



MARINE CASUALTY REPORT

FISHING VESSEL FISH-N-FOOL, D.N. 293888

**CAPSIZING AND SINKING ON 5 FEBRUARY 1987
IN THE PACIFIC OCEAN APPROXIMATELY 2.6
MILES SOUTH OF ISLA DE SAN MARTIN,
MEXICO WITH MULTIPLE LOSS OF LIFE AND
INJURIES TO PASSENGERS**

U.S. COAST GUARD

**Marine Board of Investigation Report
and
Commandant's Action**

REPORT NO. USCG 16732/001 HQS 88

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16. Abstract At approximately 1300 on 5 February 1987, the Coast Guard-inspected small passenger vessel FISH-N-FOOL was struck on its starboard side by a large breaking swell near "Ben's Rock," 2.6 miles south of Isla de San Martin, Mexico. The unexpected swell caused the vessel to broach and capsize. Of the three crew members and nine passengers on board, two survived, two drowned and the remaining eight are missing and presumed dead. One survivor managed to swim to Isla de San Martin and was rescued by local fishermen. The other survivor lashed four lifefloats from the sunken vessel together and activated an electronic position indicating radio beacon (EPIRB). Coast Guard aircraft picked up the EPIRB signal and eventually located the survivor by following its signal. The Commandant has concurred with the Board that the cause of the casualty was the operator's positioning of the vessel in close proximity to, and down the swell line from, Ben's Rock, a charted navigational hazard. This report contains the U.S. Coast Guard Marine Board of Investigation Report and the Action taken by the Commandant to determine the proximate cause of the casualty and provide a response to the recommendations to prevent recurrence.					
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M/V FISH-N-FOOL, O.N. 293888; CAPSIZING AND SINKING
ON 5 FEBRUARY 1987 IN THE PACIFIC OCEAN APPROXIMATELY
2.6 MILES SOUTH OF ISLA de SAN MARTIN, MEXICO, WITH
MULTIPLE LOSS OF LIFE AND INJURY

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Commandant's Action

16732/FISH-N-FOOL

DEC 1 1987

on

The Marine Board of Investigation convened to investigate the circumstances surrounding the capsizing and sinking of the M/V FISH-N-FOOL in the Pacific Ocean on 5 February 1987 with multiple loss of life and personnel injuries

The report of the marine board of investigation convened to investigate the subject casualty has been reviewed and the record, including the findings of fact, conclusions and recommendations is approved subject to the following comments.

CAUSE OF THE CASUALTY

The cause of the casualty was the operator's positioning of the vessel in close proximity to, and down the swell line from, Ben's Rock (charted as a navigational hazard) to engage in fishing operations. The chart is annotated to indicate that occasional breakers occur in this area. A large swell subsequently broke over Ben's Rock and struck the vessel broadside, causing it to heel beyond its range of stability and capsize.

COMMENTS ON FINDINGS OF FACT

Finding of fact 30: "...This action was in violation of the 1935 Vessel Salvage Treaty with Mexico, which allows entry for maritime Search and Rescue (SAR) only if United States vessels or citizens are "known" to be involved. There were three additional violations of this nature as a result of Coast Guard response in this casualty, namely; the initial change of course to investigate the ELT by HU25A 2128, and two helo landings on Mexican territory.

Comment: This portion of the finding of fact is not concurred with. The 1935 Treaty with Mexico allows SAR operations within the territorial waters or on the shores of Mexico with simple notification of local port authorities (Mexican Air Traffic Control authorities were notified in this case). The Treaty applies to each country assisting vessels of its own nationality. Since ELT distress beacons are commonly carried by U.S. and not by Mexican vessels, it was reasonable to assume that the distress involved U.S. citizens. Under the circumstances, the investigation of the distress beacon was within the bounds of the treaty and formal permission for entry into Mexican airspace was not required. Once [REDACTED] was rescued, it was obvious that the Coast Guard's assumption that U.S. citizens were involved was correct.

SAR response in the territory of foreign nations involves two principles which sometimes conflict: (1) the right of nations to regulate entry into, and operations within, their territory, and (2) the humanitarian need to quickly and effectively assist persons in danger or distress without regard to nationality or circumstances. U.S. policy and international law recognize the

right of vessels or aircraft to enter or overfly the territorial sea of a foreign nation to render emergency assistance when the location of a distress is reasonably well known. Such assistance is not normally dependent upon receiving permission of the coastal nation. However, the coastal nation should be notified of the entry at the earliest opportunity as a matter of courtesy. This also allows for the activation of that nation's rescue units if necessary.

COMMENTS ON CONCLUSIONS

Conclusion 9: There is evidence of misconduct and/or negligence on the part of [REDACTED] in that he permitted M/V FISH-N-FOOL to be operated on 3 and 4 February 1987 by unlicensed passengers while the licensed operators and deckhand were asleep.

Comment: This conclusion is concurred with. Also, there is evidence of similar violations on the part of [REDACTED] in that he permitted the vessel to be operated by unlicensed passengers while it was anchored on 5 February 1987. Furthermore, the assigned duties and responsibilities of [REDACTED] regarding operation of the vessel on these dates are unclear. This matter has been referred to Commander, Eleventh Coast Guard District for further investigation.

Conclusion 10: There is evidence of a violation of Title 46 Code of Federal Regulations Subpart 185.22 on the part of [REDACTED] in that on 4 and 5 February 1987, while the vessel was at anchor and passengers were asleep below decks, he did not designate a member of the vessel's crew to be a roving patrolman.

Comment: This conclusion is concurred with. Also, the assigned duties and responsibilities of [REDACTED] when the vessel was at anchor are unclear. This matter has been referred to Commander, Eleventh Coast Guard District for further investigation.

Conclusion 32: Since the Coast Guard did not know that the emergency signal was coming from either a United States' flag vessel or a vessel with United States' citizens onboard, they were precluded by treaty from entering Mexican airspace. Had the Coast Guard strictly adhered to that treaty, [REDACTED] most probably would not have been rescued by the Coast Guard.

Comment: This conclusion is not concurred with. For the reasons detailed in the comments on finding of fact 30 above, it was reasonable for the Coast Guard to assume that the distress signal was coming from a U.S. flag vessel. Therefore, it was within the bounds of the Treaty to enter Mexican airspace to investigate the signal.

ACTION CONCERNING RECOMMENDATIONS

Recommendation 1: That the Coast Guard encourage and support the National Oceanographic and Atmospheric Administration and other involved agencies in improving upon the functional design of EPIRB's and ELT's, with the express purpose of reducing the high false alarm rate and designing a method of identifying the emitting source.

Action: This recommendation is concurred with. For over eight years, the Coast Guard, through its sponsorship of the Interagency Committee on Search and Rescue (ICSAR), has been giving a high priority to resolving problems with electronic position indicating radiobeacons (EPIRB's- carried on vessels) and electronic locating transponders (ELT's- carried on aircraft) which affect their reliability. The majority of the problems have been with the 121.5 MHz ELT's, which have been carried by aircraft since 1968. Both ICSAR and the National Search and Rescue Satellite-aided (SARSAT) Agency have been working with the Federal Aviation Administration (FAA) to resolve these problems. SARSAT is another multiagency group composed of NOAA (lead agency), U. S. Coast Guard, U. S. Air Force and U. S. Navy. Massive awareness programs for pilots have been mounted throughout the country to help them understand how to avoid false alerts and show them how to check and maintain their ELT's. An improved ELT has been developed and tested and found to correct reliability problems inherent to existing ELT's. Steps are now being taken to make carriage of the improved ELT mandatory. Also, the Coast Guard is now chairing a committee to develop a national standard for more capable 406 MHz ELT's, which will have the advantages enumerated below in the discussion of 406 MHz EPIRB's.

With regard to EPIRB's, the Coast Guard recently issued a Notice of Proposed Rulemaking (NPRM), CGD 86-424 seeking assignment of 406 MHz as the frequency to be used exclusively for EPIRB's. The 406 MHz EPIRB's will be functionally the same as existing EPIRB's, but the new frequency will carry only distress signals whereas the present frequency, used for both EPIRB's and ELT's, 121.5 MHz, is also the aircraft calling and distress frequency. Aircraft voice communications can, therefore, overpower an EPIRB or ELT signal. The assignment of 406 MHz for EPIRB's and ELT's would solve this problem. In addition, the signal broadcast by 406 MHz EPIRB's or ELT's would have unique characteristics which would facilitate identification of the specific vessel or aircraft emitting the signal.

Recommendation 2: That the Coast Guard verify that its current search and rescue contacts within Mexico are up-to-date and provide for a rapid means of notifying Mexican SAR resources.

Action: This recommendation is concurred with. Contacting Mexican SAR authorities during SAR cases is sometimes difficult due to marginal communication facilities and limited SAR trained personnel in Mexico. U. S. Coast Guard representatives maintain liaison with the Mexican Navy (national

maritime SAR agency) through several visits yearly. The Coast Guard makes every effort to obtain information on current SAR points-of-contact through these visits and other meetings. However, the information provided is not always completely accurate or up-to-date. Reliable SAR communications with Mexico are expected to remain a problem until staffing and equipment shortfalls at the Mexican Rescue Coordination Centers (RCC's) are corrected.

Recommendation 3: That the Coast Guard pursue the development of more workable agreements or treaties with the Mexican government relative to the execution of search and rescue efforts in Mexican territorial waters.

Action: This recommendation is concurred with. U.S. delegations have been negotiating a new bilateral SAR agreement between the Mexican Navy and the U.S. Coast Guard since November 1984, with the most recent talks held in July 1987. If the agreement is eventually acceptable to both sides and becomes effective, provisions for much more direct coordination in SAR cases between the Coast Guard and Mexican Navy will be enacted. Additionally, the Mexican government would provide funding for upgrading their RCC's, which should eliminate many of the present communications problems discussed in the comments on recommendation 1 above.

Recommendation 4: That the Coast Guard amend Title 46, Code of Federal Regulations, Subchapter T, Small Passenger Vessels (under 100 Gross Tons), to require Operators to deposit a sailing list with its landing or other shoreside facility prior to getting underway. The list would include the names and addresses of all passengers and crew.

Action: The intent of this recommendation is concurred with. A proposal requiring vessel operators to deposit a list of passenger and crew names ashore before sailing will be included in the ongoing revision of 46 CFR, Subchapter T. Addresses will not be included in the proposed regulation revision since they would not further safety interests.

Recommendation 5: That the Coast Guard amend Title 46 Code of Federal Regulations (CFR), Subchapter T,..., to require that the safety information identified in 46 CFR paragraph 185.25-1(d) be both posted on the vessel and given verbally to the passengers by a member of the crew.

Action: This recommendation is concurred with. A requirement for safety information identified in 46 CFR 185.25-1(d) to be posted and given to passengers verbally will be included in the revision of 46 CFR, Subchapter T discussed in the comments on recommendation 4 above.

Recommendation 6: That the Coast Guard amend Title 46, Code of Federal Regulations, Subchapter T,..., to require each vessel to be under the direct control of a Licensed Operator when underway.

Action: The intent of this recommendation is concurred with. A regulatory project concerning manning and personnel qualification on small passenger vessels was recently initiated by the Coast Guard. This project will address the interpretation of the word "operated" as it appears in 46 USC 8902, including periods when a vessel is underway.

Recommendation 7: That the Coast Guard amend Title 46, Code of Federal Regulations, Subchapter T,..., to restrict Licensed Operators from standing more than 12 hours of watch in any 24 hour period.

Action: This recommendation is not concurred with. 46 USC 8104(b) already states that a licensed individual on an oceangoing or coastwise vessel of not more than 100 gross tons may not be required to work more than 12 of 24 hours at sea, except in an emergency. While the Coast Guard incorporates this section in determining required manning levels, it is the responsibility of the master or vessel operator to exercise discretion in the use of vessel personnel and the duration of work periods.



J. C. IRWIN
Vice Admiral, U.S. Coast Guard
ACTING COMMANDANT



22 May 1987
16732/MC87000625

From: Marine Board of Investigation
To: Commandant (G-MMI)

Subj: M/V FISH-N-FOOL, O.N. 293 888; CAPSIZING AND SINKING ON
5 FEBRUARY 1987 IN THE PACIFIC OCEAN, APPROXIMATELY 2.6
MILES SOUTH OF ISLA DE SAN MARTIN, MEXICO, WITH LOSS OF
LIFE AND PERSONNEL INJURY

FINDINGS OF FACT

1. Summary:

The small passenger vessel FISH-N-FOOL capsized at approximately 1300 hours on 5 February 1987 in Mexican territorial waters of the Pacific Ocean. The initial casualty occurred in approximate position Latitude 30° 26.1' North, Longitude 116° 06.7' West. The stricken vessel subsequently drifted for at least eight hours before sinking in 180 feet of water at approximate position Latitude 30° 27.0' North, Longitude 116° 05.2' West. Of the three crewmembers and nine passengers onboard; two survived, two drowned and eight are missing and presumed dead. All times in this report are Pacific Standard Time, Zone Description +8.

2. Vessel Data:

Name:	FISH-N-FOOL
Official Number:	293 888
Nationality:	United States
Service:	Small Passenger Vessel
Maximum Passengers Allowed:	28
Total Persons Allowed:	34
Lifesaving Equipment:	Four(4) eleven person lifefloats, thirty-four adult and four children life preservers, three ring life buoys, one EPIRB.
Gross Tons:	69
Net Tons:	51
Material:	Wood with FRP cover
Documented Length:	55.3 feet
Depth:	7.6 feet
Propulsion:	Motor, twin screw diesel reduction
Horsepower:	640

Year Built: 1964
Place Built: Wilmington, California
Home Port: Los Angeles/Long Beach, California
Hailing Port: San Diego, California
Owner: Bernst, Inc.
Suite 5
1341 Rosecrans Street
San Diego, California 92106
Operator: [REDACTED]
Operator Licenses: (a) Ocean Operator NMT 100 G/T Pacific Ocean, Pt. Conception to Cape San Lucas, Mexico, NMT 160 miles from baseline. Issued: 09FEB83; REC LA/LB, Issue No. 5.
(b) Master, Mineral/Oil vsls NMT 500 G/T, Oceans. Renewed: 09NOV84; REC LA/LB, Issue No. 01-02.
(c) Master, Uninspected vsls NMT 2000 G/T, Oceans. Renewed: 09FEB83; REC LA/LB, Issue No. 01-02.
Second Operator: [REDACTED]
Second Operator License: Lived onboard vessel Ocean Operator, NMT 100 G/T, Pacific Ocean, Pt. Conception to Cape San Lucas, Mexico, NMT 100 miles from baseline. Issued: 21APR86; REC LA/LB, Issue No. 1.
Certificate of Inspection: Issued 17MAY85 by Marine Safety Office, San Diego, California
Last Coast Guard Inspection: First Reinspection 19MAY86 by Marine Safety Office, San Diego, California
Last Drydock Examination: 25APR86 by Marine Safety Office, San Diego, California
Vessel Document: Originally issued 30MAY84 RDC LA/LB and endorsed as valid through MAY87

3. Personnel Data:

Name:
Age:
Address:

Position on Vessel:
Connection with Vessel:

First Licensed Operator
Managing Operator under a

USCG License:
Injury/Status:
Next of Kin:
NOK Address:

Bareboat Charter Agreement
See paragraph 2
Missing
[REDACTED] (wife)
Same as above

Name:
Age:
Address:
Position on Vessel:
USCG License:
Injury/Status:

[REDACTED]
Lived onboard vessel
2nd Licensed Operator/Cook
See paragraph 2
Exposure, neck/back injury

Name:
Age:
Address:

Position on Vessel:
USCG License:
Injury/Status:
Next of Kin:
NOK Address:

[REDACTED]
Deckhand
None
Missing
[REDACTED] (wife)
Same as above

Name:
Age:
Address:

Position on Vessel:
USCG License:
Injury/Status:

[REDACTED]
Passenger
None
None

Name:
Age:
Address:

Position on Vessel:
USCG License:
Injury/Status:
Next of Kin:
NOK Address:

George M. Stinson
[REDACTED]
Passenger
None
Dead
[REDACTED] wife)
Same as above

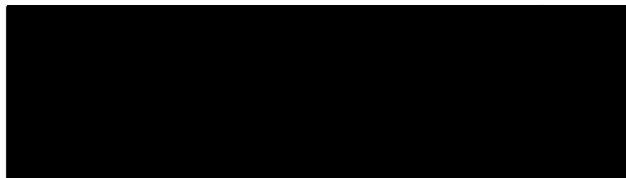
Name:
Age:
Address:

Position on Vessel:
USCG License:

Max Pfost
[REDACTED]
Passenger
None

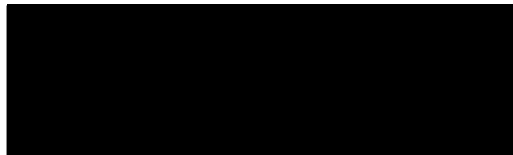
Injury/Status: Dead
Next of Kin: [REDACTED] (wife)
NOK Address: Same as above

Name:
Age:
Address:



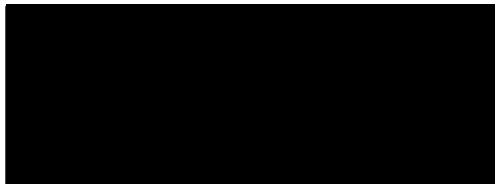
Position on Vessel: Passenger
USCG License: None
Injury/Status: Missing
Next of Kin: [REDACTED] (wife)
NOK Address: Same as above

Name:
Age:
Address:



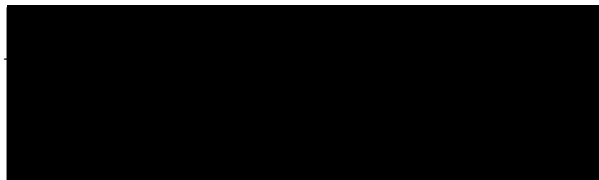
Position on Vessel: Passenger
USCG License: None
Injury/Status: Missing
Next of Kin: [REDACTED] (mother)
NOK Address: Same as above

Name:
Age:
Address:



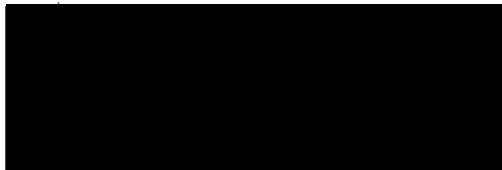
Position on Vessel: Passenger
USCG License: None
Injury/Status: Missing
Next of Kin: [REDACTED] (wife)
NOK Address: Same as above

Name:
Age:
Address:



Position on Vessel: Passenger
USCG License: None
Injury/Status: Missing
Next of Kin: [REDACTED] (father)
NOK Address: Same as above

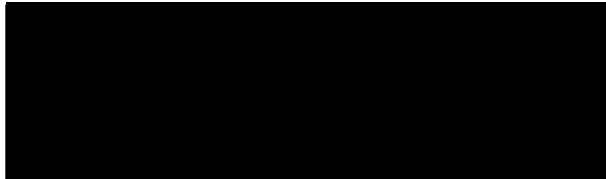
Name:
Age:
Address:



Position on Vessel:
USCG License:
Injury/Status:
Next of Kin:
NOK Address:

Passenger
None
Missing
[Redacted] wife)
Same as above

Name:
Age:
Address:



Position on Vessel:
USCG License:
Injury/Status:
Next of Kin:
NOK Address:

Passenger
None
Missing
[Redacted] father)
Same as above

4. Weather:

General weather conditions at the time of the casualty were swells of six foot significant height from the west-northwest with light winds. Significant swell height is defined as the average of the highest one-third of swells experienced over a recent period. Breaking swells of considerably larger heights were noted on scene in the vicinity of the charted "Roca Ben," an awash pinnacle which is occasionally visible (see figure 1). Ambient air temperature was between 75 and 80 degrees Fahrenheit, with water temperature estimated at 59 degrees Fahrenheit. Currents in the vicinity of Roca Ben are reported as variable. Although there is evidence of a weak southerly set just east of this point, the prevailing current extends northerly towards Isla de San Martin, an island approximately 2.7 miles offshore. Currents along the mainland side of this island are reported as southerly in nature. Local fishermen reported that current conditions are affected by tidal actions. Tidal influence for 1300 on 5 February 1987 was negligible, with slack being at 1224, working towards a high of 2.7 feet at 1552. Skies were clear with visibility unrestricted. Efforts to obtain amplifying weather data from the National Weather Service were unsuccessful, primarily due to their routine reporting areas not extending into this geographic region.

5. Construction:

M/V FISH-N-FOOL was a commercial sportfisher of flush deck, vee bottom, transom design and laminated plywood construction with multiple external layers of fiberglass laminated resins (see figure 2). The pilothouse contained steering and engine controls. Two General Motors Model 8-71 diesel V8's provided the

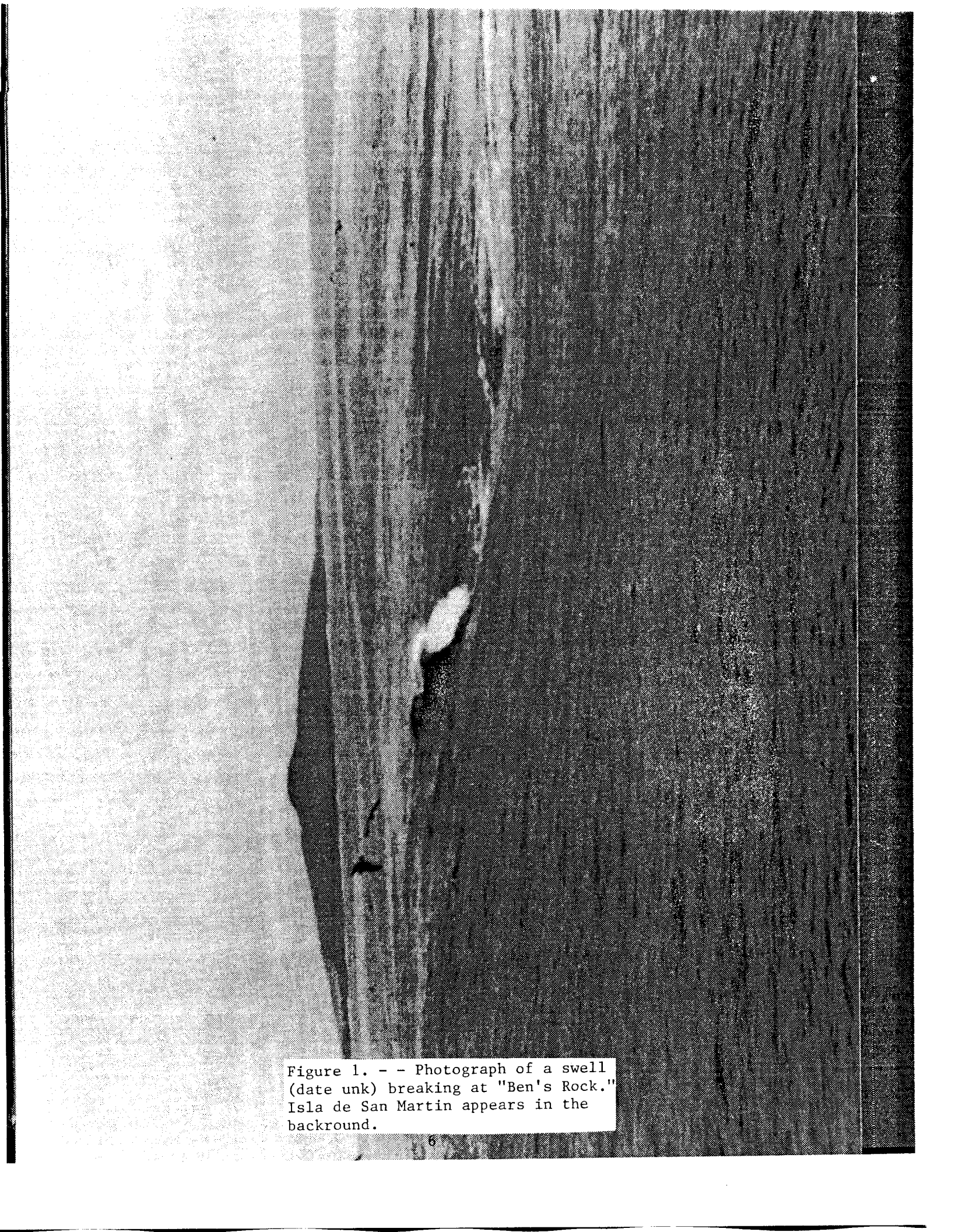


Figure 1. - - Photograph of a swell
(date unk) breaking at "Ben's Rock."
Isla de San Martin appears in the
background.

EXHIBIT FIVE (3)
WITNESS: [REDACTED] 19 [REDACTED]

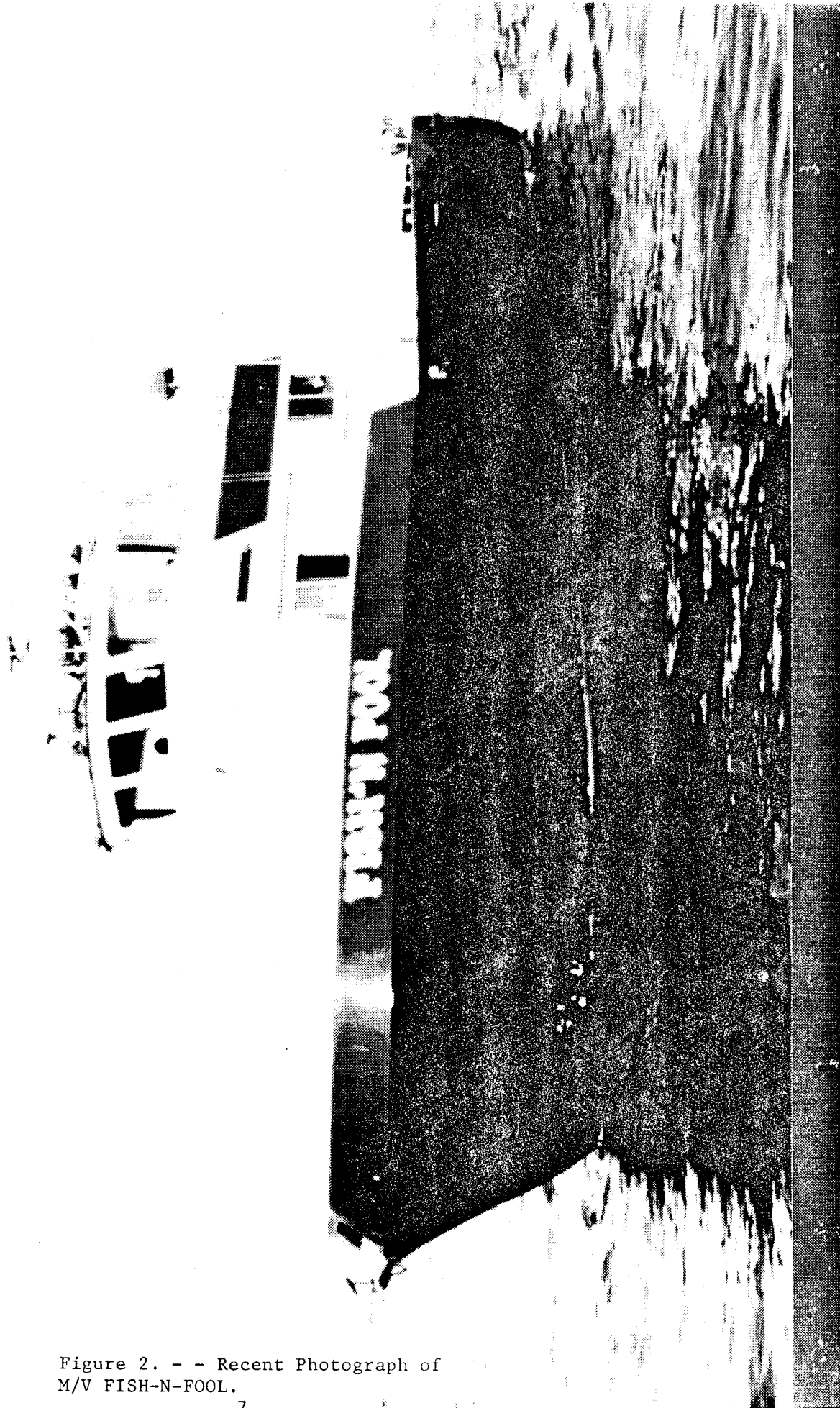


Figure 2. - - Recent Photograph of
M/V FISH-N-FOOL.

propulsive power. Electronics included three VHF marine radios, one Single Side Band radio, a Benmar 21SK autopilot, a Furuno FE-600 depth finder, a Sitex 24 mile radar and an American Pioneer Model 101 Fishscope. Below deck berthing accommodated 32 passengers, with two crew bunks available in the forward area and one in the pilothouse. The vessel was reported to be in good condition and fit for the intended service.

6. Stability:

M/V FISH-N-FOOL was certificated as an "S" vessel as defined in 46 Code of Federal Regulations (CFR) paragraph 175.05-5(a). As such, 46 CFR paragraph 170.070(b) does not require this type of vessel to undergo a stability test. There is no indication, in either Coast Guard or builder records, that a stability test was ever conducted. While it is Marine Safety Office (MSO) San Diego's current policy to require a stability test on new vessels being constructed, existing vessels are not required to undergo a test unless their stability is questioned for some reason by the Officer in Charge, Marine Inspection (OCMI). While there were modifications made to M/V FISH-N-FOOL since originally constructed, none of these alterations were considered significant enough for the OCMI to require a stability test. No "sister vessel" to the FISH-N-FOOL could be identified. The vessel departed San Diego with a full load of fuel and water, distributed according to builder design and normal operating procedure. Investigation revealed that since construction, M/V FISH-N-FOOL had been operated along the Pacific coast in various types of inclement sea states, including up to 10-16 foot seas, without incident.

7. Lifesaving Apparatus:

M/V FISH-N-FOOL was equipped with four 11 person lifefloats stored on top of the wheelhouse in tiers of two. Capable of automatic release from this location, the devices were tethered to the vessel by a 100 foot dark colored synthetic line with attached float-free link, in accordance with 46 CFR Section 180.20-1. Stored in marked bins within the galley area, the vessel had 34 adult and 4 children life preservers, all fitted with retroreflective material and lights. There were also three ring life buoys, one with a water light, and a Class A Emergency Position Indicating Radiobeacon (EPIRB) onboard.

8. Manning:

M/V FISH-N-FOOL was certificated under 46 CFR Subchapter T, Small Passenger Vessels (Under 100 Gross Tons) by Coast Guard MSO San Diego, California. The following excerpt from the Certificate of Inspection (COI) shows the required manning to be:

"2 OCEAN OPERATORS, 4 DECKHANDS.

IN ADDITION, THIS VESSEL MAY CARRY 28 PASSENGERS, 0 PERSONS IN ADDITION TO CREW. TOTAL PERSONS ALLOWED: 34. ...

WHEN OPERATING NOT MORE THAN 12 HOURS IN ANY 24 HOUR PERIOD, VESSEL MAY BE OPERATED WITH:

1 OCEAN OPERATOR AND 2 DECKHANDS

1 DECKHAND (WHEN PASSENGERS CARRIED IS 25 OR LESS)

AND PASSENGERS CARRIED MAY BE INCREASED TO 31."

A literal reading of this COI requires a crew of two operators and four deckhands for operations in excess of the 12 hour stipulation, when nine passengers are onboard. During the course of this investigation, CWO [REDACTED] of the aforementioned unit interpreted the COI's endorsement to require two operators and two deckhands for such a voyage. Investigation revealed prevalence of this interpretation among the local sportfishing community and Coast Guard MSO personnel.

9. Owned by Bernst, Inc., M/V FISH-N-FOOL had been previously bareboat (demise) chartered to Fish-n-Fool, Inc. for the period of 15 May 1984 to 30 April 1989. With Gary and [REDACTED] LaMont listed as principal officers of the latter corporation, the vessel was therefore under the command of the chartering party at the time of the casualty.

10. At about 1830 on 3 February 1987, the FISH-N-FOOL departed H & M Landing, Point Loma, California, on what was to be a four day sportfishing trip. Two licensed ocean operators, one deckhand and nine passengers were onboard. The managing operator listed on the Certificate of Inspection, Gary LaMont, was in control of the vessel's operation for this voyage. This yellowtail tuna fishing excursion had been arranged by [REDACTED] a private contractor who had done work on the FISH-N-FOOL for Gary LaMont. Verbal agreement relative to payment for the trip required passengers to only "chip in" for food, fuel and tips for the crew at the end of the voyage. This price reduction was in consideration for future work to be accomplished on the vessel. Before leaving San Diego Bay, the vessel stopped at the bait receiver near the U. S. Navy Submarine Base to load bait.

11. Crewmember [REDACTED] reported that prior to the vessel getting underway on 3 February 1987, she announced where the life preservers were located and general safety rules about movement around the vessel. Her briefing did not include instructions on the proper donning of life preservers, the type and location of all lifesaving devices and the location of the emergency checkoff list. Sole surviving passenger [REDACTED] reported not hearing any manner of verbal briefing from vessel crewmembers. Although [REDACTED] reported that an instructive placard with a portion of the required information was posted, passenger [REDACTED] did not recall seeing it, and Coast Guard records did not indicate that

such a notice was observed. Investigation also revealed that the emergency checkoff list, required by 46 CFR paragraph 185.25-1(a), had been recently removed due to deterioration. Neither a replacement for this checkoff list, nor a Coast Guard waiver letter, were obtained prior to departure.

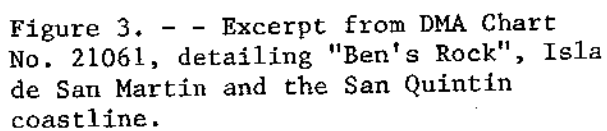
12. A list of persons onboard M/V FISH-N-FOOL was not given to H & M Landing prior to the vessel's departure. Such a precaution is neither required by current regulation, nor accomplished as a matter of routine within the local industry. This became an issue when Coast Guard shoreside personnel attempted to determine the number and identities of involved persons for critical input into search pattern planning and briefing of responding resources.

13. The vessel left the confines of San Diego Bay for sea at approximately 1935 on 3 February 1987. Weather conditions at the time were good, with little wind and relatively calm seas. Gary LaMont, still at the controls, headed the vessel in a southerly direction, parallel to the coast. The vessel steamed all night at an estimated speed of nine knots. During the late evening hours of 3 February and early morning hours of 4 February, there were periods when the vessel was underway and not under the control of one of the licensed operators. There is evidence that passengers [REDACTED] and [REDACTED] stood wheelhouse watches, alone, at the direction of Operator LaMont. During this period, LaMont was asleep in a nearby bunk, with the other crewmembers ([REDACTED] and [REDACTED] either asleep or in the galley below. This portion of the transit passed without incident. Second licensed operator [REDACTED] stood one two-hour watch during the night.

14. During the transit down to their destination off Mexico, the vessel engaged in intermittent fishing operations. Throughout this time frame, the condition of passengers was generally good, with various levels of alcohol consumption noted among the group. No one was reported to have imbibed to the point of intoxication. Passenger [REDACTED], suffering from periods of seasickness, was seen using a medication presumed to be "Transderm-Scop," a trade name for the drug scopolamine. Available only on prescription, it was reported that [REDACTED] received this seasickness remedy from someone onboard M/V FISH-N-FOOL. Given conflicting statements from the two survivors, the identity of the person providing this medication could not be resolved.

15. Midday on 4 February, the vessel arrived in the vicinity of Isla de San Martin, an island off the Mexican Baja Peninsula, approximately 150 miles south of San Diego. The vessel fished at various locations in that area, including two locally known spots called the "15" and the "6", as well as a period at anchor near Roca Ben (see figure 3). Roca Ben, commonly referred to as "Ben's Rock," is a charted navigation hazard approximately 2.6 miles south of the Island. The weather upon arrival at Isla de San Martin on 4 February was noted to be "windy," with swell

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conditions estimated at five feet. Breakers around Ben's Rock were in evidence as M/V FISH-N-FOOL fished down swell. It was reported that Operator LaMont would occasionally venture down from the wheelhouse to fish ondeck as the vessel either drifted or was at anchor. During this period on 4 February, proximity to the pinnacle was estimated to be several hundred yards. Ben's Rock actually consists of three separate "crowns" that rise to just under the water's surface. The distance separating the high spot at the northwest crown from the edge of the third crown at the southeast corner is estimated at 60-70 feet. With breaking swells known to occur at this pinnacle, the spot is a popular fishing location among the sportfishing community. White water traveling down the face of a swell at this location is not uncommon. Identifying that swells normally come from the northwest, many vessels fish in the foam which extends 100 to 200 yards southeasterly from the rock. This is accomplished by either drift fishing or anchoring down swell of Ben's Rock. When drift fishing, it is necessary to occasionally motor back up towards the Rock, since the swells tend to continually set vessels down swell. The height of swells are considerably larger at Ben's Rock than in surrounding waters, due primarily to the abrupt change in bottom contour. While all swells build to some extent at the Rock, it is not uncommon to encounter large breaking swells interspersed among relatively calm sea conditions at the pinnacle. The occurrence of the large breaking swells is dependent upon the characteristics of the incoming wave trains, and is virtually unpredictable. There are no other charted or reported partially submerged pinnacles, similar to Ben's Rock, in surrounding waters.

16. At approximately 1745 on 4 February, M/V FISH-N-FOOL anchored in Hassier Cove, located on the northeast side of Isla de San Martin. During the evening of 4 February and early morning of 5 February, there were periods when several passengers were allowed to rotate on anchor watch while the entire crew slept. There is no evidence that these passengers were instructed to also act as a roving patrol in the passenger and engineroom spaces. Second Licensed Operator [REDACTED] stood one two-hour anchor watch during the night. Two passengers, Jim Sims and [REDACTED] fished to varying degrees throughout the evening while at anchor. It was reported that these individuals consumed an undetermined amount of alcohol during this period. Although investigation revealed that a small amount of marijuana was reportedly onboard M/V FISH-N-FOOL, details regarding the person(s) associated with this narcotic were not uncovered. There was no evidence that the vessel's crew was involved in the possession or use of this substance.

17. At approximately 0730 on 5 February, the vessel weighed anchor and got underway from Hassier Cove. The general weather conditions were reported as sunny and clear, with light winds and relatively calm seas. Although statements from the two witnesses conflict on specific details, the vessel generally engaged in local fishing operations without incident. By the lunch period,

M/V FISH-N-FOOL had moved to a fishing location approximately one mile south of Ben's Rock. From this location, the waves around the Rock were reportedly visible. As passengers/crew ate their noon meal, and fished while the vessel drifted, passenger [REDACTED] reported that he heard Operator LaMont comment "My God, look at the swells at Ben's Rock." Existing swell conditions at the offshore location were from the west-northwest at approximately four to six feet, with light winds, warm air temperature and clear skies. Due primarily to the nice weather, most everyone onboard the vessel was wearing light T-shirts and jeans.

18. With Operator LaMont at the wheel, M/V FISH-N-FOOL motored back to the vicinity of Ben's Rock. The vessel set up to drift fish in the foam of the breaking swells. M/V FISH-N-FOOL was then apparently placed at idle, with the starboard bow positioned into the oncoming swells. The statements of the two witnesses, [REDACTED] and [REDACTED], differ widely regarding the vessel's distance down swell from the rock just prior to the capsizing. Accounts range from 20 feet to over one mile respectively. It is important to note that [REDACTED] estimate is based upon her knowledge of the vessel's location a number of minutes prior to the incident. Visually noting their position relative to landmarks and having viewed the fathometer, [REDACTED] went down to the galley approximately ten minutes prior to the casualty. Remaining in the galley until the incident occurred, she was unable to recall if M/V FISH-N-FOOL continued to drift or was moved by Operator LaMont. [REDACTED] estimate was based on reportedly being ondeck and able to see one of the crowns of Ben's Rock prior to the incident. Witness [REDACTED] reported that passengers [REDACTED] and [REDACTED] were on deck fishing along the vessel's port side. Crewmember [REDACTED] was seen on the bow, with Operator LaMont still believed to be in the wheelhouse. [REDACTED] remained in the galley tending to pies in the oven, while passenger [REDACTED] stood just outside the galley's door on the starboard side. It is believed that passenger [REDACTED] was also in the galley. The location of [REDACTED] and [REDACTED] were not known.

19. At this time, swells in the vicinity of Ben's Rock were coming from the west-northwest with a significant height of approximately six feet. Dr. [REDACTED] a researcher at the Scripps Institute of Oceanography (San Diego), testified that a scientifically accepted rule of thumb for estimating the highest wave or swell that can be expected to accompany a particular sea state, when traveling over consistent bottom topography, is to multiply the significant height by a factor of 1.8. Applying this calculation to the above conditions would yield a maximum wave/swell of approximately 10.8 feet. Dr. [REDACTED] further testified that a swell of this height, upon encountering a pinnacle such as Ben's Rock, could easily build to a height of fifteen feet or greater.

20. At about 1300 on 5 February 1987, M/V FISH-N-FOOL was hit

on the starboard side by a large breaking swell reportedly twenty feet high. The surviving eye witnesses to the swell, [REDACTED] and [REDACTED] agreed upon its height and the presence of white foam trailing down the face. As noted previously, although these survivors could not concur on the vessel's exact location relative to Ben's Rock, it is agreed that M/V FISH-N-FOOL was in the general area at the time of the casualty. In spite of Operator LaMont's attempt to react at the last moment by turning the bow to starboard, the vessel broached, travelled up the side of the swell, and quickly capsized. The event occurred so rapidly that witnesses reported a total lack of verbal comment or exclamation from those onboard. Passenger [REDACTED] was seen diving into the swell from his position outside the galley door. [REDACTED] reported experiencing the sensation of the vessel rolling 360 degrees three times before coming to rest.

21. Following M/V FISH-N-FOOL capsizing, [REDACTED] was momentarily trapped underwater inside the galley. Able to find her way to the galley door for escape, she surfaced near the vessel which was now floating in an inverted position in the turbulence from Ben's Rock. On the surface near her were [REDACTED] motionless and face down in the water, and [REDACTED] who was severely injured with a head wound. Although [REDACTED] and [REDACTED] were thrown together into the water nearby, foam and general swell action precluded these two groups from seeing each other. [REDACTED] was the only one of this latter group to be injured, having experienced facial wounds. Operator Gary LaMont was not seen after the capsizing.

22. With the vessel positioned keel up immediately following the capsizing, the primary lifesaving equipment onboard M/V FISH-N-FOOL was initially unable to deploy and float free.

23. Immediately following the incident, [REDACTED] reported that the group of eight began to informally assess their options for survival. From their surface perspective, he indicated that the large swells of Ben's Rock seemed to be separating them from M/V FISH-N-FOOL. Although they could not see the vessel or [REDACTED] reported hearing her call for help. With minimal flotsam to cling to, they chose to swim to Isla de San Martin, which was visible on the horizon and approximately 2.6 miles distant. General sea conditions were picking up by this time, eventually reaching six to eight foot swells prior to sunset. [REDACTED] reported that the decision to swim to the Island was made as a group effort, with no single individual assuming a leadership role. Passengers [REDACTED] and [REDACTED] shared the use of an ice chest for buoyancy, [REDACTED] had a piece of plywood and [REDACTED] used a Clorox bottle. Passengers [REDACTED], [REDACTED] and [REDACTED] were reported to be swimming unassisted.

24. Remaining near the vessel, [REDACTED] used a fish hatch cover and a 50 gallon water barrel to remain afloat. As she

attempted to encourage [REDACTED] to hang onto the available hatch, his eyes rolled back and he eventually slipped from view. Although [REDACTED] occasionally heard yelling in the direction of the larger group, she was not in a position to influence their decision to swim towards the Island in lieu of the vessel. Within an hour after the capsizing, the inverted vessel shifted and four lifefloats, several life preservers and the EPIRB floated to the surface. [REDACTED] was able to swim to one of the lifefloats, board it, and don a life preserver that was found inside. She reported encountering a strong concentration of diesel oil in the waters adjacent to M/V FISH-N-FOOL. Lashing all four lifefloats together, [REDACTED] checked the EPIRB to ensure that it was operating and then secured the device in the center of the floats. At approximately 1600, with the floats still attached to the sinking vessel by the painter, [REDACTED] began to sever the line through chewing, eventually completing the task by cutting it with small fingernail clippers. She succeeded in this arduous effort at approximately 1700. At that time, the vessel was observed to be still floating, but with only an estimated six feet of the bow protruding from the water. With nightfall approaching and hypothermia a concern, [REDACTED] fashioned an available wood board across the tops of the lifefloats to have a relatively dry platform to sit on.

25. Within one hour of the time the eight survivors started their swim toward the Island, [REDACTED] was heard thrashing in the water at the rear of the group. With everyone essentially spread out at this point, no one was able to reach [REDACTED] as he slipped from view. Soon thereafter, [REDACTED] was seen thrashing in the water, also slipping from view. Visual contact between swimmers was continually hampered by the height of the increasing swells.

26. With sunset being at approximately 1720 on 5 February 1987, the group of now six swimmers had come within an estimated 300 yards of Isla de San Martin prior to nightfall. As attempts were made to reach the Island, the group noted that a current close to the land mass was sweeping them away from their goal and towards open water. By this time, darkness had fallen and the swimmers were reportedly experiencing debilitating effects from fatigue and hypothermia. [REDACTED] reported that at this point, [REDACTED] relinquished his partial use of the ice chest that he had been sharing with [REDACTED] to afford the older man a better chance for survival. Having just spoken with [REDACTED] could also still hear the voices of [REDACTED] and [REDACTED]. A short time later [REDACTED] reported hearing [REDACTED] who had swam ahead, calling for help. Unable to reach him in time, [REDACTED] believes [REDACTED] drowned moments later.

27. At about 1930, [REDACTED] saw a light on Isla de San Martin and was able to attract the attention of local Mexican fishermen through his cries for help. Responding in their 14 foot smallboat, they rescued [REDACTED] shortly thereafter. For

approximately 20 minutes they searched for other possible survivors. Occasionally stopping the engine to listen for responses to their yelling and whistling, the searchers failed to locate any of the other swimmers. At about 2000, they returned to Isla de San Martin, where the fisherman provided the survivor with dry clothes and coffee. [REDACTED] suffered no reportable injuries as a result of this casualty.

28. At approximately 1200 on 5 February 1987, Coast Guard HU25A Falcon Jet No. 2128 departed its homebase at San Diego Air Station. On a combined law enforcement and logistics mission, the flight was scheduled to go to La Paz, Mexico, following a stop in Los Angeles, California. In Los Angeles, crewmembers picked up several items including a tail rotor assembly. The aircraft part was for a disabled HH52A helicopter attached to a Coast Guard cutter off the coast of southern Mexico. At approximately 1435, while flying at 37,000 feet over Mexican territory, about 100 miles south of San Diego, HU25A 2128 picked up an Emergency Locator Transmitter (ELT) signal on 121.5 Mhz. With an ELT commonly used onboard aircraft, they are similar in design, purpose and function to an EPIRB found on a vessel. Attempting to locate the general direction of the signal, they noted the indicator needle was pointing ahead of them. As they passed over the San Quintin area, the direction finding needle on the VHF radio swung to a heading of about 210° magnetic. At 1441, HU25A 2128 attempted to relay this information to Coast Guard Air Station San Diego. Due to congestion on their assigned transmitting frequency, the message was not passed until 1446.

29. At 1449 on 5 February 1987, Air Station San Diego advised the Eleventh Coast Guard District's Rescue Coordination Center (RCC) relative to the ELT signal. Resultant to this notification, RCC assumed supervisory control as the Search and Rescue Mission Coordinator (SMC). At 1500, HU25A 2128 was diverted by RCC from its assigned mission and was directed to investigate the ELT. After taking into consideration the priority of HU25A 2128's law enforcement and logistics mission, concerns about clearing Mexican customs, and onboard fuel constraints, RCC decided at 1514 to use a different aircraft. HU25A 2106 was then assigned to prosecute the ELT investigation. The aircraft commander of HU25A 2128 testified that if his aircraft had been allowed to pursue the ELT strike, he would only have had enough fuel onboard to permit a 10-15 minute search near San Quintin. By switching aircraft, HU25A 2128 was able to continue on its original mission to La Paz. Aircraft HU25A 2106 is a second Air Station San Diego resource, which was on a test flight at the time. HU25A 2106 subsequently landed at San Diego International Airport for refueling at the Air Station, and was airborne again at 1639.

30. HU25A 2106 proceeded south, staying at least 12 miles offshore so as to remain outside the recognized international boundary of Mexican air space. At 1725 on 5 February 1987, RCC gave permission to HU25A 2106 to enter Mexican airspace to

further investigate the ELT. This action was in violation of the 1935 Vessel Salvage Treaty with Mexico, which allows entry for maritime Search and Rescue (SAR) only if United States vessels or citizens are "known" to be involved. There were three additional violations of this nature as a result of Coast Guard response in this casualty, namely; the initial change of course to investigate the ELT by HU25A 2128, and two helo landings on Mexican territory.

31. At 1736 on 5 February 1987, HU25A 2106 spotted [REDACTED] in the lifefloats just after sunset. Also visible was the bow of M/V FISH-N-FOOL protruding from the water. At approximately 1748, having reported the sighting, HU25A 2106 dropped a Mark 25 smoke float to maintain a visual bearing of the casualty site. The name or nationality of the vessel involved was still unknown at this point. HU25A 2106 continued to periodically drop the 20 minute Mark 25 smokes. At 1757, Air Station San Diego contacted Coast Guard Dolphin helicopter HH65A 6547, which was airborne. HH65A 6547 subsequently landed at the Air Station, accomplished the necessary refueling, and was proceeding to the scene by 1833. At 1915, knowing that a Coast Guard helicopter was enroute, HH25A 2106 dropped a 45 minute Mark 48 flare and returned to San Diego for refueling.

32. At 1748 on 5 February 1987, the Coast Guard 82 foot patrol boat POINT BROWER was diverted to the scene to provide SAR assistance, having been underway on a law enforcement mission about 4.5 miles north of the United States/Mexico border.

33. By 2020 on 5 February 1987, HH65A 6547 had arrived on scene and successfully hoisted [REDACTED] onboard. Upon experiencing mechanical difficulty, HH65A 6547 flew [REDACTED] to the safety of the mainland. Being dropped off at Villa de San Quintin, [REDACTED] promptly received an initial physical examination and medication from a Mexican doctor. General care and emotional support were soon provided by a local American couple. Upon her return by car to San Diego, [REDACTED] was treated both as an inpatient and outpatient for mental stress, hypothermia and a sprained neck/back. These injuries were incapacitating for in excess of 72 hours.

34. At approximately 0140 on 6 February 1987, CGC POINT BROWER arrived in the vicinity of Isla de San Martin. At that time there was a six foot swell from the west, with a 15 knot wind from the east-northeast generating a three foot chop. Visibility was clear but hazy with a three-quarter moon providing illumination through a light cloud cover. Being the first Coast Guard surface vessel on scene, the POINT BROWER conducted the initial search patterns as directed by RCC. At about 0930, the POINT BROWER recovered four lifefloats, six life preservers and various items of debris located approximately one mile west of Ben's Rock. There was evidence of diesel oil in the waters around the casualty site. They later recovered six additional

life preservers, observed floating freely. The subject lifefloats and life preservers were found to be properly marked/stamped, deemed appropriate for the M/V FISH-N-FOOL's route and in serviceable condition. At about 1030, POINT BROWER recovered the body of George Stinson, a little less than a mile northwest of Isla de San Martin. The body was floating face down while attached to a large ice chest. On 11 February 1987, the San Diego Coroner's Office listed Stinson's cause of death as asphyxiation due to drowning. George Stinson's body was eventually taken to Fairhaven Memorial Park, 1702 E. Fairhaven Ave., Santa Ana, California, for cremation.

35. On 11 February 1987, a group of commercial and amateur divers left San Diego, California onboard the M/V BLUE HORIZON, O.N. 604 334, with the purpose of finding the M/V FISH-N-FOOL. On 12 February, they located the wreckage in 180 feet of water in approximate position Latitude 30° 27.0' North, Longitude 116° 05.2' West. The vessel was reported to be resting upright on a hard sandy bottom. Visible damage included a seven foot long, three foot high hole in the port hull, forward of amidships and above the waterline. Further damage was minimal including missing windows from the wheelhouse, a displaced stern light, and a bent antenna. No remains of either passengers or crew were sighted. Divers were unable to photograph the vessel and its damage. Further attempts to locate and dive on the vessel after this date were unsuccessful.

36. On 14 February 1987, a body was discovered on a beach in the San Quintin area. Due to the advanced state of decomposition, initial identification proved difficult. On 20 February 1987, the body was deemed by Mexican authorities to be that of passenger Max Pfost, with the cause of death listed as asphyxiation due to drowning. This identification was later confirmed by family dentist Dr. [REDACTED] through comparison of existing dentition with dental records. Max Pfost's body was eventually taken to Akes Family Funeral Home, 9695 Magnolia, Riverside California, for burial.

37. The Coast Guard's RCC in Los Angeles/Long Beach coordinated an expansive multi-unit/multi-agency search effort, that included twelve aircraft and three surface vessels of the U. S. Coast Guard and U. S. Navy. The search effort continued until dusk on 6 February 1987, when it was terminated due to a nil probability of survival. Based upon the concentrated area associated with the incident, and the high number of resources involved in the search, the probability of detection for any survivors in the water was deemed very high. It was noted that M/V FISH-N-FOOL had sunk completely from sight sometime between [REDACTED] rescue by HH65A 6547 and sunrise the next morning.

38. Occurring 150 miles south of the United States/Mexico border and approximately four miles off the Baja California mainland, the FISH-N-FOOL capsizing was well within Mexican territorial

waters. While the Mexican Navy has been designated by their government as that country's agency responsible for SAR, the Coast Guard must work through the U. S. Embassy in Mexico City to advise them of any emergency. Although RCC reportedly attempted to contact and solicit aid from Mexican officials during the initial stages of the casualty, they were unable to establish contact through existing telephone response numbers. As a result, no Mexican resources were involved in the SAR effort other than the smallboat that picked up [REDACTED]. The location and availability of Mexican Navy resources at the time of the casualty was not established during the investigation.

39. CDR Carter, Chief of the Search and Rescue Branch in the Eleventh Coast Guard District, testified that a very large majority of ELT signals picked up by the Coast Guard are false alarms. He stated that in the first two weeks of February 1987, there were 374 signals detected in the Eleventh District, only one of which was an actual distress. He further stated that the picking up of an ELT signal is only an indication of a distress, and during this "uncertainty" phase of a search and rescue case the priority of other Coast Guard missions are still taken into consideration before resources are committed or diverted to investigate. CDR Carter also testified that the National Oceanographic and Atmospheric Administration (NOAA) is working on developing a frequency that would permit putting a code or number into the transmission of an EPIRB/ELT, thereby helping in "fingerprinting" the source.

CONCLUSIONS

1. The proximate cause of the vessel casualty was operator [REDACTED] positioning of M/V FISH-N-FOOL in close proximity to, and down swell of, Ben's Rock to engage in fishing operations. This action placed the vessel in such a position that a large swell, breaking over Ben's Rock, struck the vessel nearly broadside and imparted sufficient heeling energy to overcome the inherent dynamic stability of the vessel, causing the vessel to heel beyond its range of stability and capsize.

2. That as a result of this casualty George M. Stinson and Max Pfof died due to drowning. Further, that [REDACTED]

[REDACTED] and [REDACTED] missing and presumed dead. Further, that while [REDACTED] suffered incapacitating injuries as a result of this casualty, [REDACTED] did not suffer a reportable degree of injury.

3. A contributing cause to the loss of life was the onset of hypothermia, as experienced by the initial survivors thrown into the water after the capsizing. This condition was accelerated by the light clothing worn by these individuals combined with the

sea water temperature.

4. A contributing cause to the loss of life was the fact that the casualty occurred approximately 150 miles from the nearest Coast Guard Search and Rescue facility, thereby logistically hampering timely response.

5. If the passengers who surfaced in the vicinity of survivor [REDACTED] had been able to swim to the capsized vessel in lieu of attempting to swim to Isla de San Martin, their chances of survival would have been increased.

6. Except for two short periods, [REDACTED] was responsible for the operation of the FISH-N-FOOL from initial departure at 1830 on 3 February 1987, until the time of the casualty at 1300 on 5 February 1987. The exceptions were one two-hour period during the night of 3 February, and one two-hour period during the night of 4 February, when Second Licensed Operator [REDACTED] stood watch. While [REDACTED] technically satisfied the Coast Guard's requirement to have two licensed operators onboard, she principally acted as the vessel's cook on this voyage.

7. There is evidence of negligence on the part of [REDACTED] in that he navigated M/V FISH-N-FOOL in such close proximity to a charted navigational hazard that a large breaking swell capsized the vessel.

8. There is evidence of a violation of Title 46 Code of Federal Regulations Section 186.05-1 on the part of [REDACTED] in that he navigated M/V FISH-N-FOOL on 3, 4, and 5 February 1987 with only one of the two deckhands required by the vessel's Certificate of Inspection.

9. There is evidence of misconduct and/or negligence on the part of [REDACTED] in that he permitted M/V FISH-N-FOOL to be operated on 3 and 4 February 1987 by unlicensed passengers while the licensed operators and deckhand were asleep.

10. There is evidence of a violation of Title 46 Code of Federal Regulations Subpart 185.22 on the part of [REDACTED] in that on 4 and 5 February 1987, while the vessel was at anchor and passengers were asleep below decks, he did not designate a member of the vessel's crew to be a roving patrolman.

11. There is evidence of a violation of Title 46 Code of Federal Regulations paragraph 185.25-1(a) on the part of [REDACTED] in that there was no emergency check-off list posted on M/V FISH-N-FOOL.

12. There is evidence of a violation of Title 46 Code of Federal Regulations paragraph 185.25-1(d) on the part of [REDACTED] in that on 3 February 1987, he did not ensure that a proper safety orientation was given to the passengers before getting M/V FISH-N-FOOL underway.

13. There is no evidence that the issues addressed in Conclusions 8 through 12 significantly contributed to the vessel casualty or associated loss of life.

14. Since bareboat owner/operator [REDACTED] is missing and presumed dead, evidence of the negligence, misconduct and violations of Title 46 Code of Federal Regulations, addressed in Conclusions 7 through 12, have not been referred to Commander, Eleventh Coast Guard District for action.

15. The intermittent nature of the occurrence of large swells breaking at Ben's Rock could produce a false sense of security for operators of vessels approaching or operating around this charted hazard.

16. Prior to its encountering the topography of Ben's Rock, the swell that caused the capsizing of the vessel was probably near the size of the largest swell that could have been expected under existing sea conditions.

17. At the time of the casualty, M/V FISH-N-FOOL met the applicable design and equipment requirements in Title 46 Code of Federal Regulations Subchapter T, Small Passenger Vessels (Under 100 Gross Tons). This included the stability requirements for a vessel of this size and route.

18. The investigation revealed no reason to question the stability characteristics of M/V FISH-N-FOOL because:

(a) The vessel had a long history of operating without incident along the Pacific coast of California and Mexico in a variety of weather conditions and sea states.

(b) There was nothing unusual about the way or manner in which the vessel was loaded for this voyage.

(c) There had been no recent major repairs or alterations that would have severely affected the intact stability characteristics of the vessel.

(d) The vessel was hit nearly broadside by a large breaking swell that imparted a monumental heeling moment on the vessel.

19. On 3, 4, and 5 February 1987, M/V FISH-N-FOOL was being operated under a valid bareboat charter by Fish-N-Fool, Inc., owned by [REDACTED] and [REDACTED].

20. On 3, 4, and 5 February 1987, M/V FISH-N-FOOL was being operated by [REDACTED] on a passengers-for-hire voyage under the authority of the vessel's valid Coast Guard Certificate of Inspection.

21. The Coast Guard required manning for M/V FISH-N-FOOL, for the voyage covering 3-5 February 1987, was two Ocean Operators

and two deckhands. This actual manning requirement differs from a literal reading of the Certificate of Inspection, which indicates two Ocean Operators and four deckhands. This matter has been brought to the attention of MSO San Diego by separate correspondence.

22. Had timely communications been successfully established with authorities of the Mexican Government, regarding the initial EPIRB/ELT signal, response by Mexican rescue resources may have led to a reduction in the number of lives lost.

23. That passenger [REDACTED] chances for survival were directly enhanced by his use of a nearby piece of wood as a make-shift flotation aid.

24. The rapid and unexpected nature of the casualty, combined with the vessel ending up floating in an inverted position, initially precluded the vessel's lifesaving appliances from floating free. Had the persons in the water remained in the vicinity of the capsized vessel until the lifefloats ultimately floated free, chances for survival of the persons in the water would have been greatly increased.

25. The definitive cause of the reported 3 foot by 7 foot hole in the port hull of M/V FISH-N-FOOL could not be determined. Having occurred subsequent to the vessel's capsizing, it did not play a part in the casualty or subsequent loss of life.

26. There is no evidence that the use of alcohol or other drugs played any part in causing the casualty or affecting the chances of survival of those onboard.

27. There is evidence of oil pollution in Mexican territorial waters as a result of this casualty.

28. The lack of a passenger list on shore hampered Coast Guard search efforts by making it difficult to determine the number and identities of the people onboard M/V FISH-N-FOOL.

29. The fact that a large majority of ELT/EPIRB signals are historically false alarms influenced the Coast Guard's actions in this case. It caused the Coast Guard to weigh the importance of completing other mission assignments against the small probability that the signal they were picking up in this case indicated an actual distress.

30. The Coast Guard's decision to allow HU25A 2128 to continue on its original mission and use HU25A 2106 to investigate the ELT signal was a reasonable decision considering:

(a) The limited fuel remaining onboard HU25A 2128, precluding its ability to execute a complete search for the signal's location.

(b) The priority of HU25A 2128's mission.

(c) The low probability that the signal actually indicated a vessel in distress.

(d) The legal constraints placed on the Coast Guard by the treaty with Mexico.

(e) The availability of HU25A 2106 to refuel and thereby be equipped to execute a complete search of the entire area.

31. If HU25A 2128 had been told by RCC to abort its original mission and investigate the ELT signal, and if HU25A 2128 could have received immediate permission from Mexican authorities to do so, it is possible that HU25A 2128 would have located the wreckage about one and one half hours sooner. It would not, however, have been able to remain on scene due to its low fuel state. It's also highly improbable that HU25A 2128 would have located any swimmers in the water. Further, by the time the ready helo at Air Station San Diego could have taken on a full load of fuel and made the 150 mile transit to the area, it most likely would have arrived after dark. It is therefore improbable that the Coast Guard's decision to use HU25A 2106 to execute the case had any bearing on the ultimate loss of life.

32. Since the Coast Guard did not know that the emergency signal was coming from either a United States' flag vessel or a vessel with United States' citizens onboard, they were precluded by treaty from entering Mexican airspace. Had the Coast Guard strictly adhered to that treaty, Cathy Compton most probably would not have been rescued by the Coast Guard.

33. Once it had been confirmed that an actual casualty existed, and there were people unaccounted for, the Coast Guard coordinated and executed an extensive search that covered all possible areas that survivors could have been located. Resources continued to search the casualty area until there was virtually no chance for survival.

34. Except as noted above, 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 persons, nor evidence of failure of inspected material or equipment, nor evidence that any personnel of the Coast Guard or any other government agency or any other person contributed to the cause of this casualty.

RECOMMENDATIONS

1. That the Coast Guard encourage and support the National Oceanographic and Atmospheric Administration and other involved agencies in improving upon the functional design of EPIRBs and ELTs, with the express purpose of reducing the high false alarm rate and designing a method of identifying the emitting source.
2. That the Coast Guard verify that its current search and rescue contacts within Mexico are up to date and provide for a rapid means of notifying Mexican SAR resources.
3. That the Coast Guard pursue the development of more workable agreements or treaties with the Mexican government relative to the execution of search and rescue efforts in Mexican territorial waters.
4. That the Coast Guard amend Title 46 Code of Federal Regulations, Subchapter T, Small Passenger Vessels (Under 100 Gross Tons), to require Operators to deposit a sailing list with its landing or other shoreside facility prior to getting underway. The list would include the names and addresses of all passengers and crew.
5. That the Coast Guard amend Title 46 Code of Federal Regulations, Subchapter T, Small Passenger Vessels (Under 100 Gross Tons), to require that the safety information identified in 46 CFR paragraph 185.25-1(d) be both posted on the vessel and given verbally to the passengers by a member of the crew.
6. That the Coast Guard amend Title 46 Code of Federal Regulations, Subchapter T, Small Passenger Vessels (Under 100 Gross Tons), to require each vessel to be under the direct control of a Licensed Operator when underway.
7. That the Coast Guard amend Title 46 Code of Federal Regulations, Subchapter T, Small Passenger Vessels (Under 100 Gross Tons), to restrict Licensed Operators from standing more than 12 hours of watch in any 24 hour period.
8. That this casualty investigation be closed.


K. V. FEENE
Commander, U. S. Coast Guard
Chairman


J. M. MCCOY
Lieutenant, U. S. Coast Guard
Member and Recorder

Encl: (1) CG 2692 dtd 24FEB87
(2) Certified Death Certificate for George M. Stinson,
issued by the San Diego County Coroner
(3) Certified Death Certificate for Max Pfost, issued in
Ensenada, Mexico; with attached cover letter