

**INQUIRY UNDER FATAL ACCIDENTS AND SUDDEN DEATH
INQUIRY (SCOTLAND) ACT 1976 BY PROCURATOR FISCAL,
STORNOWAY RELATIVE TO THE DEATH OF JOHN MACDONALD**

SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS AT STORNOWAY

Determination of

Sheriff Colin Scott Mackenzie

in causa

Petition

under the Fatal Accidents and Sudden Death Inquiry (Scotland) Act 1976

by the

Procurator Fiscal, Stornoway

relative to the death of

John Murdo Morrison Macdonald

STORNOWAY 29TH November 2005.

After due advertisement in terms of the legislation a Fatal Accident Inquiry was held on 25th November 2005 in Stornoway Sheriff Court into the death of John Murdo Morrison Macdonald of Flat 6, Cnoc Mor, Breasclete, Isle of Lewis. In addition to the Petitioner, Mr David S. Teale, Procurator Fiscal for the public interest, appeared Mr Alasdair Taylor of Messrs. Mackinnons, solicitors, Aberdeen acting on behalf of Messrs Macleod Brothers, sometime owners of the MFV Dunan Star II SY 123.

I first of all expressed the sincere sympathy of the bench and agents to the relatives and friends of the late Mr Macdonald. Evidence was then led by the Procurator Fiscal from 4 witnesses and in addition three affidavits relating to formal reports were lodged, namely, 1) Post Mortem Report by Dr. Robert Dickie and relative letter, 2) Toxicology Report by Dr. Duncan Stephen together with various productions including 3) a marine Chart of the locus and 4) copy Marine Guidance Note MGN 155(F), 5) copy Operations Advice Note OAN 398, 6) copy of report to UK National Immersion Incident survey by E Howard N Oakley, 7) copy of The Fishing Vessels (Code of Practice for the Safety of Small Fishing Vessels) Regulations 2002, 7) copy of (Irish) Fishing Vessel (Personal Floatation Devices) Regulations 2001 8) copy of a publication by the Marine and Coastguard Agency entitled Fisherman and Safety "A Guide to Safe Working Practices for Fishermen", 10) a copy pamphlet issued by the

MCA on Mandatory Safety Training Course for Fishermen (MCA/SF/008) and 11-13) miscellaneous copy newspaper reports relating to safety at sea.

I found the following facts admitted or otherwise proved:-

a) The late John Murdo Morrison Macdonald (hereinafter referred to as 'the deceased') was 44 years of age (d.o.b. 14.3.60). He lived at the time of his death (5.4.04) at Flat 6, Cnoc Mor, Breasclete, Isle of Lewis. He had been self-employed as a share fisherman with the *MFV Dunan Star II* SY 123 for only a few months prior to his death, operating mainly out of Carloway. Immediately prior to joining the vessel he had been a mill-worker but had also, it was understood, spent some time as crew on board a Fishery Cruiser. He was considered a steady and reliable addition to the crew of the *MFV Dunan Star II*.

b) The *MFV Dunan Star II* is a well-found 44-foot long multi-purpose fishing boat with a beam of 17'6" equipped for gill, tangle and trawl nets and creels but at the time of the deceased's death was rigged for creels. It had been built new for the owners in 1987. It had an aft wheelhouse and a whaleback at the bow with an open working deck where creels and nets were stacked after being hauled and before being shot. The gunwale surrounding the open deck was about 30 inches above the level of the deck increasing slightly in height with the sheer towards the bow. The usual crew complement was the skipper Douglas Craigie (witness) and two or sometimes three others but on the date in question they were working with the skipper, the deceased and Brian Martin (witness) of Carloway to cope with all necessary work. The boat was fully certificated and fitted with six DTI life jackets, 4 self-inflating life jackets together with sufficient sea-survival suits for the crew and four working buoyancy vests. There was also a sufficiency of life belts aboard and a life-raft.

c) On 5th April 2004 the skipper picked up the deceased with a motor vehicle before 7 a.m. to take him to the MFV which was then lying at the pier at Carloway. He was ready and waiting for his lift. Witness Martin made his own way to the boat which set out to sea shortly after 7 a.m. An hour or so was spent motoring to where their creels had been set in the Atlantic some four or five miles west north west off Gallan Head in a position 58 degrees 17.5 minutes North and 7 degrees 7.5 North. Having arrived there they identified their marker buoy, grappled it, attached the rope to the hauler and had started hauling by 8.30 a.m. The *MFV Dunan Star II* was at the time working with 750 boxes and up to 1000 creels in fleets of 50.

d) Approximately 100 creels had been hauled before 10 a.m. It was not good weather. The wind was force 4 to force 5, occasionally force 6 and blustery from the North West (from which there is no shelter at that position). The sea was rough and choppy and there was a fair degree of swell and thus of motion in the boat. The deceased had been engaged in receiving the creels, emptying them and baiting them and witness Martin had been lining up the baited creels preparatory to re-shooting them and then ensuring that they all got away again through the creel door. There was a momentary lull in the hard physical activity once the latest line had been shot and the buoy line was duly disappearing through the creel door. Witness Martin was taking a breather where he was placed on the open deck and was hanging onto a rope. The deceased was standing on the starboard side of the open deck some way for'ard but facing aft. He had been clipping the crabs' claws but had started

cutting bait on the top of a stack of boxes near to the gunwale when, suddenly, the boat took a lurch as it struck what was termed a freak wave. The skipper was then on the bridge where he was noting the readings of where they had laid the creels. He heard a shout and looked up in time to see the deceased, feet up, disappearing over the gunwale, his hands still on the top rail.

e) The skipper stopped the boat immediately and managed to hold the position showing good seamanship in doing so before leaving the wheelhouse and heading for the deck joining witness Martin who had seen the deceased lose his balance and fall overboard before his very eyes. Both the skipper and Mr. Martin threw lines towards the deceased who was struggling in the water and seemed to be in some pain but though the lines were accurately thrown and landed near him and though he made an attempt to swim towards them, all of a sudden after possibly less than a minute's lapse, his head slumped forward and into the water. He did not respond further and hung motionless in the water. The skipper managed very quickly to manoeuvre the boat as close as possible towards the deceased but as they were trying to hook on to his clothing he disappeared under the boat. His clothing must have provided some buoyancy as he speedily resurfaced on the other side of the boat. This time he was caught as he went past with a grappling hook and they managed to pull him aboard.

f) There was no sign of life but his crewmates did not think he could be dead and immediately started cardiopulmonary resuscitation (CPR). The time was noted to be about 10.05 a.m. The skipper immediately contacted the Stornoway Coastguards who detailed a rescue helicopter to attend. That arrived overhead in only 15 minutes or so, CPR having been continued on board the MFV until then and thereafter on transfer on board the helicopter until the deceased was deposited at the Western Isles Hospital shortly before 11 a.m. There the deceased was examined in the Accident and Emergency unit there by a Dr. Shakeel Hassan, a three week locum consultant with the Western Isles Health Board. He saw there was no spontaneous respiration and no sign of cardiac activity. ECG readings were flat, pupils were fixed and dilated and there were signs of rigor mortis setting in. Life was accordingly declared extinct at 11 o'clock

g) A post-mortem examination was carried out on 20th December 2004 at the Western Isles Hospital by Dr. Robert Dickie, physician, Stornoway, whose autopsy report and accompanying letter formed Production No 1. The deceased was not found to be suffering from any condition which would have led to his death other than immersion in water as confirmed by the known external facts. His lungs were found oedematous in all lobes. Death from immersion in water was accordingly certified by Dr Dickie.

h) Blood and urine samples from the deceased were taken post-mortem in the hospital and sent for analysis. These showed inter alia that at the time the samples were taken there was 170 mg of alcohol in 100 ml of his blood. Such a level of alcohol in the blood would mean that the deceased was intoxicated at the time of his death and his judgement and decision making capacity would have been adversely affected. His potential survival time in the water would have been dramatically reduced by the amount of alcohol he had ingested.

i) Neither lifejackets nor buoyancy aids of any description were worn as a matter of course by the crew of the *MFV Dunan Star II*.

The Inquiry was commenced and completed on 24th November 2005.

NOTE. I took the matter to avizandum. The actual circumstances of the fatality were straightforward enough and not in question and no additional evidence was adduced on behalf of either the representatives of the deceased or the owners of the MFV. A formal but oral determination from the bench would have then been perfectly competent, but as several safety issues had been raised - both as to the desirability of constant wearing of a buoyancy aid on board a fishing boat when at work and also the general undesirability of going to work thereon while under the influence of alcohol, I preferred to make more detailed reference to my notes and to the productions lodged before completing my final Determinations.

The nature and purpose of a Fatal Accident Enquiry is to bring with reasonable dispatch the whole circumstances surrounding certain deaths to judicial and public scrutiny and to enlighten those legitimately interested in the death - i.e. the relatives and dependants of the deceased as to the cause of the death and the cause of the accident leading to the death so far as these are known and can be established by evidence. The general public too has an interest in learning whether any reasonable steps could or should have been taken whereby the death could have been avoided.

The terms of the statutory requirements in terms of Section 6(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 are:-

"The sheriff shall make a determination setting out the following circumstances insofar as they have been established to his satisfaction.

(a) where and when the death and any accident resulting in the death took place

(b) the cause or causes of the death and any accident resulting in the death

(c) the reasonable precautions if any whereby the death and any accident resulting in the death might have been avoided

(d) the defects if any in any system of working which contributed to the death or any accident resulting in the death, and,

(e) any other facts which are relevant to the circumstances of the death."

The Inquiry itself is not restricted in how or how far it may investigate the circumstances but as it is a summary process and although the standard of proof is on the lower standard of the balance of probabilities, the Sheriff should perhaps be wary of making recommendations unless the findings on which they are based are quite clear - or can be inferred from the evidence placed before him - and inference does often have a large part to play in such matters. That said, a Fatal Accident Inquiry is not the proper forum for the determination of liability, civil or criminal or even of blame, and Fatal Accident Inquiry Determinations, however detailed, may not be founded on in other proceedings.

I interpret the task of the Sheriff in such matters and in the present circumstances as not being restricted in any way - save by the terms of the statute - and that he is entitled to comment on and, if he deems fit, to make recommendations on *any* matter which has been legitimately canvassed or is raised inferentially before him, if it appears to him to be in the public interest to do so. Such recommendations as may be made are considered seriously by appropriate authority to which they are always intimated as a matter of course. Accordingly, and not shrinking from occasionally referring to matters which might be described as being within judicial or local knowledge (where the background evidence led may have been slightly thin) I have in addition to the statutory requirements incumbent upon me, looked at and commented on the wider-ranging evidence presented or referred to at the Hearing.

The actual death of the deceased and its immediate cause is not in any doubt. As Dr. Dickie explained in Production 1, 'immersion in water' is not a cause of death synonymous with drowning. Here the deceased had an enlarged heart which meant that he would have been at risk from cardiac arrest - and the shock of entering cold water coupled with his level of intoxication and the physical effort expended to stay afloat may well have been all factors which caused his heart to stop from arrhythmia - though that again is not the same as a heart attack as that is usually understood in lay terms - all indicating death by immersion in water.

There are, however, and as foreshadowed by Dr. Dickie's report, two particular matters to be taken into account in this specific case. Both were looked at in the course of the evidence and both in my view have particular bearing on the fatality in this case. Had they been absent the fatality simply might not have occurred.

Firstly there is the state of sobriety of the deceased at the time when he fell overboard. Accounts were given by witnesses Craigie and Martin to the effect that when they recovered the deceased from the sea that he smelled strongly of whisky when they were attempting resuscitation and indeed that what looked and smelled like neat whisky was pouring from him when they were compressing his chest. His blood/alcohol level was shown to be 170 micrograms of alcohol in 100 millilitres of blood when samples were taken after the post-mortem examination. After he had reported for work at about 7 a.m. it was not suggested that he consumed any further alcohol. When he fell overboard some three hours later he was presumably reducing his blood/alcohol content which means that his blood/alcohol level would probably have been even higher earlier on. He did not, apparently, then manifest any obvious signs of intoxication and he had presented himself for work on time and seemingly in full control. As Dr. John A.J. Macleod (witness) said in evidence, however, 170 mg of alcohol in 100 ml of blood itself is more than twice the level at which a driver of a motor car is reckoned to be unfit to drive on the public road. Dr. Macleod agreed with the bench that anyone with more than 150mg of alcohol per 100 ml of blood would simply be inebriated - and his ability to concentrate or make decisions would then be considerably impaired and he would not be able to recover his balance easily were he to lose it.

There thus always remains the question about the deceased's fitness and his ability to carry out his work safely at the time of the incident. There was no evidence led as to when or what he had been drinking or for how long, when he had stopped or how much. However, even if he had spent some time at rest after having consumed his

alcohol, to draw a further parallel with the situation ashore, he may have fallen into the trap which many otherwise totally law-abiding motor-car drivers do when they are genuinely astonished, if stopped by the police on the morning after an evening of heavier than usual drinking, to find that they have not eliminated enough alcohol from their system by the time they leave for work - in spite of having had what they thought was sufficient time abed to recover. I suspect that many fishermen who are partial to a pint or a dram or three or six do not realise just how long-lasting the effects of their evening's conviviality might be and who therefore are truly not aware that their reactions and decision-making capacity can be badly affected well into the next day. The consequences can be extremely sad. In this case unfortunately, it would seem that the deceased had had a history of heavy drinking and, as is all too well known in the courts, it is often the case that heavy drinkers can disguise or even put off to a degree the otherwise inevitable effects of what they have drunk. They will still be effected, eventually, however. In this case it would seem that while the deceased was apparently able to carry out his usual tasks to the satisfaction of the others he would simply have been unable to regain his balance when the freak wave struck and made him stumble. The gunwale to his left was just at the height for him to fall over when the boat lurched. Had he been reasonably sober he would in all probabilities have been able to right himself.

To continue the land-based analogy, the drink-driving position on the roads has improved in recent years - not probably in actual numbers of road-traffic accidents or deaths (because more and more cars are on the roads) - but because the message 'don't drink and drive' does seem to be getting home to at least the younger driver - which is obviously a very good thing. It seems to me that a similar message, to the effect that one should not go to sea in any work situation until one's body is clear of alcohol - or at least no longer impaired by it, could and should be more strongly and more continuously disseminated amongst the sea-going community until the message really starts to drive home. Seamen may all too often ignore such advice but so once did many car drivers on land. Fishermen ply the most dangerous trade in the land as it is. *Anything* which can improve their situation should be attempted.

All fishermen nowadays have to undergo certain training courses including 'basic health and safety' and 'safety awareness and risk'. There was no evidence led as to the content of these courses but while I imagine that they will include plenty of good advice about not drinking while at sea I would suggest to those who devise them that more or even yet more emphasis is placed on an absolute requirement on seamen or fishermen of not proceeding to sea while there is still the likelihood of their being still impaired from the previous night's drinking - however well they feel, hungover or not - because impairment will often last for far longer than most will imagine. A habitual heavy drinker should take particular note of how if he over-indulges he may not only endanger himself but also put his fellow crewmen at risk in any necessary rescue attempt should he fall overboard because of his inebriation. The message could be "Don't go to sea and expect to work if you have been drinking more than a very minimal amount". The same warning would also apply to any who are misguided enough to indulge in illegal drug-taking.

The Second matter arising from the evidence relates to the question of buoyancy aids and their wearing. Quoting from the Maritime and Coastguard Agency (MCA) Marine Guidance Note MGN 155 (F) which was lodged as a production viz:-

1. *"Each year fishermen's lives are lost at sea due to drowning. Most fatalities are associated with the loss of the vessel but a number of lives are also lost when fishermen fall or are knocked overboard whilst working. Almost invariably they end up in the water without means of buoyancy. This significantly reduces their chances of survival.*

2. *Many of the approved lifejackets carried on board fishing vessels are too cumbersome to wear while working on deck and could deteriorate with constant use. However the MCA considers that the wearing of constant wear buoyancy equipment (CWBE) whilst on deck could save fishermen's lives.*

3. *In 1994 the Agency prepared a specification for equipment suitable for constant wear and subsequently carried out 'on board' and 'in water' trials of inherently buoyant garments (including the body-warmer and waistcoat type)*

4. *The 'on board' trials of inherently buoyant garments indicated that these were cumbersome and restrictive for fishermen when working. The 'in water' trials found the buoyancy insufficient to support the weight of a fisherman when unconscious and wearing heavy clothing. There was also a tendency for garments of this type to roll an unconscious casualty onto his or her front thereby restricting the airway.*

The Guidance Note continues for a further 13 paragraphs detailing examples of CWBE, their advantages and disadvantages and their correct use and maintenance. **The MCA strongly recommended that:-**

a) A sufficient quantity of suitable CWBE (where suitable means that it can be comfortably worn without hindrance to the work of the fisherman.....) is carried on board every fishing vessel to ensure that one device is available at all times for each person working on deck.

b) That all fishermen wear suitable CWBE whilst working on deck

The foregoing was referred to by Dr. J. A. J. Macleod, witness. Dr. Macleod is a recently retired General Medical Practitioner in North Uist who has had a deep interest in preventing drowning for many years and has tried to interest fishermen in wearing buoyancy aids for more than twenty years. Apart from his medical expertise he has had many years practical experience in operating a small boat from which he sets creels and on occasion shoots nets. He gave evidence that he always wears a buoyancy aid when on board his boat or accessing it at anchor and insists upon any passenger doing likewise. He finds that the version of inherently buoyant vest he uses is neither restrictive nor cumbersome and allows him to work on deck without getting too hot. If the weather were mild then he would discard a sweater rather than the buoyancy aid. He agreed strongly that one could not work in either a DTI approved lifejacket or for all practical purposes in a survival suit - the former in fact being nothing but a colossal handicap in working situations and the latter proving far too hot if physical exertion were required. These last mentioned aids were really only of value in an 'abandon ship' situation where there was time to prepare for it.

Self-inflating vests to give a further example mentioned by Dr. Macleod are not always suitable. They require constant maintenance and the bottles of compressed

air are not only liable to leak over time but they or their lanyard can get in the way and become entangled in, say, a creel line or net with possibly disastrous consequences. They can also sometimes inflate unexpectedly if they are inadvertently wetted (an occupational hazard one would have thought) which could unbalance a crewman at an inopportune time and were for that reason not recommended by Dr. Macleod. Dr. Macleod agreed with the general tenor of the MCA Guidance note quoted from above except that he suggested that in their 1994 trials they had started from the false premiss that the majority of those who fell overboard were unconscious when they did so. That he said was simply not the case. Most who fell into the water were, in fact, fully conscious and uninjured. What was required in these more general of circumstances was a simple inherently buoyant device or aid (known generally as a Personal Floatation device - or PFD for short) which would provide sufficient support at the initial stage of contact with cold water when the casualty is more likely to suffer shock - often resulting in cardiac irregularity leading to what used to be called 'dry drowning'. A modicum of support at that point will normally allow the casualty to recover from the shock sufficiently to allow him to do something to improve his immediate situation - such as taking hold of any line thrown to him or perhaps swimming out of danger. Without support he can flail around trying to keep himself afloat thus exacerbating the strain on his heart and thereby increasing the likelihood of hypothermia by directing the blood flow to the extremities. Too much buoyancy on the other hand can actually prevent the casualty from swimming - DTI lifejackets and survival suits come into that category and those varieties of buoyancy aids which provide both jackets and trousers can be particularly dangerous if the casualty has taken off the jacket for any reason - such as becoming too hot after sustained physical work - before falling or being knocked overboard as he will then float upside down. Wearing an inherently buoyant personal floatation device which may provide a lesser degree of buoyancy will, however, protect the wearer to a considerable degree from hypothermia and quite dramatically increase potential survival time. If one is worn beneath oilskins the less bulky of them are much less likely to get in the way when working.

On a grimmer note Dr Macleod pointed out that such personal floatation devices could enable easier recovery of bodies from the water - which might make difficult times easier to bear for grieving relatives ashore who all too often have no one to bury.

Dr Macleod brought to the attention of the court the existence of a trial of some 70 different kinds of buoyancy aids presently being undertaken in the UK under the aegis of the RNLI and "Seafish" wherein some professional seamen and fishermen have each undertaken to wear for a suitable period a different version constantly in their work and to report upon its efficiency, risks, comfort and practicality in due course. Production No. 11 refers. These trials were, Dr. Macleod said, only at the half-way stage as at the date of the hearing but a report was expected in May 2006 at a Scottish Fishermen's exhibition to be held then. So far he said, no one had returned his or her equipment as being unsuitable for use in a working environment. I was not informed of the authority with which the results of the trials when published will be regarded but any movement in that direction must surely be a good thing. Dr. Macleod also referred without further comment to the fact that the Republic of Eire had as long as four years ago made it compulsory on fishing vessels registered in Eire for all persons when on open deck to wear personal flotation devices at all times

(*vide*: Irish) Fishing Vessel (Personal Flotation Devices) Regulations 2001 (SI No. 586 of 2001). The implication seemed to be that the Irish authorities must have managed some time ago to persuade *their* fishing industry of the suitability of some kind of floatation devices and the desirability of their being worn at all times.

It was gratifying to note how well equipped the *MFV Dunan Star II* was safety-wise - the owners of the vessel cannot be criticised in any such respect. It was noted that no buoyancy-aids were worn by the crew as a matter of course in spite of the MCA recommendation as quoted above. In this instance it has to be said, of course, that the deceased's clothing provided him with almost as much buoyancy as a personal floatation device would have done - but had he had one on it might well have still made a difference. He would not, for example, have had to thrash around initially to keep himself afloat - which exertions might well have led to what seems to have been the "dry drowning" situation referred to by Dr. Macleod and as explained more fully by Dr Dickie in Production 1.

It is, however, generally well understood that the majority of fishermen up and down the country do not like wearing anything which they think may restrict them in their work - which work is hard and often dangerous enough without having anything impede their free movement. That is quite understandable - though attitudes may be changing slowly. Their working conditions can be atrocious - the weather may be terrible - cold and wet with rough seas - and yet they may be sweating inside their oilskins. It cannot be easy when heavy physical exertion is involved to find the correct balance or layering of clothing to wear to achieve the best working conditions. Anything like a traditional buoyancy aid could easily be seen in such circumstances by the fishermen simply to be an additional problem which could well be done without- and it has to be acknowledged that different types of fishing activity may require very different types of personal floatation gear to avoid these very problems. The skipper of the *Dunan Star II* acknowledged that were a suitable comfortable personal buoyancy aid to be developed which would allow the wearer to work without restriction, he would certainly wear one but he felt such aids as he was aware of or which he had tried were, so far, totally impractical when working with creels. Creeling is, he pointed out, a very manual job - one is constantly breaking sweat and wearing a buoyancy vest is like wearing four jumpers. He could see the benefits if one were trawling all day - he would probably wear one then - but not when creeling. Of course the benefits would be very obvious were one to fall in, he agreed. Mr Martin was more impressed with the floatation device belonging to Dr. Macleod and shown him, saying that he would probably wear one given the opportunity.

However all these problems have been known about for a very long time. The general unsuitability of the old-fashioned bulky Board of Trade lifejacket for use in anything but an abandon ship situation has been well known for many decades. It may well be *their* long-established reputation which has turned the faces of so many experienced and intelligent fishermen against even contemplating the use of such personal floatation devices as are now available. It is good to know that trials are currently being carried out to find the most suitable version of available floatation devices for constant wear in any work situation. There was no evidence led before this Inquiry as to why matters had taken so long to reach even that position in this seafaring nation and of course there may well be perfectly acceptable explanations

somewhere - even if these are not immediately obvious and were not canvassed. The finger of suspicion far less of blame probably cannot be pointed solely at any one department of government - even one responsible for marine safety - and certainly not at any individual - at least not with the information available to this FAI - but it is surely beyond peradventure that better and more suitable floatation devices should have in fact been developed and perfected long before now and not just left to commercial firms and the market place to try to fill the gap - excellent and well-intentioned though much of that work may have been.

This FAI has not, of course, been in any way a full public enquiry into any possible failure on the part of those responsible for progressing the development of such essential life-saving devices and my comments have to be read in that light. However, these are matters which have to be addressed and not glossed over. That full-scale trials for the most suitable personal floatation devices are at last being carried out seemingly more determinedly than in the past is certainly heartening but they are certainly not before time. Whatever else, a positive and speedy conclusion and action by the appropriate authority is needed - even if it should be found that no personal floatation available device is currently suitable, unlikely though that may be. If, then, at the end of the day nothing presently being trialled can meet with general acceptance in the industry then it will be past time for the authorities to take forward the urgent development of gear that will meet such general acceptance (or can properly be imposed upon it) - and provide the resources or more resources for that to be done and that urgently. It is really an utter disgrace and a most shameful thing that the UK has been overtaken in such a matter by the much smaller nation of Eire. Marine safety of this specific nature for the inshore fishing fleet seems to have for far too long taken far too low a priority in development - or else for whatever reason light is being hidden under a bushel or two - but the time has surely come when something positive has to be done to reduce the all too high death-rate from drowning at sea. If nothing is done or if heels continue to be dragged more avoidable tragedies will occur every year and more families devastated and lives ruined.

If a suitable device for constant wear in all working conditions is to be developed (if indeed that has not already been done) it seems to me that all crew members including the skipper should be obliged to wear one *whenever* on duty *or* on deck - at least on craft where all members of the crew can be expected to have to appear on deck at a moment's notice. Large ocean-going trawlers whose deck-officers rarely appear on deck might want to be exempted but smaller vessels where there is no such distinction and where all hands might have to turn to on deck at any time could benefit immediately from such a ruling. Had the deceased in this instance been wearing an unobtrusive comfortable personal floatation device the tragedy of his death might well have still been avoided. To continue the earlier analogy with the situation on the roads, many car-users complained bitterly when compulsory wearing of seat-belts was introduced - but eventually all got used to it and countless lives have been saved in the meantime. Some fishermen - particularly those who operate small boats single-handedly - have in recent times been seen more frequently using floatation devices quite regularly - so there may be a wind of change starting to blow amongst those who go down to the sea in small ships - but that is but a start and the trend needs to be encouraged. Compulsion may be viewed as yet another inroad into personal freedoms and enforcement might prove difficult but if a proper device is found or developed it would not take long I am quite sure for everyone automatically

to wear one when at sea. Fishing is the most dangerous trade carried out in the United Kingdom and tragedies such as is illustrated here periodically hit the fishing communities hard up and down the length of the United Kingdom. The problem is not just a local one affecting a remote area and is of nationwide application.

In arriving at my Findings in Fact I considered the Procurator Fiscal's submissions to the effect that a formal verdict be returned outlining just the basic facts as also that the deceased was at the time of his death under the influence of alcohol to the extent that his judgement and balance were affected.

Mr Taylor on behalf of the then owners of the *MFV Dunan Star II* sought to follow the Crown's submissions save that he wished to emphasise that the deceased was self-employed. The bulk of the evidence had been devoted to the issues of buoyancy aids and alcohol at sea. So far as buoyancy aids are concerned the evidence seemed to suggest that the risk of wearing them (because of snagging potential) was greater than the risk of not wearing them. If a suitable jacket could be designed he was sure it would be worn. He felt that in this case the question of alcohol was of more significance. Had the deceased not had an enlarged heart or such a high level of alcohol in his blood-stream he might have been expected to have survived. There had been, however, nothing overt to indicate that the deceased was not sober until the accident actually happened. Had it been obvious that he was inebriated he might have been sent home, or whatever - but he was coping well despite the high level. There may well be a warning here that fishermen can put themselves in danger if they over-indulge and then go to sea too soon. He joined in the expression of sympathy to the deceased's family in all the sad circumstances.

For the reasons already outlined above, however, I felt that somewhat more than a formal determination was required here and that where inferences could be drawn they should be drawn. I considered that the issue of personal buoyancy devices must almost always have a considerable significance in drowning cases at sea and that it has such here, as of course has any question of inebriation.

THEREFORE, having considered the foregoing facts, circumstances and submissions I formally determine in terms of the Fatal Accidents and Sudden Death Inquiry (Scotland) Act 1976 as follows:-

1) In terms of Section 6(1)(a) of the said Act that John Murdo Morrison Macdonald died on 5th April 2004 while engaged as a self-employed fisherman on board the *MFV Dunan Star II* SY 123.

2) In terms of Section 6(1)(a) that the death took place in the sea some four to five miles off Gallan Head in the Parish of Uig, Isle of Lewis at or about 58°16.6"N 7°5.7"W.

3) In terms of Section 6(1)(b) that the cause of death was death by immersion as a result losing his balance and falling from the deck of the said vessel into the sea.

4) In terms of Section 6(1)(c) that while there is no compulsion on crew members to constantly wear suitable personal buoyancy devices as recommended by the MCA had the deceased been wearing one it may be that his chances of survival might have been increased.

5) In terms of Section 6(1)(c and e) that the said deceased had at the time of his death a blood/alcohol level of 170 mg of alcohol per 100ml of blood which would have meant that his ability to concentrate and perform certain tasks was adversely affected. Furthermore such a high reading would have considerably affected, adversely, his ability to survive sudden immersion in the cold water of the North Atlantic. Had he not gone to sea while his blood alcohol level was still high enough to impair his reactions or his decision-making processes he might not have tripped or lost his balance in the first place or if he did he might have been able to recover in time and avoid going overboard. Had he still fallen over the side but had been sober he would have been much more likely to have been able to survive immersion in the sea and to have seized the safety lines thrown to him.

6) In terms of Section 6(1)(e) that all fishermen would benefit by the development of suitable personal floatation devices which can be worn at all times when working on board any fishing boat without hindrance to the wearer. Had such devices been approved and regulations been in place to make their use compulsory (and the same had been observed and worn by the deceased) this fatality might not have occurred.

7) In terms of Section 6(1)(e) that while advice is no doubt freely and copiously available to all crew members of all sea-going vessels as to the inadvisability of going to sea when under the influence of alcohol, if there is not already in place a very high profile warning about the very considerable danger of there still being too high a blood-alcohol level in the bloodstream the morning after a heavy drinking session preventing proper and safe functioning particularly in any one who has to work in that condition to an extent where others and he himself might be imperilled, (even when the person involved may feel perfectly fine after a few hours sleep) then such a warning should be included and/or emphasised in such advice. Such amplified advice should always be included in any safety course and in any reminders or 'refreshers' which may take place in training courses, in the hope that constant dripping away at the stony intransigence of some might eventually have a beneficial effect for all in the industry.

Sheriff C Scott Mackenzie

At Stornoway 29th November 2005