THE DELAWARE RIVER OIL SPILL

(109–1)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

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TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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OVERSIGHT FIELD HEARING ON THE DELAWARE RIVER OIL SPILL

Tuesday, January 18, 2005

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, WASHINGTON, D.C.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Independence Seaport Museum, Penn's Landing, 211 South Columbus Boulevard and Walnut Street, Philadelphia, Pennsylvania, Hon. Frank A. LoBiondo [Chairman of the Subcommittee] presiding.

Mr. LOBIONDO. Good morning. I would like to call this hearing of the Coast Guard Subcommittee to order. And I am going to start with a brief statement. We will have statements from some of the other Members of Congress, and then we will move to our first panel.

The Subcommittee on Coast Guard and Maritime Transportation is meeting this morning to investigate the recent oil spill in the Delaware River and to review the response of Federal, State, and local official to the incident.

On November 26 of '04, the ATHOS I, a Cypriot-flagged tank vessel carrying heavy crude oil, struck a submerged metal object as it was being guided by tugs to the Citgo Oil Processing Facility in Paulsboro, New Jersey. The collision created two gashes in the vessel's hull and resulted in the release of 265,000 gallons of oil into the Delaware River. The oil has affected some of the most environmentally sensitive shorelines on the East Coast, resulting in the loss of wildlife in New Jersey, Pennsylvania, and Delaware. Efforts to remove the oil and mitigate the damage are still ongoing. And although we still do not know the full extent of the environmental and economic damage caused by the spill, we do know that we are likely to suffer its consequences for years to come.

The Coast Guard, in conjunction with numerous Federal and State agencies, has coordinated the response to this incident. I want to commend the Coast Guard and the other Federal, State, and local officials for their quick response to the spill and their efforts to minimize the extent of this disaster.

Following the Exxon Valdez oil spill, Congress passed the Oil Pollution Act of 1990, which improved the Federal Government's ability to prevent and respond to oil spills. This Act directed the Coast Guard to develop and maintain specific contingency plans for spills in coastal waters throughout the United States. I look forward to hearing the testimony this morning regarding the coordination and completeness of the response efforts to the incident

under the Delaware River Plan and whether any improvements should be made to the Act to help prevent further incidents and ensure the viability of our ecologically sensitive coastal waters.

I also look forward to hearing from the witnesses on how such a large obstruction came to be located in the middle of a shipping channel that is used by large oil tankers each and every day. Obstructions like this not only pose a huge risk to the safety of the vessels and the coastal environment, but also to the efficient movement of goods and cargo in the maritime transportation system. I understand the investigation into the origins of this object is ongoing; however, I hope that the witnesses can provide the Subcommittee with an update this morning. I also hope the witnesses can tell me and the other Members what efforts will be made to locate and remove or mark any similar obstructions from the Delaware River and other important U.S. waterways. I am sure we are going to be hearing from Congressman Andrews on this issue, because Rob and I have talked privately, and there is an initiative that we are very interested in pursuing together.

The safety and security of the maritime transportation system will remain a priority concern of this Subcommittee in the 109th Congress. Our ports provide the entry point for more than 95 percent of the United States overseas trade. The maritime transportation industry provides employment to hundreds of thousands of Americans and is an integral part of the U.S. economy. The Nation depends on the safe and efficient transport of commerce via the maritime transportation system. This Subcommittee will continue to oversee the industry and will develop and move legislation to improve the safety and security of America's ports and vessels operating in U.S. waters.

I hope the testimony we receive at this hearing will help us develop initiatives to ensure the safety of the maritime transportation system and help prevent future oil spills in our ecologically sensitive coastal waters. I want to take a moment to thank the witnesses who have come here today as well as groups, such as the Fish and Wildlife Service, the Tri-State Bird Rescue, the Delaware Riverkeeper Network, and the hundreds of volunteers for their tremendous efforts to mitigate this incident, protect critical habitat, and save countless wild animals. I also want to extend my sincere appreciation to the Independent Seaport Museum for hosting us today. You have a very impressive facility here. Finally, I would like to thank my colleagues who are here with us today who are going to help out with this hearing.

We will proceed now, and I would like to ask Congressman Castle, who has been gracious to join us today but has to leave, if he would like to make any opening remarks.

Mr. CASTLE. Well, thank you, Mr. Chairman.

I would first like to thank you, Frank, for the invitation to participate in the hearing today. I am also pleased to join my colleagues today, Rob Andrews, with whom I have worked for a number of years, and Allison Schwartz, with whom I have worked for a least a few years in my case in discussing this critical issue. Finally, I would also like to thank the expert witnesses for taking their time to be here today.

The Delaware River is a valued environmental resource and commerce channel in Delaware and all states represented here at this table. Protecting its viability is a top priority for all of us. The federal and state agencies responded to the spill in a coordinated, timely, and efficient way, and have worked tirelessly to find solutions and execute extensive clean-up efforts. Certainly the impact on the health of the river and the wildlife it is home to is quite serious.

But I believe we need to focus on lessons learned and how to prevent such an environmental tragedy from happening in the first place and happening again. Therefore, we would be at fault if we did not ask: Is the scope of the investigation broad enough, and are there enough federal resources in place to identify ways to ensure that an incident like the oil spill does not happen again?

Identifying the sequence of events surrounding the Delaware River oil spill on November 26, 2004 determine exactly how it happened and who is responsible for this submerged object that led to the punctured hole of the ATHOS I remains central in unanswered questions in this ongoing investigation and must be answered. However, it is also my hope that in the course of this hearing we will learn what steps are necessary as we look to the future to prevent another disaster along the Delaware River. Personally, I have a number of questions that I believe need to be answered and hope that they will be through the course of the testimonies. And at the end, I will make a recommendation on what I believe might be helpful as our states collectively face various proposals affecting this river.

First, what warning and detection systems are in place to notify authorities of dangerous or questionable submerged objects? Second, why did the Army Corps of Engineers' sonar equipment not detect this submerged object or objects? Third, it seems evident that we need better inspection of the Delaware River bottom, but do we need better inspection of vessels that travel the Delaware River? Fourth, if we believe we do, how would such systems be implemented? And finally, while it is my understanding that the majority of vessels that travel the Delaware River are double-hulled, not 100 percent are; therefore, should we, or can we, as a region, designate the Delaware River as navigable exclusively by double-hulled vessels or approach that in some other manner?

It is clear to me, and probably everyone in this room, that regional coordination for happenings in and along the Delaware River must be coordinated in order to effectively balance the interests of both industry and the environment. In the coming months and years, our states will face numerous proposed industrial and government activities that have potential safety, environmental, and economic consequences, including the proposal by the U.S. Army to release the X nerve gas, the siting of a liquid natural gas facility by British Petroleum, possible transport of spent nuclear fuel by barge to our ports, and deepening of this river.

As we vet current and projected regional proposals for activity in and along the Delaware River, and as we try to prevent disasters like the oil spill from occurring, it seems to me we must do the following: one, first and foremost, ensure each State's own environmental and safety laws are recognized and adhered to; two, in-

crease regional coordination among the States and the Federal and local agencies to ensure all interests are considered; three, design a sustained prevention, monitoring, and research program of the Delaware River to better ensure that we understand the effects of industrial proposals or incidents on the river and its wildlife habitats.

In order to accomplish the above three goals, I would like to suggest the establishment of the Delaware River Industrial Prevention, Monitoring, and Event Response Task Force. This Task Force would be charged with three primary responsibilities: one, researching and examining ways to prevent future accidents and incidents in the future, perhaps by starting with the questions I proposed earlier in my statement; two, establish a regional response team comprised of Federal and State agencies to analyze proposed and present activity along the Delaware River to determine regional costs and benefits and to coordinate any necessary clean-up efforts in the wake of an adverse incident; and three, implement a sustained Delaware River health monitoring program. One way to implement such a task force would be to designate an earmark appropriation in fiscal year 2006 to a particular agency to be the lead in setting up a specific Delaware River Industrial Prevention, Monitoring, and Event Response Task Force.

Mr. Chairman, the goal of all of us is to ensure the viability of the Delaware River as a commercial tool and an environmental resource for years to come. This is what I hope to accomplish for the establish of the above discussed task force.

Mr. Chairman, as you indicated when you were kind enough to call on me, I apologize that I can not stay long enough to hear the testimony of our expert witnesses, as I must depart for the inauguration of Delaware's governor to occur at 12:00 noon in Dover. I am going to be pressing it as it is. I do, however, look forward to reading the transcript and to learning the opinions of the witnesses here with us today on the questions and proposals I have suggested as well as those of my colleagues. I will have a staff person here as well. And Mr. Chairman, I certainly appreciate the opportunity to be here, and I thank my colleagues for allowing me to go first because of my schedule.

Mr. LOBIONDO. Well, thank you, Mike. We appreciate your being here. We appreciate your interest and involvement and your suggestions and look forward to working with you as we move forward on these issues. Thanks.

Next, I would like to call on Congressman Rob Andrews. Rob, I thank you for being here. Rob and I have worked together on a number of issues. Our Districts share a common boundary, and we have many topics that we have similar views on. And I am very appreciative, Rob, that you have taken the time to be here to give us your views and help out on this important issue.

Mr. ANDREWS. Thank you, Mr. Chairman, and good morning.

I want to begin by expressing my appreciation to you, Chairman. I will call you Frank. It feels more comfortable calling you Frank. As usual, Frank is a champion for this region, and when this very unfortunate occurrence, I think tragedy, occurred, he was the first to step forward with a proactive, intelligent response to it. I thank him for his leadership, for his friendship, and I am certain that all

of us working together will find the best solution to this. I thank you for inviting me to be here this morning. I thank the witnesses. I look forward to hearing from you.

I also want to echo Mike Castle's comment about thanking the individuals who responded to this tragedy: the Coast Guard's men and women; the personnel of the Army Corps of Engineers; the Federal employees who work for the Fish and Wildlife Service and many other agencies; the State agencies and local agencies that came out; first responders up and down the river; citizen volunteers, many of whom put in countless hours. It was—as disturbing as the incident was, it was encouraging and inspiring to see the selflessness and dedication of men and women who went out under bitter weather conditions hour after hour, day after day, and we express our appreciation for that.

I hope this is the last one of these hearings we ever have. I hope that we never have a need for another hearing to evaluate a disaster, an ongoing disaster of this magnitude. And as Frank eluded to—as the Chairman eluded to just a few moments ago, I think that one of the ways we can avoid having another tragedy and therefore another hearing of this nature is to press for a robust and full debris maintenance or debris clean-up mission for the Army Corps of Engineers on this river. It is not the fault of the Army Corps that it has not embraced such a mission to this point. We, in the Congress, have not given the Corps the resources that are needed to embrace such a mission.

I am not an expert at all in these issues, but in my mind, it comes down to this: Whose responsibility was it to, on a regular basis, check for the presence of debris like that, which evidently caused this spill? The best I can tell is the answer is it was no one's responsibility. It wasn't anyone's primary responsibility to take care of such an issue. That is not an indictment of the agencies involved. It is an observation of the gap that we have in the protection of our river.

A few years ago, Congressman Curt Weldon, another river neighbor, and I embarked on an effort to give the Army Corps of Engineers a debris clean-up mission for the Delaware River. We were successful in obtaining some authorizing language, which gave the Corps the beginnings of the authority to do that mission, but we were not yet successful in obtaining the resources that the Corps needs to have the boats and the other equipment necessary to do the job.

One of the results that I hope that will flow from this morning's discussion is a consensus, number one, as to what the right solution is, and then a commitment, number two, to work together, both sides—all sides of the river, both sides of the aisle, both sides of the capital to effectuate that solution.

So, to my colleagues Allison Schwartz, Mike Castle, it is an honor to join you, and especially the Chairman of the Committee, Frank LoBiondo. Thank you for exercising leadership on this issue. I look forward to following your lead and coming up with a solution that prevents this from happening again. Thank you.

Mr. LOBIONDO. Okay. Thank you, Rob.

Congressman Jim Saxton was very interested in being here today. Jim led a small delegation that I was privileged to be a part

of, which was in Iraq and Afghanistan last week, and he had some prior commitments that kept him from changing things around, but he has asked that we submit a statement into the record. And I would ask to do that at this point. Jim will certainly be a partner with us as we move forward.

We are joined today by Congresswoman Allison Schwartz. Allison, congratulations on your service to Congress, and we look forward to working with you. We and the Delaware Valley have a very strong bipartisan activity, I guess you would call it, or activism that works well, and we are thrilled you are with us today. Good luck with your future endeavors.

Ms. SCHWARTZ. Thank you very much, Mr. Chairman. I am very pleased to be with you this morning, and I thank you very much for the privilege and the opportunity to participate in today's hearing.

As you know, I was just recently appointed to the Committee on Transportation and Infrastructure, and in the coming weeks, I look forward to working with you and other distinguished Members of the Committee.

I also want to welcome our witnesses and thank them for providing the expert testimony. In addition, I want to thank and applaud the hundreds, literally thousands of Pennsylvanians who donated their time to the massive clean-up effort. I think the estimates are that 1,700 volunteers came out on the river to help with the clean up.

Mr. Chairman, I am really pleased to be rolling up my sleeves and getting to work right away on Congressional oversight responsibilities. As you know, this is really the 15th day on the job for me, so this is one of my first official duties, and I am really—I am very pleased to be here, although I will echo my colleague's comments in saying I am sorry that we are not here to be discussing some better circumstances than we are this morning.

As you know, the Port of Philadelphia is the region's—really one of the reason's epicenters of international commerce, and it plays a vital role in the area's economy. The Delaware River bay and the tributaries are visited also by thousands of fishermen, wildlife observers, and recreational boaters every year. Like the port itself, these activities contribute substantially to Pennsylvania's economy. I am sure my colleagues will agree that it does the same for New Jersey and for Delaware. The recent oil spill had a devastating multiplier effect, temporarily shutting down the Salem Nuclear Power Plant, impeding trade, injuring and killing wildlife, and putting area drinking water at risk. Despite the round-the-clock clean up, we have yet to complete determination of the total costs of the clean up or for restoration, and we have not yet identified the party or parties responsible for the spill and for its associated costs.

Over the last several weeks, we have quickly realized that our response system needs to be reviewed and analyzed and action may need to be taken on any improvements determined to be necessary. In addition, we have to assess actions that are available to us now that could and should prevent future spills. As a resident of the region and a citizen concerned about the State's fiscal well being, I want this regional resource to maintain its economic and environ-

mental health. The business of the port is a company commerce and the surrounding recreational activities depend on it.

It is my hope that today's hearing will demonstrate that this is a shared goal and that it will be met with strong, bipartisan support and cooperation.

Again, Mr. Chairman, thank you for conducting this vitally important hearing. Please know that I will be a dedicated member of the team, working not just today, but in the future to remedy the damage caused by this incident and to work, in the most important way, to prevent any future spills. Thank you, Mr. Chairman.

Mr. LOBIONDO. Okay. Thank you, Allison.

We have three panels today that will be testifying officially. We will start with the first panel. We have Rear Admiral Sally Brice-O'Hara, who is the Commander of the Fifth District of the United States Coast Guard. The Admiral is accompanied by Captain John Sarubbi, who is the Captain of the Port of Philadelphia. And we also have Colonel Robert Ruch, who is the Commander of the Philadelphia District U.S. Army Corps of Engineers.

TESTIMONY OF REAR ADMIRAL SALLY BRICE-O'HARA, COMMANDER, FIFTH DISTRICT, UNITED STATES COAST GUARD, ACCOMPANIED BY CAPTAIN JOHN SARUBBI, PORT OF PHILADELPHIA; AND LIEUTENANT COLONEL ROBERT J. RUCH, COMMANDER, PHILADELPHIA DISTRICT, U.S. ARMY CORPS OF ENGINEERS

Rear Admiral BRICE-O'HARA. Thank you. Good morning, Mr. Chairman and distinguished Members. Thank you for the opportunity to discuss the ATHOS I incident.

The Delaware Bay and River is home to the Nation's sixth largest port. Daily nearly 42 million gallons of crude oil are moved on this waterway. The entire port system generates approximately $19 billion in annual economic activity. On November 26, the ATHOS I, a 750-feet Cypriot-flagged tank ship was delivering Venezuelan crude oil to the Citgo pier in Paulsboro, New Jersey.

Within 250 feet of its destination, a submerged object hulled the number seven center cargo tank, spilling oil into the Delaware River. The response was swift, comprehensive, and in accordance with the requirements of the Oil Pollution Act of 1990. Quick establishment of a unified command ensured inclusion of all interested stakeholders. By early morning, members had assembled from Pennsylvania, New Jersey, Delaware, the Coast Guard, and the O'Brien's Group, representing the responsible party. It would ultimately grow to include nearly three dozen entities aligned by their use of the Incident Command System.

Despite the complexity of this case, the unified command and its general staff worked exceptionally well. Their primary objectives included stabilizing the vessel and preventing further discharge, shoreline assessments, protective booming, oil recovery, establishing and enforcing a safety zone, collecting and rehabilitating injured wildlife, facilitating vessel traffic, and informing the public.

Within hours, thick oil had spread six miles to the north and was slowly moving south. Initially, it was slightly buoyant, very viscous, and sticky. With cooling and weathering, it tended to sink. Eventually, it impacted 57 miles of the Delaware River. At its

peak, the response employed over 1,800 people and 140 vessels. The clean up will continue into the summer.

The spill significantly affected vessel traffic and facilities. Collaboration with the Mariners Advisory Committee and Delaware Bay and River Pilots Association was instrumental in returning the port to normal operations. Submerged oil was a major concern. It threatened water intakes at the Salem Nuclear Power Plant and prompted a precautionary 11-day shutdown of two reactors. Tracking and locating submerged oil was a new and major challenge, however, consultations with experts led to several unconventional, yet effective, detection and recovery methods.

Concurrently, Captain Sarubbi initiated a marine casualty investigation, retracing the ship's track lines, survey teams located several objects, a large cast iron item approximately 700 feet from the pier was removed and proved to be a heavily corroded lower housing of a centrifugal pump. It showed evidence of fresh scrapes, including red paint, which the NTSB matched to the ATHOS I. In addition, an anchor was salvaged yesterday, and it appears to have evidence of impact. An investigation is ongoing. We do not know the manufacturers or owners of any item. The ATHOS I was stabilized, lightered, and brought to Citgo for discharge of its remaining cargo.

A temporary hull patch allowed it to safely proceed to Mobile, Alabama for repairs. Initial estimates proved inaccurate. The tank cleaning during dry-docking resulted in the Unified Command's final estimate that about 265,000 gallons of oil spilled into the Delaware River. Planning, preparedness, and training were key to the success of the community's rapid and thorough response to this incident.

Mr. Chairman, meeting America's need for waterborne transportation of goods while, at the same time, protecting the environment is a great challenge. It is imperative that the public, maritime communities, and the government work closely to manage these competing priorities. I wish to acknowledge the professional expertise of the representatives of the Commonwealth of Pennsylvania, the States of New Jersey and Delaware, and the O'Brien's Group. Additionally, several agencies and special teams contributed noteworthy assistance. EPA's Emergency Response Team, the Navy Supervisor of Salvage, NOAA's Scientific Support Coordinator and Navigation Response Team, the Army Corps of Engineers, U.S. Fish and Wildlife, Tri-State Bird Rescue, and all involved citizens.

Captain Sarubbi and I are ready to answer your questions, sir.

Mr. LOBIONDO. Okay. Thank you, Admiral.

Colonel, please proceed.

Lieutenant Colonel RUCH. Good morning, Mr. Chairman and distinguished Members of the panel. I am Lieutenant Colonel Robert Ruch, Commander of the Philadelphia District of the U.S. Army Corps of Engineers.

I am pleased to appear before you today to discuss the role played by the Corps in response to the ATHOS I oil spill in the Delaware River on November 26, 2004. On November 27, 2004, Captain Sarubbi, the U.S. Coast Guard Captain of the Port and Incident Commander for the ATHOS I spill event, requested that the Philadelphia District survey the Mantua Creek Anchorage. The

Philadelphia District Survey Team began this work on November 28, 2004 using multi-beam surveying technology to look for possible obstructions that could have caused the incident.

Initial surveys, which were conducted over the time period of November 28 through the 30th, did not identify any obstructions. On December 1, 2004, the Corps supplemented the multi-beam technology with a contractor-provided side scan sonar to—in an attempt to identify obstructions, focusing its efforts along the paths taken by the ATHOS I as it approached the Citgo dock. On December 2, 2004, the Corps began to work in association with NOAA, and they sent a surveying team that was also assigned to assist in the event. Data provided by the Corps and NOAA were provided daily to the U.S. Coast Guard investigation team. This information, combined with similar data provided by the surveying and dive team hired by the ship owner, led to the identification of the suspected object in the Mantua Creek Anchorage.

Due to concerns raised by the shipping industry, Captain Sarubbi requested that the Corps perform in-depth surveys along the entire Delaware River shipping channel from the Commodore Barry Bridge upstream to the incident site, a distance of approximately seven miles, to assure that the this was to assure that the channel was free of any further obstructions. The Corps and NOAA team worked together in this effort from December 4, 2004 through the afternoon of December 7, 2004. The channel was determined to be clear of obstructions and was opened without restrictions on December 7, 2004.

The Corps continues to work with the Coast Guard investigation team in the identification of the obstruction found in the anchorage and other related issues, as further discussed by the Coast Guard. I commend Captain Sarubbi and the entire team on their efforts following the incident. The excellent cooperation of all of the parties involved, including federal and state agencies and the representatives of the ship's owner, are attributed to Captain Sarubbi's outstanding leadership.

I would also like to commend the efforts of the NOAA Navigation Response Team led by Mr. Howard Danley and Lieutenant Commander Rick Fletcher. Their survey expertise and dedication throughout the investigation greatly assisted the Corps in its mission and proved to be an invaluable partnership.

This concludes my testimony, and I will be pleased to answer any questions you have.

Mr. LOBIONDO. Okay. Thank you, Colonel, very much.

First, for the Admiral, does the Coast Guard, in its lead role under the Delaware River Committee for Incident Response, have access to the latest information on location of the area's critical wildlife habitats?

Rear Admiral BRICE-O'HARA. Yes, sir. The Coast Guard has access to that information, which is developed through the Area Contingency Plan. That is part of the pre-planning that is done collaboratively in anticipation that there would be a tragedy of this nature.

Mr. LOBIONDO. So those areas have been taken into account in the incident response planning process?

Rear Admiral BRICE-O'HARA. Yes, sir. Would you like a more specific answer? Captain Sarubbi is more familiar with the details, if you would like a little amplification.

Mr. LOBIONDO. Well, I would, and just, as a little more of a preamble with it, I, along with a number of environmental groups, are somewhat frustrated with the delay in putting out the booms. Now I know that that is where some of the oil spread into the sensitive areas. I also know that you had a critical weather problem that prevented you from doing some things, but that is why I am going along this line a little bit, and I would like you to elaborate, if you could, Captain.

Captain SARUBBI. Yes, I can, Chairman.

As a requirement, each Captain of the Port was required to establish an area committee. That area committee is primarily charged with ensuring that the port community, both government and industry, is prepared to respond to an incident of this nature, and oil spill. Our area committee has been in place since about the mid-'90s, and just after the formation of the committee we developed the Area Contingency Plan, which the Admiral talked about. That plan has identified in it all of the different environmental-sensitive areas that need to be addressed during an oil spill. As part of the planning efforts that take place in our area committee, we had previously established protocols for booming off of the environmentally-sensitive creeks. And on the first day of the incident, we began to boom off those environmentally-sensitive creeks. In fact, by the end of the first day, we had some 12 of those creeks boomed off.

So we had a plan in place to boom the creeks off based however, and I think going—looking back, we boomed off, in total, about 26 environmentally-sensitive rivers, creeks, and those types of areas. I think, as we look back at—you know, now we are, I think in about 52 days into it, it is probably one of the things where we may need to take another look at that plan that we have for some lessons learned to see if we can do a better job. We did have some difficulty initially putting off some of the boom. We had a long, wide part of the river that we had to put boom out. We ended up putting over 20 miles of boom over 120,000 feet. We had difficulty in some areas in maintaining the boom. For example, at Raccoon Creek, the current there is very strong and difficult to deal with, and every time we put a boom out, it broke. In other cases, we had a lot of debris in the river, and that interfered with the boom. In some cases, it actually helped, because it put an increased barrier between the river and the tributary. In other cases, we had the current, because the current was so strong, the oil was entrained underneath the booms or just passed right under the booms, so we do realize that some oil did get into some of these more environmentally-sensitive creeks and, as I said, I think this is probably one of the lessons learned that we will take back to the area committee, take a look at our booming strategies for the future.

Mr. LOBIONDO. Okay. Again, for Admiral or Captain, the Delaware River is home to some of the largest and most critical ports in our Nation. They employ thousands and are a vital link for international trade. Are the representatives of the local maritime community involved with the incident response planning process?

Captain SARUBBI. Yes, Chairman. We actually have two committees now. As you know, with the Maritime Transportation Security Act, each of the Captains of the Ports are required to establish an area maritime security committee. That committee ensures that the maritime community, both on the government side, Federal, State, and local, as well as the industry are ready to do two things. One is to prevent a terrorist attack from happening within our port, but also to respond if we need to do so we do do some response planning in that as well, but in the area committee, the one that is primarily to deal with oil spill response, the—both the industry and government work together. We have representatives from the State of New Jersey, the Department of Environmental Protection, for example, Pennsylvania, Delaware, as well as members of the industry from oil refineries from the oil spill response companies, and other interested members that would be involved should we have a spill.

Mr. LOBIONDO. I am assuming there are detailed contingency plans that deal with an extended closure of the river?

Captain SARUBBI. Under my authority, of course I have the authority to close the river, and that is, in fact, what we did on the first night of the event. We quickly realized that closing down the river, with a port as large as the Port of Philadelphia, would have a significant economic impact on the community. So one of the top priorities of the Unified Command was to reopen the port. Our initial priority—our top priority had to remain recovering the oil, but we quickly realized that getting the port back open was also an important priority.

As the Admiral indicated in her opening statement, we had Captain Mike Linton from the Pilot Association, and also representing the Mariner Advisory Committee, which is the local harbor safety committee, joining Unified Command on Saturday, and he began helping us to develop protocols. He worked with my waterways management staff to develop protocols to get the port reopened.

And in fact, on Sunday, the second day into the spill, we did allow limited ship movement. I think we allowed three ships to come into port and a couple of ships to move within the port. On Monday, we implemented those protocols and began to allow ship traffic to move on a limited basis. We were concerned for a number of different things. One, we wanted to make sure that ships that had been in port and had been contaminated by the oil did not leave port dirty and then contaminate areas of the river and bay that were not oiled.

So we had to establish a cleaning process, which we did. We actually put teams of people together to clean ships. As you can imagine, cleaning an 800-foot tanker is not an easy chore. We had some difficulties in initially doing that. And as the first couple of days into the incident, we had some significant backlogs of shipping. I think it—all total, we probably had about 200 ships that were impacted, either delayed from entering port or from departing port. I think at, maybe at the maximum in an individual day, we probably had as many as 50 ships awaiting either arrival or departure into port.

We also—as a part of the process, we developed a risk-based tool that helped us to prioritize the shipping that needed to leave first,

and we did that in conjunction with the industry. We brought in representatives from the oil industry, representatives from different port authorities, South Jersey Port Corporation, the Pennsylvania Regional Port Corporation, and we developed this technique to help us, as I said, to prioritize ships so that we could get those ships that were most critical and most needed of leaving or entering the port first. And those, of course, would be oil tankers or ships with fruit on them that may have had spoilage.

So while we did not have detailed plans in place for reopening the port prior to the spill, we quickly developed those plans with the help of the maritime community, Captain Mike Linton of the Mariner's Advisory Committee, and also the Maritime Exchange for the Delaware River and Bay.

Mr. LOBIONDO. The ships that needed to be cleaned, you said you put together a team that then prioritized and cleaned them before they came in or out. Did the ships have the ability to hire themselves, contract a cleaning crew, if they chose to, can you comment on that?

Captain SARUBBI. Yeah, initially, the Unified Command—it was the Unified Command's desire for the Unified Command and the oil spill response workers to clean the ships. We felt it was important for us to go in and clean the ships, because we had the expertise to do that. But later on, we became—well, not later—a couple—within a couple of days, we became overwhelmed, so we eventually did allow the ships to clean themselves, but we retained the right to do the final inspection on the ship and then declare whether or not a ship was clean to leave. And we had developed a cleaning standard, and basically, that standard was that the ship did not have any visible sheening, there was no oil coming from the ship.

As I said, we did—we quickly did get overwhelmed in the first few days of the spill, we did overcome that, and then we got into a routine, which—and I think within 11 days—on day 11 of the spill, we were able to reopen the port, and by that time, traffic was pretty much up and running at that time. The port was reopened.

Mr. LOBIONDO. Colonel, in your testimony, you indicated that the Corps could not find any obstructions in the area in its initial scan with current sonar technology and that only after contracting out for necessary sonar technology was the obstruction located. Is the Corps conducting their regular surveys of the river using only the older sonar technology that didn't find this obstruction?

Lieutenant Colonel RUCH. Mr. Chairman, I think I need to clear that up a little bit. We did not find any objects above project level. We look for things to the 40-foot level, and anything below that is below the project level that we are actually looking for. Now the technology we use in our routine surveys is a single beam, and it is almost like what you would have on a fishing boat. We go along a line, and they are at 400-foot intervals perpendicular to the channel. And every 50 feet, basically, there is a reading. So we are getting point readings across the bottom, not covering a great deal of the entire bottom of the river. We have another technology that we use, and we did use in this case after the incident, a multi-beam. It really looks at the entire bottom.

There are advantages to each kind of technology. We did not detect anything above the 40-foot level in the federal area of the anchorage. After the side scan sonar was brought in, which you are referring to as the contractor-owned sonar, which the responsible party also hired out a firm that had a side-scan sonar in that area, everyone went through the area. We had identified some areas of interest. Now not something sticking up off of the bottom. The main thing that was seen was basically a trough that people had a lot of different theories on what may have caused it, whether the ship dragged bottom or oil jetting from the ship may have caused it in the mud. But the actual pipe that was found was found when a diver backed into it. They were down looking at an area that was interesting because of all of the markings on the bottom, but no one ever was able to say, before they found that pipe, that that pipe was sitting there and that is what we were going down to pull up.

Now every little bit of technology we have is of a great aide, because we see things like this trough and it gets us down into that area. No one found that pipe with a sonar. It may have read that way, but they were brought to an area of interest, based on all of the markings and things down there. It looked like something had occurred.

Mr. LOBIONDO. So what can we say about being sure the channel is definitely clear of further obstructions?

Lieutenant Colonel RUCH. We are certain that there is nothing coming up above project level in the areas we checked. An individual piece of material right now, I can not tell you that, with absolute certainty, that you can find everything. But with the technology we have, over the past years we have been doing this, we have been very, very successful in our ability to say the channel is open. And I don't have a fear that there is a great deal of items or there is "N" items sticking up anywhere above project level. But to go down and find that one below the 40 foot is very difficult if it is below 40 foot.

Mr. LOBIONDO. The pipe was not above project level?

Lieutenant Colonel RUCH. Not according to my surveys. Now, sir, I can not tell you exactly—you know, that is part of the ongoing investigation.

Mr. LOBIONDO. Okay. Okay. I don't want to monopolize too much.

Rob?

Mr. ANDREWS. Thank you, Mr. Chairman.

Lieutenant Colonel, I want to come back to this discussion about the iron housing and the pipe. I understand the investigation is not yet concluded, so we don't know what caused the tear in the bottom of the ship. The ship had a 39-foot draft, is that correct?

Lieutenant Colonel RUCH. I believe it was 36.6.

Captain SARUBBI. The draft of the ship is 36.6 feet.

Mr. ANDREWS. And your sonar went down to 40 feet, is that right?

Lieutenant Colonel RUCH. Well, yes, Congressman. I mean, it goes to bottom. We are looking for anything that would come above that 40-foot level. Yes.

Mr. ANDREWS. Well, okay. Are you then ruling out the theory that the iron pump housing caused the gash in the bottom of the ship?

Lieutenant Colonel RUCH. No, absolutely not.

Mr. ANDREWS. How is it possible that it caused the gash at the bottom of the ship if the draft of the ship was 36.6 feet and you went down to 40 feet and didn't see it?

Captain SARUBBI. I could clarify. I am conducting an investigation, Congressman, once the divers found the piece, they did take measurements of the piece, not only the length and the diameter and so forth, but they also measured the distance of the piece above the river bottom.

Mr. ANDREWS. What was that distance?

Captain SARUBBI. It was about 31/2 feet at its highest place, so it was protruding 31/2 feet above the river bottom—

Mr. ANDREWS. And the river bottom is—

Captain SARUBBI. —as of the time we found it.

Mr. ANDREWS. —approximately 39 feet in that area?

Captain SARUBBI. It's a project depth of 40 feet at that—

Mr. ANDREWS. But it may not be exact. So if it is 39 feet, then wouldn't the pipe be protruding 351/2 feet, roughly, from the surface of the river?

Lieutenant Colonel RUCH. Given what you said, yes, Congressman.

Mr. ANDREWS. Well, then why didn't the sonar technology find it?

Lieutenant Colonel RUCH. The sonar technology I have is what is currently available, and it did not pick up anything that came up above that level.

Mr. ANDREWS. Is there any better technology out there that would have found it?

Lieutenant Colonel RUCH. Yes, and once again, the multi-beam technology we are using now seems to be better. What we are looking for in our normal surveys, and I am not talking about the debris that you are actually talking about, we are looking for shoaling, and that is what we go out and look for. And that is those 400-foot lines. We are looking for areas of where the river sediment is piling up and we need to do—

Mr. ANDREWS. I think what you told us this morning is the multi-beam technology didn't find it either.

Lieutenant Colonel RUCH. That is correct.

Mr. ANDREWS. How extensive was the search by the multi-beam technology?

Lieutenant Colonel RUCH. It was to the level of its ability. We did 75-foot passes. We put a great deal of effort into it.

Mr. ANDREWS. So there was no more intense look that the multi-beam technology could have taken?

Lieutenant Colonel RUCH. No.

Mr. ANDREWS. Is there anything else out there that is better than the multi-beam technology?

Lieutenant Colonel RUCH. The side scan is better, and that is really what led us to be down looking in that area. And that is what you are looking—you are hoping to, you know, find something that leads you to further investigation.

Mr. ANDREWS. I am sorry. What is a side scan?

Lieutenant Colonel RUCH. A side scan, it is a towed array that goes—that we put out behind a ship. Instead of doing a direct look down, it is down to a certain depth, whatever depth we are at, and it is looking out to the side, so it has a better ability to see above the bottom.

Mr. ANDREWS. And did you or did you not use that here?

Lieutenant Colonel RUCH. We did use that.

Mr. ANDREWS. Okay.

Lieutenant Colonel RUCH. And once again, it led us to put divers down into the area, but no one had showed me that little object on the bottom.

Mr. ANDREWS. What would it cost to use the side scan to—if you had the side scan, if you used it this morning to take a look at the river, how much money do you need to buy one?

Lieutenant Colonel RUCH. It is not an exceedingly expensive piece of equipment. You can probably purchase one for around $100,000, a digital system. Now, with that said, there is a lot that goes into having the vessel, the vessel to use it, the personnel to use it.

Mr. ANDREWS. It is like buying a car and hearing about the extras. What—if we bought the whole package, with all of the extras, what does it cost us?

Lieutenant Colonel RUCH. To do the sonar, I can give you a basic cost for the actual survey equipment. And this is everything from a launch to tow it to the—about $3.15 million for the actual equipment that would be necessary and then an annual of about $540,000 to actually have the personnel trained and performing those types of surveys. Now that doesn't go into removal and all of the other things that I think you are looking at as part of—

Mr. ANDREWS. If you had the sonar technology this morning and you detected a possible obstruction in the shipping channel, whose responsibility is it to remove it?

Lieutenant Colonel RUCH. As the regulations read now, I would remove a vessel that was noted to be in the channel. I do not have an authority to remove other items.

Mr. ANDREWS. So in other words, if you were out there this morning and you saw what you saw after the spill and you sent the divers down and they confirmed that there was this pipe casing sticking three and a half feet up, you don't have the authority to remove it?

Lieutenant Colonel RUCH. We would probably find a way to remove something, if it was impacting the shipping channel or the federal anchorage—

Mr. ANDREWS. Well—

Lieutenant Colonel RUCH. —yes, we could remove that.

Mr. ANDREWS. Well, based on what authority?

Lieutenant Colonel RUCH. I would have to go to the actual authorities I have back here.

Mr. ANDREWS. But your first answer was you wouldn't have the authority really, and then you said you probably—

Lieutenant Colonel RUCH. Well, it—

Mr. ANDREWS. Common sense tells you you should.

Lieutenant Colonel RUCH. I am saying that it is inside the federal area. If it is an obstruction, one of two things happen. We go

down and see if we can remove it. And then, if we can't remove it for some reason, and I am saying there are things that are down on the bottom, rock or whatever, then we would mark it on the charts, and the ships would then have to navigate around it. But in this case, we would bring in a crane and bring it up.

Mr. ANDREWS. Who would pay for that?

Lieutenant Colonel RUCH. The Corps of Engineers. It would come out of existing O&M budget and take away from our efforts and our ability to do what you are asking us to do on a day-to-day basis.

Mr. ANDREWS. Mr. Chairman, this will be my last question, but I think I heard the cost of this being rather modest. What—in your opening statement, you talked about the initial estimates of the economic loss because of the spill. How much was it? It was a huge amount of money, wasn't it?

Mr. LOBIONDO. It was a huge amount of money.

Mr. ANDREWS. And it was certainly multitudes higher than the relatively modest amount the Lieutenant Colonel just talked about. I am encouraged by our discussions that we have had about trying to implement that solution. I would just ask you to submit, Lieutenant Colonel, for the record, if there is any authority this Congress needs to give you explicitly, so there would be no doubt that you would have the authority to remove an obstruction that you found in the future, I think we would like to know what that is.

Lieutenant Colonel RUCH. Absolutely. And I—we will provide that, and we provided it—we have, in the past, provided it and have been working with your staff on that. And your letter that several members of the panel have sent to the President has also requested that for the '06 budget.

Mr. ANDREWS. Yeah. For the record, I know the Chairman knows this, but the Chairman and I and several others joined in a letter asking the President to include in his budget proposal the funding to do what the Lieutenant Colonel essentially just talked about.

Lieutenant Colonel RUCH. But I will provide the language in written for the testimony, sir.

Mr. ANDREWS. Thank you, ladies and gentlemen. Thank you, Mr. Chairman.

Mr. LOBIONDO. Okay. Congresswoman?

Ms. SCHWARTZ. Thank you.

Just following up on some of those questions, I really wanted to see—two questions really to start with is where are we in the process of the clean up? How far along are we in this process, and—in terms of monies expended? And you said the estimates were $84 million to clean up. Those are the estimates that we have. Could you speak to how far along we are and how we have—do you have those dollars to spend, and how much have you already expended in the clean up?

Captain SARUBBI. I can answer that question, Congresswoman.

As of yesterday, the cost of recovery operations is $94.5 million.

Ms. SCHWARTZ. $94 million?

Captain SARUBBI. $94.5 million. Of that $94.5 million, $4.2 million is money that has been expended by the Coast Guard and other Federal agencies, as well as State agencies in Pennsylvania, New Jersey, and Delaware. That $4.2 million is being funded out

of the Oil Spill Liability Trust Fund. The remainder of the money is being paid for by the responsible party. As you may know, there are limits set forth as to how much money that the responsible party is responsible for paying in an incident like this. For a ship of this size, the amount is $45.5 million. On December 20, the responsible party sent me a letter stating that they will continue to fund the clean up past their limits of liability and also handle claims. And they are doing that. And they are, as I said, to date, continuing to fund the cost of the recovery and also handling all of the claims that are coming in from third parties, such as ships that were delayed or recreational boats that might have been contaminated by the spill.

Ms. SCHWARTZ. So, well, I guess that's good news. Are you saying then that the shipping company has agreed to pay any amount up to the $94 million? I mean, their liability is set at $45.5 million now by law, so—but they have said they are willing to pay whatever it takes to do the clean up?

Captain SARUBBI. Yeah, they have told me they will continue to fund the cost of the recovery, and as I said, to date, they have spent $94.5 million, minus the $4.2 million that the Coast Guard has—and other Federal agencies are spending in the—out of the fund. Now whether they are going to continue to do that, I don't know. But the word I have from them now is they are going to continue to fund the recovery operations and address claims. We anticipate that recovery operations will probably be complete some time this summer.

Ms. SCHWARTZ. And does the liability trust fund have the money you need? I understand there is some question about whether you have that money in the trust fund. Do you have all of the money you need out of the trust fund to be able to take some of the burden you have financially?

Rear Admiral BRICE-O'HARA. Congresswoman, allow me to give you a little bit of background. The Oil Spill Liability Trust Fund was created by OPA 90 at a billion dollars, and the sources of funding were an oil tax, which was phased out in 1994, and some legacy funds, which shifted into the trust fund. And those shifts were complete in 2000. So currently, the level of funds that remain in the trust fund are $842 million. So we are short of the anticipated one billion when it was created, because it is not self-generating income. So we do have concerns. As we look at a typical draw on that trust fund annually and look forward, we expect the trust fund to be depleted as early as 2009.

Ms. SCHWARTZ. So if this spill were to occur in 2010, there would be no money for you to do what you are doing now, but right now, you have the money?

Rear Admiral BRICE-O'HARA. We have the money now. Long-term, we are not assured of a way ahead. There is provision for a consumer price increase adjustment every three years. No adjustment has ever been made. That authority resides with the Department of Transportation, the department of which the Coast Guard was a member at the time of the legislation. That authority was never delegated to the Coast Guard, and so there has not been an increase or adjustment for the CPI increases, nor does the Coast Guard have the ability to make those increases. So there are some

structural concerns there in terms of now being within the Department of Homeland Security, who has authority, and should that be divested down to the Coast Guard's level.

Ms. SCHWARTZ. My staff told me that if we had used the CPI with—if that authority had been exercised, $64 million would have been the liability limit in this case. Now I—since—having just said that the shipping company is already accepting greater liability than the $45 million, that may not be the kind of concern we would have if they were not, although we could be in that situation where they could say, "This is it. We are not paying any more." And then I guess the question is what happens then to any additional challenges or damage in the future. Could you speak to what happens at that point?

Rear Admiral BRICE-O'HARA. Well, there needs to be a remedy, Congresswoman.

Ms. SCHWARTZ. But at this point, there isn't a remedy unless it is through lawsuits or actions against the shipping company or whoever might be determined to be responsible?

Rear Admiral BRICE-O'HARA. Or legislative adjustments as well. I think we are looking at two different types of remedies, liability limits being one piece of that, the other being how we manage sources of income to sustain the trust fund at the level that was envisioned when it was created in 1990.

Ms. SCHWARTZ. Well, we could reauthorize the trust fund. We could do that. And as Congress, we could reauthorize it and make sure that those funds come in from the shipping companies, the oil companies, which is where that trust fund dollars came from, correct? We could do that.

Mr. LOBIONDO. Would you yield for a minute?

Ms. SCHWARTZ. Yeah.

Mr. LOBIONDO. That is a great question that you brought up, and I think we are going to research it. If we were to deal with the tax, we would have to refer to Ways and Means.

Ms. SCHWARTZ. Um-hum.

Mr. LOBIONDO. But I believe, and we are going to check this, that in the Coast Guard authorization bill, which we have been successful with the last couple of years, that we can deal with the limits and that definitely will be something that we will look at.

Ms. SCHWARTZ. Great.

Mr. LOBIONDO. So that is a great point.

Ms. SCHWARTZ. All right. Well, thank you. And if I may, Mr. Chairman, just—

Mr. LOBIONDO. Sure.

Ms. SCHWARTZ. Just one other set of questions, if I may. And it really speaks to—I think Congressman Andrews was getting to some of this. The issue about prevention, one of them obviously is the concerns about finding debris on the floor—the riverbed and identifying that before we have to look for it because there has been a spill. Do you—without my providing suggestions, could you make the three top suggestions you would make to us that would, in fact, prevent a spill like this? I will offer that to the Lieutenant or to the Admiral.

Captain SARUBBI. Well, Congresswoman, I think it is somewhat premature to make those recommendations. We are still in the very

early stages of our investigation. We are still collecting facts. As the Admiral mentioned, we have found additional objects on the river bottom that we believe may have been associated with this incident, an anchor and also a slab of cement, which we are looking at as well. So to make recommendations or to draw any conclusions from what we have learned so far, I think would be very difficult to do at this point.

Ms. SCHWARTZ. It is something that I think is an extremely important next step. We want to first make sure that you have what you need, and that we are moving ahead on the clean up and remediation and restoration, but we also want to make sure that we do everything we can. One of the issues that none of you have mentioned, because it is not in your authority, is the issue that this was a single-hull vessel rather than a double-hull vessel. And while Congress has made a clear commitment to push and insist upon our vessels in the future being able to be double-hull, this one was not. Could you—I mean, do you have any comments to make on that? I mean, you are working on cleaning up afterwards, but if it would have been a double-hulled vessel, this would not have occurred, is that correct?

Rear Admiral BRICE-O'HARA. We know through historical evidence that when you have a double-hulled vessel, typically the outer hull has been holed, and that has been enough protection so that the inner hull has not been holed. It is very difficult, until we get through this investigation, to say conclusively that that would have been the case with the ATHOS I. What we are going to have to do is reconstruct—the piece of damaged hull from the ATHOS I is going to be cropped and delivered up here, and then we are going to compare that with these objects that we have brought from the bottom and do an analysis as to what we think exactly happened, how deep the punctures were, all of that is information that will come out during the investigation and will help us then extrapolate and determine whether the two double hulls would have provided enough protection.

Ms. SCHWARTZ. What I should say is when that investigation is complete, I am sure that you will be sending a copy to the Chairman, and really our being able to look at the investigation results and to receive any recommendations you might make or we might draw from them, so that we could take that—take action, if necessary. So—

Mr. LOBIONDO. We will—

Ms. SCHWARTZ. —I hope you provide that information to the Chairman.

Rear Admiral BRICE-O'HARA. Yes, Congresswoman.

Mr. LOBIONDO. We are understanding that the timing of the hearing today would mean that we wouldn't have all of the answers. And understanding that, we wanted to at least get the process started, and we will certainly be looking at follow-up hearings depending on what additional testimony that we receive.

Ms. SCHWARTZ. Can I just—how long is it going to take to do the investigation and for us to get some of those answers?

Captain SARUBBI. The investigation will probably take several more months, Congresswoman.

Ms. SCHWARTZ. Go ahead.

Mr. LOBIONDO. Okay.

Ms. SCHWARTZ. Thank you.

Mr. LOBIONDO. A couple more quick things. Rob, we have on another panel Dennis Rochford, who is the president of the maritime agency that might be able to give us a closer dollar amount. I know Dennis talked about that briefly. And I wanted to follow-up, just briefly, Colonel, on what Congressman Andrews was talking about. If we had this technology that would cost in the neighborhood of $3 million and something and then an additional requirement each year to fund for the personnel, how often would you use this? Would it be every week, every month, every day?

Lieutenant Colonel RUCH. It would be used every day. I—what we would do is we would probably—what we hope to do is make the switch to do a multi-beam look of the entire river instead of a single scan look. And once again, instead of having point, point, point, we are looking at a better look at the entire river. When we see the anomalies, then we put the side scan down or the ROB or whatever the technology said at that time, and then we would go down and look at that area. So it would be used every day. We would be using it to prove—to proof the channels

Mr. LOBIONDO. Okay. One additional question for either the Coast Guard and/or the Corps. Are vessel operators required to notify the Coast Guard or the Corps of a loss of cargo overboard or failure to retrieve objects that are left in navigable waterways? For example, if a vessel dropped an anchor, lost that anchor, or lost a cargo container overboard, are they required to notify you about that?

Lieutenant Colonel RUCH. I leave that to them, because they are the ones who the ship owners actually notify.

Rear Admiral BRICE-O'HARA. Mr. Chairman, the regulations are very specific regarding the reporting of obstructions to navigation with respect to a sunken vessel, raft, or other craft. And in that case, the owner is obligated to report that and to mark that obstruction. However, the regulations, when they discuss other obstructions, more general, provide only that the owner may report and mark it in the same manner as prescribed for sunken vessels. That is the way that the specific language is worded. So I think that the law could be clarified to impose an affirmative obligation on the owner to report an obstruction other than a vessel.

Mr. LOBIONDO. So what you are saying is that this piece of housing that we are seeing could have fallen overboard at some point in time and whoever—wherever this fell overboard, if in fact someone saw it, they did not break the law by not reporting it?

Rear Admiral BRICE-O'HARA. Yes, sir, the way the law is written, the—it uses the term "may" as opposed to "shall".

Mr. LOBIONDO. I can assure you that that will be remedied also in the authorization bill. Rob, do you have anything additional?

Mr. ANDREWS. Just very quickly. I am—I must say I am pleased at the Chairman of the Subcommittee with jurisdiction over that issue is sitting immediately to our right. It is good that Frank is sitting in that chair.

I just want to follow up one more question that the Chairman asked about booming and the effectiveness of the effort. If you had to give a letter grade to the quality of the booming effort that had

taken place, let us say, as of sunrise on the morning of the 27th, A being top-notch, great job, F being failure, what is the grade you would give?

Captain SARUBBI. Congressman, I would give it a B or a B+. I think we had some very difficult circumstances we had to deal with. You know, in addition to booming off those environmentally-sensitive areas, we also had to start recovering oil, and that meant bringing in skimming vessels. We also had to do an assessment of the shoreline to see how much oil we had and where that oil was. We had a vessel with almost 13 million gallons still on it. We didn't know, at the time, what caused the rupture of the hull. So there were a lot of different things going on. So I think, overall, we did a good job—

Mr. ANDREWS. What was lacking that would have made it an A+?

Captain SARUBBI. I don't know that we have fully done our overview of that. I think we have to go back and look at, you know, the manpower and resources we put into doing that as well as the strategies. I think we also had to wait for the daylight to occur to be able to start that process, but we have to look at our strategies. I think that is probably one of the biggest things we have to look at. As I said, we had difficulty in booming off some of the creeks because of the current or the debris that was in the area, and we need to maybe look at repositioning that booming and putting it in different locations as—and make the booming more effective.

Mr. ANDREWS. That is something that Commissioner Campbell is going to talk about in a few minutes, so I am interested in his recommendation.

Captain SARUBBI. And maybe we need to put some booming further in some of these creeks so that there is a second barrier as well.

Mr. ANDREWS. Thank you very much. Thanks, Mr. Chairman.

Mr. LOBIONDO. Okay. Allison, do you have any follow-up?

Ms. SCHWARTZ. Just—if you are able to identify who owned that pipe or whose it was that dropped it and lost it, do they have to then participate in the liability and what are the chances of that happening?

Captain SARUBBI. I think that depends on, you know, our investigation if we can actually determine the owner of the piece, and then we will decide at that time what the appropriate legal authorities or actions should be.

Mr. LOBIONDO. Okay. Admiral, Captain, Colonel, thank you so very much. This was very enlightening. Thanks for your dedication to service, and we look forward to following up on this very important issue. We will take a very short break while we set up for the second panel. Thank you.

[Recess.]

Mr. LOBIONDO. Thank you very much. We are very pleased to move to our second panel. We have Mr. Bradley Campbell, who is the Commissioner of the New Jersey Department of Environmental Protection, and Ms. Kathleen McGinty, who is the Secretary of the Pennsylvania Department of Environmental Protection. We thank you so much for being here. Commissioner Campbell and I have worked together on many, many, many issues, and Brad, I deeply

appreciate your participation today and your expertise in helping us try to figure out where we go from here, and I would appreciate it if you start off.

TESTIMONY OF BRADLEY M. CAMPBELL, COMMISSIONER, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND KATHLEEN A. McGINTY, SECRETARY, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. CAMPBELL. Thank you, Congressman. If I may, I would like to submit my formal testimony for the record and summarize briefly, out of respect for your time.

Good morning, and thank you for your leadership, Mr. Chairman, Members of the Committee, on this devastating impact to the Delaware River. I want, first and foremost, to congratulate and thank the Coast Guard for leading what was truly a team effort among Federal and State and local agencies responding to the spill, for their leadership and also their cooperation and accommodation, their responsiveness to concerns as they were raised, either by individual states or individual communities. I include in that congratulations and praise the many community and non-governmental organizations, the Delaware Riverkeeper, who was on scene, and the series of non-governmental groups, like Tri-State, who helped respond to the spill, coordinating the work of many hundreds of volunteers.

From the very first day that Governor Codey visited the oil spill, the first morning, it was clear that the Coast Guard was in charge but responsive to state concerns, and that was vitally important. And to the extent that they are lessons learned, they truly are lessons that could only have been learned in the context of this spill, and they are not criticisms of the Coast Guard's response.

Second is to recognize, as this Committee's very hearing today recognizes, that the impacts of this spill are significant. More than 200 miles of shoreline are affected. More than 500 water foul actually found that were affected, and many more that we know to have been affected but will never be found, either because they were killed or because we simply haven't identified them. Significant impacts for this estuary, a resource that is already under many other sources of stress, from storm water runoff to other sources of pollution in the estuary. So this is a significant event, and we fear, the Department, because of the relative amount of oil that was recovered is a relatively small proportion of the whole, that those impacts we will be enduring that we will continue to see oil wash-ups and tar balls over the coming months, and even possibly over the coming years.

In terms of lessons learned, I would identify really four points for the Committee's focus. First, in terms of prevention, I think that the elements of debris removal and responsibility, that the Committee has already discussed this morning, are critically important, enhancing the resources and technical capability of both the Coast Guard and the Corps of Engineers to early detect any obstructions that could either present a hazard to navigation or a potential threat to the environment.

Second, in terms of the liability structure under the Oil Pollution Act of 1990, in many ways a visionary law, but I think this still

highlights the need to revisit the caps, the limits on liability, which are clearly—in terms of those limits, they are simply not commensurate with the damage of the spills relative to the amount of tonnage.

And I want to put a small cautionary note to Captain Sarubbi's testimony earlier. It is true that the vessel owner has agreed to continue to fund the clean up, but I think it is important for the Committee to keep in mind two points. One is that after clean up, or really at the same time that we are completing the clean up, we need to be planning restoration actions that make the public whole for the damage of the environment. And there isn't yet a commitment to fund those restoration actions.

Second, under Open 90, even when a responsible party agrees to fund clean up beyond the limits of liability, they still have a right to recover those funds in excess of the liability cap against the fund. So there is no sense, yet, or no assurance yet that the fund will be held harmless in this oil spill. And obviously, given the revenue issues that—for the fund that were identified earlier, that is a significant concern for states like New Jersey, who are looking not only to ensure that the clean up is fully funded, but may be looking—but will be looking both to the responsible party and failing that—the fund to ensure full natural resource restoration.

Third, in the area of response planning, I think there are significant lessons learned. Congressman Andrews mentioned earlier our—some of our frustrations about the booming efforts. Clearly, there needs to be more boom material pre-positioned at the sensitive estuaries. There needs to be, I think, a reflexive booming effort as soon as a spill like this occurs, not an assessment period to identify whether booming is necessary, but immediate reflexive booming to be put in place as part of the response plan. Also, we need more frequent updates of the area contingency plan to ensure that issues like that are addressed in a timely way, lessons from other spills are learned, and certainly to ensure that data, like the data the Chairman identified with respect to critical habitat areas, was—is in the plan and is up-to-date. I think, Mr. Chairman, the point you made earlier is absolutely correct. There was—as Captain Sarubbi correctly said, there was critical habitat data in the plan. It simply didn't reflect the latest data, for example where eagles' nesting areas were that was available to the respective agencies.

Finally, and fourth, I would note that, you know, the need, as I mentioned earlier, to focus not just on completing the clean up, but on a restoration effort commensurate with the damages. Here it is our hope, and every indication from NOAA has been consistent with our expectation that there will be a focused, expedited restoration planning effort, very much like the one NOAA so successfully undertook in the context of the North Cape oil spill in Rhode Island. And so we very much look forward to working cooperatively, State and Federal agencies, with NOAA on that effort.

But in this, and in the Coast Guard's general effort, I can't help but echo a concern that Governor Codey has repeatedly raised, which is that in the areas of prevention and the areas of response and the areas of clean up and the areas of restoration, the Coast Guard has been asked to maintain those missions, those traditional

missions of the Coast Guard over the last 15 years, at the same time they have assumed many new duties as a result of the challenges of domestic security and the threat of terrorist attack. However, the resources that have been made available to the Coast Guard have not been commensurate with those increases in duties. And our fear is, as we try to learn the lessons from this spill, that we will continue to have challenges integrating those lessons into better prevention and better response as long as those resource shortfalls are there.

And with that, I am happy to defer to any questions the Committee may have.

Mr. LOBIONDO. Thank you, Commissioner, very much. And now we will turn to Secretary McGinty. Thank you so much for being here today.

Ms. MCGINTY. Thank you, Mr. Chairman and Members of the Committee. It is a pleasure to be here, although, as has been articulated, under different circumstances we hope, at some time, to celebrate some additional successes in protection and prevention. And as I look at the makeup of this Committee, I have confidence about that, given, Mr. Chairman, your leadership in both environmental and economic progress and certainly, also, Congressman Andrews, a long-time friend of mine, who, in my service in Washington, I know, and here now in Pennsylvania, to be a champion of the environment, but certainly none other or more than our new Congresswoman from the Philadelphia area. We are thrilled to have Allison Schwartz now in this critical role. She certainly had been a leader in the Pennsylvania State Senate.

Several comments, first leading to—or first relevant to what really worked well, what went right from Pennsylvania's perspective, and then several reflections on some improvements that we might make or considerations for the Congress to take a look at.

First, to adopt by reference my colleague and friend Brad Campbell's comments. I certainly couldn't agree more with all that he has said, but first and foremost, the State of Pennsylvania wants also to commend our gratitude and the leadership of the Coast Guard. Their performance was exemplary. We thought that their response was immediate, effective. The organization was thorough, and the inclusion of all of the relevant entities was very, very effective.

Specific to that, I want to comment to the Committee's attention the National Incident Management System, in particular. This system has seen its inaugural implementation here in this oil spill. And our perspective is that it has worked well. It brings all of the necessary competencies to the table. It is sufficiently specific so that the entities know what they are supposed to do, when they are supposed to do it, and the command structure is essential in effectuating that. However, we also found that it had the necessary flexibility so that when surprises arose, when the weather turned so terrible, it enabled us to respond and bring other resources to the table as necessary. So NIMS worked, and it worked well.

Second, and also related to the overall effectiveness of not only the Coast Guard, the Army Corps, the other participating Federal and State agencies, the training that is provided in the OPA 90 law, and specifically every three years, OPA 90 provides for en-

hanced and renewed multi-state, multi-federal and state training in the context of simulated emergency scenarios. Here, just relatively shortly before this incident, we had the occasion to go through a major oil spill training exercise. Those investments by the Federal Government are very effective, and I think without an exception, the entities who participated in the exercise and then were called on for the real thing would underscore that that training was invaluable and was enormously helpful here.

The other thing that went right, and if the Committee would indulge me, I just want to recognize some of my own colleagues who are here. Many of you have done that in your opening comments, and I am enormously grateful for your recognition of the work of our first responders, our emergency response staff. I am joined by Bob Bower and Stan Sneeds of my regional office here. But just to add a little bit further urgency to what you have recognized to what these individuals bring to the job, one of our colleagues, Paul Jardelle, literally put his life on the line in this response effort. He was among those who were on boats deployed two or three days after the incident when the weather did turn very, very bad. Those boats were over-topped by the waves and nasty conditions that had arisen on the river, and he was tossed from the boat. 45-degree water was a life-threatening situation. And here, too, everyone pitched in and rescued those who were tossed from those boats. But just to underscore, this is a very serious business, and these employees put their lives on the line repeatedly, and certainly in this instance.

Some recommendations, going forward, are some things we would commend to your attention. First, resources, and I am surprised not others have rung this bell even louder, because usually your hearings are an occasion for everyone to ask you for more resources. But here, very specifically, our water quality staff in the region, the Pennsylvania Department of Environmental Protection staff, 50 percent of the entirety of our water staff have been deployed to this exercise, 3,600 man hours in just—really what is over—a little over a month of work here responding. At the same time we have that enhanced deployment, the State of Pennsylvania has seen a substantial decrease both in point source water infrastructure funds as well as non-point source runoff pollution funds that we receive from the Federal Government. Tough times all around, but just this year, we saw an $11 million cut in those funds, so I would commend your attention to those resources, because it is those resources that enable us to have the kind of staff that we can then deploy and the technology to deploy in an emergency like this.

Second, waste management issues. We have found in the course of putting together the overall response plan that we are not adequately prepared to have identified in each state facilities that can receive waste materials so that there is not a bottleneck in the clean up. This was particularly important here, as the size of the spill grew as we understood that it was more than the originally 30,000 gallons that had been identified. So in terms of emergency response preparedness, we would commend to your attention a consideration that every state look to its waste management facilitates

to try to identify it and have available adequate facilities for the variety of incidents we might find ourselves involved in.

And that leads to the next point. Mr. Chairman, you were critically involved in the passage of the Marine Transportation Security Act of 2002, an historic piece of legislation. It provides us, I think, the critical opportunity to say even if, in this instance, with the help of Open 90 we find ourselves relatively well prepared when it comes to oil spills, I certainly can not testify before you that we are equally prepared to respond if it were a hazardous chemical other than oil. And we have had such incidents, but we have not had the structures through which we could ensure our preparedness. And with your historic legislation, I think we now have the occasion of the framework through which we can ensure we are prepared for those non-oil emergencies.

Next, I would point to and underscore what Congresswoman Schwartz was talking about in highlighting that this was a single-hulled tanker. We would urge consideration of an acceleration of the phase-out date of those single-hull tankers. And I would just say as an aside here that this is an area where the environment and the economy would go together. An acceleration of the phase-out would bring new opportunities, new businesses to our ports, for example, to the Philadelphia naval yard where there is the capability to build those ships that would be double-hulled in nature and therefore provide further protections against this kind of emergency.

Finally, I would come back to the issue, also, that Commissioner Campbell pointed to in natural resources damages. He covered well the liability issues. I would only point to the physical nature of what we are looking at here and counsel against a rush to judgment as to whether or not we understand the full impact on habitat and wildlife at this juncture. Submerged oil, among other issues, remains a serious concern, and it is our judgment that it will be at least a year and maybe two years before we really understand what the impact on habitat and wildlife is all about and can therefore take the necessary both legal and technical measures to restore those resources.

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to testify and again for your leadership and attention to these critical issues.

Mr. LOBIONDO. I thank you both for your insightful testimony. It gives us some good ideas here.

Congressman Andrews, would you like to lead off the questioning this time?

Mr. ANDREWS. Thank you, Mr. Chairman.

I would like to welcome Secretary McGinty and Commissioner Campbell and thank them for their service. You can not represent this area in the United States Congress and not interact with both of you on a regular basis, and you each conduct yourselves with professionalism and great skill, and we are fortunate to have both of you. We really appreciate you. I especially want to say to Brad Campbell, you know, you can't be the DEP Commissioner in New Jersey and not be involved in controversy every single day. I personally appreciate the skill and foresight you brought to this job, and thank you for the great job that you do. I am just very pleased.

There is a report that—from the Delaware Riverkeepers Network that they say that no booms were present at any time on the Pompeston Creek, the Pennsauken Creek, the Newton Creek, and the Cooper River. What do you think that says about the adequacy of the booming effort that took place after the spill?

Mr. CAMPBELL. Well, I would say, as I mentioned in my testimony, that clearly there needs to be a more concerted and immediate booming effort. I think what the Coast Guard followed in terms of standard practice, and you were asking for grades earlier, in standard practice they would have gotten an A, because it was assessed—take a period of time to assess and then proceed with booming. And so in the first days of the spill, that—in my sense, I think we had lost a little bit of time because that standard practice was followed. My sense is, on this river, where you have a six-foot tidal swing, a strong tidal current that is going to move the oil quickly, really the booming effort should begin immediately. It should be focused on started with the sensitive areas. And in order for it to proceed quickly enough, there needs to be more pre-positioning of material. So they lose time in actually getting the booming material to the scene.

Mr. ANDREWS. So, Commissioner Campbell, you would recommend changing the protocol so there is a swifter response. And rather than an assessment first, you just get the booms out in the water more quickly? Did I hear that correctly?

Mr. CAMPBELL. Certainly in the immediate—the estuaries most approximate to the spill, on this river, putting other contacts to one side, where there is such a strong tidal swing, I think immediate booming is appropriate, yes.

Mr. ANDREWS. And then I also understand your testimony is advocating sort of pre-positioning of booms in closer geographic proximity so we could have access to them more quickly, is that correct?

Mr. CAMPBELL. Exactly. Pre-positioning of the boom material, and then also closer maintenance. What we have done over the years, through our exercising with the Coast Guard and other agencies is to practice booming. And part of that is establishing in advance the anchor points for the booms. Some of those weren't fully available or useable when we went to use them this time, and so some closer attention to that also needs to be paid.

Mr. ANDREWS. Madame Secretary, do you have anything to add as far as recommendations on this question?

Ms. MCGINTY. I would just offer two thoughts. One is to add to the pre-positioning an enhanced and updated ecological assessment in these streams so that we have the latest information on what the resources are. And second, just by way of analogy, I think supportive of the comment, when it came to Philadelphia's drinking water resources, we did go ahead, working with the Philadelphia Water Department, and put in place protective measures, even before, as the Commissioner is articulating, the assessment was done. If we had waited until the assessment was done, we may not have taken that step because it looked like, in those assessments, the spill was not going to make its way up to those drinking water intakes. Now at the end of the day it didn't, but we immediately deployed enhanced carbon filtration and enhanced monitoring and

testing. And probably, for ecological resources, as those human resources, we should probably do the same.

Mr. ANDREWS. With respect to pre-positioning, where do you think the best locations might be for locating these resources more closely to the area?

Mr. CAMPBELL. Well, they are clearly going to be in areas in Salem and Cumberland County where we are going to want to preposition right along the coast. I mean, from our perspective, assuming you can identify secure locations, the closer to the affected resource, the better, because you are just going to reduce deployment times. The same type of analysis is going to have to be done, obviously, for our counterparts in Delaware, where Secretary Hughes has some of the same concerns, and in Pennsylvania, obviously.

Mr. ANDREWS. Thank you very much. Thank you, Mr. Chairman.

Mr. LOBIONDO. Congresswoman?

Ms. SCHWARTZ. Yeah. Thank you. Thank you very much. And I wanted to, first of all, thank you, Secretary, for reinforcing my line of questioning and my concern about the fact that the—under Open 90, they didn't—we have not seen an increase in the limit on liability. And in this case, we know, from the previous panel, that we are going to need more than $45 million to not only clean up but remediate the situation we have in the spill. And so we already know that. I am—I appreciate the Chairman being willing to work with us to see if we can't get that CPI implemented and that liability increased. As you pointed out, and I was told in between the panels, it is possible even if the shipping company is now paying these costs, they could come back to the trust fund and say, you know, "My liability was only $45.5 million. You have to reimburse me for the rest." That is a serious concern that those dollars will then be public dollars rather than be paid by the shipping company when they could. So I look forward to working with you on making that happen.

I was also interested in your comments, and I think we need to understand both comments that what we know now may not be all we know in six months or a year from now, certainly from an environmental point. So that—my question is, going forward, do you have recommendations for the best way we can make sure that we have not only cleaned up the river, but also—and remediated the—any environmental impact? But then the issue of restoration on the—and the public impact going forward, this is a—could you speak specifically to what is the best way to make those assessments, and are—is that now in place?

Ms. MCGINTY. I will just offer a couple of comments. Our biggest concern right now is submerged oil and oil that was immediately entrapped in sediments fairly quickly after the incident. My staff was sharing with me some of their own experience of digging into some of the sediments and finding, even if those top sediments were relatively clean, inches of oil just beneath that surface. So you can imagine, as the year progresses and we see that tidal action in the river, we might see a further re-suspension of some of that oil that is just temporarily trapped. That is one issue.

Second, related but actually different, is the oil that essentially formed hockey pucks, if you will, balls of various sizes, and probably are further down in the water column. What we do not know

right now is whether when the warm temperatures come back, will those temperatures be sufficient also to release or re-suspend some of that oil. So I guess what comes from that recommendation number one is after the immediate attention to this issue begins to fade, we need to find a way, nonetheless, to keep the spotlight, to keep the resources coming, and to keep the books open on this, because we have got a lot more to understand.

Ms. SCHWARTZ. Well, who is responsible for making sure that that happens, that we don't close the books on it?

Mr. CAMPBELL. Well, in—under OPA 90, NOAA is the lead federal trustee, and NOAA's job now is to lead a cooperative assessment effort that involves both of our agencies to assess the damage and to identify an appropriate restoration project. One of the difficulties of this type of spill is that some of the damage, either because it is beneath the surface or because the particular birds that were killed were never recovered is that there are always uncertainties. And the focus has to be on identifying and developing a significant restoration project commensurate with the damage. We know we will not replace the actual birds that were lost or the actual fisheries that may be affected, but we do know that there is going to have to be a significant restoration project to enhance the habitat to make the river whole through enhancement of the resources, even though the actual resource can't be replaced in total.

Ms. SCHWARTZ. The mayor of Valdez, Alaska wrote an interesting piece and talked about the fact that they developed—after that spill, they developed a Citizens' Advisory Council that did not exist before that played a role in keeping an eye on this and keeping an eye on what is now a good working relationship between the government authorities and the private sector, particularly the shipping company. But I guess I am going to ask the questions and maybe push the envelope a little bit on this, as a way of keeping public attention on this on an ongoing basis and apparently they continue well after the spill clean up to make sure that the public aspect of keeping the environment and keeping the waterway healthy and available both to commerce and recreation really works. Would you make a comment on whether you think that would be something we ought to encourage or even look at in some kind of citizen advisory council that could work specifically on maintaining the Delaware River, again for commerce, but also with good attention to the environment?

Ms. MCGINTY. I would think that is an excellent suggestion. I think we have some wonderful organizations that can step right up and help. The Delaware Riverkeepers is certainly among the most effective of those, but when you look at the variety of entities that pitched in in this response, that gives you some of the list of those who could make an invaluable contribution.

I want to just quickly come back to your comment, if I could. As you are looking at natural resources damages, I would offer three other things in addition to what the Commissioner has articulated. First, if you are looking at the liability structures under OPA 90 and potentially looking at some reforms there, expressly making it the case that natural resources damages are liabilities over and above and to which the responsible party is subject in addition to

just, "Here is the bill for clean up for getting the oily waste out of the river," et cetera, that that would be important.

Second, to rearticulate the resources question in terms of when the spotlight is off, we still will need to be deploying people out there doing those damage assessments, and it is always harder once the emergency has gone.

And third, I guess this comment goes to the difficulty actually of assessing natural resources damages. There is a tendency always to say put a dollar sign and be able to demonstrate exactly what the economic damage is in order to justify a claim against a responsible party. That is hard enough when you are talking about impact to physical structure or business. It is very, very difficult when you are trying to assess the value of intact habitat as opposed to destroyed habitat, healthy wildlife as opposed to impaired wildlife. And this is something actually that Commissioner Campbell and I have worked together over the years. I guess I would just urge that the Congress not require undue precision, if you will, in how NRD damages are calculated, because some things are just very difficult to put a dollar sign on. It does not follow the same structure as some of our other liability and recovery structures in other provisions of law.

Ms. SCHWARTZ. Thank you very much, and I look forward to continuing to hear from you as we move into the continued clean up and into the next phase, I think, which, as you point out, will take much longer. Thank you.

Mr. LOBIONDO. All right. Thank you.

One of the things that we are very interested in attempting to determine through this whole unfortunate scenario is that the level of communication and cooperation between all of the various agencies is it what we hoped it would be. Is there something additional that you—either of you could suggest should have been done? And obviously we have come up with some ideas of Committee jurisdiction that seem necessary from a legislative standpoint that we are going to pursue. Are there any recommendations along these lines that you can suggest need to be strengthened by strong legislation?

Ms. MCGINTY. I would have to say, Mr. Chairman, from our point of view, the communication structures did work well, that the NIMS system worked well. Having said to Congressman Andrews how well we also worked locally in taking that information from the Unified Command and making it available down the chain to, for example, the Philadelphia Water Department. I think internally we want to work on our own enhanced efficiency at dispatching that information. But overall, we thought the command structure work well efficiently and effectively to get the job done.

Mr. CAMPBELL. I would certainly concur on that assessment. I would identify a few areas where some thought needs to be given. First, in terms of early community meetings, we weren't—you know, in the exigencies of the spill, it took, I think, over a few weeks before we had the first, sort of, community-based meeting to get word out to the public, perhaps less of a problem in this case, because we are at the heart of the Philadelphia media market, a number of media outlets here, but in other contexts, and in terms of more remote communities, I think getting the word out, getting people understanding, I think that is one area where we might

have done better, again, completely agreeing with Secretary McGinty's comment that the system worked. Communication was early, robust, and effective. And not just that there was communication, but that the Coast Guard consistently responded and promptly to concerns as they were raised.

Second, I think this is a great example of the many volunteer organizations we have and the role they can play to look thoughtfully at ways in which the resources of a volunteer group like the Delaware Riverkeeper Network can be integrated into the response effort earlier, recognizing that, as a general, the actual response to oiling, the response to wildlife has to be done by professional, but using their eyes and ears on the ground more effectively, I think is another lesson we could learn.

Mr. LOBIONDO. Commissioner Campbell, I might ask you to do a little bit of speculation here, but I have a great deal of concern with our knowledge that 265,000 gallons were what was spilled and there is a little bit of a question mark as to exactly how much we have recovered, because some of it was a water mixture. We know, and you have talked a little bit about what is on the bottom. And Secretary, you mentioned that we are not sure what may happen when the temperature rises a little bit, but I think we are going to have to try to think about this to some degree and bring some varying of expertise on the issue because my big fear is that if temperature releases some of what is on the bottom, does it migrate to our beaches? Can you comment? Your thoughts? What can we do? Is there something from our perspective that we can focus on to pay more attention to this?

Mr. CAMPBELL. Well, obviously this is of paramount concern for me that we will be greeting Memorial Day and the advent of summer with additional reports of oil surfing—surfacing and potentially affecting our beaches. It is sobering to note that in the context of the Exxon Valdez oil spill, which Congresswoman Schwartz mentioned earlier, they are, to this day, discovering new pockets of oil that were not cleaned up. And I think one of the important elements is to recognize, in terms of the funding and the availability of whether it is from the responsible party or the fund that, as Secretary McGinty said, this is a response effort that is going to continue not just for months, but probably for years, if you include the natural resource damage assessment and restoration. And when you consider the Coast Guard testimony earlier that we are already at—over the $90 million mark, I think that gives—that should give the Committee a sense of scale in terms of how expensive it is to clean up oil after the fact and how the caps are really dwarfed by the cost of the response effort. But the focus of the Committee, and you, Mr. Chairman, have been tenacious in your oversight in ensuring that the funding and response resources continue to be there in the ensuing months will be critical.

Mr. LOBIONDO. Well, we certainly want to keep in very close contact. The conclusion you draw tomorrow or next week about a particular course of action that we have to pursue with what we think is still left on the bottom from participation from an outside source or from within your own framework, we certainly want to react very quickly to that. I share your great fear of what lies ahead with all of that oil that is not recovered.

Congressman Andrews, any follow up?

Mr. ANDREWS. No, thank you.

Mr. LOBIONDO. Congresswoman, any follow up?

Ms. SCHWARTZ. No.

Mr. LOBIONDO. No? I thank you both very much. We will take a short break to move to the third panel.

[Recess.]

Mr. LOBIONDO. Let us move to the third panel. And before we do that, we have—some groups that asked to participate today that we weren't able to accommodate through the panel, they are certainly a very important part of the partnership that we are putting together. And the Delaware Riverkeeper and also the Partnership for the Delaware Estuary has submitted testimony, which I would like to ask unanimous consent to be submitted into the record. Without objection, I will so order that.

And now we move to the third panel. I am very pleased that we have Mr. Dennis Rochford, who is President of the Maritime Exchange for the Delaware River and Bay Authority, and Mr. Eric P. Stiles, who is the Vice President for Conservation and Stewardship for the New Jersey Audubon Society. Thank you both for being here, and Dennis, if you would start off, please.

TESTIMONY OF DENNIS ROCHFORD, PRESIDENT, MARITIME EXCHANGE FOR THE DELAWARE RIVER AND BAY; AND ERIC P. STILES, VICE PRESIDENT FOR CONSERVATION AND STEWARDSHIP, NEW JERSEY AUDUBON SOCIETY

Mr. ROCHFORD. Thank you. Thank you, Mr. Chairman and Members of the Committee, and for your leadership on this and so many other issues that impact the ports along the Delaware River.

The Maritime Exchange is a trade association representing almost 300 port businesses in Southeastern Pennsylvania, South Jersey, and Delaware. We basically function in two ways: we act as the Chamber of Commerce of the Delaware River, we are an advocate primarily with federal agencies in Washington, DC representing the interests of a port community from the Coast Guard to the Corps of Engineers, Customs, and other agencies. We have an operating responsibility in that we operate Maritime On-Line, which is the electronic communications hub of the Delaware River capturing all—an Internet-based system that captures all of the vessel, cargo, and crew list information for the 2,600 vessels that come up the Delaware River.

Let me, first of all, submit—I am not going to read it, my testimony for the record, copies of which were sent to your Committee last week.

Let me just make a couple or three points, and having had the opportunity to listen to a lot of the testimony here earlier, not be repetitive and try to hit on what the impact is with respect to the maritime industry, port businesses, the men and women that bring the ships up the river, the longshore workers and everybody else whose income depends on this river: $4 billion a year in terms of economic revenues to the region, 75,000 employed people, $1.5 billion in wages and salaries and almost $150 million in state and local taxes. So this is significant to the regional economy.

We indicate that the Exchange's role was really one of a facilitator and communicating, if you will, between the various federal agencies and port agencies that were involved in the initial phases of the containment and clean up. We worked closely with the Coast Guard, the Corps of Engineers, the Pilots Association, the Mariners Advisory Committee. And our goal, if we had one goal, was, A, to facilitate what they were doing, but secondly to make sure that the port operators and port customers had accurate information. Somebody mentioned a few minutes ago the world we live in today with CNN news and the media, as we have it today, and this oil spill was being listened to and read about throughout the world. And our concern was that the port customers, the people that bring their cargoes through our port, had accurate information with respect to the status of the spill, the status of the clean up, and as we moved very quickly in the initial stages, Sunday through Monday or Tuesday, as the port began to open up and as vessels began to move in and move out, that is the information that we needed to get to our port customers.

Let me make a general comment with respect to the economic impact. Significant. I don't think anybody has got a number today that can tell you what the cost is of this spill. I think you can say it is in the tens of millions of dollars. And let me cite just a couple of specific examples I have with respect to either real or potential costs. We are an niche port.

I am going to reference three specific cargo commodities. One is oil, crude oil. The six oil refineries that operate on this river operate with very strict crude oil inventory requirements. And what that means is if there was, in fact, an extended closure of this port over a period of time, it would directly impact the second largest refining complex, the United States of America, and in terms of home heating oil and gasoline and jet fuel and all of the other products that they produce to support the economy in the mid-Atlantic and New England regions and beyond would be put in jeopardy. One of the reasons that we are happy in terms of the quick response to get the port opened up can be measured by that impact.

Secondly, the Delaware River, in both Philadelphia, Camden, and Wilmington, we bring in over 65 percent of all of the South and Central American fruit that comes into the United States of America. It is a perishable commodity. We are the largest banana port in the United States of America. Del Monte, as an example, over in Camden, had they been delayed another day, it would have cost them close to $7 million in terms of the cost of destroying the cargo, the bananas and the Chilean fruit. That didn't happen, but they did experience a $30,000 cost for standby labor. One of the challenges when a port is closed down or the scheduled vessel's arrival is disrupted, the terminal operators, the people that have the responsibility to offload those ships, have to go and get labor, and if that labor has to wait and they have to bring in another crew, well, there is a direct cost there.

The other commodity I would mention briefly is steel. Very important on this river. We used to handle 4 million tons a year, almost 400 ships. The economy went soft. The 201 tariffs went in place, but over the last 18 months, the line is going up, the tonnage is going up, the number of ships is going up. That is good for the

port. We only had two or three ships that were diverted from this port to another port, and one of those ships was a steel ship destined for Penn Terminals in Chester, and the cost to Penn Terminals, as well as the labor cost, was close to $50,000.

Let me give you one other statistic. The cost to operate a ship ranges anywhere from $30,000 to $40,000 a day for general cargo, steel ships all of the way up to $250,000 a day for the modern VLCC and tankers. If you are to take our average weekend, which it was, with 20 ships in port, on a daily basis, we are talking about $650,000 to $1.3 million in costs because of delays that occurred or the potential of delays, if they were to occur.

Let me—if I might, I am a minute over my limit here, let me make two points in terms of lessons learned. One, it is on industry. I—and I want to compliment the Coast Guard and the Corps and everybody, the Pilots Association, Mariners Advisory Committee as they came together in the Unified Command to make the decisions, A, to contain the spill, B, to get the clean-up operation going, and C, to open this port up to—for commercial use. But the bottom line is that we—I think that we were effective in getting information out, but we, as a port community, and I know there have been discussions here amongst other witnesses with respect to, you know, coordinating our efforts, we need to continue to improve communications. In this marketplace, in this global marketplace today, we can't have bad information going out around the world with respect to what is going on in the Delaware River, and we, as industry, which we demonstrated through this spill, working with government, need to enhance on that effort.

And I will conclude with something that is relevant, not particularly specific to this incident, but relevant in listening to the testimony. I listened to it earlier. The bottom line is, it is a federal responsibility to keep federal channels and anchorages over. And in my view, this Administration and previous Administrations have shortchanged that commitment. And I want to cite the numbers for fiscal year 2005. The Administration recommended $4.1 billion for civil works in the Corps of Engineers, and the Colonel addressed some of those expenditures. The Congress, always a little bit more sympathetic to our efforts here, appropriated $4.7 billion. The American Association of Port Authorities indicate, for fiscal year 2005, to meet just the bare minimum. Civil works requirements for the Corps of Engineers is $5.5 billion.

I would say the same with NOAA. We have been fighting hard here for the last couple of years. We have a port system in place, Physical Ocean Real Time System, which provides real time tidal and atmospheric information that is available to the captains and the pilots as they bring the ships up the river. We have been fighting for 3 years. We got $750,000 out of the Delaware River Port Authority to put that system in place. The operating cost is about $250,000 a year. There are 13 systems like that around the United States, and we are trying to get $3 million appropriated in the NOAA budget to maintain systems. And again, like the Corps of Engineers and like the Coast Guard, this NOAA system is all part of the federal responsibility to keep those channels open. And everybody bringing ships up the river is paying taxes into the Federal

Treasury. And if we can take care of the highways and railroads and airlines, we need to take care of our port system.

I hate to use this situation as an example to make that statement, but it is so very important to this port and to the ports around the United States.

Thank you, Mr. Chairman.

Mr. LOBIONDO. Thank you, Dennis.

I might note that I have had the pleasure of working with Dennis for a number of years now, basically on port security and maritime anti-terrorist measures, and I thank you for all of the time and energy you have put in to helping us understand the impact of the maritime industry.

Eric, thank you very much for joining us today. Please proceed with your testimony.

Mr. STILES. Thank you, Mr. Chairman.

My name is Eric Stiles. I am testifying today on behalf of New Jersey Audubon Society and our 22,000 members in New Jersey. First of all, I would like to thank the Chairman for inviting me to speak today.

I worked as an endangered species biologist with the New Jersey DEP for a decade working to recover the wildlife species on the lower Delaware River and Delaware Bay for nearly a decade, so I am intimately aware of what is at stake here.

My immediate visceral response, looking at the evening news was as if I had lost a good friend, knowing how much is at stake to the quality of life and public safety in this region and what can be disrupted through a single tragic event.

New Jersey Audubon Society was impacted at two levels. First of all, we have been supporting wildlife conservation since 1897. And second, we actually own two islands in the Delaware River, just down river from the spill, Chester and Mahn's Islands, so we are an affected landowner and can offer insights through those two different vantage points.

First of all, they impacted, I guess, our Nation's symbol: bald eagles. Again, we had one remaining in New Jersey from 1972 to 1984. Hundreds of thousands of hours of volunteer time, primarily from citizens, has jump-started the population in New Jersey. There were several pairs within the active zone, including one at Mahn's Island that nests on top of a 110-foot tall Eastern Cottonwood tree. It is absolutely amazing. It looks like a Volkswagen parked in a deciduous tree.

Now the tale of Mahn's Island can be told time and time again. The pair perennially fails because of PCB contaminants. Again, we are looking at an industrialized area that has contamination issues. Each year, the pair failed, they would relocate in the state's endangered species program, and Elmer Klegg, the volunteer, would work with the landowners tens of thousands of hours to minimize disturbance. Now in 1996, a corporation, DuPont, approached New Jersey Audubon Society and the state, and the partnership went as follows: if you accept this land as a wildlife preserve, would the state step up to the plate and every year bring in an orphaned eaglet for the pair to raise. Since that time, that pair has successfully fledged young. The New Jersey Audubon Society has accepted ownership and responsibility for the island. The state, and

their incredible biologists, have stepped up to the plate with the orphaned eaglet, and Elmer Klegg is donating tens of thousands of hours as, still, the pair's guardian ambassador.

This time spent, these volunteers, this love and quality of life, can be told time and time again from the Delaware River and lower Delaware Bay. Congressman Andrews and Congressman LoBiondo have been real champions in forwarding the protection of these. We know what is at stake. A single tragic event can disrupt that.

Now we know that the Delaware River and estuary is a multi-use complex, from commerce, it is very important for commerce, to recreation. In 2001, 1.64 million residents in New Jersey and 688,000 residents watched wildlife, spending $1.24 billion. People that hunt and fish spent another $1 billion. It is a fundamental quality of life for why people live there. I have lived in South Jersey for 30 years, recently exported to North Jersey, but South Jersey will always be my home. I love the area because of the wildlife. It is also very important for public drinking water. Only one industry, that is the transport of oil and other hazardous materials, has the ability to compromise all other interests and public safety on that complex.

And I would say that the famous American historian, Arthur Slessinger, was right: "History has an eerie way of repeating itself." If I were a betting man, my money would be that there is going to be another oil spill. But what can we do to take upon the successes of this response, identify areas for reform, and move forward? And I think that is the question before us today.

Now first of all, I need to thank the New Jersey delegates, specifically Congressman LoBiondo, Andrews, Senators Korzon and Lattenburg for their leadership effort. We fed information from our members directly to the Congressional delegates about areas that were not being protected, and it was the Congressional participation in the process that I think really stepped up the reflexive booming, if you will, to which Commissioner Campbell spoke.

Second, New Jersey DEP and U.S. Fish and Wildlife Service staff biologists did an exemplary job working with non-profits. In fact, we had close to 100 of our members participating as expert avian monitors to assess the damage. And really, it is counting heads. Unfortunately, many of these birds that were oiled were never captured and go on to die. But that is part of the natural resource damage assessment.

Third, Tri-State Bird Research and Rescue, again, they are not here today, but they are an international expert in cleaning up and responding to oil spills. They deserve great praise.

And last, the U.S. Coast Guard and NOAA, again, I worked on a boat for a day from Mantua Creek to Commodore Barry Bridge. The men and women of the Coast Guard Service deserve great accolades for the performance they underwent I think under some very difficult times and tasks. My observation is they don't have the resources they need to do their jobs. So any reform that I posit is not based upon the individual performance of an individual, but rather I think the failure of the system.

Now the four areas that I would posit for reform. First of all, reduce the likelihood of further spills. I think this is going to be repeating some of the wisdom we heard previously. First of all, the

shipping channel, we heard there are additional technologies that can and should be used, whether it is a magnetometer, wire survey drag, side-scanning sonar, and I think Congressman Andrews, in his question, helped me understand that technology better, should be in play here, and they require the appropriate appropriations to fund that. Again, a vision with no funding is a hallucination, so if we have plans here but not the means to implement those plans, I can not blame the agencies responsible with that charge.

Second, the minimum depth clearance should be examined. I think that has been raised time and again. Allegedly, the ATHOS hole rupture occurred at a low tide. Again, if you look at the differentiation between the draft of these craft that are under significant weight loads and the bottom of the channel itself, you want to increase that, so perhaps only allowing them to operate at a mid to high tide, especially the single-hull design, would be advantageous.

Let us look to get rid of the single-hull craft before 2015. That is a significant risk factor in what is at stake with this. I think responsible parties, that is responsible companies using double-hull craft, should be rewarded. If you are a company that is investing in a double-hull, you should have an incentive to bring that to this port. Conversely, if you have a single-hull, I think there should be an additional port fee. If you are coming in, and you are posing this additional risk hazard, this port fee should go into a dedicated fee that goes to both increase our preparedness for oil spill as well as to fund the natural resource damage from it.

Second, and I just drew this number out of a hat, but I know that the $45 million liability threshold is grossly insufficient. As we have heard today, I think it was $92 million. The company can go back to OPA? The risk and the damages are being assumed by a dwindling pool of money that is coming from taxpayers. I think $150 million or $200 million might be more in the ballpark of that liability ceiling that needs to be set.

Third, we need to improve the efficacy of the oil response effort. Again, I can not fault NOAA and the Coast Guard, but they did not have the data. I know of three bald eagle locations that Congressman LoBiondo, in particular, was helpful in getting that to the Coast Guard. Our attorneys did participate in the Unified Command center. Mahn's Island bald eagle nest, which has been there since '96, was not on the NOAA and Coast Guard inventory. The important information about Mannington Meadows was not on the NOAA and Coast Guard inventory. I think that this Committee needs to look at providing sufficient appropriations to allow the data from the federal and state wildlife and fish agencies to be provided to NOAA and the Coast Guard to be updated annually.

Lastly—I am sorry. Two additional responses. Again, reflexive booming, that Commissioner Campbell talked about, the booms were following the leading edge of the oil slick. This was before the massive wind event. The massive wind event, I think, started November 30 and then went into December 1. Mannington Meadows is one of the largest staging grounds for waterfowl on the eastern flyway. There was no boom in place. Getting those anchor points also in place ahead of the spill, I think, is critical, as we heard from Commissioner Campbell, whether they are absent or in disrepair.

Getting them in place and maintained over a regular cycle is critical.

Lastly, when I was looking at the Oil Pollution Act of 1990, there is a provision called Title V, the Prince William Provision. Under that provision, the visionary legislation established a body of federal, state, academic, and conservation agencies and local citizens with backgrounds in commerce, fisheries, wildlife, public health and safety, and education. That body worked and would work in this case to better protect natural resources and public health and safety on the Delaware Bay while still accommodating a functioning port. Most importantly, as someone that worked in the government both at the National Park Service and DEP for 10 years, this body would cut through the interagency red tape by establishing a council with a clear mandate and goal. So I think that what Congresswoman Schwartz referred to is there a need to create this, a citizens council, I think not only is there a gross need here, but there is some exciting precedent under existing legislation, the Oil Pollution Act of 1990.

We look forward to working with this body. I think one additional opportunity for this body is to work with federal appropriators to look at land and water conservation funds. I know that there is almost no dollars now for acquisition through the federal side, but to protect and enhance these critical fish and wildlife locations on all three sides of the bay, including Pennsylvania.

Thank you for your time.

Mr. LOBIONDO. Thank you both.

Allison, do you want to start off?

Ms. SCHWARTZ. Sure. Thank you. I just have two questions, but I have one for Mr. Stiles, and I thank you for your, in some ways, summary of the things that we ought to be looking at and moving forward on. Do you have an assessment of the effect broken down by state, how much an effect we have seen from the environmental point of view in Pennsylvania?

Mr. STILES. That is, I think, a very good question. I think it is an interesting question posed to an organization that is focused on a state. When I look at the Delaware Bay and estuary, to me, it is—I could care less about the political boundaries. It is very important, I think, for the Congressional delegates to know the impact to their constituents. When you look at the lower Delaware River and Delaware Bay, it is one complex. To answer your question, I haven't seen any assessment broken down by political boundaries. I think it is a fair question that could be posed to your state agencies.

But again, when you look at the submerged oil, it is what we don't know that is really scary. We have the largest concentration of shorebirds in all of North America. Again, Commissioner Campbell is concerned with May 31. I am really scared come late April, because that is when the shorebirds start coming up. If you talk about the reintegration of this oil, the spawning horseshoe crabs. It is the largest, globally, population that we have. It is critical for fisheries. So I applaud the federal participation, because this is a federally shared resource. We are talking about commerce. We are talking about migratory species. So I think that the Congressional

delegates are to be commended for working so closely on a comprehensive solution.

Ms. SCHWARTZ. Maybe it is a good thing that we haven't actually broken it down by state so that we have accepted it as a shared responsibility and recognize the fact that the Delaware River does affect all three states pretty dramatically, and working together maybe is the way to go. I shouldn't ask for it being broken down. I was curious, though, that no one has broken it down that way, either in terms of impact or cost, but thank you for your comments.

My only—my other question, Mr. Rochford is there an effect going forward in whether any of the shipping companies might say I might not come to the port here because of potential for a spill, or is this seen as a one-time impact and there isn't necessarily a negative effect going forward? I was just curious about whether you have to deal with, sort of, damage control going forward in a—maybe a more attitudinal—or if we don't take certain steps, will they say, well, it is a risk I don't want to put my vessel in, even if I don't carry oil or particularly if I do, are they not doing enough to make sure that I won't end up spilling the oil? Obviously, they don't want to—

Mr. ROCHFORD. Right.

Ms. SCHWARTZ. So are you getting questions from some of the oil shipping companies saying what are you doing now going forward, or any of the other shipping companies that bring in fruit, for example? Are they saying wait a minute, at $30,000, $40,000, or $50,000 a day, that is a big hit for me. I am not willing to do it in the future.

Mr. ROCHFORD. Well, a couple comments or observations. Number one, I think those ship owners, charters, and very importantly, cargo owners, they are the ones that really drive this equation, I think looked at how this situation was handled from Sunday through Monday or Tuesday. And the ability to begin to start to move vessels as early as Sunday indicated that, you know, we were open for business. And moving forward for that—from that point of view, if you get to Tuesday, Wednesday, or Thursday of that week, when the Captain opened the port up 24/7, there was a quick ramp up. And to my earlier comments in why the Coast Guard and the Pilots Association and the Maritime Exchange put out two, or possibly three, statements, was to lay those concerns. I think that is a very good question going forward, and let me, as an example—and I don't think we are there yet, but let me, as an example, give you a scenario where I think there is long-term impact, and I think they have suffered from it over the last year and a half or 2 years and continue to suffer, and that is when the West Coast struck and shut down all of the ports in California and Oregon and Washington. We see, today, because of that, a diversion of—and not just because of that reason, but that is something the people talk about in the industry. We see a diversion of those cargoes, including container ships, coming to Gulf, South Atlantic, and some North Atlantic ports.So what we need to avoid, and I think how this incident was handled, I would also add the fact that there is Congressional interest in what can we do to make sure it doesn't happen again demonstrates that we are taking the kind of prudent steps

that a cargo owner or a ship owner or operator would want us to take. But we can never let our guard down on that.

Ms. SCHWARTZ. Well, I thank you. Those were my only questions. Thank you for your testimony.

Mr. ROCHFORD. Thank—you are welcome.

Mr. LOBIONDO. Congressman Andrews?

Mr. ANDREWS. Thank you. And I would like to thank both witnesses. It is very encouraging to hear the level of cooperation between the business community, port community, and environmental community on this issue, and it is heartening.

Dennis, if I may, I wanted to ask you a question. You estimate the daily cost to operate a ship being $25,000 to $40,000 in the low end for a general cargo ship daily up to $250,000 a day for the post-Panamex class ships. What is a fair estimate of the cost of operating one of the tankers, like the one that created this problem?

Mr. ROCHFORD. Well, it is not in the $250,000 range. They are the larger VLCCs, the ones that are coming on line now. I would just be guessing, but I am going to indicate it is probably somewhere in the $50,000 to $100,000 range, but I can get you that answer. I don't have that information—

Mr. ANDREWS. Yeah, I mean—

Mr. ROCHFORD. —at my finger—

Mr. ANDREWS. —I am just really interested in a range.

Mr. ROCHFORD. Yeah.

Mr. ANDREWS. I am interested in Eric's suggestion about pursuing the idea of the minimum clearance. I have heard some very experienced voices in the community talk about this as well. If we adopted a policy that would not let these oil ships up the river until the tide had reached a certain point above low tide, what kind of cost impact does that have on the operation of that ship? Is it—is this $75,000 or so broken into 24 equal parts, so if it waits three more hours, it adds 1/8 to the cost? Do you following my reasoning? Does it work that way?

Mr. ROCHFORD. Well, it would work a couple of ways. Number one is whatever the operating cost is, I am sure you can take it and divide by 24.

Mr. ANDREWS. Yeah.

Mr. ROCHFORD. But in the supply chain or, if you will, the transportation chain coming up the Delaware River—

Mr. ANDREWS. There are costs, I am sure.

Mr. ROCHFORD. There are any number of scheduling issues in consideration as well as the cost of the facility in terms of the inventory that they require. Let me say has been always the discussion about how much water is under the—I think the other point worth noting here is the level of sophistication that we have in place on the Delaware River to move vessels up the river, whether it is a fruit ship or an oil tanker. The Pilots Association has invested millions upon millions of dollars in the last 5 years and before that in enhanced radar down at the Bay, the Delaware Bay. They have invested, if not millions, hundreds of thousands of dollars in GPS capabilities, so every pilot that gets on a ship in this river knows exactly where they are in the channel and they also know who else is around them. Every four years, every licensed—first-class licensed pilot is—goes off for training and retraining. So

in—from our vantage point, from industry's vantage point, you know, if you are running a port, deeper water is always better. That is why I support the 45-foot channel. But—

Mr. ANDREWS. Oh, I didn't know you supported it.

Mr. ROCHFORD. I had to get it in. You know I had to get it in. But I believe we have—and take that a step back to—you could say, well, Rochford, that is your judgment about the pilots. Well, okay, it is. But I will tell you whose other judgment it is. It is the people that are bringing those ships up the Delaware River, the captains, the owners, and the charters. And I would conclude by getting back to the other point I made, and that is there needs to be a clear acceptance of the fact that keeping the water at 40 feet is a federal responsibility in this case, and I think there needs to be a level of confidence that industry, from the tug operators to the pilots to the ship masters and everybody else in the Coast Guard that has responsibility to bring that vessel up or doing the right job.

And very quickly, the other thing that we do have in place is the port system. And I believe the funding for this year to keep that system up and operational came through Pennsylvania. But we still believe that is a federal responsibility.

Mr. ANDREWS. Yeah. I want to say, for the record, I agree with you. The pilots do an outstanding job. Without them, the river doesn't work. They are indispensable. I trust their judgment on these things, and I think they do a great job. I think one of the stories here is how many problems are avoided because of their skill in the work that they do.

Mr. ROCHFORD. I agree with that.

Mr. ANDREWS. I just want to explore Eric's point a bit that if it costs $70,000 a day to run one of these, and if there is a fair relationship of, you know, 1/24 for each hour, and if you wait 3 or 4 hours for the tide to get a bit higher, you know, you are talking about 12 or 15 percent of the cost, which is $14,000, $15,000, $16,000. Now I understand there is—there are costs on shore. There are scheduling issues at the refineries, there are trucking issues, and so forth, that that doesn't capture the full cost, but I venture to say there isn't anybody here who wouldn't be in favor of having expended another $20,000 or $30,000 on November the 16th to wait the few hours, if that would have avoided this problem. Maybe one of the ideas that we could pick up on what Eric talked about was that if ships have very sophisticated technology that would identify a hazard, maybe they don't have to go by these minimum standards, but if they don't, they should, particularly when it comes to oil. I am just—I am interested in exploring that concept further.

Thank you, Mr. Chairman.

Mr. LOBIONDO. Okay. Thank you, Rob.

Dennis, I understood correctly that the shipping industry was involved with representation to manage the vessel traffic when all of this was taking place?

Mr. ROCHFORD. In the what? Excuse me?

Mr. LOBIONDO. In managing the vessel traffic for the port, did the Coast Guard include—

Mr. ROCHFORD. The vessel traffic system?

Mr. LOBIONDO. Did the Coast Guard include the shipping industry?

Mr. ROCHFORD. Oh, absolutely.

Mr. LOBIONDO. Yes.

Mr. ROCHFORD. Oh, absolutely.

Mr. LOBIONDO. Okay.

Mr. ROCHFORD. As the Captain mentioned, Captain Linton was part of the Unified Command—

Mr. LOBIONDO. Okay.

Mr. ROCHFORD. —on day one, and we were engaged and our time was exchanged through the weekend in getting information out. I didn't spend a lot of time over at the Unified Command, but any number of industry representatives were there.

Mr. LOBIONDO. I want to take just a moment, although he wasn't on the panel. His name has been mentioned a couple of times. Captain Mike Linton is here today. Captain, we thank you for your expertise and your help in so many different areas that we work with that are of critical importance to the maritime industry.

Eric, I wanted to pursue for just a minute a concern that Mannington Meadows and the bald eagle's nest were not on a critical list. We are going to have to explore how that information is updated, but I assume that it is safe to assume that we would expect that you would be willing to help out if there is a role that you can play in verifying the information or helping to update what we already have?

Mr. STILES. Yes, Chairman.

Mr. LOBIONDO. Okay.

Mr. STILES. I think, again, when I worked for the DEP, we updated our base annually, and I did exchange that with the U.S. Fish and Wildlife Service. It would seem that those two agencies—that information is not being transported or communicated at that same time interval with NOAA and with the U.S. Coast Guard. Any help that we can have—offer in supporting that and if a general, whether a council is formed regarding the Delaware Bay and taking a look at some of these issues, broader issues, we would love to help support.

Mr. LOBIONDO. Sure. I just didn't want to make any false assumptions there.

Well, I would like, at the conclusion, to thank my colleagues for joining me today. I would like to thank Seaport Museum for hosting us today and all of the panel members. I think that while we have had some answers that were given, we had, maybe, many more questions that were raised, and I will assure you that we will be following up with specific suggestions that we know we can move on legislatively sort of in a quick manner. And we will be looking, although we haven't set the dates, we were anticipating that we would have to have additional hearings, and we certainly will be following up on that. So once again, I thank everyone, and the hearing is adjourned at 12:40.

[Whereupon, at 12:40 p.m., the Subcommittee was adjourned.]

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DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

REAR ADMIRAL SALLY BRICE-O'HARA

AND

CAPTAIN JONATHAN SARUBBI

ON THE T/S ATHOS I INCIDENT

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

U.S. HOUSE OF REPRESENTATIVES

JANUARY 18, 2005

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THE INDEPENDENCE SEAPORT MUSEUM, PENN'S LANDING
JANUARY 18, 2005

Good morning Mr. Chairman and distinguished members of the Subcommittee. I am Rear Admiral Sally Brice-O'Hara, District Commander for the Fifth Coast Guard District. The Fifth Coast Guard District office is located in Portsmouth, Virginia and is comprised of: Maryland; Virginia; District of Columbia; North Carolina; Delaware; and portions of Pennsylvania and New Jersey. I provide oversight, guidance and set policy for all marine safety, security, and operational activities within the Fifth District's area of responsibility. To my left/right is Captain Jonathan Sarubbi, Commander of Coast Guard Marine Safety Office/Group Philadelphia. Captain Sarubbi serves concurrently as the Captain of the Port, Philadelphia; Federal On Scene Coordinator for the coastal zone; Officer in Charge, Marine Inspection; Search and Rescue Mission Coordinator; and Federal Maritime Security Coordinator. Captain Sarubbi's area of responsibility includes the state of Delaware, most of New Jersey, and the eastern half of Pennsylvania. We are pleased to have the opportunity to appear before you today to discuss the T/S ATHOS I incident and upon completion of my opening statement, we would be happy to answer any questions you may have.

Before I discuss the T/S ATHOS I pollution incident and subsequent response activities, I'd like to provide you with some background information.

The Delaware Bay and River is a 120-mile waterway that is home to the nation's sixth largest port and third largest petrochemical port. There are approximately 3,000 deep draft vessel arrivals each year and it is the largest receiving port in the United States for Very Large Crude Carriers (tank ships greater than 125,000 deadweight tons). Nearly 42 million gallons of crude oil are moved on the Delaware River on a daily basis. The port is the largest North American port for steel, paper, and meat imports as well as being the largest importer of cocoa bean and fruit on the east coast. The port system generates $19 billion in annual economic activity and is home to five of the largest east coast refineries and six nuclear power plants. It is one of only 14 strategic ports in the nation transporting military supplies and equipment by vessel to support our troops overseas. The port is critical not only to the region, but also to the nation.

The Delaware estuary is a complex environmental system made up of diverse shoreline features. There are heavily industrialized areas with vulnerable water intakes concentrated from the Delaware Memorial Bridge to the Betsy Ross Bridge, interspersed with pristine marine habitats including the John Heinz National Wildlife Center. The Salem and Hope Creek Nuclear Power Plant is located at Artificial Island, NJ. There are several historical and archaeological sites along the river. There are a number of tributaries that feed environmentally sensitive wetlands, including Mantua Creek, Darby Creek, Raccoon Creek, Oldmans Creek and Big Timber Creek. The shorelines of Chester Island, Little Tinicum Island, and Monds Island are composed of freshwater marshes. Pea Patch Island, located near the Chesapeake and Delaware Canal, is home to the largest heron rookery on the east coast. Vegetated banks and marshes line most of the creeks that flow into the Delaware River. There are also sections of sand or sand and gravel beaches along the Delaware River shoreline.

The biological resources at risk in the region are primarily shoreline habitats, birds, fish and shellfish. There are high concentrations of over-wintering waterfowl (including black ducks, Canada geese and northern pintails) and diving ducks in this area, with the highest concentration in the region from the Commodore Barry Bridge to Little Tinicum Island. There are also several birds of prey in the region including Peregrine Falcons and nesting American Bald Eagle pairs. Few commercially or recreationally important fish are present in this section of the Delaware River at this time of year. The fish that are present, including spot and Atlantic sturgeon, are in the deeper waters. Blue crab and oysters are the only significant shellfish in this area and both are at the very downstream end of the spill zone.

Having set the stage for the level of activity in this marine transportation system and the resources at risk throughout the region, I will describe the incident and subsequent response.

Initial Response

At 9:30 p.m. on November 26, 2004, the Coast Guard was notified by a tug assisting the T/S ATHOS I in docking at the CITGO Asphalt Refining Company facility that the tanker was spilling oil. Simultaneously, the vessel's hull had been breached and as a result acquired an eight degree list, thereby causing its engines to automatically shut down. The assisting tug reported that the vessel was 250 feet off of the pier. The T/S ATHOS I is a 750 foot-long, Cypriot-flagged tank ship with a single bottom, double-sided hull and was built in 1983. The T/S ATHOS I was inbound with approximately 13 million gallons of Bachaquero Venezuelan crude oil destined for the CITGO Asphalt Refining Company facility in West Deptford, NJ (hereafter CITGO). Because of its significant list, which increased the vessel's draft, the vessel could not be placed safely at its intended berth at the facility and instead anchored in Mantua Creek, in the immediate vicinity where the casualty occurred.

Immediately following the incident, the vessel activated its Oil Pollution Act of 1990 (OPA 90) mandated vessel response plan (VRP) and it's designated Qualified Individual (QI), The O'Brien's Group. The QI reported to the Coast Guard Operations Center at Marine Safety Office/Group Philadelphia to direct clean-up efforts on behalf of the vessel

owners, Tsakos Shipping Company. Within 20 minutes of CITGO receiving the report of the spill, they directed their response contractor, Clean Venture, to boom off the vessel. The Coast Guard established a Unified Command and dispatched resources to assess the situation. The vessel's crew conducted tank soundings to determine the location of the damage and the amount of cargo lost. Bachaquero crude oil is slightly buoyant, very viscous and sticky. It is a cargo that is heated, has a high asphalt content and weathers slowly and can easily form into tar balls. At the time of the incident, the tide was incoming and the current was approximately one and a half to two knots. The weather was clear, the wind calm, the temperature was 38 degrees Fahrenheit. Within just a few hours, thick oil covered the river as far north as the Walt Whitman Bridge, approximately six miles north of the incident, and began to spread. The preliminary report of amount of oil spilled was estimated at 30,000 gallons. Once the vessel was stabilized several days later, a worst-case estimate of amount of oil released was determined to be approximately 473,500 gallons. However, some of that oil was believed to have migrated into the number seven port wing ballast tank.

The Coast Guard Operations Center in Philadelphia made notifications to federal, state, and local agencies as well as other key stakeholders including the National Oceanic and Atmospheric Administration (NOAA) Scientific Support Coordinator, a NOAA Navigation Response Survey Team, the Department of the Interior, and a myriad of other concerned parties. Personnel, strike teams and response resources were activated to respond to the potential major oil spill and initiate an investigation into the cause of the incident. Other elements of the Unified Command began to be assembled during the early morning hours of Saturday, November 27, 2004. By mid-morning, a growing Unified Command comprised of representatives from Pennsylvania, New Jersey, Delaware, the Coast Guard, and the vessel's QI had been established. Initial response objectives were quickly determined. The objectives included: stabilizing the vessel and taking corrective actions to prevent further discharge, conducting shoreline assessments, deploying protective booming and monitoring existing booming for effectiveness, collecting and recovering free-floating oil, establishing and enforcing a safety zone, collecting and rehabilitating injured wildlife, facilitating vessel traffic wherever possible, and informing the public and stakeholders. A Coast Guard helicopter conducted an over-flight of the spill at first light and shoreline assessment teams were deployed to determine the extent of oil impact.

Although it is anticipated that the cleanup will continue through the summer of 2005, the Unified Command addressed a number of complex issues during the initial phase of the response that warrant discussion. Additionally, there were several best practices and lessons learned. These issues, best practices, and lessons learned are summarized below.

Environmental Protection and Oil Recovery Efforts

The response to the oil spill consisted of rapid implementation of assessment, control, containment, protection and recovery strategies. These strategies were employed concurrently and continuously to meet the Unified Command's ultimate goals of protecting the environment and restoring waterways activities.

Assessment teams were deployed by air, water, underwater (divers) and ground to track the oil migration and determine the extent of oil contamination. The assessment teams determined that the oil spill impacted both shorelines of the relatively narrow Delaware

River, and each tide cycle provided net movement of oil slowly to the south. In all, the shoreline between the Tacony-Palmyra Bridge and Artificial Island, including the shorelines of creeks, marshes and other tributaries, were impacted. However, only five miles of shoreline were heavily impacted with oil, while the remaining shoreline impacts were light or minimal.

One major challenge of the assessment teams was tracking and locating submerged oil. Experts with submerged oil detection and recovery experience were brought in to assist with the response. The submerged oil expert team was tasked with developing a plan for detecting, monitoring and recovering the submerged oil. Of particular concern was the potential for the submerged oil reaching the intakes of the Salem and Hope Creek Nuclear Power Plant. A special engineering assessment team was dispatched to the Nuclear Power Plant to discuss options for preventing oil from entering the water intakes. The team put together a plan that included the placement of fixed monitoring stations that could be used as an early warning system to detect surges of submerged oil concentrations heading toward the plant and to also record trends in submerged oil concentrations and migration over time.

Concurrently, as the assessments were being completed, response resources were deployed to control, contain, protect sensitive areas and recover oil. As mentioned before, containment booming was quickly deployed around the vessel. A fleet of six on-water skimming units was deployed to recover free-floating oil and help prevent shoreline impacts. To recover submerged oil, the Unified Command chose to deploy five vessel subsurface oil recovery systems designed to collect oil on the bottom and throughout the water column. Deflection and containment booms (floating barriers) were deployed by several on-water task forces established to protect sensitive shorelines, river inlets, marinas, marshes, boats and commercial vessels and piers. At the height of the response, over 20 miles of boom was deployed.

The Delaware River region is one of the largest migratory bird transit points in the United States. Oiled birds present a highly visible symbol to the public of a spill's impact. Hundreds of personnel were deployed to disperse migrant birds and recover oiled wildlife to transport them to a triage facility. To date, over 585 oiled birds have been collected and 361 have been successfully cleaned and released or are awaiting release.

Despite the best protective efforts of responders, oil still impacted the shorelines due to rapid spreading. The Unified Command was prepared for this eventuality and mobilized a massive surface oil recovery effort. Over 1800 responders were deployed. Efforts focused on removal of oil from sensitive habitats and shorelines where oil could be re-floated and remobilized by changing tides, winds and currents. Laborers and heavy machinery, under the careful supervision of expert government scientists and responders, removed tons of contaminated debris. Because of the complexity of the contaminated shoreline, the spill cleanup operation was divided into over 20 different geographic work divisions. Cleanup operations will continue into the spring and summer of 2005.

To date, the following amount of oil recovered is as follows: oil – 3,967 gallons; oily water mixture – 60,829 gallons; oily contaminated debris – 6,699 tons.

Much of the spilled oil has now formed into tar balls that can be found throughout the water column. Oil that mixes with shoreline sediment can become heavier than water and sink. The tar balls are very sticky and long-lived. They will slowly break down by long term weathering processes such as photo-oxidation and biodegradation. Submerged oil is a considerable concern for aquatic resources. The National Oceanic and Atmospheric Administration, as lead federal trustee under OPA 90, in conjunction with the Responsible Party and other federal and state trustees, are conducting a cooperative Natural Resource Damage Assessment to determine the long term environmental impacts of this oil spill and will develop a plan to restore or rehabilitate the injured resources.

Under the Oil Pollution Act of 1990, the Responsible Party's limit of liability is established by the gross tonnage (GT) of the tankship. The GT of the T/S ATHOS I is 37, 895 GT. Accordingly, the owner's limit of liability in $45,474,000 ($1,200 per GT). Costs for cleanup and restoration beyond the limit of liability may be eligible for payment from the Oil Spill Liability Trust Fund established under OPA 90.

Port Management Issues

Due to the extent of the oil spill and the unknown cause of the damage to the T/S ATHOS I, it was necessary to close the river for a 27-mile stretch from the Tacony-Palmyra Bridge to the southern end of the Marcus Hook Anchorage. A safety zone was established by the Captain of the Port under the authority of 33 Code of Federal Regulations, Part 165. The Order closed portions of the Delaware River to facilitate oil spill cleanup operations, prevent further spread of the oil, and to allow for surveys of the channel bottom to be conducted to search for any obstructions. As a result of the Unified Command's proactive management of the waterways, the major refineries and smaller facilities were not forced to shut down operations. However, this necessary waterways management action did result in significant economic impacts in other areas. Initially, over 20 vessels were delayed as a result of the spill. Additionally, no vessels were allowed to leave the port until they had been decontaminated and many vessels could not enter the safety zone as their intended berths contained contaminated vessels awaiting cleanup. Before the river was re-opened to all traffic, it was necessary to determine that there were no obstructions in the channel that could cause another incident and, as a result, numerous ship schedules were adversely impacted.

The Unified Command worked closely with the Mariners' Advisory Committee and Delaware Bay and River Pilot's Association to develop protocols for managing and authorizing vessel movements. The Maritime Exchange for the Delaware River and Bay quickly disseminated information to the port community. On the evening of November 26, 2004 and throughout November 27, 2004, the port was closed to deep draft vessel traffic. On November 28, 2004, the Unified Command permitted commercial inbound vessels to transit through the safety zone with certain restrictions. Shortly thereafter, and as a result of not finding any underwater obstruction, precautionary draft restrictions were imposed, requiring that any vessel with a draft greater than 34 feet transit the area only at high tide as a precautionary measure. Under normal circumstances, the pilotage guidelines state that the maximum fresh water draft for river transit is 40 feet and vessels arriving with a draft in excess of 37 feet are to transit during flood current. The T/S ATHOS I's draft was 36.06 feet and met the pilotage guidelines for transiting the Delaware River.

To facilitate vessel movement, the Waterways Management Unit established Decontamination Task Forces to clean oil residue from vessels. The Unified Command agreed to a standard of "clean" that was defined as: "enough oil removed so the vessel no longer gives off a sheen." Oiled vessels were delayed at facilities awaiting decontamination, vessels were in anchorages and offshore awaiting open berths and vessel agents were delaying or rerouting shipments due to delays within the port. The Unified Command then established a Vessel and Facility Decontamination Prioritization Unit to assist the Waterways Management Unit with prioritizing vessels and facilities for decontamination using port economic factors as one of the decision drivers. Overall, as a result of the spill and necessary waterways management decisions, over two hundred vessels were delayed in their arrival and departure times, and still others were diverted to other ports.

By December 8, 2004, the river was open to all marine traffic, with the exception of wake restrictions, as oil was no longer mobile on the surface of the river and a channel survey had been completed, validating that the channel was clear of obstructions.

Salvage

Salvage of the damaged T/S ATHOS I involved shifting of cargo and ballast to return the vessel to an even keel, removing the remaining 13 million gallons of oil, and effecting temporary repairs that would allow the vessel to proceed to a dry dock for permanent repairs. The vessel was returned to an even keel by internally transferring cargo and taking on additional ballast water, but the result left the vessel at a draft of 39 feet, too deep to go to the facility and offload the remaining cargo. As a result, the T/S ATHOS I remained at anchorage where barges were brought along side and cargo was pumped off to a point where the vessel could transit to the CITGO facility and discharge its remaining cargo. Effecting temporary repairs required the design and fabrication of a steel box patch and calm water for application. The ship was moved to Groves Terminal in Fairless Hills, PA on December 21, 2004 and divers were able to install a temporary patch on the damaged hull. On December 31, 2004, the T/S ATHOS I was allowed to proceed to the Atlantic Marine shipyard in Mobile, AL for tank cleaning, drydocking, and to effect permanent repairs. The T/S ATHOS I arrived in Mobile, AL on Friday, January 7, 2005.

The initial spill estimate of 30,000 gallons proved to be inaccurate due to the eight-degree list on the vessel, which prevented an accurate gauging of the tanks. A dive survey, which was video recorded, later determined that the vessel had not only sustained a hole in the number seven center cargo tank, it had also sustained a hole in the number seven port ballast tank as well. The bulkhead between the cargo and ballast tank had been compromised, allowing an unknown amount of cargo to migrate into the ballast tank and then into the river. As previously stated, once the vessel was stabilized and no further oil was escaping, a worst-case estimate of oil released was approximately 473,500 gallons. When the tanks are stripped and cleaned in Mobile, a more accurate estimate of the total amount of oil lost into the Delaware River will be determined.

Investigation

The Coast Guard immediately initiated an investigation to determine the cause of the accident. The docking pilot, river pilot, and the T/S ATHOS I's master and navigation watchstanders at the time of the incident were interviewed and given drug and alcohol

tests with negative results. Based on diver surveys, it was determined that the T/S ATHOS I sustained a six foot by one and a half foot tear and a two foot by one and a half foot puncture in the bottom of its number seven port wing ballast tank and number seven center cargo tank. The number seven port ballast tank was empty at the time of the incident, but the number seven center cargo tank contained 2,236,216 gallons of crude oil. Eyewitness accounts and preliminary ship hydrostatic calculations suggested that the damage to the T/S ATHOS I occurred after the ship exited the shipping channel and was maneuvering in the southern end of the Mantua Creek anchorage. With the help of the vessel's global positioning system, the NOAA Office of Coast Survey recreated the ATHOS I's track line to help determine when the damage to the vessel occurred. Using this information, the Army Corps of Engineers (ACOE), NOAA, and American Underwater Search and Survey (AUSS), a company hired by the vessel's insurers, worked hand in hand to complete bottom surveys of the southern end of the Mantua Creek anchorage and approximately 8.5 miles of the shipping channel. On December 4, 2004, a large cast iron object was discovered approximately 700 feet from the CITGO terminal. The heavily corroded, U shaped object measured 12.5 feet long and three feet wide and weighed 12-tons. It protruded approximately three feet above the river floor. On December 9, 2004, the object was recovered from the river, and it was determined to be the lower housing of a centrifugal pump. A small red paint chip was found embedded on the housing along with fresh scrape marks. The National Transportation Safety Board's (NTSB) forensic laboratory matched the paint on the pump housing with a paint sample taken from the T/S ATHOS I. The Coast Guard is working with the ACOE and other entities such as the National Institute of Standards and Technology to determine the manufacturer and owner of the centrifugal pump housing. The marine casualty investigation, being conducted by members of Marine Safety Office/Group Philadelphia, is on-going.

Port Community Preparedness

The groundwork for mounting a successful response began long before the T/S ATHOS I incident. The Oil Pollution Act of 1990 (OPA-90) was key to the preparedness of the port in responding to this very dynamic and challenging oil spill. OPA-90 required the establishment of an Area Committee for the port and development of an Area Contingency Plan (ACP). It also required participation in the National Preparedness for Response Exercise Program (NPREP) mandating triennial oil spill response exercises. In addition to port preparedness, OPA-90 requires tank vessels to have a vessel response plan (VRP) detailing actions to be taken to mitigate the impact of an incident such as what occurred to the T/S ATHOS I. OPA-90 also requires that tank vessels have a designated Qualified Individual (an individual who can immediately respond to an incident and take actions on the company's behalf) on call 24 hours a day.

In addition to OPA-90, the National Oil and Hazardous Substances Pollution Contingency Plan, under which the Captain of the Port and I have the authority and responsibility to direct oil spill response operations, provides for special teams that can be called upon for technical assistance. These teams were invaluable to the T/S ATHOS I response and included the Coast Guard National Strike Force, the NOAA Scientific Support Coordinator and Navigation Response Team, the Environmental Protection Agency Emergency Response Team, Coast Guard Public Affairs Information Team, the Army Corps of Engineers, the Nuclear Regulatory Commission and U. S. Navy Supervisor of

Salvage. These teams rapidly responded to Captain Sarubbi's request for support and performed exceptionally. Finally, the ability to mobilize these Federal assets quickly was highly dependent on the availability of response funding. The Coast Guard National Pollution Funds Center provided immediate access to the Oil Spill Liability Trust Fund to pay for all Federal response activities.

Over the past few years the Delaware Bay and River port community, which includes federal, state and local government agencies, the maritime industry, and other interested parties has come together in an unprecedented way to work as a team in preparing to respond to incidents threatening the marine environment, public health and safety, and maritime commerce. There are three significant actions the port community took prior to the ATHOS I incident that are noteworthy.

First, and most important, was the unwavering commitment by all port partners to invest their time in building relationships with one another. Two very important committees, the Area Committee and the Area Maritime Security Committee, provided the opportunity to bring together a wide range of port partners on a regular basis to conduct joint training, discuss issues of the port, and develop comprehensive port response and security plans. The relationships developed through these committees before an incident occurs are essential to responding to such a complex incident as the T/S ATHOS I oil spill.

Second, the National Incident Management System Incident Command System (ICS) was the cornerstone in bringing together the 1800 person organization that was necessary to respond to this incident. 20 agencies and numerous commercial entities committed to using ICS enabled the Unified Command, made up of representatives from the Coast Guard, Pennsylvania, New Jersey, Delaware and the Responsible Party (represented by The O'Brien's Group), to rapidly build an integrated team that had a common set of objectives and priorities.

The strength of ICS is that it transcends the different organizational structures and unique terminology and processes that agencies use internally and provides a common model that enables those in the response community to join forces. Without a strong commitment from all response entities to use ICS, the Unified Command would not have been able to leverage the resources necessary to manage the multitude of operational issues that the T/S ATHOS I incident presented, nor could the Unified Command speak with "one voice," providing the public with a clear and cohesive message.

Over the last two years, the port community has trained together in the use of the Incident Command System, and as the T/S ATHOS I incident reinforced, it is clear that how well you respond is directly related to how well you prepare and practice.

Third, through an aggressive exercise program, we developed and honed critical capabilities through collective training during several challenging scenarios. In November 2003, the port held its triennial oil spill response exercise as required by OPA-90. This major exercise had many similarities to the actual T/S ATHOS I incident and we immediately set about implementing the many lessons learned in our ACP, including most recently, updating the ACP to be in alignment with the new National Response Plan.

I cannot emphasize enough, the importance of the team and the close port relationships that fostered the coordination and support of this response. The use of a Unified Command and a single response management system is absolutely necessary. We cannot afford to work at odds. Pre-incident planning and port community preparedness put us in a position to succeed.

Public and Government Outreach/Communication

The oil spill affected waterways and shorelines in three states and several different media markets creating immediate and significant local, regional and national media interest.

To meet the public's need for information and the demands of the media, a Joint Information Center (JIC) was established to provide a single source of information, ensuring that all public information regarding the spill, investigation, and response was accurate and timely. Members from federal, state, and local agencies, and various port stakeholders were represented in the JIC. Each day more than 150 media inquiries were received during the first week of the response. The first press briefing with the Unified Command was held at 11:30 a.m. November 27, 2004 and attended by 15 media representatives. Subsequent press briefings were conducted at 3:00 p.m. each day and attended by an average of 30 media representatives. This provided a predictable, consistent release of information from the key members of the Unified Command. A website was established November 27, 2004 at http://www.incidentinfo.com on the Maritime Exchange website. All the daily news releases, photos and fact sheets were posted on the website for public viewing. The website received more than 500,000 hits in the first 10 days.

The media was given access to view and record response operations, the command post, and the wildlife rehabilitation center. Locally, the JIC reached out to the public by going door to door to hand out informational fliers and answering questions. The Unified Command also held two public meetings to discuss the issues and answer questions about the spill.

Although initially understaffed, an effective group of governmental liaison officers were assigned to advise federal, state, and local elected officials of the pertinent issues associated with the spill. They also worked closely with the local Chambers of Commerce and schools; coordinated meetings with the state's Office of Emergency Management, public health, and fire departments; published daily advisories; conducted teleconferences with congressional staffers; and hosted tours for government officials.

Coast Guard Auxiliary members were also used for public outreach. They provide invaluable assistance and information about the spill to members of yacht clubs and users of marinas.

In closing, I reiterate my personal commitment to the success of this and all federal oversight hearings. I support the desire to identify strengths of our national response system and areas for improvement. Captain Sarubbi and I are ready to answer your questions to the very best of our ability.

The Oil Spill Liability Trust Fund (OSLTF) is at Risk for Substantial Costs Resulting from the T/V Athos I Oil Spill

QUESTION: Please clarify the RP's opportunities to seek reimbursement from the Oil Spill Liability Trust Fund (OSLTF), and the potential impact of this spill on the OSLTF.

ANSWER:
The RP could assert a claim to the NPFC for those removal costs and damages it incurred in excess of its limit of liability under OPA section 1004, 33 USC § 2704. To establish its entitlement to a liability limit under OPA 90, the RP must prove, in general, that the spill was not caused by gross negligence, willful misconduct, or a violation of safety, operating or construction regulations on the part of the RP or its agents. In such event, the remaining costs of the removal and uncompensated damages would be payable from the OSLTF.

In addition, the RP may assert a sole third party liability defense under OPA section 1003(a) (33 USC § 2703(a)), and, if successful, could present a claim to the NPFC for reimbursement from the OSLTF of **all** the removal costs and damages it has paid or incurred. See OPA section 1008, 33 USC § 2708. The legal standard, burden of proof and elements of proof the RP would have to meet to make out a sole third party defense under OPA 90, are set forth in OPA section 1003(a), which provides in relevant part that:

> (a) COMPLETE DEFENSES.--A responsible party is not liable for removal costs or damages under section 1002 if *the responsible party establishes*, by a *preponderance of the evidence*, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused *solely* by--
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> . . .;
>
> (3) an act or omission of a third party, other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail), *if the responsible party establishes*, by a *preponderance of the evidence*, that the responsible party--
>
> (A) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances; and
>
> (B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions; or

[Emphasis added]. Moreover, the sole third party liability defense does not apply "to the extent the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of that claimant" (OPA section 1012(b), 33 USC § 2712(b); see also OPA section 1003(b), 33 USC §§ 2703(b)), or if the responsible party fails or refuses to:

> (1) to report the incident as required by law if the responsible party knows or has reason to know of the incident;
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> (2) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or
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> (3) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

33 USC § 2703(c). If a responsible party does not meet this burden it is liable under OPA 90 for removal costs and damages up to its limit of liability. If, however, the NPFC determines[1] that a responsible is entitled to a sole third party liability defense, the responsible party is then insulated from liability under OPA 90, and, stepping into the shoes of any other claimant under OPA section 1008(a)(1), 33 USC § 2708(a)(1), is eligible to seek reimbursement from the OSLTF for the entire amount of the removal costs and damages it has paid or incurred, by submitting a claim under OPA section 1013, 33 USC § 2713.

In this instance, the RP may decide, based on its intention to claim a liability limit and assert a sole third party liability defense, to stop paying removal costs or third party damage claims resulting from the spill. In that event, responsibility for completing the removal and for considering and paying damage claims would immediately fall on the NPFC and the OSLTF. Based on costs reported to date for removal activities and early indications of the magnitude of damages caused by the Athos I spill, the OSLTF could be at risk for $150-200 million or more.

QUESTION: If a sole third party defense is established, who would be responsible for then seeking damages against the third party, if identified?

ANSWER: If the NPFC determined that the RP was entitled to a sole third party liability defense under OPA 90, and one or more responsible third parties could be identified,[2] the NPFC's only recourse would then be to seek to cost recovery from the identified third party or parties as the liable responsible party(ies) under OPA section 1002(d)(1)(A) (33 USC § 2702(d)(1)(A)). The prospects for cost recovery would depend on identification of the responsible third party, that party's ability to pay, and any liability limit that may apply to that responsible party under OPA section 1002(d)(2), 33 USC § 2702(d)(2)). The NPFC would proceed, initially, by submitting a bill to the identified responsible third parties. If the responsible third party refused to reimburse the OSLTF, or denied any liability, the matter might then be referred by NPFC/CG to the Department of Justice in order to pursue removal cost and damage recovery judicially.

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[1] Third-party liability claims may also be adjudicated by the courts when designated responsible parties (the RP in this instance) sue third-parties for reimbursement of removal costs and damages (see OPA sections 1002(d)(1)(B) and 1009, 33 USC §§ 2702(d)(1)(B) and 2709).

[2] A responsible third party may be identified by the designated responsible party as part of its proof when presenting a "sole third party liability" claim to the NPFC under OPA section 1003(a)(3), 33 USC § 2703(a)(3), or in a court suit brought by the designated responsible party against the third party. A responsible third party might also be identified by the incident investigation, and by other third parties when presenting damage claims to the OSLTF. The responsible third party's liability could be decided administratively by the NPFC if the issue arises in a claim adjudication, or, if raised by the designated RP in a civil suit, by the court.

U.S. House of Representatives' Coast Guard and Maritime Transportation Subcommittee
Oversight Field Hearing on the November 26, 2004 oil spill on the Delaware River
Remarks by New Jersey DEP Commissioner Bradley M. Campbell
January 18, 2005

I want to express my thanks to Chairman LoBiondo and Subcommittee members for the opportunity to appear before you today.

Under the leadership of the U.S. Coast Guard, with assistance from state and local emergency responders, the response to the Athos I oil spill was a wonderful example of how a variety of agencies joined in common cause can work cooperatively to address a major environmental accident.

Even the best circumstances offer learning opportunities, and I would like to share with you my impressions of how we might improve our performance in the future.

I also would like to discuss some of the inequities and shortcomings I see, as a state representative, in the federal laws guiding oil spill responses and reimbursement.

As you know, I serve as Commissioner of the New Jersey Department of Environmental Protection. Our mission at the DEP is to protect New Jersey's air, land, water and natural resources. The Delaware River is home to the American bald eagle, the federally endangered short-nosed sturgeon, striped bass, American shad, and the horseshoe crab, an ancient species, which is a critical link to the survival of other wildlife.

Every year, in May, the Delaware Bay shoreline hosts one of the world's greatest bird migrations including the red knots, a threatened species, which stop on our bay shores to rest and feed on horseshoe crab eggs before flying nonstop to the Arctic where they nest. The biodiversity of the Delaware River is rich and unique, and it is one of New Jersey's greatest treasures.

We learned that treasure had sustained significant damage at 10 p.m., on November 26, 2004, when we received notification that the Athos I was leaking oil after an attempted docking at a Citgo Petroleum Corp. terminal in West Deptford Township.

Within hours, New Jersey Acting Governor Richard J. Codey and I flew over the site to survey the incident. Initial reports estimated upwards of 30,000 gallons had escaped from the single-hulled vessel after it hit a U-shaped, cast-iron pipe, 15 feet long and approx. 4-feet in diameter found 700 feet from the Citgo docks.

From the outset, we anticipated that the initial spill estimate was low. Unfortunately, the actual number did go much higher. Late last week, the Coast Guard announced that an "accurate estimate" of approximately 265,000 gallons leaked from the vessel, making it the third largest Delaware River spill in recent history.

Regardless of the size of any initial estimate – 30,000 gallons or 300,000 – we regard any spill in the Delaware River as serious and the DEP responded on November 26 as we always do to any hazardous situation: Quickly.

Within 90 minutes of the initial report, DEP emergency responders were on the scene, working hand in hand with the U.S. Coast Guard and other federal and state agencies – which make up the Unified Command -- to contain and clean up the oil.

Under the coordination of the New Jersey Office of Emergency Management, our DEP emergency responders maintain a strong, cooperative partnership with other agencies on the state, county and federal levels. As part of the OEM's response structure, we regularly work and train with other emergency responders, ensuring a seamless response and enabling these professionals to function as an effective team from the outset.

Working as part of the Unified Command, DEP emergency responders were among the more than 1,700 responders working in the command center and along the Delaware River.

In the first few days following the spill, strong tides, high winds and heavy rains hampered containment and cleanup efforts. Efforts to maintain boom in various areas were thwarted by strong tides.

As of late last week, workers recovered more than 4,800 gallons of oil, 7,400 tons of oily solids and 79,000 gallons of oily liquid (oil and water). More than 213 miles of shoreline were impacted (9 miles heavy impact; 56 miles medium impact; 50 miles light impact; 98 miles very light impact.) More than 500 birds were affected – 207 of those found dead; 260 were cleaned and released.

We fully anticipate that this will be a long-term cleanup, and we are committed to ensuring that this painstaking work is completed. Hundreds of trained professionals are at work right now, removing oily solids from the shoreline and scrubbing oil from rocks, and these efforts will be ongoing as the weather warms.

As cleanup continues, DEP emergency responders will be working to evaluate and, where necessary, reengineer various containment and cleanup strategies. No matter how perfected a strategy might appear on paper, experience using that plan in the field sometimes will yield opportunities for improvement.

In this case, a thorough review of the ways in which containment equipment is deployed and utilized would be tremendously beneficial to any future containment and clean up operation. Specifically, strategies for maximizing the effectiveness of skimmer vessels must be explored and be incorporated into the Coast Guard's area contingency spill response plan.

Further, it would also be beneficial to reevaluate and redesign, where necessary, strategies for deploying boom and to consider securing boom and decentralizing storage into key locations on the Delaware River to help expedite deployment wherever it might be needed.

Under the Oil Pollution Act of 1990, the responsible party in the Athos I spill can be held liable for nearly $45.5 million in cleanup costs and damages to natural resources. Given the

operational costs of the spill response and the anticipated Natural Resource Damage claims, this amount may be inadequate to cover all costs involved. While the Spill Fund can be tapped for the excess cleanup costs, NRD claims are a concern.

On December 8, U.S. Senators Lautenberg and Corzine introduced legislation (S.3035 – the Oil Spill Prevention and Liability Act of 2004) that would amend the 1990 law to help prevent oil spills and to increase liability limits. The bill would place restrictions on entry into U.S. ports of vessels carrying cargo that "presents a risk of severe harm to the environment, economy or public safety of the port or port region."

I fully support passage of this legislation as it will put double-hull tankers in the water much sooner than 2010. Every day, a million barrels of oil are transported into the Delaware Bay, and double-hull tankers are key in preventing costly, environmentally devastating spills.

In addition, this legislation will phase out the unquestionably inadequate liability cap for single-hull tankers that continue operating until the federal mandate for double-hull takes effect.

Further, I would urge Congress to open the Oil Pollution Act fund to states, not only for spill response activities, but also to enable states to recover dollars for natural resource damages.

The DEP's assessment of natural resource damages is continuing. Categories under which we will be seeking compensation include: waterfowl, eagles, wetlands/riparian vegetation, lost use, fisheries, and bottom-dwelling organisms.

As members of this subcommittee, you know well that the scope of the Coast Guard responsibilities and activities is widening in the wake of September 11 and our nation's ever-increasing focus on homeland security. I know that this Subcommittee is working to address these issues, and I respectfully ask all of you to ensure that the Congress continues to provide the Coast Guard with the resources it needs to protect our ports and our environment.

Let me conclude by expressing my appreciation to all the responders from the Coast Guard to state and local officials and to the many citizens looking out for the well-being of our waters, our coastline and the wildlife affected by this spill.

And again, I thank the members for the interest you have shown with today's hearing and for the opportunity to appear before you on behalf of the people of New Jersey.

Testimony of
Kathleen A. McGinty, Secretary
Department of Environmental Protection
Before
Congressman Frank A. LoBiondo (NJ-2), Chairman
U.S. Coast Guard and Maritime Transportation Subcommittee
January 18, 2005

Chairman LoBiondo, members of the Committee: I appreciate the opportunity to appear before you today to talk about Pennsylvania's emergency response and ongoing partnership with local, state and federal agencies, wildlife and natural conservation groups, and others in the wake of the Nov. 26 crude oil spill on the Delaware River.

Let me begin by saying that the administration of Governor Edward G. Rendell continues to play an active role in cleanup and recovery activities, and remains part of the larger federal-state-local partnership to restore the Delaware River and its habitats.

Several Pennsylvania agencies were mobilized when the spill first occurred and have remained on scene throughout the spill area to support the Unified Command operations organized and overseen by the U.S. Coast Guard, which has done a tremendous job in directing this cooperative effort. Their leadership has been critical at every turn in coordinating the many parties involved in this response and cleanup.

The Rendell administration has made available the full resources of the Commonwealth to address this environmental emergency and protect against any threat to public health and safety. Turning specifically to the Pennsylvania Department of Protection: DEP emergency responders, water quality experts, engineers, biologists, waste managers, local government liaisons, public outreach specialists and others from our regional and central offices have devoted more than 3,600 man-hours to the response, performing various impact assessments and cleanup tasks.

Like so many others, these men and women have endured uncooperative weather and sometimes extremely dangerous conditions. Their safety is our top priority as they work to clean up and protect the environment. Having toured some of the spill area and visited DEP employees in the field, I have a tremendous amount of respect for all they are doing. It is risky business. In fact, we, as an agency, breathed a collective sigh of relief when one of our own DEP members, Paul Jardell, was rescued from the icy river after being swept overboard from a cleanup vessel last month. Paul continues to be part of the effort and serves as a fitting example of the dedication that every Pennsylvania employee has put into the response.

The ATHOS I spill response has taken a huge toll on DEP resources, especially at our Southeast Regional Office, where some field programs have been hard pressed by the manpower shortages necessitated by Unified Command staffing. For example, 50 percent of our water quality field staff is participating in the cleanup effort, straining resources for other state programs.

This point raises the first recommendation I would like to present to Congress: Increased support is desperately needed from the federal government to protect critical water resources. Incidents like this demonstrate why we must step up—not diminish—environmental protections. Nevertheless, the

Commonwealth has suffered some $11 million this year alone in reduced federal support for point and nonpoint water pollution prevention measures. These cuts are made even more severe by the manpower and resources being diverted by our Commonwealth to support efforts on the Delaware River.

Unified Command recently readjusted manpower requirements with the onset of colder weather, and DEP staff expects to provide approximately 480 man-hours this month. A long-range plan has been developed by Unified Command outlying winter and foul weather operations, upgraded spring operations and final cleanup signoff. Man-hour requirements for the spring cleanup and final signoff periods are under review, but Pennsylvania certainly will continue to play a role in line with the significant impact on our Commonwealth.

As of this date, DEP—along with other members of the Unified Command—continues to make shoreline assessments, identifying areas to be decontaminated. Zones of particular concern due to sensitivity or high public access are: Center City Philadelphia, Tinicum Island, historic Fort Mifflin and various marinas and piers. There has been no impact to public water supplies.

The state also is monitoring and tracking submerged oil. In addition, industry is being polled continuously to monitor ongoing impact to surface in-takes as another means to track submerged product. Long-range concerns include the potential re-surfacing of the subsurface material with the arrival of the spring and summer months.

With this cleanup has come approximately 7,812 tons of collected material and oily substances. There is certainly more to come. To provide for the rapid and safe management of spill waste and residue generated as a result of cleanup activities, DEP immediately granted emergency approvals to the GROWS Landfill and the Tullytown Landfill Resource Recovery Facility, both not far from here in Bucks County, to increase daily waste limits and expand operating hours. This effort aids the response and better protects public health and safety.

I want to commend New Jersey Environmental Protection Commissioner Bradley Campbell for his involvement on this vital aspect of the remediation. Commissioner Campbell specifically identified New Jersey landfills and waste recovery facilities—American Refuel Newark, Ogden Martin Warren County, S.E.S. Gloucester County, Union County Resource Recovery and Wheelabrator Camden County—that would be available to receive solid waste. He ensured that his state was part of the U.S. Coast Guard's waste disposal plan to protect against bottlenecks and allow a smooth transition in staging and removing debris. This was critically important as the volume of waste grew, especially as the size of the spill was understood to be significantly greater than early estimates.

This point raises my second recommendation to Congress: The critical issue of adequate waste handling should not be left to negotiation. Instead, Congress should make sure every state, including New Jersey, has planned for and ensured adequate waste handling arrangements in these types of situations. We are happy that it appears this is the first emergency ever—or in recent memory—that New Jersey did step up and share the waste disposal responsibilities. But it was not a good situation to have to scramble to identify appropriate facilities in the middle of an emergency.

All of us remain committed to the quickest recovery possible. The Pennsylvania Emergency Management Agency (PEMA) has coordinated the Commonwealth's efforts and worked directly

with Unified Command as the cleanup moved from the response phase (crisis management) to the recovery phase (consequence management). They continue to play an integral role.

Numerous groups have assisted with habitat restoration and the large number of migratory birds and wildlife affected by the spill. The Department of Conservation and Natural Resources (DCNR) has provided support and technical assistance on the cleanup of Little Tinicum Island, a state natural area in the Delaware River that has about two miles of impacted shoreline.

Several Pennsylvania Game Commission (PGC) wildlife conservation officers (WCO) and deputy WCOs responded immediately to the environmental disaster. PGC also helped with on-the-ground wildlife recovery efforts and sent biologists and environmental impact officials to assist with ongoing cleanup and remediation work.

The Pennsylvania Fish and Boat Commission also sent waterways conservation officers to the scene. PFBC worked with other state and federal natural resource agencies to monitor the short-term and long-term impacts of the spill on aquatic life. PFBC also has posted items on its fishing and boating reports on its Web page to keep residents informed and up to speed on the status of recreational activities along the river as the cleanup continues.

Almost a year before the ATHOS I spill, a federally led multi-state emergency response training exercise was conducted along the Delaware River. In November 2003, emergency responders from Pennsylvania, Delaware and New Jersey, as well as the U.S. Department of the Interior, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, U.S. Environmental Protection Agency, U.S. Coast Guard, FBI and nearby oil refineries, rehearsed for a similar disaster. Such drills are required every three years by the Oil Pollution Act of 1990.

The mock-disaster scenario involved a large quantity of oil spilled from a Pennsylvania facility into the Delaware River, which necessitated the organization of a unified command operation. The exercise honed responders' skills; provided face-to-face communication between responders from numerous agencies and organizations; and resulted in lessons that could be put to work in the ATHOS I incident. It is clear that training and preparation work.

But it takes more than training and preparation. It takes sound laws that enhance environmental protections. This point raises my final recommendation. As we have seen firsthand, single-hull tankers pose a serious risk to coastal communities, marine environments and wildlife. Congress should give serious consideration to an accelerated ban of single-hulled tankers. We should not have to wait until 2015 to have these old ships replaced by safer, double-hull vessels.

Our Commonwealth will continue to play an active role in cleanup and recovery efforts. I believe we have some of the most talented and skilled individuals in the environmental field right here in Pennsylvania. We will be there as long as it takes to restore the Delaware River and its habitats.

I thank you for your attention. Chairman LoBiondo, members of the Committee: I'd be happy to answer any questions you have at this time. Thank you.

# # #

TESTIMONY

before the

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

by

DENNIS ROCHFORD
PRESIDENT

MARITIME EXCHANGE FOR THE
DELAWARE RIVER AND BAY

on

THE T/V ATHOS I INCIDENT

January 18, 2005

Good morning, Mr. Chairman and members of the Committee, and thank you for the opportunity to present testimony today. My name is Dennis Rochford, and I am President of the Maritime Exchange for the Delaware River and Bay. As you may be aware, the Maritime Exchange is a non-profit trade association representing the members of the commercial maritime industry in Southern New Jersey, Southeastern Pennsylvania, and Delaware. Included among our nearly 300 members are those companies and individuals that were most seriously affected by the events of November 26: steamship operators and agents, port authorities and private terminal operators, and tug and barge companies, just to name a few.

Before I speak to the effects of the oil spill on Delaware River port operations, allow me a moment to briefly describe the Exchange and its day-to-day operating role in the port. I will also explain our activities both immediately following the spill, and in subsequent weeks, when responders were working to restore the port to normal operations. In addition to the other comments you will hear today, I will offer some of the lessons learned from the Exchange perspective.

As a non-profit association, the Exchange serves as a "Chamber of Commerce" for the maritime industry. Much like my presence at today's hearing demonstrates, we serve as the unified voice of the port on a variety of federal legislative, administrative and regulatory matters. But our work goes beyond an advocacy role. Since our founding in 1875, the Exchange has operated the region's 24-hour vessel reporting system. Our role as the "electronic communications hub" of the Delaware River is to coordinate and communicate specific vessel movement information between those partners in the transportation chain, both public and private sector, with a right – and a need – to know. Over the years, this service, known as Maritime On-Line, has expanded dramatically. In addition to providing information on scheduled vessel arrivals and departures, for example, it also now includes, among other data, the mass distribution of safety and security notices, weather bulletins, and a host of other critical information that helps ensure the safety, security and efficiency of the Delaware River port business complex. Maritime On-Line electronically connects port operators and various government agencies, to include the United States Coast Guard, Customs and Border Protection, and the Office of Naval Intelligence.

In keeping with our mission, throughout the spill containment and cleanup operations, the Exchange acted as liaison between the Coast Guard, Pilots' Association, and the port business community. The Exchange promptly distributed and posted information provided by the Coast Guard, Pilots, and O'Briens, the clean-up contractor hired by the steamship line. From an operating perspective, the ability to quickly broadcast information on navigational restrictions – and more importantly, the lifting of these restrictions – was and remains paramount to Exchange members' ability to make critical decisions and to keep their principals and customers informed.

We also coordinated the development and release of joint statements issued by the Coast Guard, Pilots, and Maritime Exchange on the current operational status of the

Delaware River. These statements were used more for purposes of providing critical outreach to port customers overseas in an effort to limit any unnecessary ship diversions to competing ports.

Our port was fortunate in that only a few customers elected to divert their ships to other North Atlantic ports. However, given the massive nature of the spill, we believe there existed significant potential for increased negative impact over and above the two or three ship diversions actually experienced.

While the Exchange is not in a position to provide comprehensive economic impact information at this time, there are several facts I can share with you today. In 2004, 2,637[1] ships called the Delaware River port. A breakdown of imports by major commodity type is included for your information:

Cargo	Number
OIL	764
FRUIT	435
CONTAINERS	304
IRON & STEEL	170
CHEMICALS	141
PAPER	111
WOOD	101
MINERALS	93
VEHICLES	80
GENERAL	63
CLOTHES	50
PASSENGERS	36
BULK	29
COCOA	29
MEAT	27
PROJECT	21
JUICE	19

As of 1:00 p.m. on Friday November 26, our report showed 12 ships in port. By the time we broadcast the initial Coast Guard safety bulletin restricting vessel traffic in the newly-established safety zone (between Tacony-Palmyra and Commodore Bridges) at 8:01 pm on Saturday, we showed 17 ships in port and 4 scheduled for arrival later that night, and 16 scheduled to arrive Sunday. By Sunday night, we distributed a second bulletin that provided instructions for obtaining authorization to enter/depart the safety zone – by accessing the Maritime Exchange web site to obtain the forms to

[1] Figures in the table do not equal 2,637 as some ships discharge multiple cargoes, and others may not discharge product at all.

request authorization – and procedures for decontaminating ships that were in port at the time of the spill.

So within a very short time frame, ship movements commenced. From a business perspective, the issues we faced were several: ships in port had to wait for the contractor and subsequent Coast Guard inspection before they could depart (by Wednesday, December 1 Coast Guard announced it would allow companies to use private contractors to accelerate the clean up process). This limited the ability of ships waiting at anchorage to make their way to their ultimate destinations. In addition, despite the fact that Tsakos Shipping, the owner of the Athos I, as required by OPA90, took initial responsibility for the spill and its immediate expenses, several ship operators had grave concerns about entering a contaminated waterway. Fortunately, these were few, and for the most part, port operators were able to effectively allay any concerns.

While any U.S. port closure is problematic, as most dramatically demonstrated during the 2003 west coast port lockout, the Delaware River is uniquely challenged due to the nature of the commodities we handle. For example, we are home to six major oil refineries, which operate under strict crude oil inventory requirements. An extended shutdown of the port would have disrupted the supply of crude oil to these refineries, and thereby impaired their ability to produce the gasoline, home heating oil, jet fuel, and other refined products critical to the Mid-Atlantic and New England regions of our country. The economic dislocation and costs to consumers and businesses, as well as the refineries themselves, would have been devastating.

The Delaware River port complex is one of the largest fruit and food importing ports in the United States. Over 65% of Chilean and other South American fruits imported into the U.S. arrive at terminal facilities throughout our tri-state regional port complex. The Port of Wilmington, the largest U.S. banana importing port, handles over one million tons of this cargo annually from Central America. The frequency of fruit ship calls rises dramatically at the end of November, which marks the beginning of what we generally call "fruit season" here on the Delaware, and reflects a dramatic increase in Chilean grapes and other South American fruit products.

Because of their perishable nature, these shipments are particularly sensitive to any disruption in the supply chain. On December 2, about a week into the incident, we spoke with representatives of the Del Monte facility in Camden, New Jersey, who were extremely concerned that if the ship scheduled to arrive the following Sunday could not make its schedule, the cargo would have to be destroyed. In general, a ship hauling product for the Del Monte facility typically carries over 408,000 boxes of fruit. At current market prices, the value of cargo in a Del Monte ship includes about $3-4 million in banana imports and approximately $3.2 million in pineapples. If indeed the port were closed, or operating under restrictions preventing timely transits, the economic impact to Del Monte – for one ship call – exceeds $7 million. And this number does not reflect the economics associated with the terminal facility, labor, and the myriad indirect beneficiaries of each Del Monte ship arrival.

Steel is also an important cargo for Delaware River port operators and labor. The lifting of the Section 201 tariffs in December 2003 provided relief resulting in a resurgence of the steel trade lost to this area when the tariffs were first imposed. Yet there remains considerable competition for this trade from neighboring ports – particularly New York and Baltimore. On December 1, we learned that one steel carrier elected to discharge his cargo in Baltimore, resulting in a $25,000 loss to Penn Terminals in Chester, Pennsylvania, and an associated $22,000 in labor man-hours.

It is extremely difficult to effectively estimate the impact of an event of this nature. Although individual facilities and/or shippers can provide data specific to their operations, which can certainly be tallied, what cannot accurately be captured in any calculation are potential costs down the road for the vessel operator. Ships schedule their activities well in advance, and delays in one area will effect schedules at the next port of call – leading to additional costs, such as bills for stand-by labor, which can reach to $30,000 or higher.

The daily cost to operate a ship can range from $25,000 to $40,000 on the low end for general cargo ships, to upwards of $250,000 on the high end for the most recent class of post-Panamex oil tankers. Accordingly, the potential one-day cost to the approximately 20 ships delayed in the 24 hours immediately following the establishment of safety restrictions can be estimated at between $650,000 to $1.3 million.

It must also be noted that ultimately, costs are borne by U.S. consumers and manufacturers who rely on the fresh fruit, oil, steel, wood, paper, and other products that arrive at our port each day.

These are just a few examples of the business ramifications that can arise from an event that closes the port or restricts vessel traffic. However, in the case of the Athos I spill, we believe the total potential adverse economic impact was never realized as a result of the timely and effective response to the commercial needs of port businesses.

It goes without saying that we all acknowledge the foremost priority is to contain and clean the spilled oil. However, in recognition of the fact that getting products to store shelves is also important, it must be noted that the Coast Guard as incident commander immediately invited the port community and other interested parties into the Unified Command structure and worked diligently with industry in an effort to minimize the impact on port operations. On behalf of the Mariner's Advisory Committee (MAC), Capt. Michael Linton, President of the Pilots' Association for the Bay and River Delaware, worked with the Coast Guard to help identify measures to be taken to get the port back open for business and to prioritize the movement of vessels while restrictions were in place.

In addition to its role in mass communicating regional updates, and as part of its vessel dispatching activities, the Maritime Exchange is responsible to provide information on individual ship movements, such as estimated and actual arrival and

departure times to the terminal operators, tug companies, line handlers, and the nearly 40 other businesses that "go into action" every time a ship arrives the Delaware River. In coordination with the MAC, we were able to quickly disseminate information on which ships were authorized to move to those port businesses that needed to be able to respond quickly to a continually changing shipping schedule.

There is no doubt in my mind that the Athos I spill had far less negative impact than might have been the case because of the strong and close working relationships among governmental agencies, between government and industry, and among industry partners. Our ability to achieve this level of success in a geopolitical environment that involves three states and multiple overlapping federal jurisdictions should not go unrecognized.

Yet this does not mean that we can't learn from this experience, and identify opportunities for improvement.

One key lesson we need to learn from this tragedy is that both industry and public policy makers must work together to ensure that the U.S. Army Corps of Engineers (COE) is provided with sufficient resources to meet their responsibility to keep federal channels and anchorages open and safe for navigational operations. It is in fact a federal responsibility – and one, quite candidly, that has been shortchanged over the years by this and previous administrations.

The story is clearly told through the FY '05 appropriations process. For the COE Civil Works Programs, the administration proposed $4.1 billion, the Congress appropriated $4.7 billion, and the need, as identified by the American Association of Port Authorities (AAPA) is $5.5 billion.

The Maritime Exchange, along with other public and private port entities, will continue to work closely with our regional Congressional delegation to secure the necessary funding for these critical services. We hope this hearing will help you impress upon your colleagues how critical this issue is to maintaining our national maritime infrastructure. Our concerns on the Delaware River are every bit as relevant and important as those of the ports of New York, New Orleans, and any other port throughout the country – and perhaps even more so given our status as a strategic military port.

From the Maritime Exchange's perspective, which focuses on the facilitation of regional communications, we believe that we need to decrease the lag time between incident occurrence and first bulletin distribution. Unfortunately, minus clear information, people tend to speculate. For example, the Exchange received calls from its membership, colleagues from other ports, and the local and national media asking for verification of the rumor that the port was closed. Obviously, this was never the case, but there is no doubt that competing ports would see these rumors as an opportunity to attract and gain access to those businesses that they would otherwise not be in a position to influence.

Also learned during this spill was that even though information was being relayed to the business community, there were no mechanisms in place for keeping overseas port customers informed. And although the Coast Guard is charged with a public information role, the agency should not be compelled to take on this responsibility in addition to the other more critical aspects of incident response. In the days and weeks following the Athos I spill, our members talked of this need, and we were able to respond accordingly. Because of the number of federal and state agencies, public port authorities, and private terminal operators in the Delaware Valley region, moving forward, we suggest that there be designated a single "spokes agency" for the port, such as the Maritime Exchange or the Mariner's Advisory Committee. This same protocol could be applied to all regional and external communications – be they safety, security, or business related.

Given the magnitude of the event, it is clear that the framework needed to effectively respond to the oil spill was well in place at the Delaware River. The fact that the port was 100% open for business by December 8 is a testament to the training and preparedness of the Coast Guard, federal and state environmental agencies, the environmental response community, and industry.

Thank you for the opportunity to testify today, and I will attempt to answer any questions you may have.

TESTIMONY OF LTC ROBERT RUCH
COMMANDER, PHILADELPHIA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
BEFORE THE
U. S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
JANUARY 18, 2005

Mr. Chairman and Distinguished Members of the Panel, I am LTC Robert Ruch, Commander of the Philadelphia District of the U.S. Army Corps of Engineers. I am pleased to appear before you today to discuss the role played by the Corps of Engineers in response to the ATHOS I oil spill in the Delaware River on November 26, 2004.

On November 27, 2004, Captain Sarubbi, the U.S. Coast Guard Captain of the Port and Incident Commander for the ATHOS I spill event, requested that the Philadelphia District survey the Mantua Creek Anchorage. The Philadelphia District survey team began this work on November 28, 2004, using multibeam surveying technology to look for possible obstructions that could have caused the incident. Initial surveys (conducted from November 28 – 30) did not identify any obstructions. On December 1, 2004, the Corps supplemented the multibeam technology with contractor-provided side scan sonar in a further attempt to identify obstructions, focusing its efforts along the path taken by the ATHOS I as it approached the Citgo dock. On December 2, 2004, the Corps began to work in association with the National Oceanic and Atmospheric Administration (NOAA) surveying team also assigned to assist in the event. Data developed by the Corps and NOAA were provided daily to the Coast Guard investigation team. This information, combined with similar data provided by the surveying and dive team hired by the ship owner, led to the identification of the suspected object in the Mantua Creek Anchorage.

Due to concerns raised by the shipping industry, Captain Sarubbi requested that the Corps perform in-depth surveys of the Delaware River shipping channel from the Commodore Barry Bridge upstream to the incident site, a distance of approximately 7 miles, to assure that the channel was free of any further obstructions. The Corps and the NOAA team worked together on this effort from December 4, 2004, through the

afternoon of December 7, 2004. The channel was determined to be clear of obstructions and was opened without restrictions on December 7, 2004.

The Corps continues to work with the Coast Guard investigation team in the identification of the obstruction found in the anchorage and other related issues, as further discussed by the Coast Guard. I commend Captain Sarubbi and the entire team on their efforts following the incident. The excellent cooperation of all parties involved including the Federal and State Agencies and the representatives of the ship owner are attributed to Captain Sarubbi's outstanding leadership.

I would also like to commend the efforts of the NOAA Navigation Response Team led by Mr. Howard Danley and Lt. Commander Rick Fletcher. Their survey expertise and dedication throughout the investigation greatly assisted the Corps in its mission and proved to be an invaluable partnership.

This concludes my testimony. I will be pleased to answer any questions you may have at this time.

Statement
Congressman Jim Saxton
Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation
Oversight Field Hearing on the Delaware Oil Spill
January 18, 2004 - 10 am
Independence Seaport Museum, Penn=s Landing
Philadelphia, Pennsylvania

Thank you Chairman LoBiondo, for having this hearing today on such an important issue. The unfortunate accident that led to the discharge of oil from the M/V ATHOS I into waters of the Delaware River on November 26, 2004 was environmentally damaging, the extent of which we may not know for some time. I am pleased this hearing is being held today to determine how best to prevent such an incident occurring again.

Proposals have been made to expedite the phasing out of single-hull vessels, an action previously mandated by The International Convention for the Prevention of Pollution by Ships, commonly known as MARPOL.

After the *Exxon Valdez* oil spill in Alaska's Prince William Sound, Congress enacted legislation requiring that all tankers be double-hulled by the year 2015. It is estimated that if the *Exxon Valdez* had had a double-hull structure, the amount of the spill would have been reduced by more than half. MARPOL also required that all tankers constructed after 1993 must be fitted with double hulls, or an approved alternative. In addition, all existing single-hull vessels must be retrofitted in phases, with the final conversion required by 2015.

In December 2003, revisions were made, accelerating the phase-out schedule. A new regulation regarding the prevention of oil pollution from oil tankers when carrying heavy grade oil bans such carriage in single-hull tankers of 5,000 tons and above after an April 5, 2005, date of entry, and in single-hull tankers of 600 tons and above no later than the date of delivery in 2008. Unfortunately, most of the vessels transporting petroleum today are still single-hull vessels.

Legislation introduced in the House and Senate last year would have encouraged the greater use of double-hull tank vessels by increasing the liability limits currently imposed on vessel owners. Phased out would have been the existing liability limits for single-hull ships, after the fifth year all expenses incurred for a spill would have to be absorbed by the owner, not the taxpayer. By passing the burden of complete financial responsibility to vessel owners after five years, the current 2015 single-hull tanker ban is effectively nullified.

This is not the first time such legislation has been introduced. This issue of mandating double-hull tanker vessels was also visited in 1989 by former New Jersey

Representative Dean Gallo. At that time, I cosponsored legislation offered by Representative Gallo that would have amended Federal law to require certain tank vessels to be equipped with a double hull. There were also legislative attempts to require double hulls in 1993, 1996, and 1997.

Ensuring the safety of coastal zones is an issue I have dedicated myself to during my years in Congress. From stopping ocean dumping to preventing oil spills, I have always fought to protect our shores. Having seen, first hand, the havoc oil spills wreak on coastlines, it is critical we work to ensure the shipping industry complies with vessel safety regulations. Therefore, I intend to further review any legislative proposals introduced in the 109th Congress, and will work with my colleagues on an appropriate solution.

Throughout my career, I have always been concerned with the safety and health of coastal areas, and the disastrous effects oil spills can have. The rapid response teams used by the Coast Guard to respond to oil and dangerous substance spills were created largely in part to legislation I introduced over 15 years ago. In 1989, as a member of the House Committee on Merchant Marine and Fisheries, I introduced the Clean Ocean Act of 1989. Understanding the necessity of making petroleum traffic safer, this bill would have required the creation of regional response teams that could be called upon immediately to mitigate damages of major spills.

I am proud to note that in 1990, the Oil Pollution Act, a bill which I cosponsored, was signed into law with overwhelming support. Included in this monumental piece of legislation was my language creating the Coast Guard's National Response Unit. This Unit, which initially operated out of Elizabeth City, North Carolina, has now expanded to include an additional three response units, including the outstanding facility located at Fort Dix.

The exceptional men and women of the Atlantic Strike Team are the government's mechanism for emergency response to releases of hazardous substances into the environment, or discharges of oil into navigable waters of the United States. The Strike Team provides trained personnel and specialized equipment necessary for stabilizing and containing a spill. They also maintain a continuously staffed facility which can be used for command, control, and surveillance of oil discharges and hazardous substance releases occurring in the coastal zone.

I thank the Strike Team for their tireless efforts in the aftermath of the Athos I spill. Without their hard work and expertise, this disaster could have resulted in events far worse than what occurred.

And today, fifteen years later, my concerns about oil spills and their effect on our coastlines have not diminished. We need to continue to work to find the appropriate funding mechanisms to ensure the federal government, and most importantly, the taxpayers, are not footing the bill every time there is an oil spill. We must also work to ensure the shipping industry is utilizing the secure vessels required to transport

petroleum, and see to it they are held accountable in the event these standards are not upheld.

As we move forward into the 109th Congress, I will continue to work with my colleagues on ways to prevent future oil spills, and how to best respond in the event they do occur.

Just last month, I cosigned a letter sent by Congressman Rob Andrews to President Bush, requesting that the President include $3 million in the Fiscal Year 2006 budget for the Army Corps of Engineers to address the issue of floating and submerged debris in the Delaware River. I believe this funding would go a long way to preclude something like this accident from happening again.

The environmental damage, from the immediate to the long-term, will likely take years to accurately assess how extensive it will end up being, including how many habitats, species of birds and fish, as well as mammals, have been impacted. Though much of the oil was cleaned out of the river, it will take time to determine the long-term damage to the water quality and what this will ultimately mean to those same species of birds, fish and others that were affected and many of which killed in the immediate aftermath of the spill.

I would like to thank Chairman LoBiondo for holding this hearing today. I look forward to working with those who are concerned about this truly unfortunate accident, including Chairman LoBiondo and Congressman Andrews, as we work to establish preventative measures that preclude an event such as the Athos I spill from occurring in the future.

Department of Conservation
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January 18, 2005

United State House of Representatives
Committee on Transportation and Infrastructure
Coast Guard and Maritime Transportation Subcommittee
507 Ford House Office Building
Washington, D.C. 20515

RE: Testimony of Eric Stiles, Vice President for Conservation, New Jersey Audubon Society on the Athos I Delaware River, Oil Spill

Dear Honorable Representatives:

I am speaking on behalf of New Jersey Audubon Society and its 22,000 in regards to the Athos I Delaware River oil spill. I would like to thank Congressman LoBiondo for the opportunity to speak on such an important matter to our membership, state and nation. Having worked as a state endangered species biologist for nearly a decade, I have had direct experience with oil spill response. When I first watched the images of the Athos I spill on the evening news, my immediate visceral response was if I had lost a good friend. Having worked on the recovery of Bald Eagles and wildlife on that stretch of the Delaware River and Bay for a decade, I personally knew what was at stake and how much could be lost through a single tragedy.

New Jersey Audubon Society and its membership were impacted at two levels. First, since NJ Audubon has worked to protect wildlife since 1897, this catastrophe will reverberate through long-lived toxins in our soils, water and benthic communities for decades. Second, we own two islands in the Delaware River, just downstream from the spill. New Jersey Audubon Society received Monds and Chester Islands in 1997 because of their importance to migrant and breeding birds. Our nation's symbol the federally threatened Bald Eagle has built a nest on Monds Island, perched as the crowning jewel atop a 110' tall century old Eastern Cottonwood tree. The island also hosts nesting Great Blue Herons, songbirds and provides critical migration habitat for spring and fall songbirds.

The nesting eagles are emblematic of the success of wildlife conservation and its fragility in New Jersey. Monds Island lies amidst a matrix of the nation's oldest industrial activity. Surrounded by river dredge projects, towering suspension bridges, international airports and oil refineries, this pair of eagles symbolize the resiliency of nature. However, like a child – it takes a village to raise an eaglet. Bald eagles are incredibly sensitive to disturbance. This pair's success is a tribute to a marriage between a dedicated community resident – Elmer Clegg, the state endangered species program, a corporation and a non-profit conservation agency. The state of

New Jersey worked tirelessly to raise and release 60 bald eagles in NJ from 1983-1990 to restore the failing population. The Monds' Bald Eagle pair, which included one of the state released birds, first arrived in the area in 1992. Through no fault of their own, the eagle pair could not produce viable eggs – primarily due to PCB contamination.

Every year the pair would fail to produce young and relocate and every year Elmer Clegg and the state endangered species program would devote thousands of hours to monitor the pair and work with new landowners to minimize disturbance. Finally in 1996, one courageous landowner – DuPont – forged a partnership with the state and a conservation group. DuPont donated Monds and Chester Islands to NJ Audubon Society as a wildlife preserve. The state's endangered species program agreed to take the lead in monitoring and protecting the Bald Eagles, and each year bring in a foster eaglet for the pair to raise. Elmer Clegg continues to donate thousands of hours, as the pair's ambassador and guardian.

Nearly two decades of work, involving tens of thousands of hours and a ground-breaking community, corporate, public and non-profit partnership came to a screeching halt by a single tragic event – the Athos I oil spill. The story of the nesting eagles at Monds Island can be told time and again. Fish and wildlife conservation has been a century long investment in New Jersey. The lower Delaware River and upper Delaware Bay are hosts to huge concentrations of shorebirds, waterfowl, fish, hawks, eagles and other wildlife. Fish and wildlife are a fundamental quality of life for many New Jersey residents. In 2001, 1.64 million residents and 688,000 visitors watched wildlife in NJ, spending $1.24 billion. Similarly, over 900,000 people participated in fishing and hunting spending another billion dollars.

The Delaware River and Bay, like most estuaries, supports mixed use. From commerce to recreation, this rich complex is important to all. Yet, only one of these activities through a single mistake has the potential to upstage and threaten all other interests – transport of oil. While oil is an important economic sector for the region, this importance must be tempered through and by protection of other public trust resources – fish, wildlife and public drinking water.

The famous American historian Arthur Schlesinger was right – history has an eerie way of repeating itself. The Delaware River Estuary has been home to many an oil spill. If I were a betting man, my money is on future occurrences. Yet this gloomy prediction should not cause despair. The Athos I spill and recovery efforts provide a real opportunity to make fundamental improvements in several areas – reduction of oil spill occurrences, increasing ceilings for responsible party liability and improved spill response.

Reforms must also incorporate successes.

1. New Jersey's congressional delegates, especially Congressman LoBiondo, Congressman Andrews and Senators Corzine and Lautenberg, played important leadership roles in helping protect our water and wildlife.
2. New Jersey NJ Department of Environmental Protection and US Fish and Wildlife Service biologists deserve praise for working with non-profits and volunteers to monitor and respond to wildlife impacts.
3. Tri-state Bird Rescue and Research, Inc., one of the world's leading non-profit for cleaning oiled birds, deserves great praise for its heroic efforts.
4. The U.S. Coast Guard and NOAA were very accommodating, affording NJ Audubon Society as an affected party access to critical information on its lands.

NJ Audubon Society participated directly on the oil response in several important and meaningful ways. We were able to contact our legislators directly when key locations such as Mannington Meadows and Supawna National Wildlife Refuge were not being adequately protected. Many of our members volunteered as "expert monitors" for state and federal wildlife agencies to observe tributaries throughout the watershed. Our conservation department sent staff biologists to monitor nesting bald eagles and I personally spent a day with the U.S. Coast Guard Assessment Team patrolling the Delaware River from Mantua Creek to the Commodore Berry Bridge. Our attorneys participated in the Unified Command Center, working to protect critical wildlife within the impacted spill zone. Our members also donated materials desperately needed by Tri-state to clean and rehabilitate oiled birds.

Through my prior experience with oil spill response and our intimate involvement with the Athos I, I would like to direct the Committee members' attention to three areas of needed improvement:

1. Reduce the likelihood of further spills
    a. The shipping channel should be regularly monitored using sonar, magnometer and wire surveys to detect potential hazards. Sonar only affords insights into the depth of the channel. A magnometer, if used, could have detected the metal piping which allegedly ruptured the Athos I's hull. Also, through dragging of wire apparatus along the shipping channel, we will also be alerted to other hard structures and debris which could puncture ship hulls.
    b. The minimum clearance requirement between a ship's berth and the channel depth should be increased. Allegedly, the Athos I hull rupture occurred at low tide. Ships, especially of the single hull design, should only be under operation at mid to high tides to decrease the likelihood of rupture or grounding.
    c. We should look to phase out single hull craft before 2015 and incentives should be offered for companies using double hull craft. Responsible companies using the double hull design should receive financial rewards for being good corporate citizens. Similarly, a port fee should be instituted for operators of single hull craft. This fee should be used as a dedicated funding source to better prepare the Estuary for future oil response efforts and acquisition and management of sensitive fish and wildlife lands.
2. Increase the liability ceiling for damage claims
    a. Given the importance of the Delaware River and Bay to drinking water, fish and wildlife, a $45 million liability limit is grossly insufficient. We would ask that this ceiling be raised to $150 million.
3. Improve the efficacy of oil response efforts
    a. The natural resource information guiding US Coast Guard response efforts is grossly outdated. Even though state and federal wildlife agencies knew of the importance of sites such as Monds Island (nesting bald eagles) and Mannington Meadows (fish, waterfowl and bald eagles), the Coast Guard did not have this information. Since wildlife distributions are so dynamic, this mapping must be updated annually. Money must be given to state and federal agencies to provide this information to the US Coast Guard.
    b. Pilings for booms should be placed at the entrance of every tributary and drinking water source along the lower Delaware River and Delaware Bay. These pilings

are important anchor points for booms. Having these in place will allow response teams to place booms onsite in a more time effective manner.

c. In the Athos spill, the booms were constantly being erected behind the oil slick. They were being erected on tributaries after the oil had already infiltrated these waterways. In the future, booms should be placed on tributaries and other sensitive locations (e.g. drinking water intakes) before the oil slicks are onsite.

The only remaining concern we have is the unknown. From assessments conducted thus far, it is unclear the extent to which oil has settled on the benthic communities of the Delaware River and Bay. We would ask that the Committee play a leadership role in investigating these impacts and ensuring proper mitigation and restoration. We would also ask the Committee to work with federal appropriators to earmark sufficient funds for purchase and management of critical fish and wildlife sites on the Estuary to help better protect and enhance these important locations.

I appreciate the ability to comment on these important matters. NJ Audubon Society looks forward to supporting legislation and appropriations to realize these reforms.

Sincerely,

Eric Stiles
Vice President for Conservation & Stewardship

cc: Thomas J. Gilmore, President, NJAS
Wayne Greenstone, Board Chair, NJAS

DELAWARE RIVERKEEPER

Testimony from
Maya K. van Rossum, the Delaware Riverkeeper
January 18, 2005

Dear Congressmen,

I thank you for your focused interest in the Delaware River and your special consideration of the events surrounding and following the Athos I oil spill of November 26, 2004.

My name is Maya van Rossum, I am the Delaware Riverkeeper. My organization is the Delaware Riverkeeper Network. Established in 1988 upon the appointment of the Delaware Riverkeeper, the Delaware Riverkeeper Network (DRN) is a nonprofit membership organization located in Washington Crossing, PA and affiliated with the American Littoral Society. The Delaware Riverkeeper is the voice of the Delaware River and its streams, championing their rights as living members of our community, and is leader for the Delaware Riverkeeper Network. The Delaware Riverkeeper and the Delaware Riverkeeper Network stand as vigilant protectors and defenders of the River, its tributaries and its watershed, committed to restoring the natural balance where it has been lost and ensuring its preservation where it still exists. We work throughout the entire 13,539 square mile Delaware River watershed which includes portions of New York, New Jersey, Pennsylvania and Delaware.

While it has been reported that this is the second largest oil spill to take place on the Delaware River in terms of gallons spilled it is important to recognize that it may very well be the worst spill on the Delaware River when we consider the amount of environmental damage done. Therefore the heightened level of attention being given this spill by this Committee is warranted and should continue into the future.

Seventy percent of all the oil that comes to the northeast comes up the Delaware River. This high volume of oil being transported up the River on a daily and annual basis makes our River more vulnerable than other River systems to oil spills and the resulting impacts. We have locally, regionally, nationally and internationally important and respected ecosystems that need to be protected. As a result, the Delaware River is in need of a higher level of protection than currently available by law. In addition, the Delaware is in need of a higher level of consideration and study on the ramifications of the Athos I oil spill than is currently being considered.

DELAWARE RIVERKEEPER® NETWORK - *with offices on the main stem Delaware, in the Schuylkill Watershed and the Delaware Estuary*
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Within 24 hours after the Athos I oil spill was reported, the Delaware Riverkeeper Network went to work. Since that fateful day my organization has recruited over 100 volunteers which have been trained, organized and dispatched to collect information crucial to enhancing cleanup efforts and ensuring increased information necessary for securing the most accurate natural resources damage assessment possible. The Delaware Riverkeeper and DRN volunteers identified and reported areas in need of spill response, including areas where existing efforts such as booming was failing and in need of repair. We have provided needed support to other organizations including Ducks Unlimited, Surfriders and local watershed associations eager to provide assistance. We have worked closely with state and federal agencies to ensure use of protocols and information gathering techniques. And we have been in regular and instant communication with the Coast Guard and the agencies involved providing important information, perspective and insights.

Unfortunately, in the early days of the response the Delaware Riverkeeper, the lead advocate for the River, was not invited to the table – the quality and quantity of the information and the unique communication network we had to offer was only fully appreciated a few days later. But once the Coast Guard realized the importance of coordinating with the Delaware Riverkeeper and DRN they embraced the good information and assistance we were offering. State and federal agencies such as the state departments of environmental protection and US Fish and Wildlife Service were quick to coordinate with DRN and to recognize the value of our contribution and the level of knowledge we were able to bring to the table.

While a full report of our findings on the extent of environmental harms resulting from the Athos I oil spill will be released in the near future, of particular note are the following:

- ✓Data and observation by the Delaware Riverkeeper and DRN volunteers document that oiling has impacted tributaries as far north as Swede Run (located in Delran, Burlington County, NJ) and as far south as Alloway Creek.[1]
- ✓Tarballs have been observed on North Cape May Beach in early January.
- ✓Millions of dead clams were observed on Mantua Creek near the Rt 45 bridge.[2]
- ✓Southern tributaries may have been unnecessarily oiled due to the lack of booms put in place as the plume moved downstream. Volunteers observed: rainbow sheen and oil stains on beach and vegetation on Fenwick Creek, a tributary of the Salem River, and home to wetlands; oil sheen and brown/black oil on the water surface were observed on Alloway Creek (also home to wetlands) more than 1 mile upstream from the mouth of the River; oil on both Oldman's Creek and Racoon Creek, which are both home to wetlands.
- ✓Little Timber Creek, Big Timber Creek, and Mantua Creek appear to have had the worse types of oiling.
- ✓A Bald Eagle from Mantua Creek was observed with oil on its tail; and the nesting pair that successfully raised two young last year has not been present during the clean up operations.

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[1] Data from volunteer monitors on the Cohansey River and Stowe Creek, located farther south, are expected shortly.
[2] NJDEP investigated this volunteer report a few days later but did not themselves see the claims -- it is likely the rain washed the dead clams out of the tributary during the interceding days.

Based on our on-the-ground experience and intimate knowledge of the Delaware River system, the Delaware Riverkeeper and Delaware Riverkeeper Network urge implementation of the following recommendations in order to help us better avoid oil spill catastrophes in the future and to enhance our response to the present emergency.

✓Put in place special regulations allowing only double-hulled tankers to travel up the Delaware River.

✓Secure a study of the short and long term impacts of the Athos I oil spill.

✓Hold additional congressional hearings to consider the findings of the ongoing investigation into the Athos I Oil Spill.

✓ Release publicly the analysis document that estimates the number of gallons spilled from Athos I.

✓Prohibit oil barges and tankers from coming up the river during nighttime hours (darkness). A requirement of only daylight travel will greatly enhance our visual abilities to see and respond to spills in their early stages when prevention and cleanup both have a greater chance of success.

✓A maximum draft of 34 feet (the current maximum draft instituted since the oil spill) should be put into permanent effect.

✓Make permanent the requirement that tankers be required to reach oil facilities or leave oil facilities 2 hours before the low tide.

✓Require armed escort for all oil tankers and barges traveling up the Delaware River to provide needed protection from terrorist attack.

As you know, the investigation into the oil spill continues. And the ramifications of this spill on our environment and communities continues to spread and grow. As a result, we do not yet have all the information necessary to fully consider the Athos I oil spill, how to improve response to the harms caused by the spill, and/or the range of actions that can and should be taken to prevent future spills on the Delaware River. Therefore I fully support what I understand to be the current plan to hold additional hearings on the Athos I oil spill in future months when more information is available.

Nonetheless, there are a number of issues and actions that can be considered today to benefit our River and communities.

Who's to Blame?

In recent weeks there have been efforts to deflect the finger of blame for the spill from the owners and operators of the Athos I to others such as the Army Corps of Engineers and/or the owners and users of the pipe that created the gash resulting in the spill. But we must be clear, such deflection is not appropriate. The ones responsible for this spill are the owners and operators of the Athos I. They are the ones responsible for making the management decisions, the operational choices, the equipment and navigation decisions which allowed this spill to happen. And they are the ones who are utilizing our Delaware River for financial gain as a means of transportation.

Debris in the Delaware River is a known reality, and impact with that debris is a foreseeable result. Therefore it is incumbent on vessel owners and operators to not only take advantage of the most current navigational and operational equipment and decisions, but to also continue to create new technologies and strategies to avoid harmful impacts. It is also incumbent on vessel owners and operators to act cautiously

in their decisionmaking in order to provide the highest level of protection to the River possible.

In the case of the Athos I there appear to be some key operational choices the Athos I officials made which contributed to this accident and a less timely response.

Common practice for tankers coming up the Delaware River is to lighter in the bay and then come up during the high tide. Coming up on the high tide gives about an additional 6 feet of clearance over and above the clearance ships have as the result of lightering in order to accommodate the 40 foot channel depth. By contrast, the Athos I came in and up the River fully laden (granted at a reported 36 ½ feet when the allowable maximum was at the time 37 feet) on the neep low tide (this was the lowest spring tide of 2004) arriving at the facility on or around dead low tide. The result was that the extra clearance offered naturally by the high tide was lost and the tanker was more vulnerable to collision.[3]

In addition, the owners and operators of the Athos I chose to come up the River at night, under cover of darkness. As a result, the spillage of oil was only realized when the ship physically listed. Had the tanker been moving during daylight hours the oil spill could have been identified and responded to much earlier.

Debris in the Delaware River is an existing and normal part of the River system – pointing the finger at the Army Corps or others is not acceptable. The owners and operators of the Athos I are responsible for recognizing the foreseeable existence of debris in the river and avoiding it, and as the beneficiary of the use of our River for private gain they must accept full responsibility for this catastrophe.

This does not mean we shouldn't be looking for other actions that can be taken to enhance the ability to avoid accidents in the future – we absolutely should. But it is important that the ramifications to the River not be lost in a game of finger pointing.

I would also like to take the opportunity to note that the Delaware Riverkeeper Network has submitted some information regarding the spill that we hope is of use in the investigation and may lead to some helpful witnesses. While at first this information seemed to be largely ignored, once the Coast Guard recognized the credibility and power of my organization they ensured the information was included in the investigative files for consideration and potential use.

Input on the Clean Up Effort

The Coast Guard and the States have worked diligently to respond to the oil spill catastrophe. We are grateful for all of their efforts

While initially the spill responders were antagonistic towards the work of the Delaware Riverkeeper and my organization, after several conversations a solid working relationship was established. At present, DRN has over 100 volunteers monitoring

[3] Perhaps this explains why the Athos I collided with the piping on the bottom of the river and others who had traveled the same area previously did not.

more than 40 tributary streams and 30 inland wildlife hot spots (areas where wildlife congregate) within or near the spill impact zone. DRN is also working with Ducks Unlimited and other organizations to monitor riparian wetlands and beaches to track the dispersion of tar balls as far south as Cape May, NJ.

In the initial weeks of the spill, volunteers documented the effectiveness of clean-up operations, inspecting the conditions of absorbent and containment booms placed at the mouths of tributary streams and other sensitive locations. When booms were in need of attention, the Delaware Riverkeeper was able to use our volunteer data to alert the US Coast Guard to maintenance needs that would reduce the amount of oil moving into tidal tributaries.

Volunteers continue to document locations where oiled debris has been stranded along tributary shorelines at high tide to ensure clean up crews reach these areas. Those with birding skills are monitoring inland wildlife hotspots located outside of the immediate spill zone that were used as refuges by birds able to fly to cleaner locations. Volunteers visiting these areas to perform wildlife surveys have documented oiled birds and alerted the US Fish and Wildlife Service for rescue efforts. Volunteers are also visiting public access areas along tributary streams from the mouth to the head of tide to document the scope, degree, and persistence of oiling over time.

It does appear that initial booming efforts did not stay far enough ahead of the spill to be of greatest effect. While it was clear the oil was continuing to spread well downstream, a number of tributaries remained unboomed long enough to allow oil to contaminate the tributaries, including Fenwick Creek, Salem River, Alloway Creek, Oldman's Creek, and Raccoon Creek.

In addition, the Delaware Riverkeeper Network determined that no booms were present at any time on the Pompeston Creek, Pennsauken Creek, Newton Creek and Cooper River, despite their close proximity to the spill and despite reports by volunteers of oil migrating up these tributaries. It is our understanding that some tributaries were not boomed as the result of a limited number of booms being available. If this is in fact the case then it is not an acceptable response – when an oil spill occurs there needs to be enough materials available and on site to protect all our tributaries and habitats to the greatest extent possible.

A few outstanding questions in need of answer:
- ✓Is the status of sunken oil in the Delaware River known?
- ✓What is the expectation for impacts from sunken oil when the warm weather starts to return to the region or when spring flushing floods the river?
- ✓How oiled are the wetlands and habitats up tributaries?
- ✓Have crews yet documented damage up tributaries?

We understand that the Coast Guard will shortly be reviewing its emergency response plan, analyzing it and updating it based on the experiences obtained as a result of the Athos I spill. This is an important and needed effort and we look forward to being included in it.

Natural Resource Damage Assessment
The level of damage to the Delaware River, tributary streams and habitats continues to grow daily. While clean up crews are working diligently to soak up the oil they can, oil that remains in the environment continues to move, to spread and to contaminate habitats, water quality, and wildlife.

DRN volunteers are working diligently to collect data that will inform and watchdog the natural resource damage assessment process. DRN data is being gathered to compare with aerial flight data, to supplement agency field assessments, and to advocate for and help develop a thorough and extensive Natural Resource Damage Assessment. We have been communicating and coordinating with state and federal agencies focused on this effort – ensuring our information is detailed and valued.

I am very concerned that the way current legislation and regulation are implemented; recovery for natural resource damages comes at the end of the process. This means that these damages are the last to be considered and reimbursed for and therefore are the most vulnerable to being shortchanged. Out of pocket clean up expenses, including the clean up of private boats (large and small), are all taken care of first, and therefore the natural resource damages only come in line at the end when available dollars are greatly diminished. While the natural resource damages then become eligible for public funding reimbursement, it is our belief that this still puts them at greatest risk for being short changed.

A Study of the Short Term and Long Term Harms is Needed
The ramifications of the Athos I oil spill on the Delaware River are huge, growing and in some cases irreparable. It is critically important that we identify and document the environmental harms of this spill for the Delaware River and its ecosystems.

Research of oil spills in other watersheds have tracked harms to the environment as long as 30 years later, and those were spills of significantly smaller size (less than 200,000 gallons). Our Delaware is the victim of spills on a relatively frequent basis, not annually but regularly enough to be of concern. Oil spills on the Delaware River in recent years include: 1989 (Claymount, Delaware); 1994 (Paulsboro, NJ); 1994 (Beckett Terminal); 1995 (Sun Oil Hog Island Terminal); 1995 (Eagle Point Refinery, West Deptford); 1996 (top of estuary); 1996 (star Refinery; 1997 (on river); 1998 (north of Petty's Island). Because 70% of the oil that comes to the northeast travels up the Delaware River our River is highly vulnerable to spills and the associated environmental harms. And yet, harms to the Delaware from past spills have not been carefully researched or documented.

It is important that we secure a strong, solid, environmentally focused, and long-term, study into the ramifications of this oil spill for the Delaware River, its communities, tributaries, habitats, ecosystems, aquatic life and wildlife.

Spill Estimate Needs Public Release and Review
The recent, enhanced estimate of the amount of oil spilled in the Delaware River needs public review and scrutiny. Efforts to date to obtain a copy have been unsuccessful, and we have been told that a Freedom of Information Act request is required to obtain a

copy. This is wholly inappropriate. The study resulting in the estimate of oil spilled should be immediately placed in the public domain for review. Oil spill estimates of the past have been the focus of well-deserved scrutiny and debate. The public is entitled to be able to review the assessment conducted in order to ensure ourselves that the estimate given is the most accurate possible.

Oil Spill Does Not Make the Case for Deepening, It Enhances the Case Against it.
I have been stunned and disturbed thatsupporters of the Delaware River Deepening project have been using the devastation caused by the Athos I oil spill to carry forth their unrelated political agendas by misstating the truth and reality.

The Delaware River Deepening project will not avert the threat of oil spills on the Delaware River, if anything the deepening raises the threat level. If the Delaware River were deepened from 40 to 45 feet the result would be that tankers would lighten their loads less in Delaware Bay in order to travel more fully laden with oil up the Delaware River.[4] A deeper channel simply means boats will sit deeper in the water. The risk of accident is the same – but if an accident occurs it means more oil could spew out of more heavily laden tankers harming our river, threatening our drinking water, subjecting our communities and economies to all the inherent health impacts and associated harms.

Those who are using the oil spill to make their case for the Delaware River Deepening are exploiting the ongoing oil spill catastrophe to move self-interested political agendas that themselves are harmful to our River and communities. In truth, deepening the Delaware River from 40 to 45 feet will not provide any measure of protection from oil spills and their associated environmental, economic and community devastation.

I thank the Committee for holding this hearing and seeking our input. I look forward to working with this Committee as we move forward to not only address all the ramifications of the Athos I oil spill, but to avert additional spills in the future.

Respectfully submitted,

Maya K. van Rossum, the Delaware Riverkeeper
for the Delaware Riverkeeper Network

[4] Please note – this does not mean there will be a net gain in oil imports to Delaware River refineries, our refineries are already operating at capacity. It simply means an operational change – less lightering in the bay and allowing more fully laden tankers to traveling upriver to the region's refineries.

For the Record

Partnership for the Delaware Estuary, Inc.

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Executive Director
Kathy E. Klein

Hearing on the Delaware River Oil Spill

Kathy Klein, Executive Director, Partnership for the Delaware Estuary, Inc.
Statement before Coast Guard and Maritime Transportation Subcommittee
Chairman Frank A LoBiondo (NJ-2)
January 18th, 2005
Independence Seaport Museum, Philadelphia PA

Mr. Chairman, Members of the Committee, thank you for opportunity to appear before you today to discuss the Athos 1 oil spill and how we can better protect and preserve the Delaware Estuary from future environmental and economic insults.

My name is Kathy Klein and I am the Executive Director of the Partnership for the Delaware Estuary. We are the not-for profit organization charged with the responsibility of overseeing the implementation of the Comprehensive Conservation Management Plan for the Delaware Estuary Program.

The Delaware Estuary is one of 28 estuaries recognized by the United States Congress for its national significance under the Clean Water Act. Our purpose is to promote collaborative actions that protect and enhance ecological, economic and cultural assets from a regional, watershed perspective. Now in our 9th year, we support a broad network of participation, drawing attention to opportunities of common interest. We identify ways for allocating responsibility by utilizing the collective talents, resources and priorities of our federal, interstate, state, local, private and non-profit partners.

One of the lead partners in the Estuary Program is the Delaware River Basin Commission (DRBC). DRBC is positioned as the lead on science for the Estuary, and has much to offer in the way of data on existing conditions, hydrologic and water quality monitoring, and an established network with the scientific community.

It is now estimated that 265,000 gallons of oil were release as a result of this incident. Oil has affected approximately 57 miles of shoreline from the Tacony-Palmyra Bridge to south of the Smyrna River in Delaware. While the initial shock of the Athos 1 spill is behind us, we continue to be concerned about the long-term impacts the spill will have on the habitat and living resources in the Delaware Estuary. These resources include:

- Already threatened species, including bald eagles, oysters, the Atlantic sturgeon and the rarely found and endangered Atlantic ridley sea turtle;

- The largest population of horseshoe crabs in the world, and the second largest staging area in the western hemisphere for approximately 1.5 million migratory shorebirds;

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- The largest heronry north of Florida on Pea Patch Island, with a population of 12,000 pairs of birds;

- The sensitive wetlands surrounding the waters of the Estuary that filter pollutants and sediments from the land, and act as a buffer that provides protection from flooding and erosion; and

- Important recreational and commercial fish populations, many of which have already been impacted by toxics that have resulted in the need for numerous fish consumption advisories.

In addition, the Delaware Estuary and its tributaries provide drinking water for 7.7 million people in the Delaware Valley.

To begin addressing these concerns, more than 150 representatives from the scientific community attended a special oil spill session that was part of the 2005 Delaware Estuary Science Conference, which took place in Cape May, New Jersey from January 10-12. A panel representing the company that owns the Athos I, the three Estuary states, U.S. Fish & Wildlife Service, and the National Oceanic and Atmospheric Administration, provided an overview of the status of the spill and of the Natural Resource Damage Assessments (NRDA) process that is underway. The panel and attending scientists also discussed the available scientific resources and their concerns regarding the short and long-terms impacts on the resource. Dr. Danielle Kreeger, the new Science Coordinator for the Delaware Estuary Program who is positioned at DRBC, coordinated this conference.

The Delaware Estuary is the home of the largest freshwater port in the country and the second largest refining-petrochemical center in the United States. While spills of this size are thankfully not a regular occurrence in the Delaware Estuary, it is a reality that smaller discharges of petroleum products are a regular occurrence. It is therefore critical to seek ways to minimize the impacts on the natural resources. We need to push for ways to reduce the chance of spills from occurring in the first place, including speeding up the federally legislated deadline requiring that all tankers transported petroleum products be double hulled. We must also establish a sustained monitoring and research program to measure the ongoing impacts of petroleum pollution in the river.

Thank you for your time and consideration.

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