

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE NATIONAL TRANSPORTATION SAFETY BOARD AND  
THE UNITED STATES COAST GUARD  
REGARDING INVESTIGATIONS  
AND RELATED MATTERS**

1. **Purpose.** The National Transportation Safety Board (NTSB) and the United States Coast Guard (USCG) enter into this Memorandum of Understanding (MOU) to facilitate timely cooperation between the agencies as they carry out their respective statutory missions. This MOU is intended to assist in determining which agency will lead certain major marine casualties and identifies the agencies' roles in search and rescue actions. The goal is to ensure interagency communication, cooperation, and coordination, and to best serve the maritime community and the public during a transparent marine casualty investigation process. The Memorandum of Understanding dated December 19, 2008, regarding marine casualty investigations, is superseded by this MOU. The Chairman of the National Transportation Safety Board (Board) and the Commandant of the United States Coast Guard jointly affirm that interagency cooperation, mutual assistance in marine casualty investigations, and swift implementation of safety improvements are essential for improvement of marine safety, effective agency operations, and promoting the public welfare.
2. **Authority and Applicable Law.**
  - a. This MOU is entered into on behalf of the NTSB under authority of 49 U.S.C. § 1101 *et seq.*, specifically, but not limited to 49 U.S.C. §§ 1113, 1131, 1132, and 1140.
  - b. This MOU is entered into on behalf of the USCG consistent with its Marine Safety mission under the authority of 46 U.S.C. Chapters 61 and 63, and 14 U.S.C. § 701 and its search and rescue (SAR) mission under the authority of 14 U.S.C. §§ 102 and 521.
  - c. Nothing in this MOU is intended to alter the statutory or regulatory authorities of the USCG or the NTSB. The agencies expect this MOU to facilitate cooperative efforts of the agencies in the area of marine casualty investigations and the identification of the USCG's SAR mission.
  - d. This MOU is not intended to conflict with current or future laws or regulations, Presidential directives, or the directives of the U.S. Department of Homeland Security (DHS), USCG, including those that direct overall Federal response to incidents, or the NTSB. If any term of this MOU is inconsistent with such authority, the term shall be invalid; the remaining terms and conditions of this MOU shall remain in full force and effect.
  - e. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise, by any third party against the NTSB, the USCG, DHS, the United States, or its officers, employees, agents, or any other person.
  - f. The NTSB is authorized to investigate any major marine casualty, "occurring on, or under, the navigable waters, inland waters or territorial sea of the United States, or involving a vessel of the United States, or involving a public vessel of the United States and any other vessel." in accordance with 49 U.S.C. § 1131, and, as defined in 49 C.F.R. Part 850 and 46 C.F.R. Subpart 4.40. In accordance with 49 U.S.C. § 1131(a)(1)(F), the NTSB is authorized to investigate any accident related to transportation of individuals or property when the Board decides the accident is catastrophic, involves problems of a recurring character, or carries out 49 U.S.C. § 1101 *et seq.* Under 49 U.S.C. § 1132, the NTSB "shall investigate each accident involving civil aircraft....".
  - g. The NTSB shall conduct an investigation when the casualty involves a Coast Guard vessel and a non-public vessel and at least one fatality or the property damage value addressed in 46 C.F.R. Subpart 4.40.

- h. In accordance with 46 U.S.C. Chapter 63, the USCG is authorized to investigate any marine casualty involving death, serious injury, material loss of property, material damage to vessels, or significant harm to the environment occurring on the navigable waters or territorial sea of the United States, or involving a non-public vessel of the United States wherever such a casualty occurs. The Coast Guard may also investigate a marine casualty involving a public vessel of the United States and any other vessel, and may investigate marine casualties outside the territorial sea of the United States, when the United States is a Substantially Interested State.

### 3. **Investigative Responsibilities.**

- a. The NTSB and the USCG agree that upon report of a major marine casualty, as defined in 46 C.F.R. Subpart 4.40, or a casualty between public and non-public vessels, each agency will immediately notify the other of all information regarding the casualty, and both agencies will quickly coordinate the appropriate investigative response as soon as is practicable.
- b. If either agency is notified of a marine casualty where the United States is or may become a Substantially Interested State (SIS) consistent with the International Maritime Organization (IMO), "Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident," the agency receiving notice will immediately notify the other of all information received regarding the casualty. The NTSB and the USCG will expeditiously coordinate the appropriate investigative response. On multi-national investigations involving foreign-flagged vessels, when the United States is invited to participate or decides to conduct an independent casualty investigation, the USCG shall invite the NTSB to participate in the investigation; however, there may be instances for SIS investigations where the lead Marine Investigating State denies the NTSB's participation.
- c. The NTSB or the USCG may lead an investigation of any major marine casualty. The NTSB and the USCG anticipate that when the NTSB and the USCG jointly decide to investigate a major marine casualty, one agency will be designated as the lead Federal agency for the investigation. The Chairman of the NTSB and the Commandant of the USCG, or their designees, will determine which agency will lead the marine casualty investigation.
- d. If the preliminary investigation by the USCG of any major marine casualty or casualty involving a US government vessel (referenced in Section 2) indicates that cyber cannot be ruled out immediately, the NTSB and the USCG will cooperate with the relevant government agencies as circumstances dictate. Specific obligations and procedures are reflected in Appendix 4 to this MOU, which may be jointly updated without revising this MOU.
- e. The NTSB and the USCG recognize that in particular circumstances the need for further clarification will arise in order to facilitate decision making to determine which agency will lead the maritime casualty investigation. Therefore, the NTSB and USCG agree that during communications to determine the lead, the preference is for the NTSB to lead the major marine casualty investigation of any incident which involves:
  - i. another transportation mode;
  - ii. serious threat of, or presumed loss of six or more lives on a passenger vessel;
  - iii. serious threat of, or presumed loss of twelve or more lives on a commercial vessel;
  - iv. serious threat of, or presumed high loss of life beyond the vessel(s) involved;
  - v. significant safety issues relating to the infrastructure of the maritime transportation system or the environment by hazardous materials;
  - vi. safety issues of a recurring character; or,
  - vii. significant safety issues relating to USCG statutory missions, specifically aids to navigation, search and rescue, and marine safety.
- f. The NTSB and USCG agree that during communications to determine lead. the preference will

be to have the USCG lead the investigation of all other marine casualties, consistent with its statutory authority.

- g. When the USCG leads the investigation of a major marine casualty, the NTSB may choose to participate or request the USCG to investigate on its behalf, and the NTSB may issue an abbreviated report, including a probable cause determination.
  - h. The NTSB and the USCG agree that, regardless of which agency leads a marine casualty investigation, the other agency may participate as an equal partner in gathering evidence and establishing facts, with due consideration to keeping analyses and conclusions separate and independent. The agencies agree that the lead investigative agency will help to coordinate information sharing among the agencies, particularly during the on-scene phase of the investigation. In those cases where the public interest demands on-scene live media engagements or written press releases, the agencies agree that the lead investigative agency will act as the sole spokesperson for casualty investigation information and activity, and press conferences and press releases will identify the lead and supporting investigating agencies. Participation by the non-lead investigative agency in any press conference is encouraged. Once the on-scene portion of the investigation is complete, both agencies may issue independent press releases and conduct any press conferences as necessary. (Appendix 1).
  - i. The NTSB and the USCG agree that, regardless of which agency leads a marine casualty investigation, investigative activities will be coordinated in accordance with the provisions of the *U.S. Coast Guard Incident Management Handbook (IMH)*, COMDTPUB P3120.17B so as not to interfere with USCG-led response operations.
  - j. The NTSB and the USCG agree that an NTSB Board Member will not attend the scene of a marine casualty investigation led by the USCG.
  - k. The NTSB will provide to the USCG, as resources permit, investigative support for casualty investigations, such as voyage data recorder information retrieval and materials properties analysis, typically conducted by the NTSB Office of Research and Engineering.
  - l. The USCG will provide to the NTSB, as resources permit, logistical assistance at the scene of a casualty, such as air or water transportation and office facilities. The USCG can provide, as resources permit, technical capabilities such as digital forensics, typically conducted by the CG Investigative Service.
  - m. Either agency may use an interagency fund transfer, or similar mechanism, to reimburse the other for costs related to investigations, which are agreed upon in advance.
4. **Formal/Marine Board of Investigation Hearings, Public Board Meetings, and Public Investigative Hearings.**
- a. The USCG may conduct a Formal or Marine Board of Investigation on any casualty it investigates, and will generally avoid convening the Formal or Marine Board until after the on-scene portion of the investigation is completed when the NTSB is the lead federal agency. If the USCG and NTSB jointly investigate a marine casualty under USCG lead, the NTSB may participate, at NTSB's discretion, in any USCG formal proceedings.
  - b. The NTSB may hold a Public Investigative Hearing or Public Board Meeting on any casualty that it investigates and will generally avoid holding one until after the on-scene portion of the investigation is completed. If the USCG and NTSB jointly investigate a marine casualty under NTSB lead, the USCG may participate as a party or witness in any NTSB Public Investigative Hearing.
5. **General.**
- a. The USCG is the head of the U.S. delegation to IMO. The NTSB may participate as a member of the U.S. delegation to all IMO meetings where marine safety issues of interest to the NTSB are expected to arise, and may be invited to assist in developing the U.S. position to amend, change, revise, or develop new IMO codes, resolutions, protocols, or other materials related to

marine safety for presentation and/or discussion at IMO meetings.

- b. As resources permit, the NTSB and the USCG agree to establish, sponsor, and conduct joint training opportunities for their investigators with each encouraged to make courses and training facilities available on a reciprocal, no-cost basis. Mutual training agreements have been established for internships at each agency.
- c. Upon request of the USCG, and as resources permit, the NTSB will make its Transportation Disaster Assistance (TDA) Division staff available to support family assistance operations in collaboration with the USCG; other government agencies at the federal, state, and local levels; the vessel operator; and non-governmental aid organizations, as appropriate. To support the NTSB's statutory obligations under 49 USC 1140, the USCG will provide the names of all individuals involved in the accident, and contact information for survivors and for the next-of-kin or other family members associated with each fatality, when known. (See *USCG Incident Management Handbook* for more information. Further, TDA personnel will provide training on family assistance operations, as resources permit, to USCG personnel in conjunction with USCG sponsored training on ICS.)

## 6. **Exchange of Information.**

- a. *Reciprocal and Full Access to Information.* Recognizing that the NTSB and USCG each have the authority to investigate and neither agency's authority is diminished when one is designated as lead, the NTSB and the USCG agree to share all information, including full, concurrent access to voyage recording data and audio, testimony and other evidence obtained during, or relevant to, marine casualty investigations, to the maximum extent allowed by law, and by each agency's regulations, directives, and policies. At least quarterly, USCG agrees to provide production data files from its Marine Information for Safety and Law Enforcement (MISLE) data system to the NTSB via an electronic download of the entire data set in a format that supports data analysis (such as Microsoft Access, Excel, or SAS), or DVD, or thumb drive. This data may also be provided for ongoing investigations as needed. In addition, annually USCG agrees to provide the finalized statistics for the previous year and preliminary statistics for the current year for: cargo transport, commercial fishing, and commercial passenger vessels. To ensure that neither agency is restricted in its ability to independently investigate, each agency will complete any necessary documentation as reflected in Appendix 1 to this MOU to ensure full access to all information is completed in a timely manner.
- b. *Public Requests for Information.* When investigative or other relevant information is considered for release to the public, the releasing agency will comply with its statutory obligations, the provisions of the Privacy Act, 5 U.S.C §552a, the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the Health and Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d-2, and other statutory provisions and associated federal regulations that prohibit the public release of certain information. When one agency receives a request for release of information that is a record of the other agency, the agencies agree to consult and refer the request for a direct release by the appropriate agency. Specific procedures for safeguarding certain categories of information and preventing the release of records that should be directed to the other agency are reflected in Appendix 1 to this MOU, which may be jointly updated without revising this MOU.
- c. *USCG-to-NTSB Disclosure of HIPAA-governed Protected Health Information (PHI).* For purposes of HIPAA, the USCG is a "covered entity" and the NTSB is a "public health authority," as those terms are defined in 45 C.F.R. §§ 160.103 and 164.501, respectively. The HIPAA Privacy Rule permits a covered entity to disclose PHI, without individual consent or authorization, to a public health authority (NTSB) (45 C.F.R. § 164.512(b); 49 C.F.R. § 831.9(b)(2)). Both agencies acknowledge that, as a covered entity, the USCG is required to reasonably limit the PHI disclosed to the minimum amount necessary (45 CFR 164.514(d)(3)(iii)(A)). In addition, the agencies agree to follow proper safeguarding procedures (outlined in Appendix 2) in the USCG transfer of, and the subsequent NTSB storage of PHI.

7. **SAR and Aviation Mishap Investigations in the Maritime Environment.**

- a. As the Federal SAR Coordinator for the internationally recognized US maritime and aeronautical SAR regions, the USCG intends to coordinate any SAR operations involving marine casualties or aviation accidents or incidents involving persons in distress with its internationally recognized Joint Rescue Coordination Centers.
- b. The USCG priority in its role as Federal SAR Coordinator will be to render assistance to any persons in distress. Specific obligations and procedures are reflected in Appendix 3 to this MOU, which may be jointly updated without revising this MOU.

8. **Periodic Meetings.** Close continuing liaison and cooperation will be maintained between the two agencies so that common objectives can be achieved efficiently, and problems and differences can be minimized and resolved expeditiously. The Office Director of the Office of Marine Safety and the head of the USCG Office of Investigations & Casualty Analysis agree to meet at least twice annually to review the status of the NTSB recommendations to the USCG, the previous year's investigations and to consider improvements to this MOU, the USCG-NTSB joint regulations, marine casualty investigation procedures, or other matters relating to marine casualty investigations and marine safety. The NTSB Chairman and the Commandant agree to meet periodically to discuss the agencies' cooperation and achieving their common objectives.

9. **Modifications.** This MOU may be modified at any time upon written agreement of both agencies. Technical corrections and the appendices may be modified without renegotiation of this MOU. Appendices may be signed by the Assistant Commandant for Prevention Policy and the NTSB Managing Director.

10. **Termination.** This agreement may be terminated at any time by either agency by 45-days written notice to the other party.

Jointly agreed and signed:

Robert L. Sumwalt  
Chairman  
National Transportation Safety Board

Admiral Karl L. Schultz  
Commandant  
United States Coast Guard

17 JUNE 2021

Date

17 JUNE 2021

Date

Appendices:

1. Protocol for the Sharing and Public Release of Information during a Marine Casualty Investigation
2. Public Affairs Coordination during a Marine Casualty Investigation
3. Protocol for Notification and Cooperation During USCG Search and Rescue Operations
4. Protocol for Notification and Cooperation for Cyber Investigative Actions

APPENDIX ONE TO  
MEMORANDUM OF UNDERSTANDING BETWEEN  
THE NATIONAL TRANSPORTATION SAFETY BOARD (NTSB) and  
THE UNITED STATES COAST GUARD (USCG)  
REGARDING MARINE CASUALTY INVESTIGATIONS  
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**Protocol for the Sharing and Public Release of Information during a Marine  
Casualty Investigation**

**A. In General**

This Appendix is provided as a supplement to the MOU between the NTSB and the USCG in the area of sharing and exchanging information that is exempt from public disclosure between the two agencies during the conduct of joint marine casualty investigations. This includes, but is not limited to, Sensitive Personally Identifiable Information (SPII) and Controlled Unclassified Information (CUI), which encompasses prior designations of Sensitive But Unclassified (SBU), defined below.

Each agency follows specific regulations and policy to govern and manage the public disclosure of information obtained during a marine casualty investigation and in practice, these regulations and policy may conflict.<sup>1</sup> In those instances in which the NTSB intends to publicly disclose information that the USCG, by regulation would not disclose, or vice versa, documentation to illustrate this conflict and potential resolution is necessary in the interests of both Parties to the MOU. Consequently, this Appendix is intended to set forth in detail the mutually agreed upon procedures and underlying legal rationale for the transmittal of information between the agencies and, once transmitted, the notice by either agency of its intent to publicly disclose the information – such notice affording both agencies the opportunity to either resolve the conflict or to document an objection to the public disclosure.

**B. Sensitive Personally Identifiable Information**

I. Exemptions from Disclosure For purposes of this Appendix, SPII/CUI is information, “which if lost, compromised, or disclosed without authorization, could result in

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<sup>1</sup> For example, in accordance with NTSB Freedom of Information (FOIA) regulations and policy at 49 C.F.R. part 801, “[i]nformation the NTSB routinely provides to the public as part of a regular NTSB activity (such as press releases and information disclosed on the NTSB’s public Web site) may be provided to the public without compliance with this [part 801].” And as a matter of policy, “the NTSB may make discretionary [public] disclosures of records or information otherwise exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption.” 49 C.F.R. § 801.2. In contrast, the USCG must comply with DHS FOIA regulations and policy at 5 C.F.R. part 6 and, as a matter of policy, may not make public disclosures of information otherwise exempt from disclosure under the FOIA unless such disclosure is in accordance with those regulations. Moreover, “NTSB authorities and its public safety mission require the agency in some instances to disclose proprietary and medical information that other agencies may routinely withhold or redact.” Letter to Captain Patrick McGuire, Chief, USCG Office of Maritime and International Law, from Ms. Ann G. Gawalt, NTSB Deputy General Counsel, dated November 26, 2014. Clearly, the public disclosure by NTSB of CG-owned or -acquired SPII from a marine casualty investigation would present a conflict between the agencies’ respective regulations and policy directives.

substantial harm, embarrassment, inconvenience, or unfairness to an individual.”<sup>2</sup> The USCG considers SPII/CUI to include the following types<sup>3</sup> of information. The NTSB also considers SPII/CUI to include the following types of information; however, information in categories 14, 15 and 16 may be disclosed under NTSB rules and regulations if needed to support its findings, probable cause or recommendations. Additionally, the NTSB releases the signatures of its leadership.

1. Social Security Numbers
2. Federal Employee ID Numbers, Merchant Mariner License Numbers
3. Dates of Birth (if paired with another identifier)
4. Driver’s License/State ID Numbers
5. Home Addresses
6. Home Telephone Numbers
7. Personal Email Addresses
8. Passport Numbers
9. Alien Registration Numbers
10. Biometric Identifiers
11. Insurance Policy Numbers
12. Bank Account Numbers/Banking and Financial Transaction Information
13. Credit Card Numbers
14. Medical Information (if paired with another identifier), including Toxicology Reports and Drug Test Results
15. Medical records/Protected Health Information (PHI)<sup>4</sup>
16. Proprietary/Trade Secret/Confidential Business Information
17. Signatures

II. Agency Personnel Exempt from Disclosure The USCG redacts the names of USCG personnel at or below O-5 or GS-14, citing FOIA exemption 6 as the legal basis for its practice. Pursuant to this exemption, courts routinely permit agencies to withhold the identities of personnel in military, law enforcement, and similar sensitive agencies or occupations. When considering that the USCG is a military organization and law enforcement agency, its decision to withhold the names of officers below the rank of O-6 and civilian personnel below GS-15 is reasonable.

### C. **Procedures for the Exchange of Information**

1. When investigative or other relevant information is released to the public, it will be the responsibility of the releasing agency to comply with the provisions of the Privacy

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<sup>2</sup> DHS Safeguarding Sensitive PII, p. 4 (March 2012).

<sup>3</sup> This list is not intended to be an exhaustive list of SPII/CUI because, depending on circumstances and context, other types of information, not listed here, may still be sensitive and require special handling.

<sup>4</sup> As defined by the HIPAA, PHI means individually identifiable health information “that is: (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium.” 45 CFR § 160.103.

Act, the Freedom of Information Act, and other statutory provisions and associated Federal regulations governing information disclosure.

2. For purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d-2, Pub. L. No. 104-191, 110 Stat. 2024, the USCG is a “covered entity” and the NTSB is a “public health authority,” as those terms are defined in 45 C.F.R. §§ 160.103 and 164.501, respectively. The USCG and the NTSB will observe the requirements of HIPAA, including the requirements of 45 C.F.R. part 164, Subpart E, with respect to treatment and handling of any PHI exchanged under this MOU, to the extent such requirements apply to the USCG as a covered entity and to the NTSB as a public health authority.
3. Any information received by the USCG, in the course of an investigation, will be transmitted to NTSB as a matter of course. However, if the USCG does not intend to collect particular information that is needed by NTSB, the NTSB can request for the USCG to collect that information on their behalf. When the NTSB requests information (verbally or in writing) to be collected by the USCG, the USCG will make every effort to collect and transmit the requested material to the NTSB, as soon as possible.
4. All unredacted USCG-transmitted material responsive to an NTSB request, in any medium, including electronic, paper, or magnetic tape/voice recording, will be accompanied by a USCG-NTSB Transmittal Letter (“TL”), alerting the NTSB recipient that the enclosed material may contain information protected by the Privacy Act, exempt from disclosure by the FOIA, or which is otherwise sensitive. The TL will contain:
  - a. Name of the NTSB recipient/investigator
  - b. NTSB investigation case number
  - c. List of transmitted material
  - d. Name/Signature of the USCG transmitting official
5. Once received, the NTSB will maintain the unredacted material as SPII/CUI records until the NTSB determines the use of the information for its final NTSB report and/or public docket of supporting factual material.

**D. Procedures for Notice of Intent to Publicly Disclose USCG-Transmitted Data**

1. Within a reasonable time thereafter, the USCG will provide redacted versions of the transmitted material, indicating the information that the USCG considers should be redacted before public disclosure.
2. If the NTSB determines that the USCG-redacted information must be publicly disclosed for safety purposes in a final NTSB report or supporting factual material, in compliance with NTSB rules and regulations, the NTSB will provide notice to the

USCG of such determination and an opportunity to comment on the proposed disclosure *before* such disclosure.

3. If the USCG objects to the disclosure, NTSB and USCG investigative and legal offices will discuss the disclosure concerns in an effort to reach a mutually agreeable resolution. If no resolution, the NTSB will disclose as per its regulations and the USCG will document its objection to the disclosure.
4. Each party agrees to refer requests for information under FOIA to the other party for processing if the information sought is maintained by the other party.

**E. Voyage Data Recorder Data and Audio**

1. Generally, the lead investigative agency will discuss with the other agency aspects of the recovery of the voyage data recorder (VDR) from the accident location, including logistics and expenses.
  - a. The lead investigative agency will retain the original media and/or devices.
  - b. The lead investigative agency will provide access to media and/or devices when requested by the non-lead agency.
  - c. The lead investigative agency will be responsible for the security of the original media and/or devices.
  - d. The lead investigative agency will be responsible for returning any original devices to its owner in accordance with that agency's rules or regulations.
  - e. Prior to returning any devices to its owner, the lead investigative agency will notify and seek concurrence from the non-leading agency.
2. When the NTSB leads an investigation and receives a request from the USCG for VDR information, the NTSB will make every effort to timely transmit the raw data and/or related material to the USCG Investigation National Center Of Expertise (NCOE) as soon as possible. Unless requested otherwise, the NTSB shall transmit a raw data file of the VDR information that it obtains, and this raw data file will become a record of the USCG that it may process and use under USCG rules and regulations for its investigation.
3. The NTSB and the USCG shall designate all video and audio recordings as SPII/CUI.
4. The USCG will provide a written request for VDR information, whether processed or raw, that recognizes non-disclosure requirements to assist the NTSB with maintaining confidentiality of the data. The request will contain:
  - a. The vessel(s) for which the voyage data recorder data and audio is requested;
  - b. A statement that the USCG will maintain, store, and handle the data and audio as sensitive SPII/CUI information and will further limit the distribution of data; and,

- c. Name/Signature of the USCG NCOE person responsible for receiving data and audio.
5. In accordance with 46 U.S.C. § 6309, the USCG shall have full, concurrent, and timely access to and ability to use voyage data recorder data and audio (VDR information) held by any Federal agency in all marine casualty investigations, regardless of which agency is the investigative lead.
6. In accordance with 49 U.S.C. § 1114 (d), the NTSB may not publicly disclose any part of a surface voice or video recorder recording or transcript of oral communications by operating employees responsible for the movement and direction of a vessel, or communications between such employees and company communication centers, related to an accident investigated by the NTSB. However, an exception provides that subject to protections on trade secrets and individual privacy, the NTSB is required to make public any part of a transcript, any written depiction of visual information obtained from a video recorder, or any still image obtained from a video recorder when it is relevant to the accident.
7. In accordance with the rules and regulations of the releasing agency, transcripts of video and audio recordings may be released publicly after SPII/CUI matters in the transcripts are addressed. Prior to a public release, the USCG or NTSB may share with each other transcripts or summaries of video and audio recordings, which also will be designated as SPII/CUI.
8. For the purposes of the USCG's mandates prescribed by 46 U.S.C. § 6301, the voyage data recorder from the accident location are SPII/CUI.
  - a. If the USCG determines that disclosure of VDR information is necessary to meet the investigative mandates prescribed in 46 U.S.C. § 6301, the USCG will follow the procedures necessary to protect SPII/CUI.
  - b. If the USCG determines that disclosure of VDR information is necessary to meet the investigative mandates prescribed in 46 U.S.C. § 6301, it will provide the NTSB advance notice of at least fourteen business days and an opportunity to comment on the proposed release and its rationale of such release. When possible, the agencies will coordinate their public releases of transcripts.
9. When the NTSB has sole possession of the VDR and its information, the USCG will refer any FOIA requests for VDR information to the NTSB for processing. When the USCG has sole possession of the VDR and/or its information, it will respond to any FOIA requests it receives for the records that it holds. When the USCG and/or the NTSB has independently processed the raw data file that each independently holds, that processed file becomes a unique record of each agency for the purposes of a public release.

## **F. Non-VDR Electronic Data Related to the Accident or Investigation**

1. Generally, the lead investigative agency will discuss with the other agency aspects of the recovery of other recording and/or data devices (Non-VDR electronic data) from the accident location, including logistics and expenses.
  - a. The lead investigative agency will retain the original media and/or devices.
  - b. The lead investigative agency will provide access to media and/or devices when requested by the non-lead agency.
  - c. The lead investigative agency will be responsible for the security of the original media and/or devices.
  - d. The lead investigative agency will be responsible for returning any original devices to its owner in accordance with that agency's rules or regulations.
  - e. Prior to returning any devices to its owner, the lead investigative agency will notify and seek concurrence from the non-leading agency.
2. When the NTSB leads an investigation and receives a request from the USCG for Non-VDR electronic data, the NTSB will timely transmit the raw data and/or related material to the USCG Investigation National Center of Expertise (NCOE) as soon as possible. Unless requested otherwise, the NTSB shall transmit a raw data file of the Non-VDR electronic data that it obtains, and this raw data file will become a record of the USCG that it may process and use under USCG rules and regulations for its investigation.
3. The NTSB and the USCG shall designate all video and audio recordings as SPII/CUI.
4. The USCG will provide a written request for Non-VDR electronic data, whether processed or raw, that recognizes non-disclosure requirements to assist the NTSB with maintaining confidentiality of the data. The request will contain:
  - a. The vessel(s) for which the data is requested;
  - b. A statement that the USCG will maintain, store, and handle the data as sensitive SPII/CUI information and will further limit the distribution of the data; and,
  - c. Name/Signature of the USCG NCOE person responsible for receiving the data.
5. In accordance with 46 U.S.C. § 6309, the USCG shall have full, concurrent, and timely access to and ability to use Non-VDR electronic data held by any Federal agency in all marine casualty investigations, regardless of which agency is the investigative lead.
6. In accordance with 49 U.S.C. § 1114 (d), the NTSB may not publicly disclose any part of a surface voice or video recorder recording or transcript of oral communications by operating employees responsible for the movement and direction of a vessel, or

communications between such employees and company communication centers, related to an accident investigated by the NTSB. However, an exception provides that subject to protections on trade secrets and individual privacy, the NTSB is required to make public any part of a transcript, any written depiction of visual information obtained from a video recorder, or any still image obtained from a video recorder when it is relevant to the accident.

7. In accordance with the rules and regulations of the releasing agency, transcripts of video and audio recordings may be released publicly after SPII/CUI matters in the transcripts are addressed. Prior to a public release, the USCG or NTSB may share with each other transcripts or summaries of video and audio recordings, which also will be designated as SPII/CUI.
8. For the purposes of the USCG's mandates prescribed by 46 U.S.C. § 6301, the Non-VDR electronic data from the accident location are SPII/CUI.
  - a. If the USCG determines that disclosure of Non-VDR information is necessary to meet the investigative mandates prescribed in 46 U.S.C. § 6301, the USCG will follow the procedures necessary to protect SPII/CUI.
  - b. If the USCG determines that disclosure of Non-VDR information is necessary to meet the investigative mandates prescribed in 46 U.S.C. § 6301, it will provide the NTSB advance notice of at least fourteen business days and an opportunity to comment on the proposed release and its rationale of such release. When possible, the agencies will coordinate their public releases of transcripts.
9. When the NTSB has sole possession of the Non-VDR electronic data, the USCG will refer any FOIA requests for Non-VDR information to the NTSB for processing. When the USCG has sole possession of the Non-VDR electronic data, it will respond to any FOIA requests it receives for the records that it holds. When the USCG and/or the NTSB has independently processed the raw data file that each independently holds, that processed file becomes a unique record of each agency for the purposes of a public release.

APPENDIX TWO TO  
MEMORANDUM OF UNDERSTANDING BETWEEN  
THE NATIONAL TRANSPORTATION SAFETY BOARD (NTSB) and  
THE UNITED STATES COAST GUARD (USCG)  
REGARDING MARINE CASUALTY INVESTIGATIONS  
AND RELATED MATTERS

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## **Public Affairs Coordination during a Marine Casualty Investigation**

This Appendix is provided as a supplement to the MOU between the NTSB and the USCG in the area of public release of investigative information, particularly during the on-scene activities and investigative milestones of a joint marine casualty investigation.

### **1. General**

1.1. Regardless of who is the lead agency, both the NTSB and USCG believe that for the public to perceive the joint investigation as credible and competent, that the coordination and cooperation between the two agencies in the joint investigation be clearly indicated and explained. As such, any public release of information or other media contact shall normally include a reference to the fact that the investigation is a joint endeavor by the NTSB and the USCG.

### **2. Dissemination of Investigative Information**

When the NTSB leads the investigation, and prior to the NTSB's adoption of its final report, only appropriate NTSB personnel are authorized to publicly disclose investigative findings, and, even then, the release shall be limited to verified factual information identified during the course of the investigation. In addition, all parties to the investigation, including the USCG, must refrain from providing opinions or analysis of the accident outside of the participants in the investigation. Limitations on commenting publicly on possible findings of the investigation, including the probable cause of the accident, will remain in effect until after the NTSB adopts the final report.

2.1. While the joint investigation is ongoing only appropriate personnel from the agency leading the investigation are normally authorized to publicly disclose investigative findings, and even then, the release shall be limited to verified (*i.e. mutually agreed upon*) factual information identified during the course of the investigation.

2.2. This limitation does not apply under the following circumstances.

2.2.1. When the other agency, after appropriate coordination with the lead federal agency, initiates a formal action before the completion of the joint investigation that is deemed urgent to safety, such as:

2.2.1.1. Issuance of a safety alert

2.2.1.2. Issuance of a safety recommendation

2.2.1.3. Referral of civil/criminal violations of law/regulations for enforcement action

In these instances, the other agency shall take care to ensure only information deemed necessary to support the action being initiated is included in the public release.

2.2.2. When the other agency has completed its report and closed its investigation. In such cases, the agency may publicly disclose the contents of its final report. For the NTSB, this occurs when the Board adopts the final report. For the USCG, this normally occurs when the Commandant issues the Final Action Memorandum.

2.3. In all instances, the releasing agency shall consult with the other agency in advance and provide them an opportunity to comment on the content and timing of the public disclosure.

### **3. Dissemination of Information to Media**

Both agencies agree that periodic factual briefings to the news media are a normal part of a marine casualty investigation and that, for the public to perceive the investigation is credible, the investigation should speak with one voice. Therefore:

3.1. It is preferred that the lead agency be the sole source of public information regarding the process of a joint accident investigation.

3.2. While the joint investigation is ongoing contacts with news media concerning the joint investigation will be made by the appropriate personnel from the lead agency. For the NTSB, this is through the Board Member if on-scene, the NTSB's representative of its Office of Public Affairs, or the Investigator In Charge (IIC). For the USCG, this is through the Convening Authority, the Marine Board Chair/Designated Investigating Officer, or designated CG's public affairs representative. The other agency shall normally be invited to participate in media engagements.

3.3. If the other agency desires to have a unique media contact, the lead agency must be informed and a summary of the anticipated media contact and subject matter must be provided prior to the contact.

3.4. If the other agency is contacted by the media directly regarding the joint investigation, they shall normally refer such inquiries to the public affairs office of the lead agency. The other agency may respond directly to any inquiries that address issues that are outside the scope of the lead agency's investigative authority or procedures, but should still advise the lead agency of the inquiry.

3.5. The USCG may engage the media regarding investigative actions or findings that are outside the scope of the NTSB's investigation (e.g., civil or criminal enforcement-related recommendations, issuance of a Coast Guard safety alert/safety recommendation, or completion of the Coast Guard investigation and release of its report before the NTSB has completed its investigation.)

APPENDIX THREE TO  
MEMORANDUM OF UNDERSTANDING BETWEEN  
THE NATIONAL TRANSPORTATION SAFETY BOARD (NTSB) AND  
THE UNITED STATES COAST GUARD (USCG)  
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**Protocol for Notification and Cooperation during USCG Search and Rescue  
(SAR) Operations during an NTSB Investigation**

1. **Purpose.** This Appendix is provided as a supplement to the MOU between the NTSB and the USCG to address the USCG's obligations under Annex 12 to the Convention on International Civil Aviation (ICAO), Search and Rescue.
2. **General.** The USCG is the United States' lead agency with regard to its obligations in support of Annex 12. It establishes and provides SAR services in accordance with the Annex. Additionally, under the US National SAR Plan, the USCG is the Federal SAR Coordinator for US maritime and aeronautical search and rescue regions (SRR) in the maritime environment. The NTSB and USCG agree that coordination and cooperation between the two agencies promotes efficient and effective SAR operations.
3. **SAR Protocols.** The NTSB leads the investigation of all civil aviation accidents or incidents; and with the participation of appropriate military authorities, each accident involving both military and civil aircraft. 49 USC § 1132. The NTSB also investigates major marine casualties as defined in 49 USC §1131(E) and this MOU. However, the NTSB does not participate in the search and rescue of persons that are involved in either an aviation or maritime accident. It relies on the USCG and other similarly aligned organizations for SAR.
  - a. When a SAR operation involving an aviation accident or major marine casualty occurs in a US SRR in which the USCG is responsible, the USCG will notify the NTSB. The point of contact for the NTSB is its Response Operations Center (ROC), at (202) 314-6290.
    - 1) If an NTSB investigator-in-charge has been named, the ROC will inform the investigator of the SAR plan.
    - 2) The ROC may share the investigator-in-charge's contact information with the USCG.
    - 3) The USCG SAR point of contact is the Rescue Coordination Center (RCC) or Rescue Sub Center (RSC) responsible for the coordination of the SAR operation.
  - b. Typically, the NTSB's on-scene investigative work will begin after the SAR operation concludes and the recovery phase begins, but it may begin during the SAR operation on a not-to-interfere basis.

- 1) The NTSB may conduct its investigation of wreckage recovered during a SAR operation. The NTSB investigator-in-charge will coordinate with the RCC or RSC responsible for coordinating the SAR operation to ensure neither agency's work hinders that of the other.
- c. The USCG will provide data and information related to the SAR operation requested by the NTSB for its accident investigation.
- d. The NTSB and USCG will abide by the terms of this MOU and its Appendices related to Public Affairs Coordination for the public disclosure of any information related to the SAR operation.

APPENDIX FOUR TO  
MEMORANDUM OF UNDERSTANDING BETWEEN  
THE NATIONAL TRANSPORTATION SAFETY BOARD (NTSB) AND  
THE UNITED STATES COAST GUARD (USCG)  
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**Protocol for Notification and Cooperation for Cyber Investigative Actions**

1. **Purpose.** This Appendix is provided as a supplement to the MOU between the NTSB and the USCG to address the mandate that investigations relating to major marine casualties or casualties involving US government vessels include cyber forensics.
2. **General.** The USCG shall conduct a preliminary investigation of the major marine casualty or casualty involving a US government vessel and determine if cyber may be ruled out immediately. If not, the NTSB and the USCG will cooperate with the agency(ies) that will conduct the cyber investigation.

**Remainder of content to be determined once a mandate is instituted.**