

Michael E. Haglund, OSB No. 772030
Email: mhaglund@hk-law.com
Julie A. Weis, OSB No. 974320
Email: weis@hk-law.com
Sara Ghafouri, OSB No. 111021
sghafouri@hk-law.com
HAGLUND KELLEY LLP
200 SW Market Street, Suite 1777
Portland, Oregon 97201
Phone: (503) 225-0777
Facsimile: (503) 225-1257

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
(Eugene Division)

NEWPORT FISHERMEN'S WIVES, INC.,
an Oregon nonprofit corporation, **CITY OF
NEWPORT, LINCOLN COUNTY, PORT
OF NEWPORT** and **MIDWATER
TRAWLERS COOPERATIVE**, an Oregon
cooperative,

Plaintiffs,

v.

UNITED STATES COAST GUARD, an
agency of the United States Department of
Homeland Security,

Defendant.

Case No. 6:14-cv-1890-MC

**DECLARATION OF KELLY MADDEN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

I, Kelly Madden, being sworn, say:

1. I became captain of the fishing vessel Blazer in May 2014 and served in that capacity until the vessel sank during the early morning hours of November 29, 2014. I reside in Sarasota, Florida and make this declaration based upon my own personal knowledge.

2. I have been a commercial fisherman since 1989. In those 25 years, I have fished in the waters of Alaska, Norway, Russia, Argentina and the U.S. West Coast. I hold a 1600-ton masters license for inspected vessels.

3. The fishing vessel Blazer was a 73-foot long steel hull fishboat that was built in Chula Vista, California in 1991. During the seven months that I served as her captain, we operated as a tender vessel in the salmon fishery on the Alaska peninsula during the spring and summer of 2014, pursued albacore tuna in September/October off the coast of Oregon and southern Washington and were in the midst of a voyage from Yaquina Bay to set 500 crab pots on November 29, 2014 when our vessel began to encounter difficulty. We had a crew of five that included me, Luke Carson of Newport, Matt O'Neill of Bellingham, Washington, Richard McDonald of Toledo, Oregon and Justin Haggart of Vancouver, Washington.

4. From Yaquina Bay, our plan was to steam for nine hours on a north/northwest course and to set out our crab pots in ten 50-pot strings running north/south approximately eight to nine miles west of Cape Falcon. Because it is considered bad luck to begin a fishing voyage on a Friday, I waited until 10 minutes past midnight on Saturday, November 29, to depart from the Blazer's moorage at the Port of Newport's marina in Yaquina Bay. Although the conditions were extremely rough with 10 to 14-foot seas, everything went well for approximately four hours. At that point, which was 4:00 a.m. on the morning of November 29, we noticed that we were taking on a starboard list. I immediately woke all of my crew and gave them orders to start cutting loose crab pots. I ran down into the engine room to activate a suction pump, but saw no water in the engine room or the bilge. I then maneuvered the vessel into a tight hard to starboard turning circle to try and correct for the starboard list, but it had no effect and the starboard list

only became worse. As my crew and I worked frantically to stabilize the vessel, we did not take the time to put on survival suits or rain gear and we all became soaking wet in the rough seas as the vessel regularly took seawater over the deck.

5. When it became clear that our maneuvers and jettisoning of crab pots was not working, I directed everyone to put on their survival suits and I hailed the Coast Guard via radio with a mayday call and our position. We then deployed the life raft and tied it to the Blazer's rail. At this point, the vessel was heeled over 60-70 degrees. In order to prevent a freefall down the side of the vessel to the life raft, I prepared five ropes for my four crewmen and myself to use as we shimmied down the steep port side of the Blazer and then jumped aboard the life raft. We then cut the raft loose from the Blazer and drifted away from the vessel. Within 10-15 minutes, the Blazer completely turned turtle with her keel as the highest point above water with 70% of the vessel fully submerged. At the time, there was a strong wind from the northwest and 10 to 14-foot seas. In five to seven minutes, we were hundreds of yards away from the Blazer and could only observe her at the very top of each swell. I do not know how quickly it took for her to sink.

6. In all my years of commercial fishing, I have never had to abandon ship. The conditions were such that our life raft was being tossed around in the heavy seas. Because we had no means of maneuvering the life raft in order to keep her headed directly into the oncoming swell, we were at very high risk of having a large swell capsize our raft and throw us all into the ocean. With the temperature near freezing and the strong winds, we were all becoming very cold despite our survival suits. It was an incredible relief to see the helicopter on scene within a little over 40 minutes. I learned later that the Coast Guard helicopter crew took 24 minutes to launch

the rescue helicopter from the Newport Air Station, 19 minutes to reach the scene of our life raft and then 14 minutes to deploy a Coast Guard rescue swimmer, who gave us instructions on how to use the basket lowered by cable to rescue us. Because of the helicopter's weight limitations, it was only able to take three of my crewmen. After Luke Carson, Matt O'Neill and Richard McDonald were lifted off, Justin Haggart and I waited for the Coast Guard motor lifeboat, which had been launched from Depoe Bay. It took the motor lifeboat 75 minutes to transit the approximately eight miles to reach us. By the time we were both pulled from the life raft into the Coast Guard motor lifeboat, both Justin Haggart and I were feeling extremely cold.

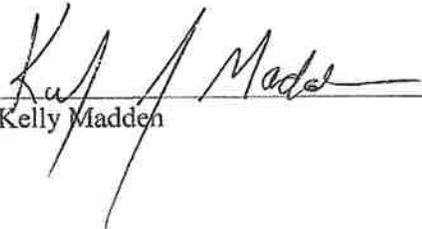
7. I firmly believe that the speed of the Coast Guard's Newport rescue helicopter and the capability of its crew saved my life and that of my four crewmen on November 29. I say this for two reasons. First, the helicopter's speed is crucial to making a rescue within a fairly narrow survival window in cold ocean waters. Although we all had survival suits on, much of the benefit of those suits had been compromised by putting them on when we were drenched with cold seawater. In addition, given the high risk that our raft would capsize, it was an unknown how long we could have survived in the ocean.

8. Second, from its vantage point in the sky, the helicopter was able to spot our raft very quickly. Without the helicopter, the motor lifeboat launched from Depoe Bay would have been headed to our last reported position and may have encountered significant difficulty finding us given the strong southerly drift of our life raft after cutting loose from the Blazer. If the life raft had capsized, one or more of us may have been able to hang onto the overturned raft, but I believe there is virtually no chance that all of us would have been able to make it back to the raft given the rough conditions. Once a number of us were separated from the life raft and drifting at

sea, the ability of the motor lifeboat to find us before one or more of us died from hypothermia would have required a near miracle. I cannot overemphasize how important the rescue helicopter was in a situation like this with its ability both to arrive on scene so quickly and to speedily locate our life raft in turbulent sea conditions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 06 day of December, 2014.



Kelly Madden

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2014, I served the foregoing

**DECLARATION OF KELLY MADDEN IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**, on the following:

Sean C. Duffy
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

by the following indicated method(s):

- by **mail** with the United States Post Office at Portland, Oregon in a sealed first-class postage prepaid envelope.
- by **email**.
- by **hand delivery**.
- by overnight mail.
- by **facsimile**.
- by the court's Cm/ECF system.

/s/ Michael E. Haglund
Michael E. Haglund