative information available to OSHA;
    - b. Inviting OSHA attendance at Coast Guard formal hearings; and
    - c. Developing lines of inquiry suggested by OSHA.

When Coast Guard investigation identifies an apparent violation of OSHA regulations, the OCMI shall promptly notify OSHA and, subsequently, will cooperate with OSHA with respect to any enforcement action that the agency may undertake. Such cooperation may include, but is not limited to, providing transportation as available. [NOTE: OSHA remains responsible for obtaining its own legal rights of access to any facility.]

2. Coast Guard Review Of Alleged Violations. The Coast Guard will review any allegation of a violation of OSHA regulations or the existence of unsafe working conditions on the OCS, and will take appropriate action under the circumstances. Copies of complaints or allegations received by OSHA will be referred to the appropriate Coast Guard district commander for resolution. The Coast Guard shall notify OSHA as promptly as possible of the disposition of allegations forwarded by OSHA.
3. Resolution Of Complaints From Merchant Mariners. In an MOU dated 8 March 1983, OSHA concluded that it may not enforce the Occupational Safety and Health Act with respect to the working conditions aboard Coast Guard inspected vessels (see Volume X of this manual for a copy of the MOU). OSHA retains its authority under Section 11(c) of the Act, which forbids discrimination in any manner against employees who have exercised any right afforded them under the Act. OSHA agreed to refer to the Coast Guard any complaints (except for Section 11(c) complaints) received from mariners working aboard inspected vessels. The Coast Guard has the sole discretion to determine whether the events complained of constitute hazardous conditions, as well as the extent of any remedial actions.

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VOLUME V

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