



# NTSB MARINE ACCIDENT INVESTIGATIONS

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# NTSB MARINE ACCIDENT INVESTIGATIONS

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## What is the NTSB?



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## History of the Agency

- In the beginning...
  - › Civil Aeronautics Board



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## History of the Agency

- 1966, Congress establishes NTSB by statute (Public Law 89-670; 80 Stat. 935)
  - › Independent Government agency within DOT



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## History of the Agency

- Independent Safety Board Act of 1974
  - › Severed ties with DOT and other modal agencies



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## Structure of the NTSB Board

- The National Transportation Safety Board consists of 5 Members, appointed by the President, by and with the advice and consent of the Senate. Members serve 5-year staggered terms.



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## Structure of the NTSB Board

- 2 Members are designated by the President to serve as Chairman and Vice Chairman. They each serve 2-year terms.
- The Chairman's nomination requires Senate confirmation.



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## NTSB Staff

- ~400 full time employees
- Headquarters in Washington, DC
  - › Office of Marine Safety at HQ
- 3 regional offices
  - › Seattle, WA
  - › Denver, CO
  - › Ashburn, VA



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## NTSB Offices

### 4 Modal Safety Offices:

- › Marine
- › Aviation
- › Highway
- › Rail, Pipeline & Hazmat

### Additional Support

- Research & Engineering
  - › Medical
- Transportation Disaster Assistance
- Legal
- Safety Recommendations & Communication
- MD, CFO, CIO, Admin



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## NTSB Authorities

Title 49, United States Code, Chapter 11  
(49 U.S.C. §§ 1101–1155)

and

Title 49, Code of Federal Regulations  
Parts 800–850



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## Mandate

“The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of ... [accidents in all modes of transportation]”

49 U.S.C. § 1131(a)

Promote safety in transportation by:

- Investigating accidents
- Determining the facts, & probable cause
- Issuing safety recommendations
- Conducting safety studies

49 C.F.R. §800.3



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## NTSB Investigative Authority

- Under joint NTSB-USCG regulations, investigate
  - › any **major marine accident** involving a foreign vessel which occurs in U.S. waters
  - › any **major marine accident** involving a U.S. ship anywhere in the world
- May investigate any major marine casualty or any casualty involving public and nonpublic vessels

49 U.S.C. § 1131(a)(1)(E); 49 C.F.R. § 850.15



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## Major Marine Accident

- Six or more lives lost
- Total loss of a self-propelled vessel of 100 gross tons or more
- More than \$500,000 in property damage
- Involving serious threat from the release of hazardous materials

49 C.F.R. § 850.5(e)



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## NTSB Investigative Authority

- Shall investigate when
  - › Casualty involves a USCG and a nonpublic vessel and at least one fatality or \$75,000 in property damage;
  - › Casualty involves a public and a nonpublic vessel and at least one fatality or \$75,000 in property damage;\*
  - › Involving significant safety issues related to USCG safety functions\*

\* with Commandant and Board agreement

- May investigate other accidents of a recurring nature



49 U.S.C. § 1131(a)(1)(E)-(F); 49 C.F.R. § 850.15

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## Entry and Inspection

- An officer or employee of the NTSB:

- › On display of appropriate credentials and written notice of inspection authority, may enter property where a transportation accident has occurred or wreckage from the accident is located and do anything necessary to conduct an investigation; and
- › During reasonable hours, may inspect any record, process, control, or facility related to an accident investigation under this chapter.



49 U.S.C. § 1134



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## NTSB Interviews

- Rights of interviewees

- › Any person interviewed ... has the right to be accompanied, represented, or advised by an attorney or non-attorney representative.
- › This is a right of the interviewee, not his or her employer.



49 C.F.R. § 831.7



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## NTSB Interviews



- The investigator cannot:
  - › Grant immunity from prosecution
  - › Assure confidentiality

However, a person may object to public disclosure of information and the Board may withhold it under an exemption to the FOIA if its release is found not to be in the public interest. 49 CFR 831.6(b).



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## Disclosure of Information

- Most Information is publicly available
- Trade Secrets Act 1114(b)(1)(D); 831.6
- Voluntarily Submitted Information 1114(b)(3)
- Voyage Data Recorders & Transcripts 1114(d)



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## Miscellaneous Legal Provisions

- Board Accident Reports may not be used or admitted into evidence in any civil action for damages  
(49 U.S.C. 1154(b); 49 C.F.R. §835.2)
- Factual Accident Reports may be admitted  
(49 C.F.R. §835.2)
- NTSB employees may not appear in court for civil litigation (49 C.F.R. § 835.5)
- NTSB employees may testify by deposition only once for all civil litigations (49 C.F.R. § 835.5)
  - ›Scope limited to factual information; no expert or opinion testimony
- Testimony in criminal matters (49 C.F.R. § 835.10)



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## Investigative Reports

- Full Report
- Brief
- Annotated Brief

Determination of type of report



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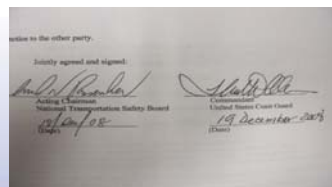
## NTSB and USCG Investigating Together.....



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## NTSB & USCG MOU

- NTSB Chairman and USCG Commandant sign MOU on 19 December 2008
- Defines “significant marine casualty”
- NTSB “*may*” elect to lead significant marine casualties.



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## What is a significant marine casualty...under the MOU?

1. The loss of three or more lives on a commercial passenger vessel;
2. Loss of life or serious injury to twelve or more persons on any commercial vessel;
3. The loss of a mechanically propelled vessel of 1600 or more gross tons;



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## What is a significant marine casualty under the MOU?

4. Any marine casualty with loss of life involving a highway, bridge, railroad or other shore side structure;
5. Serious threat, as determined by the Commandant and concurred in by the Chairman, or their designees, to life, property, or the environment by hazardous materials;



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## What is a significant marine casualty...under the MOU?

6. Significant safety issues, as determined by the Commandant and concurred in by the Chairman, or their designees, relating to Coast Guard marine safety functions.



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## US Coast Guard:

- Shall participate as a party in an NTSB-led investigation
- Regardless of which agency leads an investigation, the other agency may participate as an equal partner in gathering evidence and establishing facts
- Analysis and conclusions are separate and independent



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## MOU items of interest

- NTSB will provide investigative support such as voyage data recorder information retrieval and materials properties analysis
- NTSB and USCG are encouraged to make courses and training facilities available on a reciprocal, no cost basis.

> [www.nts.gov/TC](http://www.nts.gov/TC)



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## When the USCG leads and NTSB participates --



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## When the USCG leads and NTSB participates (Marine Boards) --

- NTSB investigators participate in every phase of the investigation.
- NTSB investigator(s) –
  - › Make recommendations about the scope of the investigation
  - › Call and examine witnesses
  - › Submit or request additional evidence



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## LADY MARY Sinking

- CFV
- Sunk 3/24/09
- 6 deaths



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## LADY MARY Marine Board

-Cape May, NJ  
-May 2009



Left to Right: LCDR Brian Province, LCDR Tracy Phillips, CDR Kyle McAvoy, LT Ben Gullo (counsel), Brian Curtis (NTSB), and the witness, Dan Karlson, senior analyst for NOAA's satellite search and rescue program



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## Alaska Ranger Marine Board

- Sinking occurred March 23, 2008
- 5 deaths
- 42 survived
- *Marine Board tours the processing plant of the ALASKA WARRIOR in Dutch Harbor*



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## KATMAI capsizing and sinking

- Coast Guard Marine Board of Investigation  
– seven of eleven crew died October 2008.



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## When the USCG leads and NTSB participates --

- The NTSB can produce its own investigation report.
- Report based on –
  - › The Marine Board proceedings; and
  - › Any additional evidence the NTSB may acquire under its own authority.



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## What NTSB offers

- Licensed marine investigators with navigation and engineering experience
- VDR expertise
- Metallurgy expertise
- Fire investigative expertise
- Weather
- Transportation Disaster Assistance



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## When the NTSB leads and USCG participates --

- NTSB Accident Investigation procedures found at: 49 C.F.R. Part 831
- CG will participate as a party



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## NTSB Investigator In Charge (IIC)

“The designated IIC organizes, conducts, controls, and manages the field phase of the investigation . . .”

“The IIC has the responsibility and authority to supervise and coordinate all resources and activities of all personnel, both Board and non-Board, involved in the on-site investigation. The IIC continues to have considerable organizational and management responsibilities . . . up to and including Board consideration and adoption of a report of probable cause.” (49 C.F.R. § 831.8)



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## The NTSB Party System

- Parties to the field investigation shall be limited to those persons, government agencies, companies, and associations whose employees, functions, activities, or products were involved in the accident and who can provide suitable qualified technical personnel to actively assist in the field investigation.

• 49 C.F.R. § 831.11



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## Who Designates Parties?

- The Coast Guard is always invited to serve as a party to NTSB investigations.
- Otherwise, the IIC (investigator in charge) is solely responsible for designating parties



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## Who are the Parties?

- NTSB
- Coast Guard
- Owners/operators
- Technical experts (accident-dependent)



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## Parties

- What do they provide?
  - Technical expertise
  - Experience
  - Documentation
  - Local or geographical knowledge



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## Excluded From Party System

- Specifically excluded are representatives of claimants or insurers and occupants of legal positions
- IIC works with insurance personnel to:
  - Allow them to establish a claim
  - Tell of investigative plans
  - Release wreckage with approval of owner (if possible)
  - Provide same factual info given to family and press



49 C.F.R. §831.11(a)(3)

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## Parties

- Nominate one person to be the party coordinator
- Share factual information obtained in the investigation
- Participate in fact gathering
- Do not participate in analysis
- Are invited to submit findings, recommendations, and suggested probable cause



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## Groups

- NTSB works through investigative groups that address different investigative areas
- Each group is headed by an NTSB investigator who serves as group chairman
- Party members comprise the remaining group members
- One representative from each party usually assigned to each group



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## Groups

- Groups are usually formed for:
  - › Nautical operations
  - › Engineering operations
  - › Survival Factors
  - › Human Performance (Elements)



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## Groups

- A Group may also be formed for
  - › Recorders
  - › Weather
  - › Stability
  - › Medical
  - › Other Modes (for multimode accident)



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## Groups

Each Group Chairman, before departing the scene, issues group Field Notes which

- Contain all factual information collected on-scene
- Are given to each group member
- Are given to the IIC who, in turn, collects all group field notes and gives a complete set to the Party Coordinators



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## Release of Information

- Factual information released during on-scene phase and when significant findings are obtained
- All information, with a few exceptions is made available to the public
  - › [www.nts.gov/Dockets/Marine](http://www.nts.gov/Dockets/Marine)



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## Interviewees

- Rights of interviewees

“Any person interviewed by an authorized representative of the Board during the investigation, regardless of the form of the interview has the right to be accompanied, represented, or advised by an attorney or non-attorney representative.” (49 CFR Part 831.7)



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## The NTSB investigator cannot:

- Grant immunity from prosecution
- Assure confidentiality



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## Toxicological authority

- NTSB has no authority to order tox samples on living persons.
- Does have authority to obtain samples required to be taken by others or taken at hospitals
- Make requests:
  - » To USCG
  - » To individuals
  - » Through company



Local authorities may have necessary authority.

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## The Final Report

- After factual reports have been reviewed by parties;
- After analytical reports have been completed;
- NTSB staff drafts the final report, including facts, analysis, conclusions, probable cause, and recommendations



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## Sunshine Meeting

- The draft report is presented to the safety board in a public meeting at safety board headquarters
- Party submissions are provided to the board with the report
- Parties are specifically invited, but may not participate in the meeting
- If adopted, the report at that point becomes a public document.



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## Training Open to Public at NTSB Academy – Ashburn, VA

- Marine Investigations
- CLE – Working with the NTSB
- Digital Forensics
- Route Cause Analysis (NASA)



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## ADVOCACY

### What we ask from you

- › Support of Most Wanted List Items
- › Participation in Listening Sessions



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## ADVOCACY

- Support for the installation of VDRs on Passenger Vessels and Ferries to assist us in “getting the facts right” to uphold the accuracy of our reports. Added benefits: Helps you/your client to: gain a better understanding of the facts; improve safety through monitoring/self reporting and corrective action; and as teaching tool by vessel personnel.



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## Questions

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## **James F. Rodriguez**

Assistant General Counsel of the National Transportation Safety Board.

Jim joined the Office of General Counsel in April 2011. He provides counsel on accident investigation issues, manages the agency's information law docket, and advises on intellectual property, proprietary, and export control matters. Jim served as the NTSB's legal representative during the NTSB investigations of the sinking of the freight vessel El Faro, the SpaceShipTwo test flight crash, the Asiana Flight 214 accident, the Boeing 787 battery fire, the pipeline explosion in Sissonville, West Virginia, the Seastreak ferry accident in New York City, the Skagit River, Washington bridge collapse, the collision between a Metrolink train and pickup truck in Oxnard, California, and the Amtrak train derailment in Philadelphia, Pennsylvania.

Jim's prior legal experience includes intellectual property and commercial litigation for the Los Angeles office of Kirkland & Ellis LLP, and the Austin office of Weil, Gotshal & Manges LLP. In that time he worked on patent litigation matters involving computer networks, speech synthesis, medical devices, satellite communications, and aircraft avionics. He also worked on commercial disputes over satellite launch failures. Jim was an Air Force Reserve Judge Advocate and served as a summary courtmartial officer, advised commanders on administrative and disciplinary options, and reviewed FOIA requests, inter-service aircraft support agreements, and government contracts.

Prior to law school, Jim spent eight years as an active duty Air Force officer working in military satellite programs. He led launch and early-orbit checkout teams for the Defense Meteorological Satellite Program and conducted operational testing of 13-meter antennas in Fairbanks, Alaska. After leaving active duty, he worked as a civilian engineer and manager in government and commercial space industry positions.

Jim graduated from Virginia Tech with a Bachelor of Science degree in Aerospace Engineering, and received his Juris Doctor, summa cum laude, from the University of Arizona. He is also a certified flight instructor.



## **Capt. Michael J. Kucharski**

Senior Marine Accident Investigator for the National Transportation Safety Board.

Mike Kucharski came to the NTSB in late 2014. Since joining, he has investigated deep sea, brown water, commercial fishing, and dive vessel accidents.

Immediately prior to joining the NTSB Mike was the Managing Director of Orion Maritime Consultants, LLC. Captain Mike also served as Port Captain / Marine Manager for the Celebrity, Azamara, and TUI cruise vessel fleets where he was able to focus his operational and legal expertise to ensure company vessels were properly staffed, equipped, and compliant with regulatory and company standards.

In addition to his 23 years of seagoing experience aboard freighters and tankers (11 as master) in all deck officer positions on some of the world's more challenging waters, Mike enjoyed a collateral 30-year career in the U.S. Naval Reserves. As a Reservist, he utilized the skills obtained through his merchant service to act as an advisor or instructor at numerous deep draft and shoreside commands. He has also served as counsel, consultant, and expert witness to vessel and shipyard owners, underwriters, clubs, syndicates, construction companies, and transportation entities.

Mike Kucharski holds his Juris Doctor from Regent University School of Law and his Bachelor of Science, Marine Transportation, from S.U.N.Y Maritime College. He is currently licensed to sail as master of vessels of unlimited tonnage, upon oceans; and to practice law in the Commonwealth of Virginia.