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Our reference: F0004629

Dear Ms Drysdale

RE: Freedom of Information request - Trawler Gaul

I am writing further to the Freedom of Information (FOI) requests about the loss of *Gaul* that you submitted to the Department for Transport on 11th August and 22nd October, 2008.

Your e-mail of 11th August has previously been answered as an FOI request but because of extensive correspondence the Department has received from you on the matter of *Gaul*, I have prepared this letter as a statement of the Department's position in relation to a reopening of the Reopened Formal Investigation (RFI) into the loss of *Gaul*. Beyond acknowledging receipt, we will not respond to future correspondence from you in relation to the Secretary of State's position on reopening the Formal Investigation unless it raises issues of substantially different content.

For the sake of clarity, I set out the historical background surrounding the loss of *Gaul* in Annex A to this letter.

Since the publication of the RFI report, you have made the Department aware of your dissenting interpretations of the evidence for the causes of *Gaul's* loss. You have contacted the Department repeatedly with respect to material located at the web address <http://the-trawler-gaul.blogspot.com/> (which I shall refer to as your weblog). The Department has consistently reiterated and maintains its position that the RFI should not be re-opened on the basis of the information you have supplied.

Under section 269(1) of *Merchant Shipping Act 1995* (MSA), the Secretary of State is obliged to order the rehearing of investigations in whole or part

- (a) if new and important evidence which could not be produced at the investigation has been discovered; or
- (b) if there appear to the Secretary of State to be other grounds for suspecting that a miscarriage of justice may have occurred

and may otherwise exercise a discretion to order the rehearing of investigations.

After the discovery of the wreck of *Gaul* and its investigation, MAIB detailed a list of what it considered to be new and important evidence which was not available to be produced at the original Formal Investigation (OFI). That list is annexed to this letter at Annex B. The list gives some idea of the quality and quantity of evidence which the Secretary of State accepted, at that time, satisfied the requirements of section 269(1)(a).

The information located at your weblog is a long way from the weight and strength of the evidence which became available after the discovery of the wreck and the subsequent MAIB report, and which caused the reopening of the Formal Investigation. The Secretary of State maintains the consideration that the material you have provided does not fulfil the criteria of 269(1)(a).

Moreover, nothing in the information and documents provided in your weblog is new evidence. As you accept on your weblog, the information you have supplied could have been produced at the RFI. Furthermore, the Secretary of State does not accept that this information (which must, under section 269(1)(a), both be new *and* important) is important. The information you have provided derives in substantial part from the evidence which was before the RFI, and simply re-interprets that evidence. The Secretary of State maintains the consideration that this re-interpretation does not add anything to the process of evaluation which took place before the RFI.

Therefore, given the Secretary of State's view that section 269(1)(a) is not engaged, in order for the Secretary of State to be obliged to reopen the Formal Investigation, the provisions of section 269(1)(b) must be fulfilled; it must "appear to the Secretary of State [that there are other] grounds for suspecting a miscarriage of justice may have occurred." This provision precludes grounds based on the revelation of new and important evidence, which are dealt with under 269(1)(a), and its fulfilment would require that the conduct or content of the 2004 RFI be found to be flawed in such a way as to lead to doubts about the integrity of its conclusions. The documents at your weblog do not provide reasons for suspecting that this is the case.

The Secretary of State maintains that the methodology and the findings reached by the RFI were sound. Technical experts in a number of disciplines were consulted, and there are no grounds for suspecting that their expertise was in any way deficient. You do not suggest that the expertise of the experts appearing before the RFI should be impugned. The material gathered at your weblog is neither substantive enough nor well-sourced enough to undermine confidence that the execution of the RFI led to a fundamentally satisfactory conclusion.

Moreover, your submissions amount, in the Secretary of State's view, to an assertion that, on the evidence before it, the RFI should have reached a different conclusion. Whilst the Secretary of State accepts that the RFI *could* have reached a different conclusion, he is satisfied that nothing in the evidence before it, or in the way in which that evidence was considered, discloses any suggestion of a miscarriage of justice. Accordingly, the Secretary of State maintains the consideration that it does not appear that there are grounds for suspecting that a miscarriage of justice may have taken place.

It follows therefore that the Secretary of State is not obliged under section 269 of the Merchant Shipping Act to reopen the RFI, as none of the material you have produced is new and important evidence which could not have been produced at the RFI, and it does not appear to the Secretary of State that there are any other grounds for suspecting that a miscarriage of justice has taken place.

The Secretary of State has also considered whether he should, in his discretion, order that the RFI be re-opened. The Secretary of State has considered the extensive nature of the evidence presented to the RFI, the time which was taken to weigh that evidence, the fact that the RFI was assisted by a number of experts and the careful conclusions of its report. In all the circumstances of this matter, taking those factors into account, the Secretary of State declines to exercise his discretion to re-open the RFI.

Your request of 22nd October was about the contents of a letter sent by Jim Fitzpatrick MP to Julian Brazier MP on 8th April, 2008.

I reproduce below the text with which your FOI request was concerned, in its full context:

There is no reason to doubt the outcome of the thorough and expert analysis that led to the inquiry's conclusions and consequently **I am advised that there is no reason to reopen the investigation.** [Emphasis indicates the text quoted in the FOI request]

No further analysis or advice was given to Jim Fitzpatrick MP than appears in the letter. Therefore, the information you requested does not exist. For the sake of clarity, I should explain that the sentence on which your request focuses was intended, taken as a whole, to convey that the dearth of evidence undermining confidence in the inquiry's conclusions meant that there was no reason to rehear any part of it.

If you are unhappy with the way the Department has handled your request of 22nd October or with the decisions made in relation to that request you may complain within two calendar months of the date of this letter by writing to me at the above address. Please see attached details of the Department for Transport's complaints procedure and your right to complain to the Information Commissioner.

Yours sincerely
Theresa Crossley

Theresa Crossley
Head of Shipping Policy

Annex A – Background of the loss of the *Gaul* and subsequent investigations

The Loss and Original Formal Investigation

The motor trawler *Gaul*, a single screw factory filleter freezer fishing vessel, was lost in very bad weather on the North Cape Bank to the north of Norway on or around the 8th February, 1974, with the loss of 36 lives. Despite a search operation, the only trace of any wreckage of *Gaul* found at the time was a single lifebuoy in May, 1974. The original formal investigation (OFI) into the loss of *Gaul* – held under *Merchant Shipping Act 1894* and conducted in September and October, 1974 – acknowledged the lack of direct evidence, and found that the most likely cause of the loss was

... that *Gaul* capsized and foundered due to taking a succession of very heavy seas on her trawl deck when she was almost broadside to the sea, which initially caused her to heel over, and that she had not time to recover before a subsequent wave or waves overcame her ability to right herself.¹

Because of the lack of physical evidence, most notably *Gaul's* wreck, and a perception that search efforts for *Gaul* were unsatisfactory, rumours persisted that more sinister causes resulted in the loss. Speculation focussed on the possibility that, like some other British trawlers up until 1967, *Gaul* had been involved in intelligence gathering against USSR naval forces. Such speculation has never been substantiated, and indeed testimony from Secret Intelligence Service (SIS) personnel at the OFI indicated that neither *Gaul* nor any member of her crew had ever undertaken intelligence tasks on behalf of the SIS.

Discovery of the Wreck, MAIB Involvement and Initial Survey

In August 1997, an expedition funded by UK and Norwegian television companies positively identified *Gaul's* wreck. Following a documentary which aired footage of the wreck, the Secretary of State asked the Marine Accident Investigation Branch (MAIB) whether it was able to determine the cause of *Gaul's* loss from the footage. The MAIB responded that it would require a more detailed survey before it could offer substantive conclusions. Given the indication that substantial conclusions might be possible, this survey was conducted in August 1998. The video evidence from that survey was supplemented by the findings of scale model testing, and the MAIB concluded that the immediate causes of the loss were that:

"*Gaul* was heading with the seas broad on her port bow when her bow was pushed to starboard and a group of very large breaking waves impacted on her port beam, rolling her just beyond 90° to starboard. This action caused the fish loading hatches to fall partially open. She recovered, to list at least 40° to starboard but this was sufficient to allow downflooding through the open weathertight hatches and doors on the trawl deck. She probably sank in less than 10 minutes."²

The Recommendation to Reinvestigate and the Second Survey

The MAIB noted that its findings were very similar to those of the OFI. The MAIB's report also provided a comprehensive list of new and important evidence which was not available at the OFI, and which is reproduced at Annex A. On the basis of this evidence, and the MAIB's explicit recommendation, the Secretary of State ordered, on 14 April 1999, the rehearing of the OFI, under powers conferred by Section 269(1)(a) of the *Merchant Shipping Act 1995*.

Mr Justice David Steele was appointed as Wreck Commissioner. A recommendation from initial meetings of the Wreck Commissioner and his appointed assessors prompted an intrusive examination of *Gaul's* wreck using remotely operated vehicles. This survey was undertaken in July and August, 2002, and produced "video material ... of startling quality and value."³

The reopened formal investigation (RFI) took place in January and February, 2004. The RFI, with access to superior evidence and extensive expert testimony, reached a conclusion materially different from that of the original investigation:

"[T]he probable cause of loss was the accumulation of in excess of 100 tonnes of water on the factory deck that was not noticed at least until just before the capsizes ... Whatever the circumstances [the officer of the watch] felt he had no choice except to bring the vessel head to wind ... [T]he turn created new unexpected forces on the entrapped water from the centrifugal and centripetal forces causing a sudden further surge to starboard and to the stern causing capsizes and rapid sinking by the stern to be inevitable. As for the source of water on the factory deck, the strong probability is that seawater ingressed through the open duff and offal chutes on the starboard side and thereafter through the factory access door and other downflooding points."⁴

1 Report of Court No. S493 (ON 338111), p. 104

2 Marine Accident Report No. 4/99, Report on the Underwater Survey of the Stern Trawler GAUL H. 243 and the supporting Model Experiments August 1998 – January 1999, p 79

3 Report of the Re-opened Formal Investigation into the Loss of the FV Gaul, Part 1, p. 4

4 Report of the Re-opened Formal Investigation into the Loss of the FV Gaul, Part 2, p. 271

Annex B – List of “new and important evidence” supporting the rehearing of the original formal investigation into *Gaul*’s loss

Extracted from Marine Accident Investigation Branch’s *Report on the Underwater Survey of the Stern Trawler GAUL*:

New and important evidence

The underwater survey and model experiments have revealed new and important evidence that was not available to the FI in 1974.

1. The wreck was in one piece in position 72° 04.1’N 25° 05.3’E.
2. There was no evidence of fire damage or explosion.
3. There was nothing to indicate that *Gaul* had sunk because her hull had been holed.
4. There was a tear due to water pressure crushing damage in the side plating above the waterline at the bows.
5. All weathertight doors and hatches on the forecastle deck were closed and secured.
6. The weathertight door to the engine room casing (port side of the trawl deck) was closed and secured.
7. The weathertight door to the engine room escape (starboard side of the trawl deck) was open, and undamaged.
8. The weathertight door to the factory (starboard side of the trawl deck) was secured open and undamaged.
9. The opening to the factory doorway was two thirds full of net.
10. The two fish loading hatches (aft centre of the trawl deck) were fully open and undamaged. The locking pins were not in place.
11. The port trawl door was found hanging on the transom in its usual storage position.
12. The steerable Kort nozzle was at 10° to 15° to port.
13. The propeller pitch was estimated to be set to absorb about 50% to 75% ahead power.
14. Partition bulkheads between the cabins, and the forward bulkhead to the chart room, had burst forwards.
15. A general absence of water pressure crushing damage to the hull, hatches and doors.
16. Bridge windows and portholes were unbroken.
17. The outboard face of the port funnel was indented over most of its height.

18. The stern ramp gates were open.
19. The spare trawl doors were missing from their racks on the trawl deck, and the fishing gear appeared to have fallen to the starboard side of the net arena.
20. Model experiments showed that *Gaul* could have been "knocked-down" if hit on the beam by a breaking wave higher than about 16m (52 feet).

INVESTIGATION FINDINGS

Findings of the underwater survey

1. *Gaul* sank in position 72° 04'N 25° 05'E.
2. The wreck was in one piece and heeled about 35° to starboard.
3. The bow was buried to about 1.7m in sediment, the stern was clear down to the bottom of the Kort nozzle.
4. Trawl nets obscured the forward end of the trawl deck, the aft face of the bridge, and the aft starboard corner of the trawl deck.
5. The port side of the hull was visible down to the bilge keel.
6. A large portion of the starboard side was buried in sediment. The sediment was within 0.3m of the trawl deck amidships.
7. There was a tear in the side plating above the waterline at the bow due to water pressure crushing damage.
8. All weathertight doors and hatches on the forecastle deck were closed and secured.
9. The weathertight door to the engine room casing (port side of the trawl deck) was closed and secured.
10. The weathertight door to the accommodation block (forward end of the trawl deck) was inaccessible.
11. The weathertight door to the engine room escape (starboard side of the trawl deck) was open and undamaged.
12. The weathertight door to the factory (starboard side of the trawl deck) was secured open, and undamaged.
13. The opening to the factory doorway was two thirds full of net, which had been carried into this position as the vessel filled with water on the surface.
14. The outboard face of the port funnel was heavily indented over most of its height.

15. The two fish loading hatches (aft centre of the trawl deck) were fully open and undamaged. All but one of the securing clips were in the open position.
16. The locking pins to the fish loading hatches were not in place.
17. The net store hatch (aft starboard corner of trawl deck) was inaccessible.
18. The port trawl door was found hanging on the transom in its usual storage position.
19. The starboard trawl door was missing.
20. There was a general absence of water pressure crushing damage to the hull, hatches and doors.
21. The bridge windows and portholes were unbroken.
22. Bulkheads between cabins, and the forward bulkhead to the chart room, had burst forwards.
23. The autopilot control was missing from the control console.
24. The spare trawl doors were missing from their racks on the trawl deck, and the fishing gear appeared to have fallen to the starboard side of the net arena.
25. The aft (and inner) of the double doors to the net store was hanging open.
26. The steerable Kort nozzle was between 10° and 15° to port.
27. The controllable pitch propeller is estimated to be set to absorb between 50% and 75% ahead power.
28. The davit for the "C" class boat was stowed.
29. As far as could be seen all the liferaft containers were missing from the stowage racks.
30. One of *Gaul's* four-man liferaft containers lay on the seabed off the port bow.
31. The "C" class boat and the inflatable boat were missing.
32. The gates at the head of the stern ramp were fully open.
33. There was no evidence that a seabed cable had contributed to the loss of *Gaul*.

Your right to complain to DfT and the Information Commissioner

You have the right to complain within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF