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OVERSIGHT OF THE OIL SPILL LIABILITY TRUST FUND

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

DECEMBER 10, 1998—NARRAGANSETT, RHODE ISLAND

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OVERSIGHT OF THE OIL SPILL LIABILITY TRUST FUND

THURSDAY, DECEMBER 10, 1998

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Narragansett, Rhode Island.

The committee met, pursuant to notice, at 4 p.m. at the University of Rhode Island Graduate School of Oceanography, Narragansett Bay Campus, Coastal Institute Auditorium, Ferry Road, Narragansett, Rhode Island, Hon. John H. Chafee (chairman of the committee) presiding.

Present: Senator Chafee.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Our first panel consists of Mr. Daniel Sheehan, Director of the National Pollution Fund Center, US Coast Guard, is our key witness. Mr. Craig O'Connor, Deputy General Counsel, National Oceanic and Atmospheric Administration; Mr. Steve Morin, assistant to the Director of the Rhode Island Department of DEM.

First, I want to thank everybody for coming this afternoon, and especially I want to thank our Washington-based witnesses from NOAA and the Coast Guard who have taken the trouble to be with us.

Now, the purpose of this hearing is to examine how well the Oil Pollution Act claims process is working. The focus of the hearing is on those claims that are presented to the Government for payment. The Oil Pollution Act provides that a private party or a Federal, State or tribal natural resource trustee may present its claim to the Government for payments if negotiations with the party that caused the RP, the responsible party, caused—if the negotiations with the responsible party failed, in other words, if you're not getting satisfaction from the responsible party, then under the Oil Pollution Act the private party can present its claim to the Federal Government.

Today we'll hear from two panels regarding two different types of claims against the Oil Spill Liabilities Trust Fund. The first panel will address claims by natural resource trustees against the fund. Until recently, the opinion of the Comptroller General was that the managers of the Fund, the Coast Guard's National Pollution Fund Center, could not pay, now this is very important, could not pay any claims for natural resource damage without Congress's approval. The Justice Department reversed that and so the Na-

tional Pollution Funds Center is staffing a new office to process these claims.

Now, how the National Pollution Funds Center will dispose of natural resource claims is extremely important here. Craig O'Connor, Mr. O'Connor, Deputy General Counsel of NOAA, will testify that the State and Federal trustees at NOAA and the Department of Interior recently completed the very first natural resource damage assessment and restoration plan under the new 1996 regulations required by the Oil Pollution Act, so we're working under some relatively new regulations here. Though this restoration plan is still open for public comment for a few days, it may become the first joint Federal/State natural resource damage claim presented to the claims fund for payment that complies with NOAA regulations. In other words, this may—the plan they've got here, this State may be the first one. Unlike some 1,800 other State trustee claims pending before the Pollution Control Fund, the Rhode Island claim will enjoy deference because of a so-called rebuttable presumption that Congress provided in the Oil Pollution Act for claims prepared in accordance with NOAA regulations.

Mr. Dan Sheehan is of the Coast Guard's National Pollution Fund Center, this is really a tongue twister, they call it NPFC, but for short I'll call it the Pollution Fund Center. That saves one word, apparently. He's going to explain how his organization plans to handle these trustee funds. Does everybody understand that the trustee funds are funds not presented on behalf of an individual fisherman, for example, they're presented on behalf of, in this case it will be the State, and for damage done to natural resources. Trustees' claims raised some novel legal issues, and the Pollution Fund Center, along with the Justice Department, the Federal trustees are working how to resolve these. Mr. Sheehan will testify about recently completed guidance documents that spells out the claims process. I'm glad the Federal agencies were able to move forward with this, though the State trustees are only now receiving the document. I understand the pollution fund will consider revising the document in response to the feedback they got from this and other hearings.

Mr. Steve Morin, Assistant to the Director of the Department of DEM, will provide the prospective of the State Natural Resource Trustee.

OK, so the first panel deals with the recoveries for injuries to public resources. The second panel will address the very real economic losses suffered by individuals, so there's two separate things. In the two-and-a-half years since the North Cape spill, nearly 3 years, parties injured by the spill sought compensation from the responsible party and its insurer, from the trust fund, by making claims to the pollution fund. It's fair to say that many Rhode Islanders who suffered economic damages due to the spill are frustrated with the claims process, and I think that will probably come out pretty clearly. Parties injured by the spill, particularly commercial fishermen, have voiced serious concerns about the speed with which their claims are processed and the adequacy of the settlements offered by the pollution fund. Individual fishermen and the Rhode Island Lobstermen's Association feel the Funds Center is seeking unreasonable and unavailable evidence to prove the losses

they claim they've suffered. On the other hand, the Funds Center claims it's attempted to pay proven losses as quickly as it can, while at the same time discharging its fiduciary duty to protect the Fund against poorly documented losses, and, obviously, they do have a responsibility.

Mr. Sheehan will explain the claims process and review the Fund's experience with the North Cape claims. Mr. Sheehan will also discuss a new approach that may help resolve the claims for lost profits suffered by the lobstermen.

We'll hear from the Rhode Island Lobstermen's Association, individual fishermen, seafood processor and charter boat operator about their experience and concerns.

As I say, there's two witness panels this afternoon. After we hear from the second, there will be an opportunity for members in the audience, if somebody wants to offer some remarks, we'll give that person a chance, it will be for 2 minutes, but, nonetheless, we want to hear what you've got to say. Anyone desiring to make remarks should sign up with John Goodman. Where is John. That will help us get some idea on the time that we want to allot for this, and they can be on, of course, we want it to be pertinent to what the hearing's all about; namely, claims for cost, damages and the time it's taken and so forth.

I look forward to hearing from our witnesses and we'll start with Mr. Sheehan.

Mr. Sheehan, as I mentioned, is the Director of the National Pollution Funds Center, U.S. Coast Guard and based in Washington.

So, Mr. Sheehan, if you'd proceed, we would be grateful. Thank you.

[The prepared statement of Senator Chafee follows:]

STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Good evening, and thank you all for attending. In addition to our Rhode Island witnesses, I wish to thank our Washington-based witnesses from the Coast Guard and National Oceanographic and Atmospheric Administration for traveling to Rhode Island.

The purpose of this hearing is to examine how well the Oil Pollution Act claims process is working. The focus of the hearing is on those claims that are presented to the Government for payment. The Oil Pollution Act provides that a private party or a Federal, State or tribal natural resource trustee may present its claim to the Government for payment if negotiations with the party that caused the oil spill fail.

Tonight, we will hear from two witness panels regarding two different types of claims against the Oil Spill Liability Trust Fund. The first panel will address claims by natural resource trustees against the Fund. Until recently, the opinion of the Comptroller General was that the managers of the Fund, the Coast Guard's National Pollution Funds Center ("NPFC"), could not pay any claims for natural resource damages without a Congressional appropriation. The Justice Department has reversed that position, and the NPFC is now staffing a new office to process those claims.

How the NPFC will dispose of natural resource damages claims is extremely important to Rhode Island. Craig O'Connor, Deputy General Counsel of NOAA, will testify that the State and Federal trustees at NOAA and the Department of Interior recently completed the very first natural resource damage assessment and restoration plan under the new 1996 regulations required by the Oil Pollution Act. Though this restoration plan is still open for public comment for a few days, it may become the very first joint Federal-State natural resource damage claim presented to NPFC for payment that complies with NOAA regulation. Unlike some 1,800 other State trustee claims pending at NPFC, the Rhode Island claim would enjoy deference because of the so-called "rebuttable presumption" that Congress provided in the Oil Pollution Act for claims prepared in accordance with the NOAA regulations.

Mr. Dan Sheehan of Coast Guard's National Pollution Funds Center will testify about how his organization plans to handle trustee claims. Trustee claims raise some novel legal issues, and the NPFC along with the Justice Department and the Federal trustees have been working to resolve many of these issues. Mr. Sheehan will testify about a recently completed guidance document that spells out the claims process. I am glad that the Federal agencies were able to move forward on this, though the State trustees are only now reviewing the document. I understand that NPFC will consider revising the document in response to the feedback they will receive from Rhode Island and other State and tribal trustees. Mr. Andrew McLeod, Director of Rhode Island's Department of Environmental Management, and Mr. Stephen Morin, Assistant to the Director, will provide the perspective of a State natural resource trustee on the claims process.

While the first panel deals with recovery for injuries to public resources, the second panel will address the very real economic losses suffered by individuals. In the nearly 3 years since the January 1996, *North Cape* spill, parties injured by the spill have sought compensation from the responsible party and its insurer, and from the Trust Fund by making claims to the NPFC. It is fair to say that many Rhode Islanders who suffered economic damages due to the spill are very frustrated with the claims process.

Parties injured by the spill, particularly commercial fishermen, have voiced serious concerns about the speed with which their claims are processed and the adequacy of the settlements offered by the NPFC. Individual fishermen, and the Rhode Island Lobstermen's Association, feel that the Funds Center is seeking unreasonable or unavailable evidence to prove the losses they claim to have suffered due to the spill. For its part, the Funds Center claims it has attempted to pay proven losses as quickly as it can, while at the same time discharging its fiduciary duty to protect the Trust Fund against poorly documented losses.

Mr. Sheehan of the NPFC will explain the claims process and review NPFC's experience with the *North Cape* claims. Mr. Sheehan will also discuss a new approach that may help to resolve the claims for lost profits suffered by the lobstermen. We will also hear from the Rhode Island Lobstermen's Association, individual fishermen, a seafood processor, and a charter boat operator about their experience and concerns.

After we hear from the second witness panel, there will be an opportunity for members of the audience to offer remarks for 2 minutes. Anyone desiring to make remarks should sign up with John Goodman of my staff—lohn, would you please identify yourself? I also ask that remarks be limited to the subject matter of this hearing—claims for costs or damages that are made to the National Pollution Funds Center.

I look forward to hearing from our witnesses. We will start with (Director McLeod, if attending) then Mr. Sheehan, Mr. O'Connor and Mr. Morin.

STATEMENT OF DANIEL SHEEHAN, DIRECTOR, NATIONAL POLLUTION FUNDS CENTER, U.S. COAST GUARD, DEPARTMENT OF TRANSPORTATION

Mr. SHEEHAN. Thank you, Mr. Chairman. I truly appreciate the opportunity to appear before you today. To my mind, the communication, the open dialog in a forum like this, where we get to hear and we get to be heard in terms of our processes, both for the natural resource damage claims as well as the third-party claims, are the ones which are very, very important to us. As you noted, I do have the privilege of running the Coast Guard's National Pollution Funds Center and our assistance was a direct result of another catastrophic oil spill, the Exxon Valdez, which resulted in the Oil Pollution Act of 1990.

One of the major provisions of that Act——

Senator CHAFEE. Maybe you can pull that microphone a little bit closer, would you, Mr. Sheehan.

Mr. SHEEHAN. I would be glad to.

One of the provisions of the Oil Pollution Act of 1990 is to provide the parties damaged by an oil spill will be compensated either by the responsible party or from the Oil Spill Liability Trust Fund.

Since I'm also on the second panel today, which concerns compensation of claims in general, in this first panel I'm going to limit my remarks to a more specialized type of claim, that of natural resource damage claims.

Senator CHAFEE. That's right, then we'll do the individuals in the second round.

Mr. SHEEHAN. An unfortunate consequence of many oil spills is the damage that occurs to natural resources impacted by the spill. OPA–90 specified that there were four categories of natural resource trustees, there were Federal trustees, State trustees, Indian tribe trustees, and in some rare instances foreign trustees, and in some cases, in its first three, there are some overlapping jurisdictional issues, but these trustees are permitted by law to submit claims to the Oil Spill Liability Trust Fund for not only the cost of implementing a restoration plan, but also for the cost of assessing the damage.

As Senator Chafee pointed out, up until October of last year my organization was prevented from paying these claims because of a ruling by the Comptroller General. The Department of Justice's Office of Legal Counsel basically ruled in a different manner and gave us an interpretation which now permits us to entertain that type of claim. After the decision was made we took very quick action to convene a group, an informal group of Federal trustees to assist the Funds Center in understanding the natural resource damage assessment methods, certainly including the NOAA assessment regulations, which my colleague, Craig O'Connor, is going to describe today, as well as to help us scope out and define our resource needs to be able to adjudicate this type of claim.

Mr. Chairman, we anticipate being able to begin adjudication of these claims in the late spring of next year. We currently have over 2,000 claims in State trustees. Now, while most of these claims are relatively small, they are still large in number. To assist all of the trustees, the three categories that we mentioned, in submitting claims, we've prepared a Natural Resource Damage Claimant's Information Guide. We have copies of that guide which we have provided outside, we announced on the 23 November that it was available on our Web site, we are making it available by letter and in hard copy to all of the State trustees. Just a few moments ago I gave to Mr. Steve Morin the very first letter to the State trustees, giving him a copy of that guide.

In my written statement I've provided a brief overview of how we would generally handle this type of claim, and while we have attempted to anticipate many questions, if my experience is any teacher, as the process matures, we're going to have to make changes to this guide based on input, not only in hearings such as this, but from direct input from the State trustees and other trustees as well. It is of great assistance and will be of great assistance to us to have as much input as possible and we encourage that.

With that, Mr. Chairman, I will conclude my remarks and will be pleased to answer your questions to the best of my ability.

Senator CHAFEE. OK. What I thought I'd do is listen to the three witnesses and then ask the panel some questions. Next is Mr. Craig O'Connor, Deputy General Counsel of NOAA.

STATEMENT OF CRAIG O'CONNOR, DEPUTY GENERAL COUNSEL, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Mr. O'CONNOR. Thank you, Mr. Chairman. Thank you for the opportunity to appear here today. I'm appearing on behalf of not only NOAA, but the Department of Commerce, but also the Department of the Interior. I'm really quite happy with the opportunity to sit and talk to you about a process that was brought to the public through the Oil Pollution Act, the opportunity for us to have the full restoration of the natural resources that may be damaged by an oil spill and the opportunity to assure that that restoration occurs, notwithstanding the fact that those parties responsible for the oil spill may not choose to provide the compensation or be unable to provide that compensation. The oil spill liability trust fund is that indemnification on behalf of the people of the United States and the people of Rhode Island with regard to the North Cape oil spill to assure that your resources are fully restored.

The issue of how those claims are presented and processed by the National Pollution Funds Center is the subject of our discussion today, and I would like to state, on behalf of both NOAA and the Department of Interior, that we are very appreciative of the opportunity to work closely with Dan Sheehan and his folks in the development of the guidance and the claims process. We feel comfortable that we have, as the Federal Government, been successful in merging the considerations that the natural resource trustees undertake in the development of a restoration plan as spelled out in our regulations with the claims process. We have worked closely with Dan and his folks, and although along the way we had some bumps and grinds that you usually have if you're trying to merge different statutory authorities and programs, at this point we feel comfortable. I also feel very comfortable that if it becomes necessary to submit to the Funds Center the claim that is presented by the restoration plan developed with regards to the North Cape oil spill, that that plan and the claim will be expeditiously processed and that we will be paid in full, Dan, for that claim. I feel very comfortable, because what we have been able to do, working with the State of Rhode Island and the Department of Interior, is to develop what I feel to be a very good and very solid natural resource restoration plan. We presented that plan to the public in September of this year, and it addresses fully, in our opinion, the natural resources that were injured as a result of the North Cape spill. Those resources included, as many of you know, lobsters, quahog claims, many shellfish, sea birds, including eiders and loons, damage to the salt ponds, damage to the fish and wildlife reserve. We have been able to capture through the work with Rhode Island, with the Department of Interior, with the academic community right here at the University of Rhode Island, what I feel to be a comprehensive, very fair, very reasonable and a technically adequate and well-supported restoration plan. The claims process is designed to entertain such a claim. We did it in accordance with the regulations that we promulgated in 1996, we tracked those regulations, scripture and verse, we had the full participation of the responsible parties and the public in the development of that plan, and at this point, although I don't anticipate that we're going to be able to settle that

claim with the responsible parties, I do anticipate that if that claim is presented to the Funds Center, it has been prepared fully in accord with their expectations and there will be no difficulty in having that claim processed and no difficulty in us moving forward in the spring with the restoration of those resources in accordance with that restoration plan.

So it's with comfort that I sit here today and provide testimony on behalf of the Federal trustees and say that we are satisfied with the concerns that we have expressed to the Funds Center, we are satisfied that they have exercised their responsibilities in a judicious way and that we will be well accorded at such time as the plan is presented to them for compensation.

Senator CHAFEE. OK.

Now, Mr. Morin, Assistant to the Director of Rhode Island DEM.

STATEMENT OF STEPHEN MORIN, ASSISTANT TO THE DIRECTOR, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Mr. MORIN. Thank you, Mr. Chairman. I would like to offer Director McLeod's apologies, he couldn't make it here this afternoon, but he did send his greetings and indicate that however he can be of assistance, he would be happy to render that assistance to yourself and the committee.

I have been the State of Rhode Island's trustee representative for the North Cape oil spill damage assessment and restoration plan since the unfortunate incident in January 1996, and over that nearly 3 year period of time I've worked with NOAA and the Department of Interior, scores of scientists and able assistants to put together a, probably a five-foot long administrative record which the trustee's counsel will overview one more time after the close of the public comment period in a few days, and at that point we will put forward the restoration plan, the final restoration plan based on the public comment that we received and the overview of that administrative record.

We've been extraordinarily careful, as Craig as mentioned, to follow all of the dictates of the NOAA NRDA regulations, for a number of reasons. The primary one I think is that when we looked at the Oil Pollution Act statute and the billion dollar trust fund that was there, we recognized that, unlike many Superfund cases, which may drag on for 10 or 15 years before a resolution, that a billion dollar trust fund that Congress had instituted was designed to speed that process along. I think that, although 3 years seems a long time compared to other natural resource restoration plans, I think that trustees for the North Cape have done a remarkable speedy job. The next place to go is to the responsible parties, and really we're not the going to the responsible parties themselves, we're going to the responsible parties' insurance company, and, absent the fund, if we did not have the billion dollar trust fund behind us, our only recourse would be litigation, which could take two, five, seven, 10 years through the appellate process before any restoration of the natural resources, the public trust resources was undertaken. With the billion dollar trust fund, it's like having our own insurance company. If the other guy hits my car and he's not willing to pay for the repairs, I can go to my insurance company

and my insurance company will make me whole, that's how we've been viewing the National Pollution Funds Center, and so we've, as I said, we've spent a great deal of time, we've been extraordinarily careful to follow all of the NOAA guidelines, and for most of what the National Pollution Funds Center guidance document says, I have very little disagreement. We intend to undertake the restorations as recommended in the guidance, we're going to take any money that we get, put them in revolving funds, ensure that we properly document how that's been spent so that the resources that were injured can be restored. The one concern that I have, and in looking through the guidance document, is the, I think the way the fund seems to look at trustees, as if they were another claimant, and that the trustees, although they're following federally adopted and judicially vetted regulations, they are, in the case of the North Cape at least, two of the trustees are Federal agencies, we are following the Federal Administrative Procedures Act and the National Environmental Policy Act, at the end of the day we will have our administrative record, we will close that and we will issue our final report, and we view that, at least the State of Rhode Island views that, as the final executive decision regarding the restoration, the trust of the those natural resources. It's more than I think just a presumption of correctness, it is, we think, we think it should be viewed as the final decision in this matter, and that absent a finding of arbitrary or capricious on behalf of the trustees, that the Funds Center should be writing the check to the trustees for those restorations so that we can begin expeditiously putting back the trust resources that were lost to the public, and so our concern is, as I said, the issue of the finality that the guidance document, the Coast Guard's guidance document seems to indicate, that if they choose, they could deny, in whole or in part, the claim of a natural resource trustee for restorations.

Now, I can understand that the 2,000 or so claims that may be pending that were made prior to the adoption of the NOAA regulations, I can understand their concerns relative to those, but I think that there needs to be a distinction drawn between those claims which were made under NRDA regulations that were adopted and those that were made another mechanism, and that, the review of the records that the claims center undertakes is a very basic review, have we checked off the boxes that were necessary in the regulations, and, if we have, then a check issues. Beyond that, I don't think they need to review it, because the trustees were the ones given that responsibility by Congress, and if we have done our job, if we followed the regulations, then our decisions need to be presumed correct.

Senator CHAFEE. Let me ask you a question here. As I understand it, you first, as a trustee, and you represent the State of Rhode Island, as a trustee, you came up with your claim and you tried to conform to the regs that NOAA, I guess as NOAA puts them out, didn't they?

Mr. MORIN. Yes.

Senator CHAFEE. But I was a little surprised, you haven't been to the responsible parties yet, is that right?

Mr. MORIN. We have not been formally to the responsible parties. The responsible party has been, as the regulations require, a par-

ticipant in the damage assessment, that is they sat in on all of the work that we did in assessing the damage. In the construction of the restoration plan, however, that's left to the trustees alone, and the formal presentation of the claim to the responsible parties will take place after the closure of the public comment period; however, as in all litigations, we are generally in some kind of negotiations with the responsible parties' attorneys and insurance company right from the beginning, so there's been a very, very strong back and forth between the trustees and the responsible party regarding an attempt to settle the case.

Senator CHAFEE. But NOAA or the Fund isn't going to pay anything until they know that the responsible party has declined, you fail, you struck out with the responsible party, is that right?

Mr. MORIN. Yes, Mr. Chairman. Ninety days later, 90 days after we make the demand on the responsible parties, if they have not paid, we would make the claim.

Senator CHAFEE. OK. So there's a time limit, that's very important, otherwise this thing could drag on forever.

Mr. MORIN. That's correct, Mr. Chairman.

Senator CHAFEE. So, obviously, you're dealing with the insurance company, but we'll call it the responsible party. Now, so here we are, 3 years after the, 3 years next month after the accident, and so you're getting together your claim, you're following the dictates of, the guidelines from NOAA, and this thing is three feet long, or what did you say?

Mr. MORIN. About five feet.

Senator CHAFEE. Five feet, OK. So now you're going to lug it down to go before the responsible party and then they have 90 days?

Mr. MORIN. That's correct.

Senator CHAFEE. When does the clock start running, when you deliver it there?

Mr. MORIN. When we deliver the final demand, and we're not giving them the whole five feet, Mr. Chairman, we'll give them a summation of that document there. They're aware of most of the documents in the file.

Senator CHAFEE. Because they've sat in, as I understood it, an awful lot. I mean, when a million lobsters were lost, or whatever it was, baby lobsters, you sit down with them, you try to figure, now what's the potential loss of these baby lobsters and what's it going to mean in 5 years and so forth and so on, you can figure that all out?

Mr. MORIN. That's exactly what we did, Mr. Chairman. We had University of Rhode Island scientists, in the case of lobsters, University of Rhode Island scientists go out and sample the area of the oil spill and the areas adjacent to the oil spill and do a field study to say how many lobsters were out there, how many lobsters should have been out there, and you subtract one from the other, and, in fact, our estimation is that now there were nine million lobsters of all sizes, mostly little ones, that were killed, and that over time they would yield some two-and-a-half million or two million adult lobsters to the commercial shellfishermen, the lobstermen after they all grew out, so that those nine million little guys need to be replaced so that in time we have the adults, plus we have

all of the environmental services that those small lobsters who don't make it to adult size, food for cod, for example, and all the ecological services they provide are put back into the process. The responsible parties sat with us in the construction of those studies, and the outcome, although not every single study is agreed to, the outcome is agreed to, at least the responsible parties understand how the studies were done and they understand the system that was going on, many of the studies are the responsible parties' studies. A great deal of what's in the administrative record will be back and forth between the trustees and the responsible parties' investigators on interpretations of what science might be this way or that way.

Senator CHAFEE. It seems to me the attitude of the responsible parties would be, well, why the heck should we pay this, all they've got to do is wait 90 days and then you go collect from the Federal Government. Now, I suppose that the downside of that is that once you collect from the Federal Government, the Federal Government is segregated, would come on in and sue the responsible party, or could, is that—what's the encouragement for the responsible party to settle?

Mr. MORIN. See, I think that is the encouragement, Mr. Chairman. The claim is subrogated to the Fund, the Fund then sues the responsible parties to get back its money that its paid to the trustees to do the restoration, and the incentive then is that not only, and I don't want to speak for the Fund, but, as I understand it, not only do they have to pay the cost of the restoration, but they'll have to pay the administrative cost to the Fund on top of that, and so you're going to——

Senator CHAFEE. I presume they don't want the Federal Government suing them particularly?

Mr. SHEEHAN. People generally don't like that.

Senator CHAFEE. It must be extremely difficult to quantify the cost in something like this. I mean, I can see in the next panel we're going to have the individuals, and an individual with some definite, knows what he made last year and what's happened, what he's making this year and the losses and so forth, but with these, in effect, natural resource damages, it's—I don't know how you quantify it.

Mr. MORIN. What we did, and that's the, I think this is the difference between how natural resource damage claims were done before OPA–90 and done after OPA–90.

Before, a monetary figure was arrived at, money changed hands and then trustees tried to do something that was generally associated with what the damage was, but in many cases we did not have that case, and in the World Prodigy is a perfect example. There is an ongoing—in fact, yesterday they opened up shellfish grounds that were transplanted, that was paid for by the World Prodigy damage assessment, but there were no clams killed during the World Prodigy oil spill. Now what we do is restore the resources which were injured, and we don't look at the cost of doing that until right at the end, what we find are technologically available mechanisms for restoring the natural resource, we scale out that to ensure that the amount that was killed is going to be re-

stored on this hand, and at that point we say, OK, well, how much will it cost to do this.

Senator CHAFEE. Well, take your nine million lobsters, now, OK, you're going to restore that, how do you restore nine million lobsters?

Mr. MORIN. What we've determined is that the lobsters—we have some fairly sophisticated biological models, and some very, very good biologists, including Tom Gibson of our staff, who broke down the lobsters into how many eggs would have made nine million lobsters and how many eggs would have flowed from those nine million lobsters, so that when it all grows out, you get the two-and-a-half or two million adult lobsters. We then say, OK, well, how do you increase egg production, and there's a fairly old method which has never been used in Rhode Island, but it's big in Maine, called V notching, where you take an adult female lobster, you mark their tails, after they become legal size, you mark their tails and you put them back in, then you prohibit the landing of a marked lobster, that marked lobster stays in the water as a legal size lobster but no longer able to be caught for about two more malts, which would be 2 or 3 years, essentially, and in that time period she will produce another large clutch of eggs and those eggs will replace the lobsters lost, and that's how we do it, and then you go and count up the number of lobsters you need to do that and how much that costs in the marketplace, how much it costs to administer the program, and it works out in this case to be about $10 million to do the restoration of the lobsters, and so we didn't—but we didn't get to the money part until we've gotten to all the rest of that. Had we found a way of restoring the lobsters less expensive than ten million, which would have had the same effect, we would have, by the regulations, would have been obliged to use that, but at this point we found what is the most economically viable mechanism for doing that and we think that's going to work.

Senator CHAFEE. Mr. O'Connor, suppose the trustee went against the responsible parties and had six different categories of injuries and the responsible party is willing to settle on three of those but won't negotiate in the other three, now if the trustee takes a settlement of the first three, can he still come after you for the remaining three or does he have to go way back and, if he accepts anything from the—is he inhibited from moving forward if he's accepted a settlement of a partial part of his claim?

Mr. O'CONNOR. My anticipation is that if we are to enter into a partial settlement with the responsible parties, that if we have any expectation of going to the Fund for the balance of the funding for that restoration plan, that we had better carefully structure that settlement to assure that we are preserving the remaining claims against the responsible party. The concern that the Funds Center has evidenced in its guidance is that, that the trustees in effecting a settlement not jeopardize the position of the Funds Center in collecting whatever moneys that they ultimately might pay for the trustees for the balance of the claim. I have would see no reason, and the guidance does not indicate that there would be a prohibition from effecting a partial settlement, preserving other portions for submission to the Funds Center, but, once again, it would be

with that proviso, that we not jeopardize the interest of the Funds Center and collect from that.

Senator CHAFEE. It seems to me that it's terribly important that the trustee, the tribe or the State or, I guess you mentioned you have a foreign trustee, but I suppose in most instances it would be, the State would be the trustee, wouldn't it?

Mr. O'CONNOR. In most instances. The State is at least a significant trustee.

Senator CHAFEE. So it seems to me it would be terribly important that the trustee work extremely closely with you?

Mr. O'CONNOR. Yes, sir.

Senator CHAFEE. And so now, and then in preparation of this—you're familiar with what they're doing, what the State's doing?

Mr. O'CONNOR. We've been working hand in hand. I mean, there's been a full partnership. It's the position of the Federal Government that this restoration plan is a package, it is not a bits and pieces kind of thing, and we are going to maintain the partnership that we have with Rhode Island in prosecuting this claim, and if we can't get it fully compensated by the responsible parties, then our anticipation is that we will go as partners to the Funds Center and have the fund then provide that compensation.

Senator CHAFEE. You'll go to Mr. Sheehan then?

Mr. O'CONNOR. That's correct.

Senator CHAFEE. What it does, I mean, I'm all for speed and admire speed, I must say 90 days is a short turnaround time for the responsible parties to makeup its mind. Is the theory that they've been in on it, they're in on it, too, judging from what Mr. Morin said, that to a considerable extent in calculating these costs? But 90 days, is that adequate time?

Mr. O'CONNOR. Oh, I think it's more than adequate time. If the claim had been presented, prepared in isolation, without the responsible parties being part of the process, then I think that there would be an argument in favor of their having had an opportunity for further review and evaluation of the claim, but they have, in accordance with our regulations, been part of the process, they fully understand it, there is nothing that is going to be a surprise to them, and they had had more than adequate opportunity to evaluate that claim.

Senator CHAFEE. I mean, for instance, they'd be in on—suppose you lost some eelgrass or the lobster situation described, they have their own calculations in all that, I presume, they've been in on it?

Mr. O'CONNOR. I would suspect—well, they have presented their own evaluations, their own calculations and their own conclusion based on the studies that were done, but they participated in the development and the implementation of those studies, so nothing should be of surprise to them.

Senator CHAFEE. All right. Well, it sounds like, although this has taken 3 years, in all fairness, there was a roadblock there to start with, it seems like this damndest roadblock that the, not the Justice Department, who was it originally said you couldn't pay any claims out, what was the Fund for?

Mr. O'CONNOR. Well, that was an interesting question. I mean, the Comptroller General had issued an opinion that the Fund was not——

Senator CHAFEE. Well, that's really protecting a turf, isn't it? We setup a billion dollar fund and the Comptroller said nobody can be paid from it.

Mr. SHEEHAN. Well, if I can respond to that. The Comptroller General, in his opinion——

Senator CHAFEE. Well, don't be too sturdy in his defense.

Mr. SHEEHAN. [continuing] . . . said the process that was to be followed was to obtain funds for payment, you had to go through the appropriations process. That, however, did not bar the process that was made with respect to the assessment of the natural resource damages, that proceeded independently.

Senator CHAFEE. Because of the theory that you might have gone to Congress to get an appropriation?

Mr. SHEEHAN. Yes, sir.

Mr. O'CONNOR. We have prosecuted a number of oil spill cases since OPA was passed in 1990 and have moved forward and actually have settled almost all of those cases with the responsible parties. It wasn't until 1997 when we found out, that, in fact, the Fund will be there to indemnify us if we weren't able to settle it on our own and to indemnify us without the necessity of appropriation, going through the appropriation process. We felt comfortable, much more comfortable in prosecuting our claims.

Senator CHAFEE. Do you think the presence of the Fund discourages the responsible party from settling?

Mr. O'CONNOR. Well, I would echo what Steve said on that point. I think the fact that the Fund is there, the fact that the trustees are going to be able to get the money necessary to do the restoration and the fact that the Fund is going to ultimately sue to collect that money, it's just putting off the inevitable. I would think that, if I were a responsible party, I would be more inclined to try to settle my case with the trustees than to have to defend against the claim being filed by the Funds Center because the standard of review may be different and it may be an easier of standard of review collecting the money on behalf of the Funds Center than it would be if the trustees sued individually.

Senator CHAFEE. Plus, the whole weight of the Federal Government on your back.

Mr. O'CONNOR. Yes, sir.

Senator CHAFEE. Do you have anything?

Mr. GIBSON. I do, Senator. Mr. Sheehan, could you talk a little bit about the staffing plans you have for this new function of evaluating natural resource claims, you were not previously staffed to perform that mission, when you'll be ready to accomplish it and how you're going to clear the backlog of 1,800 claims that have been presented to date?

Mr. SHEEHAN. Thank you. I will be glad to do that. We basically have laid out, in consultation with the Federal trustees, a game plan for putting together——

Senator CHAFEE. Steve, do you want to pull that a little bit closer.

Mr. SHEEHAN. [continuing] . . . for putting together a natural resource damage claim division. There will be approximately, to begin with, seven folks in that, we will have a division chief, we will have some economists and biologists as well. We anticipate

that we will be staffed up by late spring and at that point in time we will be able to start adjudicating these claims. The 2,000 claims that I mentioned earlier, a great majority of those are from the State of Florida, and we've already begun work with the State of Florida to get them to group these claims so that they can come up with a restoration plan, which is a necessary condition and necessary part for consideration of payment of a claim, but we should be ready by the time my colleagues to the left have gone through their process with the responsible parties and then to us.

Mr. GIBSON. Let's say that the North Cape claim proceeds to the process, is not settled, and was presented to you sometime in mid-spring; what is the estimation of NOAA and NPFC on how quickly that claim might be adjudicated? The statutory requirement is 90 days, is that deadline reasonable?

Mr. SHEEHAN. Actually, there isn't a statutory requirement for 90 days for us, but we would look at the administrative record, we would be ready to review that claim when it came in, we would be working with the trustees to see, if we needed supplementary information for the administrative record, it is difficult for us to say how long it will take since we've never adjudicated one and it's difficult for them because they never submitted one, but I can assure you that we're going to do this as quickly as possible.

One of the differences between this type of claim and third-party claims is that this goes through a stylized process, according to a set of regulations, in anticipation of submitting a claim, unfortunately, some third parties' claims you don't anticipate you're going to have a loss, so you don't necessarily have the records there all the time to bolster that, so there is a difference between the time factor.

Mr. GIBSON. Thank you.

Senator CHAFEE. Just running over the time schedule again, and I appreciate that things can go wrong, but the anticipation now is that, Mr. Morin, as the trustee, you believe you have your claim in shape and ready to file, did I hear you say by January?

Mr. MORIN. Yes, Mr. Chairman, I think that that's, I was saying early January, and the Federal trustees cautioned me not to be overly optimistic, but in the month of January I think we will have finished review of the public comments and our final review, our final work on the plan, we will file a final plan sometime in the month of January and it will immediately be sent to the responsible parties for——

Senator CHAFEE. Start of the 90 days?

Mr. MORIN. For the 90 day start, and at that point we would then be prepared to, if no settlement or partial settlement is reached, we would take the full claim, or the partial claim, to the Funds Center sometime in late spring, and we are concerned about the timing of the review process, and that was, the reason why I kept mentioning the adjudication process that we have gone through in following the NOAA regulations and over-viewing this large administrative record, because I hear Mr. Sheehan, and I see in the guidance the fact that the Funds Center may want to review the administrative record and review, and either augment the record or ask for additional information, and our concern is that, in finally, in making a final agency determination as to what is the

damages, we think that we sit in the place of the Government for that point, because we are partners with the Federal Government right now, NOAA and DOI are also co-trustees, so we will file that trustee claim as both the State of Rhode Island and the Federal Government, so it's the Federal Government, essentially, and one of the States.

Senator CHAFEE. How did the Federal Government get in on the claim?

Mr. MORIN. They are co-trustees, Mr. Chairman.

Senator CHAFEE. Because some of their lands have been effected?

Mr. MORIN. Because, that's correct, Mr. Chairman, greater than three miles from shore, NOAA's got trust interest as well as, migrating fish and so forth that may go between State waters and Federal waters and the bird issues or the land issues for the Fish & Wildlife Service, U.S. Fish & Wildlife Service, they're the trustees' migratory birds.

Senator CHAFEE. And the wildlife refuge?

Mr. MORIN. And the wildlife refuge as well. And so we are three trustees together filing a single claim rather than simply the State of Rhode Island or simply the Federal Government filing bits and pieces of a claim.

Senator CHAFEE. So you have the situation of the Federal Government being in on a claim against the Federal Government?

Mr. MORIN. That's correct, Mr. Chairman, and using Federal regulations, and that's why I'm concerned about the notion that biologists or economists might be reviewing the administrative record and not having gone through the 3 years of back and fourth and agony and so on and so forth, but at the end of the process substituting, somehow substituting their judgment for the judgment of the trustees. Well, the trustees by law, by OPA–90, were the ones who were supposed to make the determination on what is a restoration, what damage was done and what restoration is necessary. I think that their job should be very ministerial, and rather than biologists and economists, I think there needs to be a clerk typist with a checkbook at the end of the process for the, at least for the Government claims, doing that work.

Senator CHAFEE. I'm anxious to get this thing settled and Rhode Island get as much money, but, gee whiz, I have a little trouble in thinking that you just submit a bill and they've got to pay it?

Mr. MORIN. And if it were, you know, out of the blue, I would agree with you, Mr. Chairman, but because we are in the place that we are, that is because we are together with the Federal Government, we followed the rules that they've done, we've followed the Federal Administrative Procedures Act and the Federal National Environmental Policies Act as well as the State law is involved, to make sure that we've touched all the bases, at the end of the process we are left with an administrative record, and it's interesting that the guidance documents that the Coast Guard puts out indicates that its findings, that its findings are final, they cannot be sued except on the arbitrary and capricious standard of their administrative record, and, yet, we have the same process, we file it all under the same rules, the Federal EPA, the Federal Environmental Protection Act, the National Environmental Policy Act and the NOAA rules, and at the end of our record the indication from

the Fund is that they may be in there messing around with how it was that we did that and did we count the lobsters right, and we think that's a very dangerous sort of precedent, because at the end of the process what gets litigated is, I think, if the trustees have done their work, should be held to that same standard of arbitrary and capricious that the Coast Guard thinks it should be held.

Senator CHAFEE. You put up a good argument. What do you say about that, Mr. Sheehan, you sit up there with a clerk typist to type out the check and just send it along?

Mr. SHEEHAN. We're not going to do it, Mr. Chairman. Our authorities and responsibility stem from OPA-90. There is certainly deference which is given to the claimants that follow the NOAA rules, we've stated that, we're going to do that. We certainly need economists and biologists because we're going to be dealing with all sorts of different claims, not only from the Federal sector and ones that have gone through the NOAA process, but ones that are done by States, not done in accordance with that process. We are anticipating that we're basically going to be looking at the administrative record, looking at the rules which we have every confidence that that you have followed very closely, going through that, if we have questions about that, we'll go through the trustees. We expect to do it in an expeditious manner. We want to see the natural resources restored quickly and in a timely manner, and that's my commitment, to do that, sir.

Senator CHAFEE. Well, also, we've had testimony here from Mr. O'Connor that Mr. Morin and he have worked very, very closely together. How much have you been in on all this, your organization?

Mr. SHEEHAN. My organization has not been in on the plan itself.

Senator CHAFEE. The claim.

Mr. SHEEHAN. We have not participated in that particular process, basically because we do have a fiduciary responsibility and an adjudicatory responsibility with respect to the law itself, so we have not participated in the process. We have been following it as much——

Senator CHAFEE. But, obviously, as you say, when the claim comes in and you've got questions, you've got, I don't know whether you've got biologists, but you've got people you've turned to, you say to them how did you get this count, presumably, won't you, quite likely, and ask them, and if they are convincing, you take it?

Mr. SHEEHAN. Our primary role in that type of claim will be to look and see that they have followed their own regulations, and, other than that, having not seen a claim and having not gone through that process at this point, I'm not sure of the level of actual review that it's going to get, but we're going to be basically going through and looking at it.

Senator CHAFEE. Now, he thought, Mr. Morin thought that by late spring they'd come to the Federal fund, so that gets us up to the Spring of 1999, late spring, how, you know, I'm not—it's tough to figure these things, but you'll get to it, and when do you think you might come to a conclusion?

Mr. SHEEHAN. I would say that it's going to depend on a number of factors, one, whether they come to us with a whole or whether they've settled it in part.

Senator CHAFEE. If they settle it in part, presumably that would make it easier, wouldn't it?

Mr. SHEEHAN. Presumably that would make it easier. Well, as soon as it arrives, we will start the process. We're not going to sit on it.

Senator CHAFEE. OK, that's all. I'd like assurances from you that you will go right to this thing.

Mr. SHEEHAN. Yes, sir, you have those.

Senator CHAFEE. This is 3 years already, and late spring always seems to be later than early spring, heavy words for the day, but. So, in any event, I urge you on. Do you have some questions, Tom?

Mr. GIBSON. I did have one more question. In the North Cape claims situation, right now we have the Federal trustees and the State trustees working together, and, hopefully, going to go to the end of the process together, but what would happen if the Federal trustee decided to settle a claim for a resource that it shared trusteeship with the State, where would that leave the United States, where would that leave the State if litigation ensued?

Mr. SHEEHAN. I'll be honest with you, we've looked at that and we would hope that we would be able to forge them back into a consensus to come with a single claim, because it would be very difficult from a precedential standpoint for this to occur. We think that the partnership, which has, obviously, been effected so far, is a good one, we would urge them to go back to the negotiating table between themselves to come to us with a unified claim.

Mr. GIBSON. Mr. O'Connor.

Mr. O'CONNOR. I have no intention of terminating the partnership.

Mr. GIBSON. Well, let's talk about a hypothetical State, that is Rhode Island, where a claim has been presented where you did have a Federal trustee and a State trustee taking adverse positions and one settling and one not and the other seeking compensation from the fund, have you thought about that situation?

Mr. O'CONNOR. Yes, we have thought about that situation, and what that creates is the necessity to define the scope and extent of the respective trusteeships between the State and Federal Government, and as difficult as it is to count lobsters, it is even more difficult to determine the line between that trusteeship, particularly, as Steve mentioned, with migratory species and so on, it would become a retractable situation, it would be a situation, if we were not able to negotiate it out with the Funds Center and reach some amicable resolution with the Division of Trusteeship, it ultimately might be an issue that we would have to litigate.

Mr. GIBSON. So the prohibition under the statute for double recovery means that one or the other trustee, the trustee that is left in the lurch after the settlement is very much at risk, at not being able to actually get its claim compensated because it would have to prove at what its part had not been covered by the settlement, it would be a difficult situation, it's a very strong discouragement for trustees to split up, and we would not, the Federal Government has no intent to do that. Mr. Morin.

Mr. MORIN. I would hope that we would not be in a position of having to split up the team this late in the date, because I agree with Craig, that we are—it is so difficult to decide whose got which

parts of the resource, you could do it geographically, and for some resources that are less mobile, that might be all right, but for the mobile resources, particularly birds, we've got migratory birds that spend the winter in Rhode Island and they spend the summer elsewhere, in northern New England, and the Federal Fish & Wildlife Service has been acting as trustee in that regard. That's why we've, I think we've been very, very careful to try and work this thing together. I would hope that if we could not, that if for some reason someone wanted to settle this in a way that was not protective of the whole trust resource, that is that the entire public good was not taken into account, that one or the other would either come to their senses or sue the other one to keep them from doing that. One of the things, Mr. Chairman, that you should know is that in addition to, my Attorney Claude Cote is up there in the audience and he reminded me that not only do all the trustees have their own attorney, but we have a Justice Department attorney who sits in to make sure that we are following all of the Federal rules, and that that makes for an interesting discussion between the trustees and the center, if there's a disagreement on the compensation, because who defends, who defends the center if the trustees are angry at it if the Justice Department is part of the trustee council.

Senator CHAFEE. Well, the Justice Department, both sides, huh?

Mr. MORIN. The Justice Department, at least in this instance, the Justice Department is on our side so far, but they represent the whole Federal Government. It's an interesting argument, that what happens if there's a disagreement between some parts of the Federal Government and the other part's egged on by the State.

Senator CHAFEE. All right. Well, first, I want to thank you. I'll be following this very closely because, one, I'm glad you're cooperating so well, and you've indicated, you've given us some kind of a time schedule here, and I'm deeply interested in how all this comes along, so I will be following it with great interest and urge you to keep going, and I commend the close working relationship you and Mr. O'Connor formed, and now get on with the submission, get the answer from the insurance, from the responsible party and just move on. Thank you very much. OK.

I think that Mr. Sheehan, you're staying, aren't you?

Mr. SHEEHAN. Yes, sir.

Senator CHAFEE. Now, the next panel, Mr. Brown is from Peacedale. Mr. Christopher. OK. Now, in this panel we have Mr. Christopher, owner of ABC Lobster Company in West Kingston. Mr. Bruce Kopf, commercial fisherman in Narragansett. Bruce, is he here?

Mr. HARTMAN. No, he's not. Somebody will be reading something into the record for him, Mr. Chairman.

Senator CHAFEE. OK. John Sorlein, president of the Rhode Island Lobstermen's Association. And do we have Mr. Nally here?

Mr. HARTMAN. No. We have his testimony, Your Honor. He, unfortunately, was working and he couldn't get here.

Senator CHAFEE. Now let's get straightened out who we do have. We've got Mr. Sheehan, Mr. Christopher, Mr. Sorlein.

Mr. SORLEIN. Yes, sir.

Senator CHAFEE. Does that do it?

Mr. HARTMAN. Mr. Chairman, Mr. Blount is not here and Mr. Nally couldn't be here because of work, but I did bring their testimony with us.

Senator CHAFEE. And you are?

Mr. HARTMAN. I'm Barry Hartman, I'm their attorney.

Senator CHAFEE. So Mr. Kopf isn't here. OK.

Now, why don't we start with Mr. Christopher.

STATEMENT OF AL CHRISTOPHER, WEST KINGSTON, RHODE ISLAND

Mr. CHRISTOPHER. Mr. Chairman, my name is Al Christopher and I appreciate the opportunity to briefly address you today. My testimony is presented as the former owner of ABC Lobster, Inc., a seafood dealership that was located a 296 Great Island Road in Narragansett, Rhode Island. ABC operated by purchasing lobsters from inshore fishermen and then selling those lobsters on the wholesale market to large exporters. ABC also sold some fish and lobsters on the retail market to its walk-in customers. ABC did not purchase fish or lobsters from offshore fishermen because it was not profitable for it to sell such fish and lobsters.

After ABC Lobsters started doing business in 1993, they subsequently increased sales every year. In 1993, ABC had gross sales in the amount of approximately one million dollars. In 1994, when ABC began selling lobsters on the wholesale market, it purchased all new refrigerated lobster tanks and grossed approximately one-and-a-half million dollars in sales. In 1995, sales continued to increase, and by the year end, ABC had grossed 2.1, approximately 2.1 million dollars.

1995 was a good year for lobstering, especially in the spring. Many fishermen who typically did not fish in the winter and spring were planning to gear up and fish hard during the Winter and Spring of 1996. Accordingly, I expected our lobster purchases and sales to increase and we bought four new lobster tanks, which increased ABC's holding capacity dramatically. Unfortunately, that increased demand for holding capacity never happened because on January 19, 1996 the North Cape Barge ran aground off Moonstone Beach and spilled over 800,000 gallons of heating oil into Block Island sound.

In 1996, ABC gross sales were dramatically reduced as a result of the spill. For example, from June 25, 1996 until December 31st, 1996, ABC purchased only, approximately 300,000 pounds of lobsters. During this same period, in 1995, ABC had purchased 465,000 pounds, in other words, my gross purchases declined by about 36 percent during this same period. The profitability of ABC declined accordingly. During this same time period, ABC's retail sales by almost 34 percent.

My claim was first filed with Turnabout on May 31st, 1996 and was later amended to include the entire year of 1996 and a filing date May 14, 1997. Since that amended filing, about 18 months have elapsed. That is way too long.

While waiting to be paid for my damages, business losses have continued to mount, as the lobstermen delivering to ABC continued to experience lower and lower catches due to the decimation of the lobster stocks. In the face of these continued losses with no end in

sight, I sold my business in 1997 at a price considerably below its former market value. My business is gone and my losses remain.

Having failed to get a reasonable offer from damages from Turnabout, I filed my claim with the fund on September 16, 1997. Instead of obtaining a quick resolution of my claim, I was forced to go through the process of delay and documentation all over again. If you look at the correspondence file today, you will see that first the Fund asked for information, then after assigning my claim to Hull & Cargo in January 1998, Hull & Cargo requested different information and then its accounting subcontractor required even further layers of detail. When the Fund finally came up with a settlement offer on June 18, 1998, 9 months had elapsed since the Fund had started its review. Once again, this is way too long. Since the Fund settlement offer was unreasonably low for the first half of my claim and denied entirely the second half of my claim, I submitted a request for reconsideration on August 14, 1998. In this request for reconsideration I provided voluminous documentation to support my claim, in particular the second half of my claim which had been denied outright by the Fund. This documentation included the complete claims of five of my largest suppliers which were pending before Turnabout. These underlying claims of my suppliers unequivocally bolster, improve my claim for damages. In any event, despite the fact that the Fund should have proposed their final offer of settlement within 90 days of this final submittal, that deadline lapsed without explanation. I have been told that I can take this inaction as a denial of my request and then file suit. That makes no sense at all. I could have filed suit anyway without wasting time and resources by filing with the Fund. The fund has failed.

I finally received a letter dated November 20, 1998 from the Fund. Instead of providing me with an offer on my claim, the letter stated that the Fund had waited until October 26, 1998 before authorizing action by Hull & Cargo on my request for reconsideration. In other words, they waited 90 days after receiving my request for reconsideration before doing anything at all. It is no wonder that I didn't receive their final offer of settlement within the 90 day timeframe. Even more disturbing in this letter was their statement that they still could not tie my losses in the last half of 1996 to the oil spill. Why is this so difficult? Don't they even read the reports of the consultants who have documented the lobster losses for the natural resource damage assessment. And, guess what, they asked for more information to justify the losses of the lobstermen who supplied me.

The Fund is adversarial claimants. If you will look at the Fund settlement proposal of June 18, 1998, alongside the request for reconsideration for ABC dated August 14, 1998, certain facts are clear. The Fund does not recognize that the North Cape oil spill produce any harmful effects other than to force closures of certain areas for fishing up until the end of June, 1996. Using their analysis, the effects of the spill stopped by the end of July, 1996. They interpret an unexpected increase in the lobster catch in August as being equivalent to a full and complete recovery from the spill. That's absurd. They just don't get the fact that the spill resulted in enormous damage to the lobster population off the coast of

Rhode Island. Why doesn't the fund make any attempt to consult the scientists involved with the natural resource damage assessment studies, in effect, to understand the significance of the spill. They would see that not only has there been great damage, but that the effects of the spill will be felt in even greater degrees over the next few years.

The Fund's analysis are designed to minimize damages. Great pains were taken by Hull & Cargo to reduce my potential award by selectively applying data, such as weather or the relocation of fishermen from one shore facility to another, as factors to lower my award. The Fund fails to understand that everything changed after the spill, business plans were revised and the factors that led to growth over previously years no longer had relevance. The Fund and its adjusters used a standard of proof consistent with insurance adjusting. Claimants are treated as potential scam artists seeking to capitalize on an accident and that is simply not the case. We did not ask for this spill and we only want to be made whole. I thank you for this opportunity to speak.

Senator CHAFEE. Thank you, Mr. Christopher, very much.

And now, Mr. Sorlein.

STATEMENT OF JOHN SORLEIN, PRESIDENT, RHODE ISLAND LOBSTERMEN'S ASSOCIATION

Mr. SORLEIN. Thank you, Mr. Chairman, and I appreciate the support that you are showing for our industry by coming to this community at this time to help us address this serious problem.

My name is John Sorlein and I'm the president of the Rhode Island Lobstermen's Association. We are a nonprofit association of individuals who are engaged primarily in the business of fishing for lobsters. Several of our members also have onshore businesses or related businesses that rely in large part on lobstering for their livelihood. These businesses represent a large portion of the lobstering industry off Point Judith, Rhode Island, and the Rhode Island Lobstermen's Association has put together a group of over 100 businesses that have developed and continue to develop and document damage claims.

The fishing industry has contributed greatly to the local and statewide economy. Millions of dollars have been pumped back into the economy by way of direct and indirect business resulting from the successful harvesting of Rhode Island's pristine seafood beds. Many lobstermen have been fishing in this area for years and the Lobster Association represents a large portion of that total. Lobstering is mostly a small business, each lobsterman owns a boat or two and each hires his or her own crewmen to help.

We love what we do. We are independent and self-sufficient and we are successful because of our willingness to put in an honest day's work.

Point Judith is also one of the largest fishing ports on the East Coast. Until January 1996, the lobsters caught in Point Judith were world renown for the quality, and, in fact, we absolutely think that they are the best lobsters caught, and the range of the lobsters far better than Maine lobsters.

However, on January 19, 1996, the unthinkable happened, and a barge, the North Cape, spilled over 800,000 gallons of highly

toxic Number 2 heating oil after running aground off of Moonstone. We say this is unthinkable since no one had expected this to ever happen. We had had an oil spill in 1989 with the World Prodigy, and to think that this could happen again, it was just unthinkable, but it did.

The immediate impact of the spill was disastrous, and the only significance of dead lobsters, over 60,000 were measured by weight from the sample areas located on the beach, and over 18,000 of these lobsters were studied to determine their sex, size and reproductive status. That information was used to project the loss of over 2.9 million lobsters, nearly three million lobsters that washed up on the beaches as a result of this spill, and this was only a small portion of the number of dead lobsters that remained beneath the surface of the ocean.

When the spill happened, we were at a loss about what to do. Few of us had ever had to make a claim for lost profits and we didn't know how to do it. We immediately thought that we had to file a lawsuit. We soon found out, however, that a new procedure existed under the Oil Pollution Act of 1990, and under that procedure we would be able to file individual claims for losses without going to court and with a reasonable amount of evidence we would be able to recover in a quick period of time. That has not happened. Many of our members and others have filed claims and submitted literally thousands of pages of documents to establish our losses, but few of us have been paid. We provide information and we are asked for more. We provide more and are asked for still more. We prove a loss under one standard and the responsible party or the fund changes the rules. We simply don't understand why this is so difficult. The barge owner was convicted of criminal offenses that caused this spill, but rather than compensate us, the Nature Conservancy was given over one million dollars. Rather than compensate us, hundreds of thousands of dollars are going to be spent to buy habitat preservation land in Maine. Why haven't our claims been paid or even fairly considered? Why is it that to despite our efforts, instead of the claims being decided in 6 months by the responsible party or in 90 days by the Fund, now almost three full years later few have been fully decided? Why is it that the responsible party and the Fund are only paying one dollar for every four dollars that have been proven to have been lost? Why is it that the responsible party has decided that no one that fished next to the closed area could not possibly have lost more than 3 percent of his catch? Many people that fished in the closed are had moved to other areas so that there were more fishermen looking for few lobsters, in other words, we were competing with ourselves for a diminished resource. No one seems to understand that lobsters don't standstill, they migrate. Yet, the claims adjusters are assuming that no lobsters moved into or outside of the closed area and they assume that fishermen don't move either. They think that if you fished outside the closed area, you can't be effected, but the fact is we are. It is no mystery when someone has consistent catches every year for 5 years or more, or even better still, increase catches for the 5 years previous to the oil spill, and then suddenly, after January 19, 1996, the catch is dramatically less. We don't fish anymore, we mitigate our losses. It's a longstanding joke in my family.

I have a 9-year-old daughter who says ''daddy doesn't go fishing anymore, he mitigates''. We travel further, we spend more money, we work longer hours and catch few lobsters. The fun is gone and there's no mystery here.

How can it be that the fancy study that was performed that says there were 200,000 adult lobsters lost in 1996 and 1997, but several of us alone caught over 400,000 less lobsters during those years than before. The responsible party and the Fund concocted theories of lost lobsters based on conjecture and guess. We have shown actual losses, but those losses are ignored.

At this point, many of us are fed up with this administrative process. We are ready, we are willing and we are able to go to court and sue these criminals for our actual losses. Clearly, we cannot get a fair shake by the responsible party or by the Fund, we are being forced to go to court, that means the oil pollution process has failed us.

We sincerely hope that you can fix this for the next set of victims, wherever they are. Thank you.

Senator CHAFEE. Thank you very much, John. Now, is somebody making a presentation on behalf of—did you want to say something?

Mr. HARTMAN. Mr. Chairman, there are two other witnesses who are clients that have filed claims that couldn't be here today.

Senator CHAFEE Do you to want to give a summation of what they were going to say?

Mr. HARTMAN. Very briefly. One was for the Gail Frances. The Gail Frances is a charter fishing boat business and they have a tale to tell. They're now before the Fund, they've been denied their claims, and to make a very long story short, it comes down to this. The Fund, after somebody submits a claim for hundreds of thousands of dollars, says, well, let's look at the weather on that day that you say you would have gone out but didn't, and if there were winds in greater than 25 miles an hour, we're going to assume you wouldn't have gone out, even though they went out on those days, and do you know what they looked at, they looked at the wind speeds at midnight, and based on the wind speed at midnight, they said you wouldn't have gone out that day. It's nonsense. These people have provided thousands of pages of documentation to the Fund to show their losses. They had letters from customers saying, dear Gail Frances, we're canceling because of the oil spill, and what did the Fund do, they said, we want the phone numbers of those people, you get them for us and give them to us, the letter's not enough. We provided the tax returns that went to the IRS, and what did they say, that copy of the tax return that went to the IRS isn't good enough, we want you to take it back and re-sign it in ink and then send it to us again. That's nonsense, Mr. Chairman. We did it and they've backed off, they don't require that anymore.

The bottom line is, after almost 3 years the Gail Frances has yet to be paid for any lost income that they demonstrated.

The other individual that couldn't be here is Bruce Kopf. Now, Bruce has a different situation. He's not in business anymore. His bottom line was this, the area was shutdown, he couldn't get out to fish, period, he couldn't get out to fish and they said he didn't prove his losses. There's nothing else that needs to be said. He pro-

vided his tax returns. That was his only business. He provided his revenues, he provided his cost, he provided his fuel, he provided the names of his crew, he provided his salary. He couldn't go out that day, he was prevented, and that's not good enough for the Fund.

One last thing, if I may. Well, that's all we'll say with these particular claimants.

Now, Mr. Chairman, I must say we appreciate your support, you're one of the few that have stood up for our clients, to try to make this system work out, as has Mr. Gibson, and try to see if OPA works, and I must say that I'm disappointed with how OPA's worked. I don't hold this against Mr. Sheehan, he's the safety net. I hold this against the responsible party, it's their fault and their responsibility, but now we need the safety net and that's all we need. Thank you.

Senator CHAFEE. Well, thank you. Now, Mr. Sheehan, you'll get a chance to rebut. Let me just say this, Mr. Sheehan, it keeps coming up in here that, and I think you contradicted this, but there seems to be some confusion about 90 days before you, if I understood the testimony correctly here, I think that Mr. Sorlein and maybe Mr. Christopher indicated that, I think they had a little longer period before the insurance company, they suggested. Mr. Christopher, how long do you say you had before?

Mr. SHEEHAN. Would you like me to layout the time for that?

Senator CHAFEE. Yes, why don't you lay out the times for us. We know the 90 days before the responsible party.

Mr. SHEEHAN. The claimant first has to go to the responsible party, if there is a responsible party. The responsible party has 90 days to respond to that claim. If the responsible party doesn't reply or gives an offer which isn't satisfactory after those 90 days, or if they deny it in 30 days, they can come immediately to the Fund. There is no set timeframe for the Fund to adjudicate a claim, but let's say that we adjudicated Mr. Christopher's claim, and use his process that he described, made him an offer, he asked for a reconsideration, the reconsideration, by our regulations, we have to respond to the reconsideration within 90 days or you then have the option to then file suit, which is not the purpose of OPA–90, OPA–90 does not want you to have to go court, but you would have had that option at the end of 90 days.

Senator CHAFEE. Wait. I've got to get this clear in my mind. You go before the responsible party with a claim, Mr. Christopher would, that's a preliminary step that has to take place before they go before you?

Mr. SHEEHAN. Before they come to us, yes, sir.

Senator CHAFEE. OK. And the responsible party has 90 days to——

Mr. SHEEHAN. To either act on it, deny it, or if there is no action in 90 days, they can then come to us.

Mr. HARTMAN. It's 90 days from when they consider the claim to be complete.

Mr. SORLEIN. That's a big problem.

Mr. HARTMAN. When they consider the claim to be complete.

Senator CHAFEE. When the responsible party considers?

Mr. HARTMAN. Yes, yes.

Senator CHAFEE. Then I suppose——

Mr. SHEEHAN. The responsible party is doing it wrong then, because the responsible party, when you file your claim, that starts the clock running, the 90 days.

Mr. HARTMAN. They don't take that position. I couldn't agree with you more. Tell them.

Senator CHAFEE. And they keep asking you for more and more information, we want a signed copy of the income tax and so on and so forth.

Mr. CHRISTOPHER. Yes.

Senator CHAFEE. All right. That is a big difference, because whoever controls that can just delay forever.

Mr. CHRISTOPHER. Mr. Chairman, that's exactly what they did to us, and it was just constant, every time they asked for something, we would give it to them and then they would ask for something else and then it would just go on and on and on.

Senator CHAFEE. This is adjusters, Hull & Cargo?

Mr. SHEEHAN. Turnabout.

Senator CHAFEE. Turnabout.

Mr. HARTMAN. Now, let me tell you what happened, was that they would say if you want us to consider this claim to be complete, we will and we will adjudicate it but we think you should give us more information. When I talked to people at the Fund, they said to me, you'd better give whatever you want to give to the responsible party first because we won't consider new information, now that's what I was told, so we're betwixt and between, either the 90 days doesn't start so we have to get everything in to the responsible party, if we say forget it, responsible party, make your decision based on what we have, we don't like it and go to the Fund, the Fund tells me, well, you didn't present that information to the responsible party.

Mr. SHEEHAN. Let me set the record straight. You file a claim, 90 days, if you haven't gotten an answer or they haven't responded to you, you can come to us. One of the things that, if we adjudicate that claim and we have a request for additional information, we require that that additional information also be sent to the responsible party. That is different than the process which you described.

Mr. HARTMAN. Well, with due respect, Mr. Sheehan, I'll get you the name of the person that told me don't come to me with new information if you didn't give it to the responsible party first, that's what we were told.

Senator CHAFEE. Well, there's a big difference here. Now there's a big difference, because under what Mr. Christopher is saying and the attorney saying here is, if you don't get what the responsible party asks for, you can't present it to Mr. Sheehan, whereas, Mr. Sheehan is saying not at all.

Mr. SHEEHAN. That's not true.

Senator CHAFEE. It's 90 days from when you submit your claim to the insurance company and to the responsible party, and if I, Mr. Sheehan, want more information when you come to me, then all we're saying is you send that to the responsible party.

Mr. SHEEHAN. The responsible party as well.

Senator CHAFEE. OK. So that's a whale of a difference. But, Mr. Sheehan, let's, OK, let's agree on that, so now they're before you,

but they indicate, and, you know, it's pretty convincing testimony from Mr. Sorlein and Mr. Christopher, that they just can't satisfy you people, you want more and more, and I understand adjusters, and you've got fiduciary duty, but this thing seems to, they're very valid complaints that they got here.

Mr. SHEEHAN. I think that they are legitimate issues which we are glad to hear. I think, sir, that one of the things, as you indicated, Mr. Sorlein, is the first time you've ever done a lost profit claim. Lost profit claims and business interruption claims, which basically these are, are easily the most complex claims to adjudicate that the entire insurance industry has, and they're particularly difficult to adjudicate in a fishing industry and a lobster industry.

Senator CHAFEE. But, you know, Mr. Sheehan, you've got to take some people on faith. I mean, you're not dealing with General Motors, trying to make their regulations, you're dealing with John Sorlein, who knows what he did last year, who knows what happened when January, 1996 came, knows the effects of that, and can he rip you off, I suppose if he works hard at it he can rip you off, but what's in it for him?

Mr. SHEEHAN. Sir, it's not my intention to even suggest that the folks who come to us, that we look at them in that manner. We do not. We have spent a, to put it in a bit of perspective, we received out of the North Cape spill 33 claims. Now, there have been many hundreds which have been settled by the responsible party. We have 33 claims. We've settled two, we've got, I think three were denied, we've got three offers out, we've got seven which are currently being measured, which are being looked at with the information that we've got, we've got sufficient information to measure them, and we've got 18 which information has been requested, and sometimes as long ago as May and we were told in July we were going to get all of this information, we haven't heard anything from them. So part of it is, part of it's in the claimant's court, part of it is our fault, and in my statement, and I will say this publicly today, that there have been delays in this whole thing, and I apologize for those delays, some of it's due to our contracting, I've instituted a new process whereby we can get assistance faster for some of this, some of this has been to put together an honest model of the lobster industry so that we can adjudicate all of these claims. I've got that here today, which we're going to pass-out and make available to all of the potential claimants.

If I may, I've got a couple of other points to deal with this.

Senator CHAFEE. Go right ahead.

Mr. SHEEHAN. One of the things that have been a concern to us has been the issue of the statute of limitations. OPA–90 has a 3-year statute of limitations from the time damages have occurred or easily discoverable. One of the things that the responsible party has, evidently, published and sent to the Lobstermen's Association and to a series of other interested parties is that they are going to be considering claims beyond the 3-year statute of limitations, they're specified in OPA–90. I have put together some information about that issue because it is of concern to us, that if you have filed a claim past the 3-year statute of limitations with the responsible party and you don't get satisfaction, we are prohibited by law for

you to come back to us. For example, let's say that you had a boat which was oiled by the spill and that occurred a week after the spill, which was in January 1996, and you had it cleaned, for whatever reason you decided that you were going to wait, go to the responsible party, and you went to the responsible party in the middle of February, you didn't get satisfaction from him, you're barred from coming to us because you've gone past that, you knew when that damage occurred. What we've put together, Mr. Chairman, is a document dealing with the statute of limitations issue, because I really want to make sure that nobody gets surprised by that and by the impact of that.

Senator CHAFEE. Could you do that illustration of the oil again. I didn't get that. There's a 3-year statute of limitations?

Mr. SHEEHAN. Yes, sir.

Senator CHAFEE. Give us the time.

Mr. SHEEHAN. It would have—the statute of limitations would run out, let's say——

Senator CHAFEE. Take this spill, January 19.

Mr. SHEEHAN. January 19th. A week later you had a boat which was oiled, you had it cleaned, that's a legitimate cost for recovery.

Senator CHAFEE. Right.

Mr. SHEEHAN. For whatever reason you didn't file that with the responsible party, but you waited until February 1999 to file that with the responsible party, because the responsible party has a letter out that says, I'm going to consider claims after the statute of limitations. If the responsible party then doesn't settle with you, you don't have recourse to come back to me because the 3 years has gone by, no matter what the responsible party has said. So we looked at this, we've written a letter to the responsible party, telling them to include that information to potential claimants, I've put together a press release which went out today to the Providence Journal, to a series of papers around here addressing that issue because we're concerned about the fact that folks might get caught.

Senator CHAFEE. Because the 3 years is coming up.

Mr. SHEEHAN. Because the 3 years is coming up for at least those things which are discoverable in the immediate aftermath of a spill. Now, that doesn't say, for example, that potential future losses on the lobster industry which aren't discoverable until a time in the future.

Senator CHAFEE. I found Mr. Christopher's testimony very convincing, and particularly, it seems to me, that you can trace through his profits his gross sales year after year as he documents it there, and then, obviously, things stop, and I just have great trouble why he's had such a tough time trying to get compensated. Now, I assume that the responsible party, what, brushed you off in a lot of those, gave you some settlement figures but nothing specific?

Mr. CHRISTOPHER. Not at all, and then when we went to the Fund. I mean, the second, they split it up into two parts, from when the waters were reopened again until, as one part, and then from there until the end of the year, and they denied the second half completely, the Fund did, and that's why I said, they just figured as though it was over, the spill didn't have any effect after

that, after they opened up the waters, that was the end the spill. And, I mean, we sent in lobster slips from the boats that were pending that and the whole works and they can see comparing from 1 year to the next how the catches were down and they just said, no, it doesn't effect it.

Mr. HARTMAN. If I may, I promised when Tom and I talked about this we weren't going to try to make you the judge on claims, because that's not fair, and we're not really trying to do that, but I will say this——

Senator CHAFEE. No, but Mr. Christopher presented, I think, a very interesting case, and one that seems to me to be quite well documented. I mean, you know, you can't assume that suddenly he's sitting at home on the sofa watching daytime shows, he's trying to pursue his business, and you can see, his document shows what his gross was and then it tails off. It wasn't that he just sat at home. He's not going lobstering.

Mr. CHRISTOPHER. He certainly didn't.

Senator CHAFEE. Go ahead.

Mr. HARTMAN. What I was going to say was, and I appreciate Mr. Sheehan saying there's now a model out of some sort, which is news to us, but I appreciate knowing that. The danger is this, the reason why Mr. Christopher's claim has been denied and the reason why we're having other difficulties is because the Fund, I'm sure, acting in good faith, is making assumptions about losses and saying to the individuals, we are making this assumption, it applies to you and we don't care about your facts, and the danger of any model and any rule, like the 3 percent rule I told you about once before that the responsible party filed and you can only get 3 percent of your losses if you fished outside the closed area, we don't care what your real losses are, is that it ignores the facts, so all we're asking is look at the two banker boxes of documents he submitted, we know there was a loss out there, everybody knows lobsters died, everybody knows it was shutdown, look at the two boxes of financial documents he's provided, and based on the language of the regulations that talk about reasonable documentation and the legislative history that talk about let's not make everybody go to court, make a reasonable decision here, that's all we ask. That's all we ask.

I have never, and I've litigated these cases in court, I've litigated lost profit cases, defending a lot more than I've been a plaintiff's lawyer for, Mr. Sheehan, I've never seen anybody require the level of documentation that's required here by any court, and that's all we ask, just look at reasonable documentation. If you think somebody is lying, say so; if you don't, assume they're honest business people and make a decision, that's all we ask.

Senator CHAFEE. Mr. Sorlein, did you have a comment?

Mr. SORLEIN. Yes. You made a comment about a basic level of trust, Mr. Chairman, and at some point you have to have faith in an individual, that he's not out to cheat and get something that he doesn't deserve, and I talked earlier about mitigation, and it's interesting, when I think of the possibilities of people making an assumption, the Fund or the responsible party making an assumption that I'm out to cheat them, when I actually think about what I've done in the last 3 years to mitigate my damages, which is required

by law, I believe, that I must do what is within reason, within reason of what I can possibly do to mitigate my losses, in other words, I can't sit around and watch soap operas and just pileup the losses, and, in fact, what I have done is I've burned more fuel on my lobster boat, spent more hours on, taken my pots further to try to get away from, not only the impact area where the lobsters were wiped out, but also to move further away from the areas adjoining the so-called impact area where lobstermen have migrated out with their own traps, in essence, helping me to catch my lobsters in some other location and going beyond that, to the point now where I am 60 miles offshore in an inshore lobster boat, which is not a good place to go in the interim time, because that's the only way I'm going to put food on my table and pay my bills. What I've done by doing that is I've removed my traps from this so-called closed area, this impact area they like to talk about, and by doing that and following through with the responsible party's philosophy of 3 percent outside a certain line, I have destroyed my chances of a claim, so it's a catch 22. I've worked to mitigate my damages. By mitigating my damages, I've eliminated myself from the claims process.

Senator CHAFEE. Why have you eliminated yourself from the, because, when you use the word you've mitigated your damages, you mean you've now moved your gross up to where it was before?

Mr. SORLEIN. No. When I say mitigating my damages, I'm working to my fullest capability, operating my business to make as much money as I can, in other words, to find lobsters other places.

Senator CHAFEE. Yes.

Mr. SORLEIN. And by doing that and by removing my pots from this impact area, the so-called impact area, where they draw lines on a chart which are very arbitrary and they say inside of here is where the oil spill killed the lobsters, but right on the other side of that line nothing happened, so if you put your pots over there, you have no claim.

Senator CHAFEE. Yes, I see. Instead of staying local, you're going 60 miles out and taking more fuel and greater expenses, greater danger, too.

Well, Mr. Sheehan, you're sort of on the hot spot here. You know, right from the beginning I said I wasn't asking you to be in a situation where you have to become clerk typist and just type up a check for every claim that comes up, we're not asking that, but we're also asking that, these are very legitimate complaints, and I think you've got to take some people on faith, and you yourself said that it isn't part of your standard to figure that everybody's trying to cheat your organization that submits a claim, and I certainly don't think these gentlemen are trying to do that. I think they present very good cases. One of the problems, apparently, that's come up, is working with your evaluation contractors, and I think you yourself said you've revised that, have you?

Mr. SHEEHAN. Well, one of the problems, Mr. Chairman, has been the timeliness of getting our claims, commercial claims adjudicators to respond to some of the claimants, like yours, for example, and that was a contracting problem that we had internally in the Coast Guard, we have fixed that, we can get those folks to respond quicker at this point in time to the claims as they come forward. The commercial claims adjudicators that we've hired in this

particular instance, Hull & Cargo, have a long history of adjudicating maritime type of claims, they are one of the best in the country, they basically follow our guidance with respect to what type of information is needed, they also use industry standards. One of the things which we make absolutely clear to them is that we want them to fairly adjudicate that claim because we end up finally signing off on it, they get no credit from us for coming in with a low ball offer, I think I made that statement in one of the interviews I had, that is not part of the process at all. We are not out to protect the Fund from future use. We're out to pay claimants, but we do have a requirement that there are certain standards of information that we need to pay folks. Now, there have been a couple of cases where we have settled, where we basically went in and worked with the claimants to help reconstruct their books. We spent money for our accountants to go in and help them do that because we recognized—we don't want to have a requirement where you have to custom tailor information to come to us. We are more than happy to have our folks go out and help work with the claimants to provide some of this information, and we're committed to doing that. I think one of the problems has been that there have been somewhat of a lack of communication back and forth.

In the press release I put some information about the information that we needed and why we need it, because I think that that's a legitimate concern. Lots of times you get asked for information, if you're not told what it's for and why you want it and how it plays into the adjudicational process, you say, why do I need to do that, and I understand that, and that's one of the things that we put in this document to help with future claimants and to help with those that we've currently got on our plates.

Senator CHAFEE. Well, I'd like to see some results here, and I'm not just, and I'm not just speaking on behalf of these two gentlemen here who I think have presented a very convincing case, but there are others, too.

Mr. SHEEHAN. Yes, sir.

Senator CHAFEE. And I'll follow this and I'll just, have your people take a look at these particular cases and the cases that the attorneys have here and let's just get this thing done. As Mr. Sorlein and Mr. Christopher said, you're going to end up with—somebody is going to have to make a decision, it's not going to be—the situation has got to be absolutely crystal clear, but usually in these cases these people want a decision. So I'll be staying in touch with you, Mr. Sheehan, on these, and I will get the rest of the cases, that, obviously, I'm intensely interested in the Rhode Islanders, but this is a national problem, too, and I'm representing the claimants nationally, likewise. Do you have any other questions?

Mr. GIBSON. No, sir.

Senator CHAFEE. Let's see what we can do on all this. And, now, you gentlemen have got to respond quickly if he wants something more.

Mr. HARTMAN. Absolutely. And, Your Honor, with all due respect to Mr. Sheehan, I don't know who he's talking about, but I can show you the list of documentation, believe me, there's no moss growing under this stone when we respond. It goes quickly, very, very quickly.

Mr. SHEEHAN. I would like to say this, that I have letters from, we have requests out to 18 claimants, many of which are represented by my colleague over here, Mr. Hartman, from May and July who we have not received the documentation, so if that's not moss, I mean, I'm sorry.

Mr. HARTMAN. That's simply not true.

Senator CHAFEE. Let's not get back and forth. I think, you know, some people just for wariness or despair give up and don't respond, but I don't think we want it to be an endurance course either on these folks.

Mr. SHEEHAN. We don't either. Please, accept my assurance of that.

Senator CHAFEE. Sometimes, it seems inappropriate to say that you've got to fish or cut bait here, but on these things a decision has to be made and you're dealing with, these aren't shysters, these aren't guys out to shaft you, these are people who can, I think the income tax, it seems to me pretty that not many people are going to take a chance of cheating on their income tax to collect some more, and when they submit their income tax, as Mr. Christopher, you can see the level of his business going up, things going great and making purchases and then down she goes. So, in any event, so I'll stay closely in touch with you, Mr. Sheehan, and now you've got to do your part.

Mr. CHRISTOPHER. Absolutely.

Senator CHAFEE. And the others who aren't represented here, likewise, I don't know whether the ones you represent and members of your organization, Mr. Sorlein.

Mr. SORLEIN. Certainly, certainly, sir, yes.

Senator CHAFEE. So we'll follow them along. Did anybody else want to say anything? We have a chance for somebody to say a couple of minutes.

Mr. TRAGER. I'm Bob Trager. I own a small lobster wholesale business in Jerusalem. I'd like to ditto what Mr. Christopher said because his business was similarly sized to mine, and Barry's representing our business, but what I'm hearing is not as encouraging as I'd like it to be because I don't know where we stand right now, I'm going to have to talk to Barry afterwards, because we haven't submitted this year's tax returns, but all of the things that Al said about how the insurance company has dealt with us when we put our short-term claim in, stacks of papers like this. My wife—I don't know if you know Skip's, I think you've been down to Skip's dock, Senator?

Senator CHAFEE. Yes.

Mr. TRAGER. Well, anyway, we're the oldest continuous running lobster wholesale business in the whole port, but we're probably the smallest, too, but we're also one of the oldest retail markets in the State of Rhode Island and it's in jeopardy of surviving right now because of the way this whole thing is transpiring. Right now my sons are down there, two of them, that are running that business, unloading lobster boats. I looked around here and I see what I think are a lot of lawyers and a few fishermen, and that's from guessing, but one of the reasons there aren't more fishermen here, and Mr. Sorlein didn't mention it, is today, and he probably shouldn't be here, because today is a calm day and practically ev-

erybody went out fishing today because there's so few calm days, if the wind is blowing, they won't fish, but they fish when they can, so I think this place would be packed with people if it wasn't a fishing day and the lobstermen could have been here.

I've seen a decline in our business very similar to what he said. This year has been one of the slowest that I can remember, and, like I said, there are many people that have been in the business longer than me that are in Galilee, but we're the oldest ones there, and in the last 12 or 13 years, and I think with the 17 to 20 boats that sell to us, we've got a pretty good feel of what's going on with lobsters in the area, and, believe me, what's going on right now is not a healthy situation, and not only that, but we also have to contend with the regulations that are coming down with lobstermen now, that some of them are so far out in left field that the Government's playing around with that, that's a scary issue, too. So the lobster, we got that, and this, and this claims process, I wish I could describe my wife Ingrid to you a little bit, but nobody, she is so honest that it's scary sometimes, and, yet, we still couldn't get anywhere. It took us forever to get what I didn't even think was a fair settlement for that short-term claim. One of the things they would do, a slip was missing, but one slip out of 5,000 slips. Well, believe it or not, we ended up finding it, it was one that we canceled out, you know, that's the kind of thing they would do over and over again. We haven't even gotten the long claim. I don't know what's going on with the long claim process, but I know one thing, what's going on with my business and my two sons that decided that this is what they're going to be doing with their living for the rest of their lives, one of them has two children, my other son is probably starting along those lines pretty soon, and we don't fish. A lot of people, like they were saying, there's some people that have fishing boats and they have these businesses, all we do is serve the lobstermen and we run a retail market and we run a wholesale lobster business, we're on the other end of it, but whatever happens to the lobstermen, we are damaged, our damages are proportionate to whatever happens to them, and what's happening to them is not good right now. I think that——

Senator CHAFEE. I think that——

Mr. TRAGER. I'm just afraid that, even though I heard all this and I'm glad I came, I don't have a good feeling of comfort when I hear about statute of limitations that's going to come up in a few weeks, because my wife and I haven't done some kind of manipulation of our books and whatever. We're working down there, like Al's out of it, it's a good thing that he is, but right now we're still doing it, we've been doing it for a long time and we want to keep doing it. It's a hard job, and it——

Senator CHAFEE. I also wonder whether the full effect hasn't really been felt yet.

Mr. SORLEIN. No, it has not.

Senator CHAFEE. If you take the 3 years—when did they reach maturity, after about 3 or 4 years?

Mr. SORLEIN. Seven.

Mr. HARTMAN. According to the draft assessment, the worst years are going to be 1999, 2000, 2001.

Senator CHAFEE. Yes, that's what worries me, is that the full hit will come then. And then I think, I thought it was very interesting that the testimony was given about the others that are all part of the food chain, that looks very—it's very interesting.

Mr. SORLEIN. Senator, I have one more thing. With respect to some comments I believe that Mr. Sheehan was directing toward the documentation still outstanding and possibly, and he didn't say this, but possibly claimants that have not moved into the Fund process yet, I can speak for myself in saying that I have held back from asking my attorneys who represent me to move my claim from the responsible party to the Fund for the simple reason, and I call this the chicken and barbecue theory, that how many pieces of chicken do you throw onto the grill before you figure out that the coals aren't burning, and while lobstermen are different in a lot of respects, but we're also very similar, and when I see some of my colleagues with claims going that are involved in the Fund and getting nowhere, and I know that my claim is quite similar——

Senator CHAFEE. With the Fund, John, or with the——

Mr. SORLEIN. With the Fund, sir.

Senator CHAFEE. In other words, they've gone through the responsible party, the 90 days?

Mr. SORLEIN. Right. And now you're saying that there's no sense in my going, moving, going through the process of being in the Fund, when I can look at five or six of my colleagues who have claims that are identical to mine in all respects except for the name at the top of the tax return and the individual figures and the other supporting documentation, but we are, essentially, identical, and we're getting nowhere, so that it just makes little sense.

Senator CHAFEE. Before the responsible party?

Mr. SORLEIN. Both the responsible party and the Fund.

Senator CHAFEE. The ground rules are that you got to go first, you have to go through the responsible party?

Mr. SORLEIN. Absolutely. I understand that, sir.

Senator CHAFEE. And I'm not quite sure that, you're saying they've done that, then you see them go before the Fund and they go nowhere and that discourages you, is that what you're saying?

Mr. SORLEIN. Exactly. What I'm trying to relate to you, sir, is that from a personal standpoint, my own claim, I have not pressed my claim to go forward into the Fund because I see no reason to be there. I'm just trying to describe to you the dismay that we have with the process that the Fund seems to be presenting to us because of the inaction on the claims that are similar to mine, and I see no sense in throwing yet another piece of chicken on the grill when I can tell that there's no fire there, so that's where I am.

Senator CHAFEE. Well, Mr. Sheehan said he'd look into these and press these people along and get these things settled, is that a fair statement, Mr. Sheehan?

Mr. SHEEHAN. Yes, sir, and I would like to make an offer, that we would be pleased to come up and meet with the Lobstermen's Association and sit down and go through this in their setting, just to go through and layout and describe whatever else you need. We will go through this process.

Senator CHAFEE. I would say not only describe it, but arrive at some conclusions, in other words——

Mr. SHEEHAN. I think there's a communication problem that needs to be addressed.

Mr. SORLEIN. If Mr. Sheehan was going to bring that clerk typist with him, we'd be more than happy to accommodate him.

Senator CHAFEE. OK. Do you understand that offer, John? I should get your name.

Mr. HARTMAN. It's Barry Hartman. We had asked from March 5th, 1996, I sent the Freedom of Information Act request to Mr. Sheehan, saying tell me all the criteria you need and want to file these claims, and he said there were none. Give it to me, I will pass it on, I will make sure that all our claims meet, I will guaranty you that our claims meet every documentation requirement that you have there and then some, I will guaranty you that. I mean——

Senator CHAFEE. Let's not replay it. Mr. Sheehan made this offer, I think it's a fine offer, that he or his people will meet you and——

Mr. HARTMAN. Say the time and place.

Senator CHAFEE. Let's get this doggone thing settled.

Mr. SHEEHAN. If I can only make one other point, and that's, again, I would urge you to take a look at that document that we put together on the statute of limitations, it's out on the table out there, and I don't mean to scare you, but it has some implications.

Mr. TRAGER. You scared me, and I'm going to go look at it.

Mr. HARTMAN. We're quite familiar with that.

Senator CHAFEE. That's enough to scare anybody, the statute of limitations. What was the date, the 19th?

Mr. HARTMAN. The 19th of January.

Senator CHAFEE. So that's enough to scare anybody. So time is of the essence here.

Mr. SHEEHAN. For most folks that doesn't apply, but there are some that it might, and I want to make sure that everyone who has a loss has the opportunity to come to the Fund site.

Senator CHAFEE. All right. Now, the ball's in your court over here, gentlemen, to work it out with Mr. Sheehan and——

Mr. HARTMAN. Give me a date and time and I'll be in your office. I'll save you a trip to Rhode Island.

Senator CHAFEE. And I personally will follow this thing and stay in touch with Mr. Sheehan as to how we're doing here in getting these things done.

Mr. HARTMAN. I have to say something, Mr. Chairman, a comment was made by the counsel of Mr. Sheehan saying they've been asking to meet with claimants. That's simply not true. I am willing to meet on behalf of 122 claimants, to take all the information back to our claimants to put it together. These people can't afford to meet with bureaucrats all the time, that's what I'm there for. I'll give them the information. Tell me when to be in your office. Let's cut through this. To say that you want to meet with our claimants for the fifth time, tell me when to be in your office and I will be in your office, I'll do it.

Mr. SHEEHAN. I don't want to replay this, but I think our dialog today has been very useful.

Mr. HARTMAN. Absolutely.

Senator CHAFEE. Well, I can understand, and I take it that what we're saying is that, yes, they're glad to meet with the lawyer, but what are you suggesting? You're the attorney for Mr. Sheehan?

Mr. SHEEHAN. She's my deputy.

Senator CHAFEE. Deputy. And what are you saying, you want to meet these fishermen face to face?

Ms. LANE. We frequently have questions that we need to pose directly to the claimants. We deal with claimants on a day-to-day basis.

Senator CHAFEE. Well, would you do that up here?

Mr. SHEEHAN. We will be glad to come up at your convenience, not at our convenience.

Mr. SORLEIN. Why can't those questions be posed to our attorneys who are handling our cases? This is a very complex process, Senator, and——

Mr. HARTMAN. If you put a hundred people in a room, you're going to say, Mr. Smith, tell me about your claim.

Ms. LANE. You don't have to meet with everybody at the same time, and sometimes questions can be answered in 2 seconds, whereas, sometimes when you go through attorneys it takes 2 months to get.

Mr. HARTMAN. That is just simply not true. That's not true. That has not been true.

Senator CHAFEE. I think there's considerable merit, and if they're willing to come up here, and if the deputy or whoever is going to interview these individuals and it's going to, if they think it's going to move things along faster, I think there's some merit in that.

Mr. HARTMAN. They're welcome to do it. I'm just trying to be practical and move it as quickly as we can, because our folks can't all be there.

Senator CHAFEE. Oh, obviously. I don't think you're suggesting 120 call you.

Ms. LANE. No, even over the phone sometimes we can get questions answered.

Mr. HARTMAN. Oh, we've offered that with the clients, absolutely.

Senator CHAFEE. Now, is this thing settled now, is it understood you're going to meet at a certain time up here?

Mr. SHEEHAN. We'll work it out with them, Mr. Chairman. We will probably end up doing both and that will be fine with us.

Mr. HARTMAN. That's fine.

Senator CHAFEE. Now, just a concluding statement here.

Mr. ALLEN. My name is Dick Allen.

Senator CHAFEE. Dick, come on up front.

Mr. ALLEN. I just wanted to comment on one thing, you kind of alluded to it, the frustration and making it an endurance contest, and one thing that I've realized, that this is a pretty heavy cost in pursuing your claim, not in just the defense fees that the lawyers are going to get or things like that, but, as someone mentioned, there are a lot of people who aren't here because they have to be out fishing. If they had given up the day, that's an additional loss. We put in a tremendous amount of time gathering this information, putting it in, and, as I understand the law, those kinds of things are not compensable, you can't put in a claim for what you put in, and so these continuing requests, people get to the point

where they say, you know, I'm just adding to my losses by continuing to respond to these things, so I think it's a completely valid argument that we can't just keep saying they want to talk to you, they want to meet with you here, they want to meet with you there, how many days can you give up, how many times can you put in before you just say, hey, I'm starting to go backward now, forget the whole thing, you know, take your losses and you can go away.

Senator CHAFEE. OK. Well, I think you're right, you're not going to be able to collect for the time you spent tabulating your losses, but, well, I think we made some headway here, and I'm very, very interested in this situation, so everybody put their shoulder to the wheel now and try and reach settlements on this, and, as I say, I'm going to make it my business to see how these things all come along, but it's up to you folks now to get together and work it out, and Mr. Sheehan has offered to come up here, his people, there's one, if you want to take, and when he comes, I'll get some conclusion.

All right. That settles that, folks, and that concludes our hearing. I want to thank everybody for coming. You've all been very helpful.

[Whereupon, at 6 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF DANIEL F. SHEEHAN, DIRECTOR, NATIONAL POLLUTION FUNDS CENTER, U.S. COAST GUARD, DEPARTMENT OF TRANSPORTATION

Good afternoon, Mr. Chairman and distinguished members of the committee. I am Dan Sheehan, the Director of the National Pollution Funds Center, responsible for the management of the Oil Spill Liability Trust Fund. I want to thank you for giving me the opportunity to testify concerning the claims process that resulted from implementation of the Oil Pollution Act of 1990 (OPA–90). A primary objective of OPA–90 is to provide compensation, subject to certain statutory limitations, to those damaged by oil spills or threats to our navigable waters. Polluters are strictly liable for a broad range of damages and, if the polluter does not pay, the Oil Spill Liability Trust Fund (OSLTF) is available to ensure appropriate compensation. The National Pollution Funds Center (NPFC) is charged by Executive Order and internal agency delegations to implement and administer procedures for the payment of claims from the OSLTF for compensation of damages discussed in OPA–90.

OPA–90 significantly broadened the scope of removal costs and damages claimants can recover, specifically eliminating the traditional admiralty ship owner's protection. If a responsible party does not pay a claim for damages or removal costs, or if the responsible party (RP) cannot be identified because the source of the spill is not known, a claim may be submitted to the NPFC for consideration of payment for the following categories:

Uncompensated removal costs;

Damages to real or personal property;

Loss of subsistence use of natural resources;

Net loss of certain government revenues by Federal or State governments or political subdivisions thereof;

Loss of profit and earning capacity due to loss or injury to real or personal property or natural resources;

Net costs for increased or additional public services during or after removal activities by a State or a political subdivision of a State; and

Natural resource damages and the cost of assessing those damages.

Prior to OPA–90 the only mechanism available for most non-Federal claimants was to seek redress for damages directly from a negligent responsible party. The scope and type of damages that were compensable were narrowly defined and the existing case law basically stated that in order to claim damage, individuals or their property had to be physically impacted or touched by the oil. This did not account for the myriad of real damages caused by oil spills. OPA–90 also provides a two-step process whereby a claimant may seek compensation directly from a strictly lia-

ble RP or a guarantor if a guarantor was required by OPA–90. If the RP doesn't settle a claim within 90 days, the claimant can either seek compensation through litigation against liable parties (the RPs) or submit the claim to the NPFC for adjudication and payment from the OSLTF. In the latter event, when the NPFC pays a claim, it becomes subrogated to the rights the claimant had against the RP.

OPA–90 sought to provide a mechanism that prevented a claimant from having to engage in potentially costly and lengthy litigation. Where an RP is known, the two-step process does in fact facilitate that goal. The *North Cape* spill serves to illustrate the achievement of the broader goal of having the RP respond first and take care of the claims, but also of giving claimants a second venue if they feel the RP did not adjudicate claims properly.

By way of background, I would like to provide an overview of the NPFC's role with respect to the *North Cape* spill. The NPFC has served two roles in the aftermath of the *North Cape* incident. First was in support of the response effort. During the operational response to the *North Cape* incident, the NPFC served as "banker" for the government costs. We provided the funding source to the Federal On Scene Coordinator so that Federal response efforts could be initiated immediately. The government spent $1,886,034.92 during the clean-up phase of the incident. The NPFC also drafted the Notice of Designation that was delivered to the RP. This Notice advised the RP of its liabilities under OPA–90 and set out the requirements for advertising for claims, including informing claimants of their rights to submit claims to the OSLTF if unable to reach settlement with the RP. It is our opinion and general observation that the implementation of OPA–90 and the requirement to inform claimants of the Fund's availability has provided significant incentive to RPs to act responsibly toward claimants.

The second NPFC role was in support of third party claims. During the incident, an NPFC claims representative traveled to the site and provided information to various public officials and others. We made copies of the "NPFC Claimant's Information Guide" available during the incident and have mailed others to claimants since. In the immediate aftermath of the incident, we worked closely with representatives of the congressional delegation of Rhode Island, the Governor's Office, and the guarantor of the RP to implement a partial payment and settlement process for claimants. This partial payment policy had been in place for claims adjudicated at NPFC, but had not been adopted universally by the marine insurance industry. Through a cooperative and collaborative effort with that industry, and in particular the Water Quality Insurance Syndicate, the partial payment option was made available to claimants from the *North Cape* spill to tide them over until final adjudication was completed. In the aftermath of the incident you introduced legislation to make this a permanent feature of OPA–90, another positive step in refining the claims adjudication process.

Based on information provided by the *North Cape* representatives, the RP received 1,460 claim inquiries from 1,180 claimants. Of these 1,460 claim inquiries, 579 are still outstanding; most of these are phone inquiries following which the claimant has not pursued a written claim. Of the remaining 881 claims, 125 have been withdrawn by the claimants, and the RP has made partial settlements on 275 claims and full settlements on 481 claims. To date, the NPFC has received 33 claims arising from the *North Cape* incident. All claims at the NPFC fall within the categories of property damage or lost profits and earning potential. These are claims for which either payment has been denied by the RP or the claimant did not feel the offer made by the RP was acceptable. As might be expected in the situation where claims have been denied by the RP, there is generally a lack of evidence to support the claims. In addition to this lack of documentation, there are two factors that have impacted our ability to adjudicate these claims expeditiously: claim complexity and delays resulting from government contracting requirements.

The *North Cape* oil spill incident has presented the NPFC with some of the most complex claims received to date, in particular those claims of fishermen for loss of profits or earning capacity. We have hired experts to assist us in adjudicating these claims. We have received widely varying technical and scientific data and opinions on the impact of the spill on fisheries resources. We have had to acquire catch data and have spent a substantial amount of time helping claimants properly document their damages. All of these factors have contributed to delays in the processing of many of these claims. Many claimants submit their own claims. Others choose to use legal counsel. In some instances, claimant's counsel has been reluctant to provide information or to arrange for the NPFC's representatives to deal directly with the claimant, thereby also contributing to processing delays.

I would again point out that the claims we have received are not all claims arising from this incident, but only those that were not settled by the RP or its guarantor.

Arguably, we have received the claims that are more difficult to compensate because of a lack of supporting documentation.

Some of the delays are our fault and I take responsibility for those. We believe in continuously improving the process and in making it more customer friendly. I have initiated a new technical support contract mechanism which I believe will assist us in being more timely. Additionally, I am reviewing the Claimant's Guide and our standard supplemental information request documents to see if they can be improved. We can speed up processing time if we can reduce the number of times we have to go back to the claimant for additional information. In support of that goal we have prepared a handout for the lobster industry, available at the hearing today, which provides a list of the specific documentation required, how we use the documentation, and the methodology which will be used to measure their claim. We are hopeful that this document and other supplemental guidance will clear up some of the confusion about the NPFC's adjudication process.

I understand the frustration of individuals that believe they have not been adequately compensated as a result of an oil pollution incident through the claims regime established by OPA–90. And there is nothing we would like better than to be able to compensate every claimant to his or her complete satisfaction. However, our authority and ability to provide relief is not unfettered.

First, there are statutory constraints, which limit any relief to those seven categories of costs and damages mentioned previously, and their respective classes of allowable claimants. The statute also requires that, generally, claims must be presented first to the RP and that the RP is allowed up to 90 days to settle the claim before the claimant may come to the NPFC. Clearly the RP does need time to consider claims, but I can understand the problem of an individual facing financial responsibilities whose livelihood has been taken away by a spill. In the aftermath of the *North Cape* spill, I wrote to every guarantor and gave a speech at a maritime conference stressing the absolute importance of timely claims adjudication to put money on the table for just such individuals.

Second, as stewards of the public's money, we have a fiduciary responsibility to ensure that where funds payments are made that it is done equitably and that any payments from the OSLTF are based on supporting documentation. We are subject to congressional oversight and annual Inspector General financial audits. We are clearly, and appropriately, accountable for the funds expended.

Lastly, one of our functions in administering the OSLTF is to pursue cost recovery vigorously from RPs. These costs include expenditures from the Fund for third party claims. We need to ensure that we have adequate documentation to support claims payments that are later billed back to the RP. That documentation is utilized in our litigation proceedings.

I would now like to take the opportunity to give you a better understanding of our claims process—what we do with the claim when we receive it. Our basic approach is to first determine if the claim is compensable under OPA, and then to measure the amount of compensation. After we have determined the compensable amount, we offer 100 percent of that amount. This point is also emphasized to any contractor we hire in the adjudication process. Our contractors receive no bonus for "saving money" for the Fund.

The NPFC also insists that all claims be handled consistently. The methods used by the NPFC to measure these damages are the standard methods, where standard methods exist, that are used in the insurance industry. All claimants are held to the same general requirements: they must submit evidence to support their claim. 33 CFR 135.105. Claimants requesting compensation for lost profits or earning capacity must establish that property or natural resources were injured or lost as a result of an oil spill and that the claimant lost income as a result. The amount of the loss is established by income tax returns, financial statements and similar documents. Saved expenses, mitigation, and alternative employment or business factors are also relevant. 33 CFR 136.233.

To assist us with various aspects of the adjudication process, the NPFC sometimes hires contractors with specialized expertise. Contractors can provide technical expertise or surge capacity and also ensure consistency for those incidents where we anticipate a high volume of claims. For example, in handling the claims arising from the *North Cape*, the NPFC hired a contractor to prepare a report on the fishing bans imposed in the area, when and where the bans were imposed, when they were lifted in the various areas impacted by the spill, and how these bans generally impacted the seafood industry in that area. We also required the claims adjudication contractor to hire an accounting firm familiar with the New England lobster industry to assist with the lost profits claims, and an expert on lobster population dynamics and movements in southern New England. Although this has generally worked well, it has not always resulted in as timely an adjudication as might otherwise occur.

As mentioned previously, I am implementing a new contracting process to allow us to hire the specialized expertise we require in a more timely and responsive manner. Regardless of which vehicle is used to obtain contracting services, the recommendation made by the contractor is closely scrutinized by appropriate personnel at Coast Guard Headquarters and the NPFC. Any claims adjudication recommendation is reviewed by two NPFC claims professionals, who make the final decision on disposition of the claim.

As of November 10, 1998, the status of the 33 claims submitted to the NPFC are as follows: 2 have been settled; 3 have offers pending; 3 have been denied; 18 await information from the claimants; and 7 are in the measurement process by our contractor.

With respect to natural resource damage (NRD) claims, it is clear to anyone familiar with the *North Cape* oil spill that natural resources were damaged as a result of the spill. Even though the NPFC has not received an NRD claim from the various Natural Resource Trustees, I'd like to take this opportunity to discuss the current status of these claims in general at the NPFC. While the NPFC has provided (and will continue to provide) limited funding to Trustees to initiate NRD assessments, it has not previously paid NRD claims, relying on a Comptroller General opinion, issued in late 1995, that OPA–90 provides for payment of NRD from the OSLTF only by appropriation; OPA–90 allows the NPFC to pay other damage and removal cost claims direct from the OSLTF without appropriation. In late 1997, the Department of Justice (DOJ), Office of Legal Counsel, interpreted OPA–90 to permit payment of NRD from the OSLTF without further appropriation, like other damages and removal costs.

Following the DOJ interpretation, the NPFC formed a Program Implementation Team with members from the Coast Guard, National Oceanic and Atmospheric Administration (NOAA), and Department of the Interior, and with advice and assistance from the DOJ and other agencies as needed. The NPFC had no experience with the science and economics of NRD. The Program Implementation Team provided technical assistance to the NPFC in determining the resources needed to carry out this program, especially the qualifications of the personnel necessary to evaluate these often complex claims. The Coast Guard is in the process of approving additional personnel resources for the NPFC that will be devoted to NRD claims processing. As soon as qualified staff is hired, the NPFC will begin adjudicating NRD claims. We are hopeful that the new staff will be in place by next spring.

The NPFC has developed an outreach document, a Trustee claimant guide, that explains the process and general requirements for adjudication of NRD claims by the NPFC. Essentially, the guide summarizes certain OPA–90 provisions relevant to NRD, the general claims regulations already in place, and certain aspects of the NOAA damage assessment regulations. The guide is now available for the information of all Trustees on the NPFC's Web Site (http://www.uscg.mil/hq/npfc/npic.htm). I plan to send a letter notifying State Governors, congressional delegations, and all Trustees (Federal, State, and Indian Tribes) about the availability of the Guide. I will also invite any comments they may have on the utility of the guide as an information source.

Let me highlight a few OPA–90 NRD fundamentals that underlie the Guide.

All Trustees have the same standing as claimants from the OSLTF. There are no preferences or differing procedures or standards for any particular Trustee or class of Trustees.

The interests of Trustees may often overlap, so the Trustees are encouraged to coordinate their claims. NPFC cannot pay twice from the OSLTF for the same damage.

A claim must be based on the cost of a plan to restore, rehabilitate, replace or acquire the equivalent of the damaged natural resources, the diminution in the value of those resources pending restoration, and the reasonable cost of assessing damages.

Assessment or restoration plans must be made available to the public for comment before they are finalized.

Any NRD claim must first be submitted to the responsible party. If the responsible party does not settle within 90 days, the Trustee may submit the claim to the NPFC.

The Trustee has the burden to support its claim. However, the claims process comparable to an insurance adjustment process. It is not intended to be a proceeding with opposing parties arguing alternative evidence or law. Congress clearly intended that claims to the OSLTF be an alternative to litigation, not litigation in another form.

Trustees may follow the NOAA damage assessment regulations in preparing their claim, but are not required to do so.

Determinations or assessments made in accordance with the NOAA damage assessment regulations are presumed to be correct. Any presumption is subject to rebuttal. If the NPFC determines the rebuttal evidence is of sufficient weight, a claimant may need to supplement its record or claim with additional information.

Ultimately, the NPFC may pay a claim in full, but it also may deny a claim in whole or part if it is not adequately supported.

Any amounts paid to Trustees from the OSLTF must be retained in a revolving trust account and used only to reimburse and pay costs of assessment and restoration of the damaged natural resources.

Regarding the *North Cape* incident, I understand that the Trustees have released a draft restoration plan for public comment. Under OPA–90, they must conduct public hearings prior to finalizing the plan and then submit a claim for the cost of the final plan to the RP before they may submit the same claim to the NPFC. If the RP does not settle the claim, the Trustee claimants will determine whether and when to submit a claim to the NPFC or litigate their claim against the RP.

In summary, Mr. Chairman, I would like to again thank you for the opportunity to appear before you today; to provide insight into our claims process; to let you know what steps we are taking to streamline our process; and to reassure you and your constituents that we share the goal of assuring that claimants are appropriately compensated for damages caused by oil spills, and that the natural resources damaged will be restored in a timely manner.

I will be happy to answer any questions you might have.

RESPONSES OF DANIEL SHEEHAN TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

TIME FRAMES FOR HANDLING CLAIMS

Question 1. There appears to be some confusion on the time frames in which the responsible party (RP) and the National Pollution Funds Center (NPFC) must act with respect to a claim. Can you clarify how long the RP has to handle a claim, when the claimant may go to the NPFC, and how long the NPFC then has to handle the claim?

Response. A claimant is required by law to first present the claim to the RP. The RP has up to 90 days from presentment of claim to take action concerning that claim before it can be submitted to the NPFC. If the RP denies liability for the claim or the claim is not settled within 90 days of the date it was presented, the Oil Pollution Act of 1990 provides that the claim may then be presented to the NPFC for payment from the Oil Spill Liability Trust Fund. With respect to how long NPFC has to handle the claim, there are no statutory or regulatory requirements, however, we strive to adjudicate all claims as quickly and efficiently as possible. All claims are not equal in their complexity or documentation requirements and as a result, the time needed for adjudication will vary from claim to claim. NPFC relies heavily on contract support for the analysis of claims injuries and has implemented improvements to make this process more timely.

STATUTE OF LIMITATIONS FOR FILING CLAIMS

Question 2. An announcement was made at the hearings concerning the Statute of Limitations for the filing of claims under OPA. Could you clarify this issue and its impact on the claimants in Rhode Island?

Response. The Oil Pollution Act of 1990 (OPA–90) has a 6-year statute of limitations (SOL) for claiming removal costs, and a 3-year SOL for other compensable OPA–90 oil spill damages. The question was raised about when the 3-year clock starts. While the circumstances of each claim will determine when the clock starts, the rule is that the claimant must submit an OPA oil spill damage claim to the National Pollution Funds Center (NPFC) within 3 years after: 1) the injury, and 2) its connection with the spill, were reasonably discoverable with the exercise of due care. Loss-of-profit injuries, and their subsequent claims, are often complex. As general guidance, NPFC believes that a loss-of-profit injury is reasonably discoverable no later than when, in the course of its normal business accounting practices, or otherwise as required by law, the claimant determines, or is required to determine, business loss for a given period. But if a business in fact discovers it suffered a loss at an earlier date, that date will control. In the absence of other information as to when a loss of profit was in fact discovered, the NPFC may rely on the date of relevant income tax filings to establish the date loss was reasonably discoverable.

When is the connection between the injury and the discharge reasonably discoverable? Again, the circumstances of the claim will determine when the connection was reasonably discoverable. In general, the connection may be reasonably discoverable

when the injury is discovered or discoverable. In some circumstances the connection with the discharge may be reasonably discoverable only at a later time because, for example, information on the spill or its impact was not available until a later time.

This focus on "reasonably discoverable with the exercise of due care" is a recognition that some damages may not be apparent until some time after an oil spill incident. Rather than start the clock for all claims at the time of the incident, OPA provides a degree of flexibility depending upon the circumstances. Although the circumstances of each claim will vary in determining when the 3-year period starts for that claim, some examples may be helpful to claimants.

Example 1: Fisherman "X" observes an unexplained reduction in catch for several months beginning in February 1994. X notes a resulting loss of profits for those months when preparing quarterly tax records. On January 15, 1996, State and Federal authorities announce, and X learns, for the first time, that catchable fish stocks in the area fished by X had been severely impacted by an oil spill in February 1994. The 3-year period for X's loss-of-profit claim would arguably begin on January 15, 1996, which is the date the connection between the loss of profits and the oil spill was reasonably discoverable.

Example 2: A charter fishing boat owner "Y" loses business for the month of January 1995 because charterers cancel as a result of a massive oil spill in the area. But business revives quickly after the spill and Y does not bother to pursue a claim. In February 1998 the responsible party for the spill places an ad in the local paper offering to continue to consider and pay damage claims from the spill even though the 3-year period may have passed. Y reconsiders and decides to present a claim. The responsible party denies the claim. Y then decides to present the claim to the NPFC for payment. The NPFC cannot pay the claim despite its merits because it cannot, unlike the responsible party, waive the 3-year period.

The purpose of raising this issue at the hearing was to highlight our concerns with respect to potential claimants that have heretofore not submitted claims. As indicated in the hearing, the RP notified potential claimants that they would still consider claims even though they were beyond the SOL. By law, the NPFC cannot waive the 3-year limit for claims to the NPFC for payment from the Oil Spill Liability Trust Fund. Because the circumstances of each claim will determine when the 3-year period starts for that claim, the NPFC cannot provide a single date to begin the 3-year period that will apply to any class of claims. The only certainty is that the period begins no sooner than the initial date of the spill; any claim submitted within 3 years after the initial date of the spill will certainly be timely. Beyond that, the best guidance NPFC can offer claimants is not to delay submitting a claim for a period of years. Such delays will only increase the risk an otherwise valid claim may be denied in whole or part solely because it is submitted late. NPFC has taken steps with respect to the RP's public notice concerning their acceptance of claims beyond the SOL. A copy of NPFC's letter follows:

DEPARTMENT OF TRANSPORTATION,
U.S. Coast Guard, September 21, 1998.

Mr. BARRY HARTMAN,
Kirkpatrick & Lockhart, LLP
1800 Massachusetts Avenue, NW,
Second Floor,
Washington, DC 20036–1800

DEAR MR. HARTMAN: The Director of the National Pollution Funds Center asked that I respond to your 1 July 1998 letter. I have read it very carefully, and would like to address your concerns. Because the National Pollution Funds Center's (NPFC) mission requires that we deal with oil spills on a daily basis, through our claims process in particular, we are keenly aware of the consequences of oil pollution incidents. I think our goal is the same. We both want to see that those who hare been damaged as a result of incidents are made whole.

Accordingly, we can appreciate the frustration which your clients feel. Our contractors began working on these claims in April 1998, and requested additional information from your clients on May 15, 1998. I was pleased to see the recent letter of July 24, 1998 from Mr. McIsaac of your firm which appears to indicate that we have now overcome your firm's initial unwillingness to our contractor's request for information and personal meetings with individual claimants. In preparation for those meetings, our contractors asked for contemporaneous documentation that provides the number, location, and monthly placement of traps as well as a monthly summary of catch pounds and dollars for these locations for 1994 through 1996. This will allow us to document each fisherman's efforts (measured by the number

of traps and pounds caught) before the spill, and then after the spill. This is important as the latest inshore landing report for the Area 539 provided by Mr. Tom Angell of the Rhode Island DEM is very different from the Table B you provided. (See enclosed schedule completed by our contractor based upon the handwritten information provided by Mr. Angell). After our contractor reviews the information, they have requested meetings with you and your clients to review any questions and issues, and to confirm a working understanding of each claimant's particular business operation.

Your characterization of NPFC's approach to handling your clients claims is inaccurate. First, you assert that NPFC is holding your clients to the heightened standard of "beyond a reasonable doubt." This is simply not true. The methods used by the NPFC to measure these damages are the standard methods used in the insurance industry. All claimants are held to the same standard of proof—they must submit evidence to support their claim, 33 CFR 135.105(e)(6), and they must submit proof that their income was reduced by damages stemming from the oil spill, 33 CFR 136.233. Second, your description of the NPFC Approach is not on point. You are of course correct in stating that the one claim for which we have submitted an offer does refer to the National Marine Fisheries Service (NMFS) total landings at Point Judith for the claim period of August 1 through December 31, 1996 which indicates an increase in lobster landings over 1995. However the inference is that the claimant is a lobsterman. In facts the claimant is a lobster wholesaler. Accordingly, using total Port Judith landings is the proper threshold to examine the supply availability of lobster in Port Judith. Our contractor clearly stated in the Claim Summary for this claim that they would need to evaluate the individual claims of fishermen who supplied this lobster wholesaler. I understand you represent these fishermen and this information should be readily available.

As far as actual lobstermen are concerned, I agree that total landings is not the proper measure. This is precisely why we have been requesting individual catch/landing records for each lobsterman. Ours too is a straightforward approach. We project what the individual income would have been based on effort and adjust for saved expenses, actual income, mitigation or extra expense. Your methodology of merely comparing income falls short. Although proof of loss of revenue is an important threshold issue, loss of revenue alone is not proof of a compensable claim. A claimant must also demonstrate that the loss of revenue resulted from the incident, and that the claimant attempted to mitigate damages to the extent that it was reasonable to do so; Thus, our contractor has requested individual catch/landing records to support your clients claim.

You also state that landings of lobster in Area 539 have decreased drastically since the *North Cape* spill and cite Thomas E. Angell's studies as authority. First, let me point out that the chart which you attached to your letter as Exhibit A indicates that the total lobster landings at Point Judith increased from 3.3 million pounds in 1995 (before the spill) to 3.9 million in 1996 (after the spill). Second, Angell's data contains a tremendous margin of error. As I noted before, Mr. Angell has revised his estimates since producing the chart you are using. Attached you will find a schedule, based upon information provided to Hull and Cargo by Mr. Angell, summarizing lobster landing data for Area 539. This schedule shows the total landing for 1995 to be somewhere between 2.6 million and 3.2 million pounds in 1993 and between 2.1 million and 2.9 million pounds in 1996. The margin of error between the high and low figures for 1996 is almost a million pounds. The point to be taken from this is that the data does not clearly support your assertion that Area 539 findings hare decreased dramatically since the spill.

Finally, much of your letter deals with your frustration with the responsible party (RP) and its claims adjusting representatives. Please understand that I have no authority to regulate how the RP processes claims. All I can do is to receive claims which have gone unresolved by the RP and then to adjudicate those claims in accordance with our regulations.

I want to assure you we arc committed to the efficient adjudication of these claims, but we are also mindful of our fiduciary duty to ensure that all claims paid are meritorious and properly measured. I hope we can work together to achieve this mutual goal.

Sincerely,

LINDA F. BURDETTE, *Chief of Claims,*
National Pollution Funds Center.

DEM Low Range Comparison

Month	1995	1996	1996 to 1995	Subtotals
January	71,519	30,228	−41,291	.....
February	27,352	8,155	−19,197	.....
March	31,635	7,653	−23,932	.....
April	83,770	33,037	−30,733	.....
May	80,099	77,036	16,937	.....
June	289,714	100,758	−188,956	.....
July	885,788	421,837	−244,079	−531,301
August	530,283	511,817	−18,486	.....
September	262,838	327,114	84,276	.....
October	305,994	235,569	−70,425	.....
November	256,470	194,375	−62,005	.....
December	125,689	157,163	31,474	−55,238
TOTAL	2,693,124	2,106,588	−588,537	−586,537

DEM High Range Comparison

Month	1995	1996	1996 to 1995	Subtotals
January	72,133	33,348	−38,285	.....
February	28,479	8,678	−19,801	.....
March	36,014	10,585	−25,429	.....
April	71,975	37,212	−34,753	.....
May	75,569	120,054	44,435	.....
June	323,182	114,563	−208,619	.....
July	778,979	493,671	−235,308	−587,720
August	636,545	699,285	62,641	.....
September	196,688	462,513	85,820	.....
October	−54,158	377,223	−26,935	.....
November	290,834	251,886	−38,948	.....
December	144,197	358,211	214,014	276,596
Total	3,220,349	2,929,726	−291,124	−291,124

Data provided by Mr. Tom Angell of Rhode Island DEM on July 16, 1998.

CLAIMS REGULATIONS

Question 3. The natural resource damage claimant's information guide states that, "It is likely that the interim final claims regulations will be finalized within the next several years." This reference is the interim claims regulations at 33 CFR Part 136. Please discuss in detail any plans that may exist for finalizing the interim claims regulations.

Response. The National Pollution Funds Center (NPFC) plans to submit a regulatory project workplan for internal Coast Guard approval on or about October 1999. While the details of the plan have not been finalized, we anticipate the plan will include substantial revision to the current interim regulations, a notice of proposed rulemaking and opportunity for comments prior to publication of a final rule. Our target date for publication of the final rule is late 2000 or early 2001.

STATEMENT OF CRAIG R. O'CONNOR, DEPUTY GENERAL COUNSEL FOR ATMOSPHERIC & OCEAN RESEARCH & SERVICES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Good evening Mr. Chairman and members of the committee. I'm Craig O'Connor, Deputy General Counsel for Atmospheric and Ocean Research and Services at the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA). Thank you for inviting me to participate in this discussion of damage claims submission to the Oil Spill Liability Trust Fund (the Fund) by Federal, State and tribal natural resource trustees. Under the Oil Pollution Act of 1990 (OPA), trustees act on behalf of the public to restore natural resources when they are injured by oil spills.

My testimony is being presented on behalf of NOAA and the Department of the Interior and will provide a Federal trustee's perspective on submitting damage claims to the Fund. I would like to begin by commending the U.S. Coast Guard's National Pollution Funds Center (NPFC) for the progress they have made in developing guidance for processing damage claims submitted by natural resource trustees and guidance for trustees regarding the claims process. In recognition of NOAA and DOI's extensive experience with developing and pursuing natural resource damage claims, the NPFC initiated early consultation with these two Federal agencies. My agency and DOI worked closely with the NPFC to increase their understanding of the restoration planning process and the NOAA natural resource damage assessment regulations to help them develop guidance useful to natural resource trustee claimants. I can assure you that the NPFC is striving to expeditiously establish an effective process for paying natural resource damage claims from trustees.

When those who are responsible for oil pollution to navigable waters do not or cannot provide compensation, OPA authorizes compensation of qualified claimants for removal costs and damages. Until recently, the NPFC relied on a Comptroller General opinion which concluded that OPA provides for payment of natural resource damage claims from the Fund only by appropriation. Then, in September 1997, the Department of Justice concluded otherwise, determining that uncompensated claims for natural resource damages, like other uncompensated damages and removal costs, are payable from the Fund without further appropriation. Since that decision, Federal trustees have worked closely with the NPFC to develop guidance for processing and considering natural resource damage claims to the Fund.

The NPFC has reached a general understanding with Federal trustees about how damage claims will be treated. This understanding is reflected in the Natural Resource Damage Claimant information Guide, which began circulating on November 24, 1998. This Guide discusses how trustee damage claims are presented to the Fund and how they are given consideration, consistent with the NPFC's existing claims regulations and the NOAA natural resource damage assessment regulations. The NPFC has invited comments from users and other readers of the Guide and expects to change the Guide content from time to time to improve its informational value. We expect the NPFC to begin processing trustee claims in the late spring of 1999.

The Federal trustees recognize that the NPFC must consider the interest that trustees have to obtain compensation expeditiously to support restoration needs, as well as the Fund's interest to ensure that any claims paid are valid and properly supported. At the same time, it is important to develop a consistent national approach to damage assessment and restoration planning for oil spills. The Federal regulations for conducting natural resource damage assessments under OPA should serve as an important tool for ensuring consistent, high quality restoration planning by trustees and the development of solid restoration based claims. These regulations were promulgated by NOAA, and became effective in February 1996. They represent a commitment by natural resource trustees to focus on expeditiously restoring the natural resources and services injured by oil spills. Assessments performed in accordance with the NOAA regulations are entitled to OPA's rebuttable presumption of correctness.

If a responsible party denies all liability or fails to settle a claim presented by trustees within 90 calendar days after an OPA claim is presented, trustees may either file a civil action in court against the responsible party or present the claim to the Fund. Generally speaking, like any other OPA claimant, a trustee bears the burden of proving its damages to the NPFC. However, the Guide recognizes OPA's intent that, when claims are prepared in accordance with the NOAA regulations, those claims are statutorily presumed to be correct, unless rebutted by sufficient evidence in the record of the assessment. In reviewing claims, the NPFC will determine whether trustees have complied with the regulations and met the burden of proof based upon review of a comprehensive administrative record developed in accordance with the NOAA regulations.

The State of Rhode Island is acutely interested in this issue because of the January 1996 oil spill from the tank barge *North Cape*. Before I proceed, I would like to recognize the significant contributions of the State of Rhode Island and the Department of the Interior in pursuing a natural resource damage claim in the wake of this oil spill. Full restoration of the natural resources injured by this oil spill would not be possible without the commitment and cooperation of the Rhode Island Department of Environment Management and DOI. While the trustees have been engaged in a cooperative damage assessment with the responsible parties for this incident, there is a strong possibility that the restoration plan for this oil spill could be the first claim by a Federal trustee submitted to the Fund.

A Draft Restoration Plan and Environmental Assessment (Draft RP/EA) for restoring the natural resources and associated services injured by the barge *North Cape* oil spill was released on September 15, 1998. The restoration activities in the plan are designed to return injured natural resources and their services to their prespill conditions and compensate for interim losses. The assessment and the Draft Restoration Plan were developed in accordance with the NOAA regulations on an open, public administrative record, so we fully expect that claim will be afforded record review by the NPFC.

The trustees evaluated injuries to the following resources and services: (1) the offshore marine environment, including lobsters; (2) salt ponds; (3) birds; and (4) human uses. The responsible parties (RP) for this incident, including Odin Maritime Corp., Thor Towing Corp., and Eklof Marine, were invited to participate in the injury assessment. The trustees and RP designed, performed and funded many studies used in determining the nature and extent of injuries to natural resources.

The trustees evaluated 25 restoration alternatives with the potential to enhance the recovery of natural resources injured by the spill (i.e., primary restoration) and to provide additional resources to compensate for the losses pending recovery (i.e., compensatory restoration). Based on analysis of these alternatives, the trustees are proposing the following restoration actions:

- Adult lobster restocking and protection project: To compensate for the 9 million lobsters killed, the trustees are proposing to purchase, ''v-notch,'' and release 1.25 million adult female and 300,000 adult male lobsters into Block Island Sound over a 5-year period. ''V-notching'' describes the practice of cutting a small v-shaped notch in the lobster's tail. Lobster harvesters will be prohibited from possessing v-notched lobsters. The v-notch should last about 2 years and give the lobsters at least one more opportunity to reproduce before becoming commercially available.
- Quahog restoration—To compensate for the loss of 1 million kg of shellfish and sea stars, the trustees are proposing a 5-year quahog restoration project for the coastal salt ponds. The trustees are proposing to purchase and plant 49 million, 20 millimeter-long hatchery-reared quahog seed into several of the salt ponds.
- Water quality improvement through land acquisition—To compensate for 880,000 kg of finfish, crabs, benthic animals and other organisms killed by the spill, the trustees are proposing to purchase sufficient land within the watershed of the salt ponds to prevent the development of 38 new houses. Acquiring these lands will prevent additional nitrogen loadings to the ponds from these homes, thereby preventing additional degradation of water quality and future losses of eelgrass beds and their associated animal communities.
- Piping plover protection—To compensate for the loss of five to 10 piping plover chicks, a federally threatened shore bird, the trustees propose a 5-year project to protect nesting sites on South County and Block Island beaches. This project will be designed to minimize predation and human disturbance on piping plover nesting pairs and chicks through protection of nest sites.
- Loon habitat protection—To compensate for the loss of loons, an iconic animal to the northeast, the trustees are proposing to purchase and protect loon nesting habitat in northern New England along lake shoreline that is threatened with development. The trustees have calculated that 33 nesting pairs and their associated nesting sites need to be protected to fully restore the loss. The trustees have identified potential acquisition sites, that would require purchasing development rights for a 500 to 1,000 foot buffer zone around nesting territories within a 25 mile stretch of lake shoreline and the purchase of easement rights for a 500 foot buffer zone along a portion of 30 miles of privately owned shoreline.
- Marine bird habitat protection—To compensate for the loss of marine birds the trustees are proposing to purchase and protect island acreage in the State of Maine to prevent future losses of breeding eider populations due to development. The trustees have calculated that 414 nesting eider pairs and—their nest sites need to be protected to fully restore the loss of marine birds. The trustees have estimated that approximately 31 acres of nesting habitat will need to be acquired.
- Recreational Fishing Enhancement—To compensate for injuries to the recreational fishery caused by the spill the trustees are proposing two projects:
- Anadromous Fish restoration—fish passage improvements will be implemented on two rivers that flow into the coastal salt ponds to enhance populations of river herring to compensate for injuries to recreational fishing. Possible sites for improvements include Factory Brook, Cross Mills Dam, and Rum Pond/Smelt Brook.
- Shore access—The trustees are proposing to improve access to the shore for recreational anglers at Matunuck Point by reconstructing a public stairway and walkway down a bluff to the shore.

The trustees are currently seeking public comment on the analyses used to define and quantify natural resource injuries and the actions proposed to restore injured

natural resources or replace lost resource services. The Draft RP/EA is available to the public for a 90-day comment period and the trustees conducted a public meeting to solicit additional comments. Written comments must be received by December 16, 1998 and will be reviewed before finalizing the document. If the trustees determine that significant changes to the plan are required, an additional opportunity for public review will be provided.

In addition to this draft restoration plan, the trustees have compiled an administrative record containing documents considered in planning and implementing assessment and restoration planning activities. The record is available for the public to review at two locations in Rhode Island as well as through the website for the Rhode Island Department of Environmental Management. Additional material will be included in the administrative record at a Later date, including public comments received on the Draft RP/EA, the Final RP/EA and restoration planning documents.

A Final Restoration Plan will be presented to the RP, either for funding or for the RP to implement the restoration projects set forth in the final plan. The natural resource trustees for the *North Cape* oil spill would prefer that the responsible parties agree to implement the restoration plan produced by this cooperative damage assessment process. Nevertheless, if the responsible parties are nonresponsive, the trustees are prepared to pursue their claim, either by presenting a claim to the Fund or by litigation to ensure that the American public is compensated for the losses from this oil spill. Restoring the Nation's natural resource heritage is a responsibility shared among many Federal, State and tribal agencies. The natural resource trustees look forward to working with the NPFC to guarantee that we meet the mandate to promptly restore natural resources for present as well as future generations of Americans.

STATEMENT OF STEPHEN G. MORIN, ASSISTANT TO THE DIRECTOR, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT THE TRUSTEE FOR NATURAL RESOURCES OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Good evening Mr. Chairman and members of the committee. I'm Stephen G. Morin, Assistant to the Director, Rhode Island Department of Environmental Management and the State's delegate to the *North Cape* Oil Spill Trustee Council. Thank you for the invitation to participate in tonight's hearing.

The State of Rhode Island has been the unfortunate victim of two major oil spills in the last 10 years; the *World Prodigy* spill in 1989 and the *North Cape* spill in 1996. During the *World Prodigy* spill, State and Federal responses operated from separate locations with harmonious but loose coordination. Afterwards the State independently pursued claims for natural resource damages and undertook separate restoration actions from the Federal Government.

The Oil Pollution Act of 1990 (OPA) changed all of that. After concluding that separate, conflicting or untimely responses could exacerbate the damage from an oil spill, Congress directed the creation of a system that required all of the parties responding to an oil spill to work together. Most importantly, a Fund was created that allowed government responders, both State and Federal, to take any and all measures necessary to stop and clean up a spill.

During the *North Cape* spill the Coast Guard and the State of Rhode Island implemented a preplanned response in which they and the Responsible Party operated in a Unified Command at a pre-designated command post. In another room the Federal and State Trustees began working with the Responsible Party's representatives on a natural resource damage assessment.

The Presidentially appointed Federal On-Scene Coordinator, USCG Captain Barney Turlo, while having the ultimate say pursuant to OPA–90, insured that all of the decisions were acceptable to the State. Most importantly he made sure that we knew that the full resources of the Oil Spill Liability Trust Fund (the Fund) were available to the State of Rhode Island. As the Deputy State On-Scene Coordinator, I was repeatedly asked to estimate the amount of money Rhode Island would need to sustain the response. I was assured that, as a member of the Unified Command, all of our response expenses were consistent with the National Response Plan and eligible for immediate reimbursement by the Fund.

So far the promise of OPA–90 was delivering 100 percent of its advertised benefits. However once the response phase concluded we switched our attention to the restoration of the substantial damage done to our natural resources.

As in the response arena, Congress recognized that the speedy restoration of damaged natural resources was an essential element of the statutory reform. Experience showed that an absent or recalcitrant Responsible Party would delay or deny the restoration of damaged resources. Congress also recognized that the process of liti-

gation, with its delays, costs and uncertainty might still not yield a complete or adequate restoration. The Fund was to be the remedy for these problems. It would act as the guarantor of a swift and complete restoration.

In this realm the promise of OPA–90 has not yet been fulfilled. On February 5, 1996, during the *North Cape* oil spill, the final regulations for conducting natural resource damage assessments under OPA took effect. Since that time these rules have been challenged in court and upheld. Although able to use other methods, the State and Federal Trustees jointly decided to utilize these new rules. We agreed to work cooperatively on the damage assessment and restoration plan and to include, as required, the Responsible Party in the damage assessment phase.

During the negotiations over OPA–90 the House of Representatives wanted to make the Federal liability scheme and Fund the sole methods of establishing liability and settling claims. The Senate, to your credit, insisted that States should be able to set their own liability laws and manage their own Trust Funds. The tradeoff for this however was that should States elect to sue using their own legislative authorities, outside of the OPA rules, they would not have guaranteed access to the Fund. Within hours of the spill, Rhode Island elected to follow the OPA path, giving up the "home court advantage" of trying a damage case in the State system. The anticipated speed and certainty offered by access to the Fund was too great an incentive to ignore.

When I joined the Trustee Council, the first difference from the response operations that I noticed was the near complete absence of support from the Fund. Enough money had been provided to allow the Trustees to determine if there was damage to trust resources. Thereafter the Trustees would either have to use their own resources to undertake the assessment or they would have to rely on the Responsible Party to fund the studies. The Fund, we were told, was not available to fund either the Assessment or the Restorations. Despite the language of the Act and the endless references to the contrary in the Congressional Record, the Fund managers were told by the Comptroller General that they could pay other damage claims but not Natural Resource claims.

As legislators, you know that few agencies have budgets with these kind of contingency funds. So when I joined the Trustee Council I found that the Responsible Party was funding the majority of the assessment studies. Had it not been for the small NOAA Damage Assessment Center budget the Responsible Party would have been completely in the driver's seat. This clearly was not what you intended when you set the Fund's ceiling at $1 billion.

In the ensuing 2 ½ years, thankfully, the Justice Department has reversed this position. The Fund can now be used to pay for Natural Resource Restorations. For the North Cape Trustees it came just in the nick of time. Our view was that with the Fund as our Insurance Company, we would not be forced to bargain from a position of weakness with the Responsible Party. Without the Fund we would have had no recourse other than lengthy litigation and we probably would have had to settle for a less than complete restoration in order to get back any of the lost resources within the next decade.

In keeping with the requirements of OPA–90, Governor Almond appointed the Director of the Department of Environmental Management as the State's Natural Resource Trustee. He joined the Secretaries of Commerce and Interior as the Presidentially appointed Trustees. The Trustee Council, made up of the representatives of those three agencies, then spent nearly 3 years pursuing damage assessment and restoration planning under the new Federal NRDA regulations. We are now in the public comment stage of our Draft Environmental Assessment and Restoration Plan (the Plan).

We intend to finalize the Plan by January 1999, taking into account the public comments, which we have received. In accordance with the requirements of OPA–90, we will then submit it to the Responsible Party for implementation or funding. After 90 days, if the Responsible Party is unwilling to undertake or pay for the Restoration in whole or in part it is our plan to submit a request to the Fund for the money necessary to complete the restoration of the damaged Trust resources. That sum would represent the amount that the Trustees have determined is necessary to fully implement the projects that restore the lost public resources as contained in the Plan. It would of necessity not include the cost of any of the restoration projects that would be performed or funded by the Responsible Party.

The Trustees believe that this is the only rational interpretation of the language of OPA–90 and is consistent with the congressional intent as reflected in the Record. As duly appointed representatives of the Public Trust who followed properly adopted and judicially upheld Federal regulations, our Restoration Plan Is the final executive decision. As such it is entitled to immediate payment from the Fund to undertake restoration of the injured public resources.

At a Conference on OPA–90 issues put on by Roger Williams Law School, we were surprised to learn that the National Pollution Funds Center (NPFC) does not necessarily share our view of the process. In their view Natural Resource claims are little different than any other claim.

Since then, we have heard arguments that the NPFC's first obligation was to protect the fiscal integrity of the Fund. We also heard that the NPFC wanted to understand the Responsible Party's view, presumably to gauge the Fund's litigation risk when they sought reimbursement from the RP. In our opinion neither consideration is required by OPA–90 nor reflected in the Record. In fact the House Report (101–242) states "In promulgating regulations establishing claims procedures under this legislation, the President shall observe the following principles: The Fund is to provide compensation for damage claims fully and promptly. While the Fund must require some evidence of loss and the establishment of a causal connection with oil pollution, it should not routinely contest or delay the settlement of damage claims. The Fund will sometimes be providing compensation where there is little chance of subrogation against the discharger. Even so, litigation or lengthy adjudicatory proceedings over liability, defenses, or the propriety of claims should be reserved for subrogation actions against dischargers." The Senate Report (101–94) states that ". . . the primary purpose of this Act is to guarantee that claimants will receive rapid and equitable compensation for any economic loss suffered as the result of an oil spill, the committee expects that the claims settlement procedures established by the Secretary will be formulated with this purpose in mind. Particular care should be taken to avoid unnecessary procedural delays or overly complicated bureaucratic processes."

That is as explicit as can be. Especially in the case of the *North Cape*, where the new NRDA regulations were first used, and where the Trustees have followed the National Environmental Policy Act as well as the Administrative Procedures Act. In pursuing this damage assessment the Trustees have reviewed scores of scientific reports as part of a voluminous Administrative Record. They will use these documents and the public comments they have received to make their final determination. There is no place for the Fund to review, re-work or second-guess the Trustees decision. A decision of the Trustee Council should be viewed as the decision of the executive branch of Government. The only adjudication should be by the Judiciary. All this is not to say that the NPFC should not exercise care when reviewing.

Having invested 3 years in the NOAA NRDA process, the State of Rhode Island believes the Fund has a ministerial, non-discretionary duty to pay for the Restoration Projects that were developed by the duly delegated Natural Resource Trustees. Any adjudication the Fund engages in should be with the RP in a cost recovery for subrogated claims, which the Fund has already paid.

I have just received a copy of the NPFC's draft Natural Resource Damage Claimant's Information Guide. The NPFC is, by their account, the final decisionmaker on the validity of an NRDA Plan. The Guide says that the NPFC will decide if a Restoration Plan is consistent with the NOAA regulations, even one submitted by NOAA!-It also says that its decision to deny a NRDA claim is final, "subject to limited judicial review of the NPFC administrative record under the Administrative Procedures Act "arbitrary and capricious standard." However two pages later they say that they may ". . . request that a claimant supplement its administrative record. . ." Not only is that an obvious double standard but it truly undermines the administrative decisionmaking process. The Trustees have an obligation to review the entirety of the Administrative Record and then to use their best professional judgment in crafting the Restoration Plan. The Trustees' decision is then "subject to limited judicial review".

It is clear that the NPFC is trying to take the NRDA regulations and the process they require into account in this new type of claim. But it is also clear that they are trying to force the private party claims review process to serve in the NRDA arena. That is not what Congress intended.

The Fund should allow the Trustees to begin restoring the injured resources in the near future, rather than having to wait many years to obtain a judgment against the Responsible Party in Federal court litigation under OPA. We would ask that you re-convey this sentiment to the Coast Guard National Pollution Funds Center in the strongest possible fashion.

STATEMENT OF ALBERT B. CHRISTOPHER

My name is Al Christopher and I appreciate the opportunity to briefly address you today. My testimony is presented as the former owner of ABC Lobster, Inc.("ABC" or "ABC Lobster"), a seafood dealership that was located at 296 Great

Island Road in Narragansett, RI. ABC operated by purchasing lobsters from inshore fishermen and then selling those lobsters on the wholesale market to large exporters. ABC also sold some fish and lobsters on the retail market to walk-in customers. ABC did not purchase fish or lobsters from offshore fishermen because it was not profitable for it to sell such fish and lobsters.

After ABC Lobster started doing business in 1993, it subsequently increased sales every year. In 1993, ABC had gross sales in the amount of $921,582.00. In 1994, when ABC began selling lobsters on the wholesale market, it purchased all new refrigerated lobster tanks and grossed $1,531,238.00 in sales. In 1995, sales continued to increase and by the year-end ABC had grossed $2,120,605.00.

1995 was a good year for lobstering. Many fishermen who typically did not fish in the winter and spring were planning to gear up and fish hard during the winter and spring of 1996. Accordingly, I expected our lobster purchases and sales to increase and we bought four new lobster tanks which increased ABC's holding capacity dramatically. Unfortunately, that increased demand for holding capacity never happened, because on January 19, 1996, the *North Cape* Barge ran aground off Moonstone Beach and spilled over 800,000 gallons of heating oil into Block Island Sound (the "Spill").

After the Spill, about 250 square miles of Block Island Sound were closed to fishing. All of the lobstermen that sold to ABC were unable to fish. Soon after this closure, the Rhode Island Department of Health ordered the removal of all lobster pots from the closed areas. When the lobstermen who supplied ABC retrieved their gear from various closed areas soon after the Spill, I purchased the few uncontaminated lobsters that they found in an attempt to mitigate my damages.

ABC's retail sales were especially affected during this period. I believe that the Spill created a stigma against Rhode Island seafood.

On February 12, 1996 I received a written offer of $525,000 from the State of Rhode Island for the leasehold interest and one story building housing ABC Lobster. It was the intention of the State to use the property occupied by ABC for ferry parking purposes. Despite receiving this offer after the Spill, I rejected it outright because the business of ABC had been growing dramatically and was projected to continue its healthy growth. One factor in my decision was the downplaying of the Spill's effects that was presented in the media and from government sources. As I have progressed through the claims process that brings us here today, I have had ample opportunity to regret my decision not to sell to the State.

In mid-April some of the closed areas were reopened to lobstering. Many of the lobstermen that sold to ABC began the laborious process of fixing and re-setting all their gear. At least another month elapsed before the lobstermen had harvested lobsters that they could resume selling to ABC. From the time the lobstermen's gear was initially retrieved until the time the gear was re-set and able to be harvested, ABC had almost no lobster purchases.

Various areas of prime lobster grounds remained closed, off and on, until June 25, 1996. However, even after all of the closed areas had been reopened to lobstering, ABC continued to experience a decrease in wholesale and retail sales in comparison with 1995. This decrease is entirely due to the lower catches experienced by the lobstermen who supplied ABC. I believe that their reduced catches were entirely due to the effects of the Spill. There is simply no other explanation.

In 1996, ABC's gross sales were dramatically reduced as a result of the Spill. For example, from June 25, 1996 until December 31, 1996, ABC purchased only 300,058 pounds of lobsters. During this same period in 1995, ABC had purchased 465,459 pounds. In other words, my gross purchases declined by about 36 percent during this time period. The profitability of ABC declined accordingly. During this same time period, ABC's retail sales fell by almost 34 percent.

On May 31, 1996 and May 14, 1997, by and through its attorneys, Kirkpatrick & Lockhart, LLP, ABC submitted to Turnaboat, Eklof Marine Corp.'s ("Eklof") insurance adjuster, a claims package seeking compensation for losses from the Spill. This started the long process that brings me here today.

My written testimony today includes copies of correspondence documenting my attempts to seek compensation for my losses. I have not included copies of the documents that I was forced to produce during this process because it would require the submittal today of about 2 boxes of copies. Instead, let me tell you about what bothers me with this claims process.

1. Too much documentation is required

When I first filed my claim I was under the impression that it would be a simple process under the Oil Pollution Act ("OPA") so that I would not get the run around like those affected by the *Exxon Valdez* catastrophe. I report today that that is plainly not the case. As you can plainly see by looking at the copies of correspond-

ence I have included today, there has been request after request for additional information. These requests were first from Turnaboat, and after that process produced unfavorable results, the same redundant and unnecessary requests were made by Hull & Cargo Surveyors, Inc. ("Hull & Cargo") the claims adjuster for the Fund.

I learned during these productions of documents that my sworn statements as to the facts of my situation, as provided in affidavits, had no real significance. It was always a case of "document this" or "compile that" in justifying my losses. The thing that most surprised me was that even though Turnabout had requested a tremendous amount of documentation the Fund required that I provide significantly more and different documentation than Turnabout had bothered to ask for.

2. It takes too long to resolve a claim and get paid

My claim was first filed with Turnabout on May 31, 1996 and was later amended to include the entire year of 1996 in a filing dated May 14, 1997. Since that amended filing, about 18 months have elapsed. That is too long. While waiting to be paid for my damages, business losses have continued to mount as the lobstermen delivering to ABC continued to experience lower and lower catches due to the decimation of the lobster stocks. In the face of these continuing losses with no end in sight, I sold my business in 1997 at a price considerably below its former market value. My business is gone and my losses remain.

Having failed to get a reasonable offer for damages from Turnaboat? I filed my claim with the Fund on September 16, 1997. Instead of obtaining a quick resolution of my claim, I was forced to go through the process of delay and documentation all over again. If you look at the correspondence filed today, you will see that first the Fund asked for information, then, after assigning my claim to Hull & Cargo in January 1998, Hull & Cargo requested different information and then its accounting subcontractor required even further layers of detail.

When the Fund finally came up with its settlement offer on June 18, 1998, 9 months had elapsed since the Fund had started its review. Once again, this is too long. Since the Fund's settlement offer was unreasonably low for the first half of my claim, and denied entirely the second half of my claim, I submitted a Request for Reconsideration on August 14, 1998. In this Request for Reconsideration, I provided voluminous documentation to support my claim, in particular the second half of my claim which had been denied outright by the Fund. This documentation included the complete claims of five of my largest suppliers which were pending before Turnabout. These underlying claims of my suppliers unequivocally bolster and prove my claim for damages. In any event, despite the fact that the Fund should have proposed their final offer of settlement within 90 days of this final submittal, that deadline lapsed without explanation. I have been told that I can take this inaction as a denial of my Request and then file suit. That makes no sense at all. I could have filed suit anyway without wasting time and resources by filing with the Fund. The Fund has failed me.

I finally received a letter dated November 20, 1998 from the Fund. Instead of providing me with an offer on my claim, the letter stated that the Fund had waited until October 26, 1998 before authorizing action by Hull & Cargo on my Request For Reconsideration. In other words, they waited 70 days after receiving my Request For Reconsideration before doing anything at all. It is no wonder that I didn't receive their final offer of settlement within the 90 day timeframe.

Even more disturbing in this letter was their statement that they still could not tie my losses in the last half of 1996 to the Oil Spill. Why is this so difficult? Don't they even read the reports of the consultants who have documented the lobster losses for the Natural Resources Damage Assessment? And guess what? They asked for even more information to justify the losses of the lobstermen who supplied me.

3. The Fund is adversarial to claimants

If you look at the Fund's settlement proposal of June 18, 1998 alongside the Request for Reconsideration for ABC dated August 14, 1998, certain facts are clear:

The does not recognize that the North Cape Oil Spill produced any harmful effects other than the forced closures of certain areas to fishing up until the end of June 1996. Using their analysis, the effects of the Spill stopped by the end of July 1996. They interpret an unexpected increase in the lobster catch in August as being equivalent to a full and complete recovery from the Spill. That is absurd. They just don't get the fact that the Spill resulted in enormous damage to the lobster population off the coast of Rhode Island. Why doesn't the Fund make any attempt to consult the scientists involved with the Natural Resource Damage Assessment studies in an effort to understand the significance of the Spill? They would see that not only has there been great damage, but that the effects of the Spill will be felt in ever greater degrees over the next few years.

For the second half of my claim, covering the period from August through December, 1996 and amounting to $100,011, the Fund offered to pay nothing—-zero dollars—on the basis that they could not see the connection between the Spill and the reduced lobster catches brought to ABC by the lobstermen. This failure in understanding astounds me and I invite you today to review the offer from the Fund and my Request for Reconsideration so that you can see how the Fund has failed me in so many different aspects.

The Fund's analyses are designed to minimize damages. Great pains were taken by Hull & Cargo to reduce my potential award by selectively applying data such as weather or the relocation of fishermen from one shore facility to another as factors to lower my award. The Fund fails to understand that everything changed after the Spill. Business plans were revised and the factors that led to growth over previous years no longer had relevance. The Fund and its adjusters use a standard a proof consistent with insurance adjusting. Claimants are treated as potential scam artists seeking to capitalize on an accident, and that is simply not ask for this Spill and we only want to be made whole.

I thank you for this opportunity to speak.

STATEMENT OF JOHN SORLEIN, RHODE ISLAND LOBSTERMEN'S ASSOCIATION, WAKEFIELD, RHODE ISLAND

Good evening. My name is John Sorlein and I am president of the Rhode Island Lobstermen's Association (RILA). RILA is a non-profit association of individuals who are engaged primarily in the business of fishing for lobsters. Several of its members also have onshore businesses or related businesses that rely in large part on lobstering for their livelihood. These businesses represent a large portion of the lobstering industry off Point Judith, Rhode Island. RILA has put together a group of over 100 businesses that have developed and continue to develop and document damage claims.

The fishing industry has contributed greatly to the local and state-wide economy. Millions of dollars have been pumped back into the economy by way of direct and indirect business resulting from the successful harvesting of Rhode Island's pristine seafood beds. Many lobstermen have been fishing in this area for years and RILA represents a large portion of that total. Lobstering is mostly a small businesses—each lobsterman owns a boat or two and each hires his or her own crewmen to help. They love what they do. They are independent and self sufficient. They are successful because of their willingness to put in an honest day's hard work.

The Spill

Point Judith is the largest fishing port on the east coast. Until January 19, 1996, the lobsters caught in Point Judith were world renowned for their quality, in fact, we think they were the best quality lobsters caught in this country. However, On January 19, 1996, the unthinkable happened—a barge spilled over 800,000 gallons of Number 2 heating oil (the most toxic to lobsters) after running aground off Moonstone Beach. We say this was unthinkable since no one expected this to happen at all. Nobody expected this because back in 1989 there was a similar spill—The *World Prodigy* in Narragansett Bay, which is just a few miles from Point Judith. No one thought that such an oil spill could ever happen again, at least not in this neighborhood, but it did.

The immediate impact of the spill was disastrous. In the only significant count of dead lobsters, over 60,000 were measured by weight from the sample areas located on the beach and over 18,000 of those lobsters were studied to determine their size, sex and reproductive status. That information was used to project a loss of over 2.9 million lobsters that washed up on the beaches as a result of the Spill. And that was only a portion of the total number of lobsters actually killed by the Spill.

Additionally, as a result of the Spill a 250 square mile area was closed to fishing and lobstering for an extended period of time.[1] This closed region included the entire area leading into the Port of Galilee, where many seafood processors are located. Not only were lobsters not caught in this area, but also it was virtually impossible to transport other shellfish catches (upon which onshore facilities relied) into Point Judith.

The purpose of these comments express our support and endorsement of the comments by the other victims of this spill, and the comments our attorneys. When the spill happened we were at a loss about what to do. Few of us ever had to make claims for lost profits, and we didn't know how to do it. We immediately thought

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[1] Area closed intermittently from January 19 to June 25, 1996.

we had to file a lawsuit. We soon found out, however, that a new procedure existed under the Oil Pollution Act of 1990. Under that procedure, we would be able to file individual claims for losses without going to court, and with a reasonable amount of evidence, would be able to recover in a quick period of time.

That has not happened. Many of our members and others have filed claims, and submitted literally thousands of pages of documents to establish our loss. But few of us he been paid. We provide information, and are asked for more. We provide more, and are asked for still more. We prove a loss under one standard, and the responsible party of the Fund changes the rules.

We simply don't understand why this is so difficult. The barge owner was convicted of criminal offenses that caused the spill. But rather than compensate us, the Nature Conservancy was given over one million dollars. Rather than compensate us, hundreds of thousands of dollars were spent to put loons in Maine. Why haven't our claims been paid or even fairly considered?

Why is it that despite our efforts, instead of the claims being decided in 6 months by the responsible party, or in 90 days by the Fund, now, 3 years later, few have been fully decided.

Why is it that the responsible party and the Fund are only paying 1 dollar for every 4 dollars that are proven to have been lost? Why is it that the responsible party has decided that no one she fished next tot he closed area could not possibly have lost more than 3 percent of his catch? Many people that fished in the closed area had to move to other areas, so that there were more fisherman looking for fewer lobsters.

No one seems to understand that lobsters don't stand still. They move. Yet the claims adjusters are assuming that the no lobsters moved into or outside of the closed area. And they assume that fisherman don't move either. They think if you fished outside the closed area, you can't be affected. But the fact is we are. It is no mystery when someone has consistent catches every year for 5 or more years before the spill, then suddenly, after January 19, 1996, the catch is dramatically less.

We don't fish anymore. We mitigate our losses. We travel further, spend more money, work longer hours, and catch fewer lobsters. There is no mystery here.

How can it be that the fancy study that was performed says there were about 200,000 adult lobsters lost in 1996 and 197, but several of us alone caught over 400,000 less during those hears than before?

The responsible party and the Fund concocted theories of lost lobsters based on conjecture and guess. We have shown actual losses, but those are ignored.

At this point, many of us are fed up with this administrative process. We are ready willing and able to go to court and sue these criminals for our actual losses. Clearly we cannot get a fair shake by the responsible party or by the Fund. We are being forced to go to court. That means the Oil Pollution Process has failed.

We sincerely hope that you fix this for the next victims.

STATEMENT OF BRUCE E. KOPF

My name is Bruce Kopf and I appreciate the opportunity to address you today. My testimony is presented as the former owner and operator of the Fishing Vessel *Spartan*. I will briefly describe my claim.

The F/V *Spartan* was an off-shore fishing vessel that used circulating sea water to keep lobsters alive after capture. My fishing grounds have been in an area about 80 miles south/southwest of Block Island to just north of Hudson's Canyon. This is an area far removed from the areas impacted by the North Cape Oil Spill (the "Spill"). I have fished this area for well over 10 years.

At the time of the Spill, my boat was in port at Point Judith ready to sail as soon as the weather cleared. However, immediately after the Spill, a large portion of Block Island Sound was closed to lobstering due to the extensive environmental contamination. I was unable to fish for lobsters offshore from January 19 through March 29, 1996 because my vessel was unable to pass through the closed area. In addition, if I had traversed the closed area and obtained my catch offshore, the sea water in the closed area remained contaminated, so I would not have been able to preserve my catch by using that circulating sea water. It was really this simple: If I used any of the water from the closed areas for my circulating system, Rhode Island authorities would have classified my whole catch as contaminated.

Likewise, if I had instead elected to traverse the closed area with closed circulation tanks and returned to Point Judith, this would have resulted in freezing conditions for my catch. In my best professional judgment, I would have lost all or most of my catch under these conditions.

As I have fully explained and documented to the Fund, I was unable to mitigate my damages by landing at other ports since I would have either had to traverse the closed area to reach an alternative port, or I would have had to land in a State in which I was not licensed to land my catch, was not familiar with the dockside facilities, and for which I had no prior arrangement to sell my catch. In addition, in the aftermath of the Spill there were many reports in the media suggesting that the opening of the fishing areas was imminent. I have included copies of articles from the Providence Journal in the record today to show what I and other fishermen were being told by the regulators. Based upon this information and my own professional judgment, I elected to stay in shore until the matter was resolved.

My $23,762 claim as presented to Turnaboat on March 26, 1997 and to the Fund on January 30, 1998 was straightforward and simple: I asked to be compensated for my losses during that 69-day interval from January 19, 1996 to March 29, 1996 when I could not fish because of the Spill. My claim was based on my average income during that interval in the 3 years prior to the Spill. I should note here that my claim ends on March 29 since that was the date that I sold my vessel. It had been my intention to fish until the time when I transferred title to the new owner of my boat. Turnaboat denied my claim on May 9, 1997 under the theory that my fishing area was never closed and I could have landed my catch in another State. The Fund has not presented a settlement offer to date.

Please note that I have experienced two major difficulties with the OPA claims process:

1. The resolution of my claim is taking too long

My claim was filed with the Fund on January 30, 1998. Approximately 10 months have elapsed since that filing. My claim is simple. Why is there no resolution? Note that I have responded to all of the information requests presented to me by Mr. John P. Kelly, the adjuster hired by the Fund. My last response, which I believe resolved all of the outstanding issues for Mr. Kelly's analysis, was submitted on August 25, 1998. There had been no word from the Fund or Mr. Kelly in the 3-month interval after that submittal until just last week when I received a letter from Mr. Kelly requesting irrelevant, unnecessary and redundant documentation. More incredibly, this documentation had been provided and/or addressed to the satisfaction of both Mr. Kelly and the Fund back in August. I am a fisherman who was harmed by the Spill. Why does it take so long to get compensated for my losses?

2. I have been asked to provide too much unnecessary, irrelevant and redundant information

First, note that my written submittal today includes all of the relevant correspondence for my claim showing the multiple requests for information from the Fund and its adjuster, along with my responses to those requests. I have been asked to provide the following information, which I believe has no bearing on my claim, to John P. Kelly & Associates at one time or another:

Although this claim is for damages for the first quarter alone, I had to supply settlement sheets and account information for all months during 1993, 1994 and 1995.

I was asked to explain what other offshore lobstermen did after the Spill.

I was asked to provide the names and telephone numbers of people who purchased directly from me off the docks.

I was asked to provide a retrospective analysis of the costs and difficulties of bringing my catch to alternative ports during the time period of my claim.

All of the above was unnecessary and intrusive. I had previously: (1) provided my tax records and backup documents that show what I earned during the first quarter of 1993 through 1996; and (2) submitted a sworn affidavit explaining, among other things, my fishing practices and the unavailability of other ports. Does any of the other information make any significant difference?

If the Fund has to make any determination at all about my claim it is whether I showed reasonable judgment in the aftermath of the Spill in not somehow finding a way to traverse the closed areas and land my catch in some other State. I tell you today, and I have sworn before, that based upon my experience and the information presented to me in the aftermath of the Spill, that would not have been a responsible course to follow.

I thank you for this opportunity to speak.

[From the Providence (RI) Journal Bulletin, November 22, 1996]

FISHING INDUSTRY SLAMMED BY SPILL

(By Elizabeth Abbott)

Governor Almond and Rep. Jack Reed said they would seek Federal help for fishermen hurt by the oil spill.

NARRAGANSETT—From offshore lobstermen who can't travel through the spreading oil slick without killing their valuable catch, to wholesalers along the Galilee waterfront whose lobster and crab supply has been embargoed by State health officials, Rhode Island's multimillion-dollar fishing industry is reeling from the grounding of the barge *North Cape*.

''I've got [lobster pots] six miles away, but I can't bring them up because I don't know where the oil is,'' Eric Winn, a Point Judith lobsterman, said Sunday.

Peter Schone, whose lobster pots are a safe 100 miles out, has a different dilemma. Schone can't bring his catch into shore because he needs to pump ocean water into his boat to keep it alive.

This he can no longer do.

Commercial fishermen and seafood processors cannot use water from the fouled area, which now stretches from South County to Block Island, to store, wash or process seafood, according to emergency restrictions issued by the Departments of Health and Environmental Management.

''Nobody knows where they can bring live product,'' Schone complained.

The State's fishing industry employs between 3,000 and 4,000 people, and generates about $500 million in economic activity annually, according to David Borden of DEM. A dollar estimate of damage from the spill has not been formulated, but at a news conference Sunday Governor Almond predicted it would be considerable.

Not only has shellfishing been banned in coastal ponds from Point Judith to Napatree Point and out to three miles offshore, but 105 square miles of Block Island Sound Sunday was closed indefinitely to all kinds of fishing.

''The fishing industry will suffer a significant loss,'' Almond said.

Almond and Rep. Jack Reed promised to seek Federal help for fishermen hurt by the oil spill.

If this help comes, it won't be too soon for the State's 500 to 1,000 lobstermen. So far, they have been hardest hit by the spill. The oil has killed thousands of adult lobsters—the count as of Sunday was 11,000—and decimated the juvenile lobster population as well.

''What I don't understand is how they let the oil get in the pond,'' a frustrated Winn said, referring to Point Judith Pond.

It's not just lobstermen who have been hurt.

The oil has contaminated the coastal pond breeding grounds of winter flounder, a ''multimillion'' dollar fishery in Rhode Island whose stock is already perilously low, DEM's Borden said.

''This will do nothing but make matters worse,'' he said.

The businesses who buy lobster and fish from the State's fishermen are also feeling the effects of the spill.

On Saturday, about a dozen Health Department inspectors began embargoing lobsters and crabs from wholesalers throughout South County. Between 50 and 100 wholesalers were visited and an undetermined amount of lobster and crab seized.

''Nobody likes to have their food embargoed,'' said the Health Department's Ernest Julian, but he pointed out that this measure was necessary to keep contaminated seafood away from consumers.

''There's nothing on the market right now that's contaminated,'' Julian said.

Nonetheless, health inspectors will also begin inspecting fish retailers and restaurants to ensure that no contaminated seafood is being used, he said.

Fishing and shellfishing operations hurt by the spill can file a claim with the barge's owner with Turnabout Services LTD, officials said. The number to call is 800–995–4045.

[From the Providence (RI) Journal Bulletin, January 28, 1996]

PLAN DRAFTED FOR REOPENING CONTAMINATED FISHING AREAS

(By C. Eugene Emery, Jr.)

NARRAGANSETT—Officials yesterday hammered out a draft proposal for gradually reopening the 250 square miles of ocean closed to fishing by the 828,000 gallons of oil spilled from the barge *North Cape*.

The plan must still be formally approved by top representatives of several State and Federal agencies, and Eklof Marine, the company that owns the barge and has agreed to pay for the testing needed to allow fishing to resume.

Edward S. Szymanski, associate director for water quality management at the Department of Environmental Management, said approval could come as early as tomorrow.

But he and other DEM officials declined to predict how quickly, even under the best of circumstances, the fishing ban might be lifted.

Other North Cape-related developments yesterday:

—An official for the company holding the insurance policy on the North Cape said the total cost of the cleanup and the price tag for reimbursing fishermen for lost income will easily exceed $10 million.

—Plans to begin pumping out the 70,000 gallons of diesel fuel left aboard the tug Scandia were postponed yesterday morning because heavy seas from yesterday's storm made conditions too dangerous. The Scandia lost control of the *North Cape* when its engine room caught fire. Workers will try to pump out the fuel today.

—With the *North Cape* harbored in Newport, workers began disassembling the Coast Guard's command center at the Dutch Inn in Galilee. The agencies involved in the cleanup will continue working, with the Coast Guard directing operations from its headquarters in East Providence.

—DEM workers at Moonstone Beach, which was hit hardest by the spill, continued finding dead birds, lobsters and starfish along the shore. The birds that have been rescued and cleaned, which are recovering in a Narragansett municipal garage, are not expected to be released for another week or so.

—The Coast Guard captain overseeing the operation said yesterday's storm probably would have split the *North Cape* in two if it had remained grounded.

The tentative blueprint for reopening the fishing areas must be approved by the DEM; the Rhode Island Department of Health, which tries to prevent contaminated fish from reaching the market; the University of Rhode Island, whose scientists are serving as consultants on the project; the National Oceanic and Atmospheric Administration; the Food and Drug Administration; and Eklof.

Szymanski said that under the proposal, an area can't reopen to fishing until all oil sheens have disappeared, water tests show that the amount of oil is below Federal standards, and tests of fish and shellfish show that the animals are safe to eat.

Yesterday's storm was expected to eliminate all of the sheens, Szymanski said, but aerial reconnaissance will be needed to be sure.

Once the sheen has disappeared, Eklof, working under DEM supervision, will begin collecting water samples from at least two dozen areas, including Block Island Sound and the various ponds believed to be affected by the spill.

The draft plan calls for collecting water 1 meter below the surface and 1 meter above the sea floor, said Szymanski.

Those samples will be tested for traces of nearly four dozen oil-related chemicals. If the individual concentrations of all of those chemicals are below Federal limits—usually ranging from 0.001 to 0.004 parts per million—testers will move to the next step: looking for pollution in finfish, lobsters and shellfish.

Only if the test results show that contamination levels are below Federal standards will State officials reopen an area to fishing.

"Our goal, obviously, is to open the fishery as soon as we possibly can," said DEM director Timothy R.E. Keeney.

There has been some confusion over how much pollution is actually in the water.

On Wednesday, Keeney said water samples from Point Judith Pond showing average oil concentrations of less than one part per million was "good news" because the Federal standard is 10 parts per million. Although one water sample showed an oil concentration of 3.8 parts per million, the results seemed to suggest that the oil that spilled had not produced a serious threat.

But Keeney said yesterday that he had misunderstood the Federal standard, and one part per million is not good at all.

"If a lobster is exposed to 600 parts per billion (or 0.6 parts per million) over 4 days, it will not survive," Keeney said.

Szymanski said he expects the closed fishing areas to be reopened a chunk at a time as test results show them to be clean.

A priority, he said, will be to reopen the mouth of Narragansett Bay so fishermen can draw in ocean water as they come in and out of the Bay.

Currently, if an incoming fishing vessel tries to keep its catch alive by taking on water from the mouth of the Bay, the whole catch immediately is classified by the State as contaminated.

"If we find an area that meets the standards, boom, we'll open it," said Keeney.

The DEM director said although fishermen are eager to resume fishing, they also understand that the worst thing that can happen is to reopen a closed area and later discover that tainted fish from that area have made it to market.

"Then the whole market is at risk" because consumers will lose all confidence in the safety of fish, he said.

(U.S. Rep. Patrick J. Kennedy, saying that "they have been inconvenienced for long enough," yesterday called on the Department of Health to allow lobstermen to recover their pots from the oil spill area so they can determine how much of their catch is contaminated and eventually get reimbursement from Eklof. He also said that lobstermen should be allowed to clean their traps so they'll be ready to resume work as soon as the ban is lifted.

The estimate that the eventual cost of the spill will exceed $10 million came from Ben Benson, the senior surveyor for the Maritime Response Syndicate, which represents the Water Quality Insurance Co. The company underwrites the first $10 million of Eklof's insurance.

"From an operations standpoint, the cleanup won't reach $10 million," he said. "But with the addition of claims and the NDRA (Federal Natural Resource Damage Assessment program) claim it will, in all likelihood, exceed $10 million."

Eklof has additional insurance to cover claims above the first $10 million.

Governor Almond and fellow Republican Nancy Mayer, general treasurer and candidate for U.S. Senate, spent part of yesterday touring the Dutch Inn command center, visiting the makeshift bird recovery shelter and checking on the progress in removing the oil from the Scandia.

At the command center, Coast Guard Capt. Barney Turlo said it will probably be tomorrow or Tuesday before the *North Cape*, now berthed at the Newport Navy Base, gets the go-ahead to return to New York for repairs. The approach of yesterday's storm prompted Turlo to send the barge to Newport.

Turlo said divers inspecting the barge found "literally dozens of localized tears, cracks and holes" at the bottom of the hull, made of ⅝ths-inch steel. The biggest crack was 5 feet long and 8 inches wide. "Some of the smaller ones were a foot and a half long and an inch wide," he said.

Although welds prevented the cracks from spreading as the waves and tides put stress on the hull, Turlo said, "We're not even sure it would have survived the next 2 days . . ." without breaking in two.

At the bird rehabilitation center at the Narragansett town garage, the Almond group watched one of the 23 long-necked loons being bathed in a series of steel basins. One worker used a toothbrush to clean oil from an animal's head.

In all, about 40 birds are at the facility trying to regain their strength while resting in playpens, wooden boxes and 6-foot wide pools, some warmed by heaters and sunlamps. All were shielded from view by blue tarps, blankets or sheets.

Lynne Frink, one of the women from the New Jersey organization in charge of the rescue operation, said the center would be in business at least another week. Even after the birds have recovered and their feathers can once again protect them from the cold, Federal officials must give their approval before the animals can be released.

(The U.S. Fish and Wildlife Service announced yesterday that, beginning tomorrow, any sightings of oiled birds, either dead or alive, should be reported to the Ninigret National Wildlife Refuge headquarters in Charlestown at 364–9124.)

At Moonstone, with the noontime waves crashing over the tug Scandia, the workers in charge of pumping out its fuel managed to pressure test the system. But they postponed the actual pumping because of the weather.

DEM workers said they were still finding dead birds and contaminated lobsters being tossed onto the sand by the waves.

A walk along the beach revealed many dead starfish and skate egg pockets.

The faint smell of oil lingered, even in the bracing wind.

Nonetheless, said Almond, the scene "looks pretty good without the barge."

Across Narragansett Bay, salvage workers and Coast Guard officials had begun moving oil from the *North Cape* to the smaller *Clear Waters 12*.

Coast Guard Reserve Chief Brian Smith said the transfer would continue through today.

Smith said the 17 or so members of the salvage crew would keep working as long as they could, despite the forecast of rain and a high wind warning from the National Weather Service.

"If this was a normal operation, we probably wouldn't be transferring fuel," Smith said. But seawater is seeping in through the *North Cape*'s cracked hull and mixing with the oil to form "slop."

"If they stop pumping, it could possibly sink. It's a Catch–22. But (Captain Turlo's) policy is that no one's been hurt yet, and we'd like to keep it that way. You can always clean up the oil, but you can't replace somebody's hand or arm."

[From the Providence (RI) Journal Bulletin, February 23, 1996]

BLOCK ISLAND FISHING AREAS REMAIN SHUT

(By Tom Mooney)

The expected reopening of portions of Block Island Sound to fishing this week has been delayed by another round of sampling that found lobsters still smelling of oil a month after the *North Cape* spill.

"It's a cause of concern because with some kinds of fishing gear lobsters can be caught," said Ernest Julian, chief of the State Health Department's Division of Food Protection. And one smelly lobster on someone's table "could destroy the industry," he said.

State environmental officials were planning earlier this week for the reopening of part of the closed 250-square-mile area to gill netters and hook-and-line fishermen. Trawlers were still to be prohibited since their bottom nets could catch lobsters, some of which still smell of oil.

Since the area is in Federal waters—beyond 3 miles and east of Block Island—State officials were awaiting final approval from the National Marine Fisheries Service.

But the number of test lobsters still smelling of oil—9 out of 44 caught between Tuesday and Thursday—surprised scientists, said Julian.

And even though all finfish samples continue coming back clean, Julian said, the lobster findings gave reason for pause.

The scientists want more time to discuss how to enforce a prohibition against catching lobsters and whether ground fish, like flounder, should also continue being off-limits, said Julian.

State and Federal officials also want to reach agreement on the type of fishing gear allowable.

"It's highly likely there will be an agreement next week," Julian said. But he wouldn't commit to a day. "Things can change."

[From the Providence (RI) Journal Bulletin, March 2, 1996]

FISHING BAN TANGLED IN BUREAUCRACY

(By Peter B. Lord)

Reopening of the 250-square-mile area off Rhode Island is expected soon, but it still needs official approval from at least a dozen State and Federal agencies.

At first, they didn't realize they were doing something so unusual.

Soon after the barge *North Cape* ran aground Jan. 19 and disgorged 828,000 gallons of oil into the churning surf off Moonstone Beach, State health and environment officials announced they were banning fishing in all waters between Galilee and Block Island.

It was a prudent public health measure, they said, and it wouldn't last long. The ban probably would be lifted within a week.

More than 6 weeks have passed.

Not a single fish tested by scientists since then has been contaminated with oil. But fishing is still prohibited in a 250-square-mile area.

State officials say they hope the ban may be partially lifted sometime next week. But they've made so many similar predictions already, they will not be more specific.

Instead, they talk about a "bizarre" review process that has consumed the attention of dozens of State and Federal bureaucrats. One Federal official called it "a mess."

Among the factors cited for delays in lifting the ban are the primitive metabolisms of lobsters (which until recently continued to smell of oil), snowstorms that shut down government offices, time spent consulting experts on the West Coast who cut their teeth on the *Exxon Valdez* disaster, and the slowness of completing critical laboratory analyses.

The single most important explanation, however, is that apparently no other State has ever instigated such an extensive fishing ban after an oil spill. Consequently, no one has any experience in determining when such a ban should be lifted.

So what sounded like a simple process of inspecting and certifying the cleanliness of a body of water and its fishlife has turned into an unprecedented bureaucratic and scientific tangle. Lawyers and regulators from at least a dozen State and Federal agencies have been groping toward an agreement on reopening the waters, literally making up the rules as they go along.

"I don't know that anyone in this office has ever done this before," said Dan Morris, a resource conservation officer for the National Oceanic and Atmospheric Administration in Gloucester, Mass. His is one of the key agencies that must approve the reopening.

"We're aware of only two emergency fishing closures: one for an outbreak of paralytic shellfish poisoning on Georges Bank and the other for a spill of drums filled with arsenic," Morris said. "All this is new ground. That's why we're having to proceed carefully."

Insurers for the oil barge are expected to compensate fishermen for income lost during the closure. And when all the reviews are completed, there should be no doubts that the fish are safe.

Ernest Julian, chief of the State Health Department's Food Protection Division, says it was his idea to close the fishing grounds the weekend of the spill.

"It was the logical thing to do," he recalled last week. "You have 828,000 gallons of oil in the water, it didn't make sense to bring product up through that."

Julian and fishery experts at the State Department of Environmental Management initially closed a 105-square-mile rectangle of Block Island Sound. Later they extended it to 250 square miles.

But State officials soon learned they had overstepped their authority in a big way. Most of the waters they closed were Federal waters over which the State has no jurisdiction.

The oversight was kept quiet and Federal authorities quickly made the closure of the waters legal by publishing official notice in the Federal Register.

Within days, State and Federal agencies launched a massive effort to collect samples of water and fish to determine the extent of contamination.

Early indications suggested the oil was rapidly dissipating. Officials hoped much of the closed area would be reopened the first week of February.

Soon, the regulators would learn that it was easier to collect the information than it was to agree on what it meant.

The various agencies informally agreed to a "protocol" that would tell them when it would be safe to reopen the fishing grounds.

Most of it was fairly straightforward. The *North Cape* and its tug, the Scandia, would have to be removed.

Visible oil sheens would have to be gone. (Sheens were reappearing in Point Judith Pond as recently as a week ago, according to Julian, as large vessels churned up the bottom and caused oil in the sediments to return to the surface.

The water would have to be free of oil.

Finally, fish would have to pass the odor and chemical tests agreed to by toxicologists and other scientists.

Most of the experts generally agreed to the terms of the protocol a month ago.

David V.D. Borden, the DEM's assistant director for fish and wildlife, said the protocol has been approved by the following State interests: the Coastal Resources Management Council, the Health Department, the attorney general's office, the Governor's office, and the DEM's legal counsel, water resources division and director's office.

A similar long list of Federal agencies is involved as well, and Borden said most of them have yet to officially approve the protocol.

The Federal interests include: the National Marine Fisheries Service and its offices in Gloucester, Narragansett, Seattle and Washington, D.C.; the general counsel of NOAA; the New England Fishery Management Council and the U.S. Food and Drug Administration.

"All these people have agreed to the concept," said Borden. "But they haven't formally signed off. It's a little bizarre."

"It's one thing to get technical comments from experts. It's another thing to get the administrative sign off and approval," observed Bob Vanderslice, a risk assess-

ment expert with the State Health Department. "This is not something Federal agencies are used to doing. They have lawyers whispering in their ears telling them not to sign anything. Since they don't have clear authority, what should they be doing?"

Several weeks ago, the pattern was clear. The water was clean. The fish were fine.

The problems were with lobsters: Some picked up as far as 14 miles offshore continued to smell of oil. And oil was suspected to be in the sediments near the spill site.

Scientists here consulted with the Northwest Fisheries Science Center in Seattle, where scientists have been studying the effects of oil on fish for more than 20 years.

John Stein, director of environmental conservation at the center, said scientists tested many of their theories after the *Exxon Valdez* spill in 1989. (Even though the Valdez was a much bigger spill, it caused a much shorter and more limited fishing ban, Stein said.)

Stein advised local officials that the problem with lobsters is their metabolism.

"What that means is when lobsters are exposed to aromatic hydrocarbons in the oil, they take them up, as do the fish. But the liver of a lobster is not as efficient as the liver of a fish in transforming the compounds into forms that can be easily excreted."

So while fish can consume oil and expel it from their systems, Stein said "lobsters will accumulate appreciably higher levels."

State officials proposed a compromise. They wanted to reopen the fishery to gillnetters—fishermen who tow nets suspended in the water—and to hook and line fishing. That way, regulators could be fairly certain that no one would bring in contaminated lobsters or any other catch from the ocean bottom.

On Feb. 16, the DEM asked the National Marine Fisheries Service to agree to the limited reopening, expecting a response any day.

It's still waiting.

NOAA's Dan Morris acknowledged there have been delays, but he said Thursday that he expects the reopening plan to be approved very soon.

"It's an unusual circumstance to open and close a fishery," Morris said. "We're talking about public perception and public health. You have to be careful with both."

No one suggests that any agency wasn't doing its best to resolve the fishing ban. In fact, there has been a lot of praise for the Federal-State team effort.

But State officials remain amazed there are no national standards for such a situation.

"What environmental problem is more common than an oil spill?" said Vanderslice. "And yet there are no national protocols. No standards. They've never done it."

But Ken Sherman, chief of NOAA's marine laboratory in Narragansett, said he wasn't surprised that there are no national rules.

"Each spill is so unique. One has to tailor a closure and opening for each event. And the events are always different. We've been very fortunate with spills in the Northeast. We didn't have to do a closure with the Argo Merchant because it was wintertime and all the oil was taken offshore. With the *World Prodigy*, very little got into the sediment and it evaporated much more quickly."

Everyone agrees that the *North Cape*'s oil is dispersing. DEM's Borden hopes fishing will be allowed to resume this week.

Fishermen, however, face yet another roadblock—another problem that combines science, biology and government regulations.

Gillnetting—the most important type of commercial fishing that the State is trying to reopen—will be prohibited for the month of March in waters off Rhode Island.

It's just a bad coincidence.

Months ago, the New England Fishery Management Council voted to ban gillnetting for all this month in a large block of water off Rhode Island and Martha's Vineyard to reduce the accidental netting of a threatened marine mammal called a harbor porpoise.

Fishermen accidentally kill between 1,200 and 2,900 of the porpoises in the Northeast each year, so the council agreed to restrict fishing in certain areas where the highest number of kills occur.

No one realized last fall, when the council agreed to the ban for the month of March, that the State would be trying to reopen its fishery in the same water, at the same time.

[From the Providence (RI) Journal Bulletin, March 14, 1996]

FISHING BAN BASED IN AREA POLLUTED BY OIL SPILL BETWEEN PT. JUDITH AND BLOCK ISLAND

(By Peter Lord)

Fishermen are still barred from dragging for bottom fish or catching lobsters or shellfish in the oil spill area.

The North Cape fishing ban was eased yesterday. The action by the Federal Government was the first letup in a 7-week-long prohibition against all fishing in a 250-square-mile area between Point Judith and Block Island.

Federal fisheries officials, who had the final word, finally signed off on a State request to reopen the area to fishermen using hooks and lines or gill nets.

The fishermen most affected by the partial reopening are charter boat operators and commercial fishermen seeking herring and squid.

But fishermen are still prohibited from dragging for bottom fish or trying to catch lobsters or shellfish within the area tainted by the Jan. 19 spill of 828,000 gallons of home heating oil from the barge North Cape.

The partial reopening reflects what scientists have discovered in thousands of tests and samplings after the oil spill: that the water is clean and the fish are OK, but lobsters from as far as six miles out still smell of oil and some oil remains trapped in sediments near the spill and under coastal ponds.

"We're making continual progress," said Ernest Julian, chief of the State Health Department's Division of Food Protection. "It's slow progress. But look at the water temperature. It's so cold it's slowing the breakdown of the oil. It's like putting something in the refrigerator; it takes longer to spoil."

Julian and other State officials recommended the limited reopening a month ago. Since then there has been growing tension between State and Federal bureaucrats over the delays in obtaining Federal approval.

The final decision lay with regulators and lawyers in the National Marine Fisheries Service, an arm of the U.S. Department of Commerce. Some observers attributed the delay to the fact that no State has ever imposed such an extensive fishing ban before, so no one had any experience in lifting such a ban.

For weeks State officials said fishermen had been understanding and cooperative with the ban.

But tempers flared this week at a meeting in Narragansett to tell fishermen about compensation programs available to help them recoup their losses during the ban.

Fishermen responded bluntly: Forget about laying blame, they said. Reopen the fishing grounds.

On Tuesday, DEM spokesman Peyton Fleming said, he asked a National Marine Fisheries Service spokesman what Federal official would have the final approval on lifting the ban. The spokesman gave him a name, Fleming said, but refused to give him the person's telephone number.

"I told him that people up here are getting really impatient," Fleming said. Also on Tuesday, Fleming said, DEM Director Timothy R.E. Keeney called the Federal agency's general counsel and "read him the riot act."

Sen. John H. Chafee and Congressman Jack Reed both said yesterday that they had been pressing the Federal fisheries people in recent days to expedite their decision. Reed said he met with Rollie Schmitten, director of the National Marine Fisheries Service, on Tuesday to urge him to make a decision.

Yesterday afternoon, Schmitten officially lifted the ban. He issued a statement from Washington saying, "We've moved as quickly as possible to guarantee this reopening strikes the delicate balance between providing fishing opportunities and yet ensuring Rhode Island's seafood is safe and wholesome."

Schmitten pledged to continue working with State officials on efforts to reopen the remaining fisheries.

Governor Almond called yesterday's action "a major step forward in getting Rhode Island commercial fishermen back to work."

Reed and Chafee said they continue to be anxious about the fact that the shellfishing beds are still closed.

"While I am certainly pleased by this first step toward a complete reopening of Rhode Island waters to fishing, each day that the grounds remain closed to other types of commercial fishing represents an enduring economic hardship for our State," Chafee said.

It has been more than 7 weeks since the North Cape ran aground at Moonstone Beach and State officials jumped into a bureaucratic morass by imposing the fishing ban.

Yesterday Federal officials confirmed that they were officially closing a 28-square-mile area southeast of Block Island to lobstering because lobsters in the area were being brought up with oil odors.

The State requested the closure a month ago, according to the National Marine Fisheries Service, and has informally enforced it with patrol activities.

Julian said yesterday that a closed area near Brenton Reef is looking "pretty good" for lobstering right now and may be the next candidate for reopening. But he declined to guess when any other bans will be lifted.

Meanwhile, more samples are being collected. Water samples were taken yesterday from Point Judith Pond. The results should be available in a few days.

STATEMENT OF FRANK BLOUNT FOR GAIL FRANCES, INC.

My name is Frank Blount and I appreciate the opportunity to address you this evening on behalf Gail Frances, Inc. My wife and I have been for many years the owners and operators of the Frances Fleet, three vessels that operate year-round out of the port of Galilee in Narragansett. Our business is based on charter fishing trips, where one of our boats is rented and daily fishing trips, which usually carry a large number of passengers.

The winter season of 1996 started great, but then the Spill hit us hard and had a tremendous impact on our charter and daily fishing business. Regular customers, scared away by the closures and negative press, went fishing in other ports in New York, Connecticut, and Massachusetts. Charter trips were canceled one after another as groups expressed concern about the effect of the spill and the closures. Unfortunately, we could do nothing to counter all the negative publicity. We even had to shut down our restaurant due to the dwindling number of fishermen.

Our claim was first submitted to Turnaboat, who was responsible for the spill. We sent them a detailed analysis of our entire claim, prepared by an accountant. We also sent them corporate tax returns, financial statements, calendars documenting passenger counts, letters supporting charter cancellations, invoices for trade shows, and other pertinent information. Amazingly, they kept asking us for more and more information, like copies of our leases and salary information, that was entirely duplicitous of what we'd already given. We gave them what they wanted anyway, and tried to negotiate a fair settlement. Finally, about 18 months after the claim was first submitted, which is 12 months longer than they have under the law to decide our claim, they only offered us a fifth of what our damages were. It is clear to us now that they never intended to fairly compensate us for the damage they did. They said "the ban on reel fishing was lifted on March 23, 1996," so they didn't want to pay anything after that. The funny thing is, people were not lined up outside our boats to go fishing on March 24. Everything was not back to normal.

This same claim with the same exact documents given to Turnaboat was then submitted to the National Pollution Fund in August 1997 A month later, despite the fact that our claim had grown to over 200 pages, the Fund demanded even more documents that wholly duplicated the original claim. We had already given them compiled financial statements prepared by certified public accountants for 1993, 1994, and 1995, but now they wanted bank statements for every month in those years. We had already given them copies of our tax returns for 1993, 1994, and 1995, but now they wanted us to make more copies and re-sign them in ink, something a court would not even do. The IRS doesn't give signed copies back! It seems like from the beginning, the Fund had a bias against us. Nevertheless, after much time and effort, we gave the Fund exactly what they wanted.

All of this information was apparently still not enough for the Fund, as they insisted on a meeting I had no choice but to attend for fear of harming my claim. In February 1998, my wife and I met with representatives of the Fund, and thoroughly discussed our claim. We responded to numerous questions at this meeting that could have been answered by a thoughtful review of all the documents we already gave them—they asked us questions about documents they already had.

How Payment For Our Charter Business Was Avoided

Incredibly, on March 1998, a month after the meeting, the Fund wrote a letter that demanded even more information. After asking for and receiving cancellation letters from every charter client, the Fund apparently decided that we also had the obligation of supplying the phone number of every individual who canceled a charter trip. We were amazed by this demand. We had already sent the Fund eight letters signed by each of the canceled charters that clearly stated that the Spill caused the cancellation. But that wasn't enough for the Fund. They wanted us to track down

and give them the telephone number of every person who canceled with us. Where else does a victim have this burden?

We nevertheless again tried to meet the excessive demands of the Fund by providing a charter history from our records for most of the clients who canceled, but that wasn't good enough, either. On July 27, 1998, almost a full year after the claim was sent to the Fund, and 6 months after they are supposed to come to a decision, its offer to Gail Frances for all of our lost charters was zero. We documented a claim for over $50,000 for those lost charters, and the Fund offered us nothing.

How Payment For Our Daily Fishing Business Was Avoided

As incredible as that outright denial was, the Fund also managed to come up with a brand new idea to reduce their offer for the part of our claim for lost daily passengers. The Fund told us that we would not be compensated for lost passengers on days that the wind reached 25 mph or more, apparently because it decided that even if the Spill had not occurred, the weather would have kept many passengers away. They subtracted forty passengers from our total lost passengers for every day that the wind reached 25 mph. By their calculations, 356 passengers would not have fished in 1996 based on weather alone, so the Fund reduced its offer by another $15,000.

The Fund's methods are madness. The fact is, wind records from the Point Judith Coast Guard Station and the Block Island Airport demonstrate that we carried 189 passengers in 1995 on days that the Fund would have credited us with none. Furthermore, the Fund subtracted forty passengers from our total for days like February 17, 1996—a day on which the wind reached 25 mph only once, when it was 25.3 mph at midnight! I couldn't believe that the Fund was basically telling us that less than a month after 800,000 gallons of oil had spilled, it was really the wind at midnight that was keeping people away from the water!

The money the Fund did offer us doesn't come close to the losses we actually suffered. Its flat-out wrong for the Fund to desperately search for ways to avoid making us whole. It seems to me that the only difference between the National Pollution Fund and Turnaboat is the letterhead of each denial we receive. Why should we have to go through the same process twice?

It's been 2 years and hundreds of pages since we first made a claim for our damages from this oil spill, and we still haven't gotten a dime. Victims deserve more from a process specifically created to compensate them.

STATEMENT OF J. WILLIAM W. HARSCH, ESQ.

The Oil Spill Liability Trust Fund ("Fund") is generally understood to have been set up to reimburse those suffering losses as a result of oil spills. There is no question that the massive Rhode Island oil spill which occurred on January 19, 1996 caused enormous damage and resulted in great financial loss.

The process which was set up after the spill to assess and reimburse claims became a problem almost at once. it appeared that those handling the reimbursement process, or at least some of them, felt that their role was an adversarial one and one in which they should seek to settle claims for the lowest possible dollar amount. Anyone who felt that their claim was not being treated fairly had recourse to an intimidating and drawn-out court process or to submitting a claim to the Fund.

Reports on the experiences of individuals and business entities in seeking to collect damages from one of these three sources vary considerably. However, the bottom line is that the claims processing mechanism set up by the owners and their insurers, quite naturally, had, as one of its objectives, keeping the claims payment numbers as low as possible and therefore resisting claims or settling for reduced amounts.

The court process is by definition adversary. While the law does provide avenues for recovery, this is generally not a speedy or "user-friendly" process.

The question then presented is whether the third alternative, the Oil Spill Liability Trust Fund, would represent a somewhat different and more accessible relief and recovery process. It is my belief, from a review of the statute and its background material, that the Fund was basically set up to provide a speedier and more impartial relief mechanism.

On the one hand, this would be helpful to those seeking recovery in that the process would be less burdensome, hopefully more prompt, and less adversarial. On the other, it would serve to aggregate claims and generally develop more clout in seeking eventual recovery from those responsible for the damages and their insurers.

Either as a result of administrative misunderstanding of congressional intent, or conservative administration of the Fund, or difficulties with the present statutory

language as drafted, this does not appear to have turned out to be the case. You will hear a good deal of testimony, I am sure, on the subject of the Fund's handling of direct damage claims. This is one area which merits the committee's attention. I would like to put before the committee another area of difficulty as follows.

I believe that the Fund has considerable difficulty, both conceptually and operationally, in dealing with indirect and consequential damages occasioned by a spill such as this one. I believe that there can be no question that oil spills, certainly larger oil spills, create injuries and damages far beyond the area of immediate and direct impact. Like ripples on a pond, the impact spreads to secondary and tertiary businesses and activities.

It is my belief that the U.S. Congress intended the Fund to be capable of handling the entirety of damages reasonably attributable to an oil spill. If this were not the case, the result would be that those responsible for the spill would escape a portion of the damages which they inflicted, and would in effect transfer the cost of those damages from themselves to those who were in fact injured.

A typical insurance company will use an adverse and skeptical process to resist all claims. The less direct the claim, the more the skepticism and hostility. The area of consequential damages then becomes one which I believe should be of particular concern to the Fund. The job of the Fund, in addition to handling promptly and with reasonable sympathy those damages which are direct and relatively easy to establish, should also be to respond to damage claims in the category of indirect injury.

Such claims would include reduced access to resource supplies because of contamination, loss of market, loss of income from those normally involved in providing product or services in the area (and to the resource) affected by the oil spill. Naturally, at some point, the indirect and consequential impacts of an oil spill will become distant, relatively small, and difficult to ascertain. That should not mean that the Fund should not have a well-established mechanism for dealing with indirect, partial and consequential damages. Further, it should not mean that the process for dealing with such damages becomes very time-attenuated.

On the plus side, there is no question that having the Fund available is an enormous positive contribution to dealing with the impacts of an oil spill and to requiring those responsible for damages to pay for them. Further, the contacts which I have had with the Fund's staff have been uniformly courteous, and the staff has certainly attempted to be helpful and responsive.

However, it would be my impression that the Fund legislation requires further attention to clarify the intent that there be coverage of indirect and consequential damages, just as there is of direct damages. Perhaps above all, I urge this committee to consider whether the Fund is adequately defined and directed so as to provide what the insurance companies and the representatives of ship owners do not provide, and the court system cannot provide, which is a program directed to full recovery of damages by each and every business and individual affected by an oil spill. The Fund should, in my opinion, be clearly directed that it avoid behaving like an insurance company, avoid undue skepticism, inappropriately complex processes and over-concern with the question of whether it, in turn, will be able to recover its payouts from the insurance companies covering the generator of the spill. I believe that Congress intended, and those affected by the spills clearly need 1) a process which will allow individuals and business enterprises to recover their damages and get back on their feet as promptly as possible; and 2) a process which is fully committed to the principle of seeing that there is full recompense and that, to the extent possible, those responsible for a spill pay for the damages caused.

STATEMENT OF RAYMOND NALLY

My name is Raymond Nally and I appreciate the opportunity to address you today. My testimony is presented as an officer and shareholder of Betsy Enterprises, Inc. which owns and operates the Fishing Vessel *Betsy*. I will briefly describe my claim.

The F/V *Betsy* is used for lobstering and uses circulating sea water to keep the lobsters alive. On or about January 19, 1996, the North Cape Barge ran aground and spilled oil into Block Island Sound. Due to the environmental contamination caused by the North Cape Barge oil spill (the "Spill"), on or about January 20, 1996, a large portion of Block Island Sound was closed to lobstering (hereinafter referred to as the "closed area").

At the time of the Spill I had about 40 trawls with a total of 960 pots in the water in various locations around Block Island Sound, with the majority located outside of, but within one mile of the closed area. After the Spill I was unable to tend these traps because my crewhand quit on account of the Spill. I normally remove my traps

at this time of the year from areas that I knew to be conflicted, since I knew that my pots would not be safe if left in place. I could not remove the pots however, since I was unable to retain another crewhand because of the situation created by the Spill. The market for crewhands had been effectively cornered by Eklof Marine the party responsible for the Spill—who supplied crewhands with partial payments as compensation for damages from the Spill and who also employed many of these deckhands in conducting response actions due to the Spill.

I would have had to spend twice the time and energy to look for my gear without the assistance of a crewhand. It was simply not practical from a business or personal safety standpoint to attempt to retrieve my pots alone. Even if I had been able to secure a deckhand, I would have had to travel through the closed areas to tend my traps and any lobsters I caught would have to be kept alive without the assistance of my water tanks, since I could not use the contaminated sea water in my circulating sea water system. It is my belief that any lobsters caught would have died during transportation without the use of circulating sea water.

When I was finally able to get someone to help me tend my gear, I discovered that 11 of my trawls were missing. I strongly suspect that the 264 pots on these 11 trawls were destroyed by draggers who were forced outside the closed area following the Spill. I valued the cost of these lost trawls to be 510,736.00.

After my claim was denied outright by Turnaboat, the insurance adjuster for Eklof, my claim was submitted to the Fund on March 19, 1998. I have been told by my lawyers from Kirkpatrick & Lockhart that my claim was the only claim they submitted to the Fund that wasn't assigned to an adjuster for resolution. My claim was instead handled by NPFC Legal who denied my claim in its entirety in a letter dated August 6, 1998. Their reason for the denial, if I may quote, was:

". . . the proximate cause of the damage to your client's fishing equipment would not be the oil spill incident; rather it would be intervening action of the draggers which proximately caused the damage."

This is wrong. My pots were in perfectly good condition before the Spill. Because of the Spill, and its effect on manpower, its closure of the port, its restriction on use of water over a wide area and its forcing of all fishermen out of a wide area—my pots were destroyed or disappeared. Was it some draggers? I don't really know because I wasn't there and they did not leave any evidence. There is one thing I do know: If there had not been an oil spill, I would not have lost $10,736.00 worth of gear. And if it was actually the actions of some draggers that caused me to lose my gear, I can tell you now that were it not for the Spill, I would have removed my gear before the damage could occur, just like I did in previous years.

I thank you for this opportunity to speak.

NATIONAL POLLUTION FUND CENTER NEWS RELEASE

COAST GUARD PROVIDES INFORMATION ON T/B NORTH CAPE CLAIMS

Washington—The U.S. Coast Guard National Pollution Funds Center (NPFC) announced today the availability of information concerning the methodology that it is utilizing to adjudicate or measure lost profit claims from lobstermen that occurred from damages arising from the T/B *North Cape* oil spill of January 19, 1996. The information will be available as a hand out at the hearing held on December 10, 1998 by the Committee on Environment and Public works of the U.S. Senate in Narragansett, Rhode Island.

The NPFC is also providing information concerning the impact of the 3-year statute of limitations on potential claimants that were damaged by the oil spill.

Copies of both documents are appended. They will also be available on NPFC's web site at http:/www.uscg.mil/hq/npfc/npfc.htm.

Both documents are provided in an effort to address questions which have arisen concerning these issues. For additional information concerning the documents please contact, Ms. Linda Burdette, Chief Claims Adjudication Division, National Pollution Funds Center, (703)–235–4801.

INFORMATION CONCERNING STATUTE OF LIMITATIONS AND THE T/B NORTH CAPE SPILL PROVIDED BY THE U.S. COAST GUARD'S NATIONAL POLLUTION FUNDS CENTER 10 DECEMBER 1998

The U.S. Coast Guard National Pollution Funds Center (NPFC) announced today that any person who plans to present an OPA oil spill incident claim for damages arising from the T/B *North Cape* oil spill of 19 January 1996, is advised that the claim must be presented to the NPFC within 3 years after the date on which the injury and its connection with the spill were reasonably discoverable with the exer-

cise of due care. This does not mean that the timeframe for submitting claims to NFPC ends on 19 January 1999, however potential claimants do need to know the general conditions that start the clock for the 3-year statute of limitations.

All OPA damage claims arising from the T/B *North Cape* oil spill must be first presented to the responsible party, Eklof Marine. If the responsible party denies the claim or fails to settle the claim within 90 days, the claimant may present the claim to the NPFC. While the responsible party may choose to accept and settle claims after the 3-year period has elapsed, the NPFC cannot waive the 3-year statutory limit for claims presented to the NPFC for payment from the Oil Spill Liability Trust Fund.

The circumstances of each claim will determine when the 3-year period starts. It is possible that a given claimant may have more than one injury from a spill, each of which is discovered or reasonably discoverable at a different time. So a claimant may have separate claims with different 3-year periods for submission.

OPA damages for which claims may be submitted include loss of profit damages. In general, a loss of profit injury is reasonably discoverable no later than when, in the course of its normal business accounting practices, or otherwise as required by law, the claimant determines, or is required to determine, business losses for a given period. But if a business in fact discovers it suffered a loss at an earlier date, that date will control. In the absence of other information as to when a loss of profit or earning capacity was in fact discovered, the NPFC may rely on the date of relevant income tax filings to establish the date the loss was reasonably discoverable.

The connection of the injury to the oil spill also will be determined by the circumstances. The connection may be reasonably made when the injury is discovered or discoverable. For example if your boat was oiled by the spill and you had it cleaned the next week and have not submitted a claim, the statute of limitations is quickly coming to an end. However in some circumstances the connection may be reasonably discoverable only at a later time because, for example, information about the spill or its impact was not available until a later time.

Because the circumstances of each claim will determine when the 3-year period starts for that claim, the NPFC cannot provide a single date to begin the 3-year period that will apply to any particular claim or class of claims. The only certainty is that the period begins no sooner than the initial date of the spill; therefore any claim submitted within 3 years after the initial date of the spill will certainly be timely. Beyond that, the best guidance the NPFC can offer to potential claimants is that they not delay submitting a claim for a period of years. Such delays will only increase the risk that an otherwise valid claim may be denied in whole or in part solely because it is submitted late.

Presenting a claim to the NPFC does not preclude a claimant from continuing to pursue settlement with the responsible party. So claimants may submit a claim to the NPFC to meet the 3-year requirement while still pursuing a settlement with the responsible party. Of course, the claimant cannot be paid twice for the same damage.

MEASUREMENT OF LOST PROFITS CLAIMS BY LOBSTERMEN ARISING FROM THE NORTH CAPE OIL SPILL

US COAST GUARD NATIONAL POLLUTION FUNDS CENTER—10 DECEMBER 1998

The following is an explanation of the National Pollution Funds Center's (NPFC) methodology for measurement of lost profits claims filed by lobstermen in Point Judith, Rhode Island. The lobstermen were prevented from fishing during part of 1996 after the oil spill from the North Cape impacted their fishery. NPFC has concluded that damages did occur to the lobster industry as reflected by statistics indicating substantially reduced catch levels after the spill and into late summer of 1996 at which point statistics indicate that catch levels returned to previous year levels. This methodology is intended to measure the lost profits and earning capacity suffered by lobstermen during the period from the spill until late summer 1996 by taking into account the seasonal nature of the lobster industry, a benefit for additional effort expended by some individuals during 1996, and the varying levels of success among lobstermen in the area historically. Essentially, the methodology applies 1995 performance of claimants to 1996 effort to calculate an expected 1996 profit. Claims paid are the difference between expected profit and lower actual profit, adjusting for saved expenses.

Methodology: (Example attached)

(1) The methodology uses Rhode Island DEM statistics and quarterly catch historical data to calculate the Average pounds of marketable lobster in each trap haul

(average catch per trap-haul) on monthly basis. The average catch per trap-haul is calculated on a monthly basis to account for the seasonality of lobster fishing.

(2) The average catch per trap-haul is then multiplied by the Number of traps that are checked or "hauled" on any given trip. This number will vary for each fisherman; our example uses 300 traps per trip. The number of trap-hauls in 1996 will be revised to consider traps retired, sold or purchased. If additional traps are proven to have been purchased in 1996, we will detente the maximum number of traps that can be hauled per trip for each claimant. The number of trap-hauls is multiplied by the 1996 seasonally adjusted average catch per trap-haul to derive the 1996 Expected Catch per trip.

(3) To determine the 1996 Total Expected Catch the 1996 Expected Catch per trip is multiplied by the number of trips. During the fishing closure due to the spill, the number of trips for 1996 is based on the actual number of trips made for the same period in 1995 as the determined loss period. However, for periods when the fishing areas were no longer closed due to the oil spill, the number of trips is based upon settlement sheets or receipts provided by the claimant.

(4) The 1996 Total Expected Catch is then compared to the lobstermen's previous years catch in relation to the average lobsterman's catch, to account for the experience of the individual lobsterman, to calculate the 1996 Projected Catch. Expected catch for 1995 is compared with the actual catch in 1995 to calculate the 1995 Monthly Catch Variance Percentage. Expected catch for 1995 is calculated in the same manner as expected for 1996. We consider that the claimant's 1995 catch percentage variance will be the same for 1996. For example, if the claimant's settlement sheets or receipts show that they normally exceed this calculation (variance greater than 100 percent), we will adjust their expected catch upward to calculate projected catch.

(5) The 1995 Quarterly Average Price Per Pound for Point Judith was provided by a New England scientific expert.

(6) The 1996 Projected Monthly Stales is calculated by multiplying 1996 Projected Catch by the corresponding 1995 Pt. Judith quarterly average price per pound.

(7) Actual Sales for 1996 are subtracted from projected sales for 1996 to calculate Total Lost Rules for 1996.

(8) Saved Expenses (for example, fuel, bait and crew-share) are calculated as a percentage of sales. Amounts are based on the claimant's 1995 Income Tax Return. During the closure due to the spill, we calculate saved expenses as a percentage of lost sales. Any additional expenses incurred during that time will also be considered.

(9) Saved Expenses are subtracted from 1996 lost sales and additional expenses are added to calculate 1996 Lost Profits.

Documentation Requirements

Specific information is needed from the claimant in order to utilize this methodology to calculate 1996 lost lobster income. We do not require that the information be provided in a specific form or format. We are willing to assist the claimant in assembling the necessary information in order to adjudicate claims. The information requirements and the rationale for the requested information is provided below:

(1) FISHING LICENSE: Establishes a claimant's eligibility and fishing area during the period of loss.

(2) VESSEL DOCUMENTATION & CREW INFORMATION: For 1996 establishes where the vessel can legally fish and how crewmembers are compensated.

(3) FEDERAL INCOME TAX RETURNS: For 1993, 1994, 1995, 1996. Establishes non-continuing expenses (bait, fuel, etc.), and confirms that fishing income reported on the returns corresponds with settlement sheets or receipts.

(4) DOCUMENTATION ON NUMBER OF TRAPS, TRAPS HAULED PER TRIP AND POUNDS CAUGHT MONTHLY FOR 1994, 1995 & 1996: Shows where claimant's traps were located during the course of the year, and whether fishing losses resulted from the oil spill. This information is used to project the amount of lost income due to the spill, and to account for increased effort, seasonality and new equipment, etc.

(5) DOCUMENTATION FOR NEW TRAPS FOR 1996: Demonstrate claimant's intent to expand his business prior to the oil spill.

(6) A MEETING WITH THE CLAIMANT: Once we and our contractor have the above information and have had an opportunity to review it, our contractor will meet or perform a telephone interview, if necessary, with the claimant to resolve any questions regarding the information provided.

NATIONAL POLLUTION FUNDS CENTER

Example 1996 Lobster Lost Profits Calculation

December 8, 1998

Description	Sample Calculation of Lost Lobster 1996 Income												Total
	January	February	March	April	May	June	July	August	September	October	November	December	
(1) 1996 Seasonally Adjusted Average Catch (in Pounds) Per Trap-Haul	0.262	0.262	0.262	0.877	0.877	0.877	3.364	3.364	3.364	1.461	1.461	1.461	
(2) Multiplied by: The Number of Trap-Hauls	300	300	300	300	300	300	300	300	300	300	300	300	
1996 Expected Catch Per Trip	78.72	78.72	78.72	263.01	263.01	263.01	1,009.11	1,009.11	1,009.11	438.35	438.35	438.35	
(3)Multiplied by: Number of Trips	4	4	4	6	6	6	12	12	12	8	8	8	
1996 Total Expected Catch	314.90	314.90	314.90	1,578.07	1,578.07	1,578.07	12,109.31	12,109.31	12,109.31	3,506.83	3,506.83	3,506.83	
(4) Multiplied by: 1995 Quarterly Catch Variance Percentage	104.00 percent	104.00 percent	104.00 percent	95.00 percent	95.00 percent	95.00 percent	120.00 percent	120.00 percent	120.00 percent	75.00 percent	75.00 percent	75.00 percent	
1996 Projected Catch	327.50	327.50	327.50	1,499.17	1,499.17	1,499.17	14,531.17	14,531.17	14,531.17	2,630.12	2,630.12	2,630.12	
(5) Multiplied by: 1995 Quarterly Average Price Per Pound	$4.02	$4.02	$4.02	$4.02	$4.02	$4.02	$3.01	$3.01	$3.01	$3.16	$3.16	$3.16	
1996 Projected Sales	$1,317	$1,317	$1,317	$6,027	$6,027	$6,027	$43,739	$43,739	$43,739	$8,311	$8,311	$8,311	$178,180
(6) Less: 1996 Actual Sales	$0	$0	$0	$0	$1,000	$2,400	$25,000	$44,500	$44,500	$8,500	$8,500	$8,500	$142,900
(7) Total Lost Sales	$1,317	$1,317	$1,317	$6,027	$5,027	$3,627	$18,739	No Loss	No Loss	No Loss	No Loss	No Loss	$37,368
(8) Less Saved Expenses		Fuel	5.00 percent	$499									
		Bait	8.00 percent	$798									
Total Saved Expenses				$1,267									
(9) Total Lost Profits													$36,071

STATEMENT OF BARRY M. HARTMAN, KIRKPATRICK AND LOCKHART, LLP

Good Afternoon, Senator Chafee. Thank you for the opportunity to appear today.

My name is Barry M. Hartman. I am a partner in the law firm of Kirkpatrick & Lockhart, LLP. I am here today my capacity as counsel to over 100 lobstermen and women, small businesses, and crew. MOST of these people have yet to be fully compensated for the severe economic losses Hat they suffered as a result of the North Cape Oil Spill on January 19, 1996.

You will hear testimony today from four of our clients. Two are lobstermen, one used to run a small business on shore, and one operates a charter and daily fishing boat business. All share the common injury caused by the oil spill—their livelihoods were interrupted. They also share the characteristic of having tried and tried to recover for their losses, only to be turned down for no reason, or thwarted by unreasonable and some cases irrational demands by the responsible party and the Oil Pollution Act (OPA) Trust Fund.

My testimony today will not address any individual clients. Rather, it will focus on the broader pattern and practices governing how the compensation system under the Oil Pollution Act of 1990 is functioning. Having now over 100 claimants for 3 years as a result of this spill I can sum up the compensation system in four words.

"It does not work."

Also, the process will not work unless the attitudes of the responsible parties and the administrators of the The Fund can be adjusted. By "work" I mean what Congress said when it passed OPA in 1990:

> Finally, we make it easier for victims of oil spills to recover for economic damages, natural resource damages, subsistence loss, and others. They can seek reimbursement from the spiller or directly from the $1 billion Federal Trust Fund. The 1978 Amoco Cadiz spill off the coast of France was the biggest spill in history to come ashore. The litigation on that spill is still going on after 12 years. and not one penny in damages has been paid. This bill will make sure that that doesn't happen.

136 Cong. Reg. H6935 (August 3, 1990). Today, 3 years after the spill, precious few have been fully compensated.

Before explaining why this is the case, let me give you my perspective. I served as Acting Assistant Attorney General for the Environment Division in the United States Department of Justice during the *Exxon Valdez* spill. I was responsible for prosecuting that company. I was also the representative of the Justice Department in connection with the development of the Oil Pollution Act of 1990.

One of the issues we focused on as of fleers of the court as well as law enforcers, was how to assure that victims of the spill were made whole wisdom having to fight well paid insurance company lawyers for years and years in court proceedings. The legislation that was crafted included an administrative process that was supposed to assure the quick and full payment of claims. I believed it would work. I was wrong.

The OPA compensation process is not working for a number of reasons. First, it is not providing full compensation to injured parties in the timeframe established by law, and in many cases not at all. The regulations call for a decision by the responsible park within 6 months. The Trust Fund is supposed to decide claims within 90 days. Of the claims that my Fox filed with the responsible patty for documented losses suffered by fishermen near the closed area, almost none have been decided, let alone decided within the 6-month time period. We have had claim pending with the Fund now for more than 1 year. Not a sole one has been decided within 90 days.

Second, both the responsible party and the Fund administrators are requiring more proof of losses than would be required in a court room. For example, if we went to court, we could use routine business records to show our losses. Neither the Fund nor the responsible party accepts these records. In some cases, they even made us create new ones. Similarly, if we went to court, we could use the sworn statements of our clients to prove their losses. Neither the responsible parry nor the Fund accepts These. If we went to court we could use copies of our tax returns as filed with the IRS to prove our losses. After some persuasion, the adjusters stopped rejected copies of these reins. If we went to court and the responsible park Nought that something over Man the spill caused our losses, the responsible party would have to prove that. Here, the responsible party and the Fund ignore our losses and demand Bat we prove beyond any doubt that nothing else could possibly or remotely have caused our documented losses. If we went to court we could prove future losses by projections based on historical experience. The responsible party and the Fund refuse to accept this. They take a "wait and see" attitude and have indicated that

they mill nor pay any claim for any future time period. This is inconsistent with the regulations and the law.

Third, the Fund is not providing the function that it is supposed to provide. The whole purpose of this compensation system is to get the responsible parry to pay. If it will not meet its obligations then the Fund is supposed to pay, and dozen sue the responsible party for what the Fund paid on its behalf. The fact that the law gives the Fund half the time that it gives the responsible party to make a decision (90 days v. 6 months) reflects the notion that it should not start from scratch. Here, the Fund has admitted that it does start from scratch, functions exactly like an insurance company, and applies the same or higher standards of proof than what the responsible party applies. The insurance adjuster who considers claims for the responsible party has no obligation to claimants—only to the insurance company. The Fund may have a fiduciary duty to preserve the Fund for proper claims, but it also has a statutory duty to compensate victims when the responsible party fails to. In reality, it only preserves The Fund. Not a single one of the claims we have filed has been paid by the Fund. The people considering the claims for the Fund are insurance company adjusters. They work for a responsible party one week, and the Fund another.

Fourth, the responsible party and the Fund are not adjudicating individual claims. They are applying secretly created legislative rules to all claims, regardless of the facts. Specifically, the responsible party has decided that no one with documented losses from fishing near but not in the closed area deserves more than 3.1 percent of their losses, regardless of the facts. My letter to the Director of the Fund outlining the absurd nature of this secret rule is attached as Exhibit A.

Fifth, the delays in deciding claims are occurring because the responsible park and the Fund have erected barriers to payment, and have camouflaged them behind pretextual claims of not having sufficient documentation. (In one case, two bankers boxes of documents was insufficient). The law requires that the responsible party decide a claim within 6 months of receipt of the complete claim. It requires that the Fund do the same within 90 days of receipt of the complete claim. To avoid this, each routinely, upon receipt of the claim, writes a lever saying that it is missing information, and therefore is not complete. We submitted thousands of documents for our clients and few were considered complete. That occurred even though we provided EXACTLY what we were told to provide. In fact, before we filed our first claim we submitted a Freedom of Information Request to the Fund asking for specific examples of information that was used for approving a claim. Although the Fund initially refused to give us this, we ultimately got some information. We followed exactly what they told us to. It was not enough.

Sixth, the responsible party and the Fund do not even look at what we provide before asking for more information. There have been literally dozens of instances when, after making a submission, we get a call asking for more information. We tell the caller he already has it.

Seventh, are being asked for the same information in two, three and four forms. We provide tax returns that show actual net income. They ask for our books that were used to prepare the tax returns. We provide our books. They ask for documents and receipts to show our costs. We provide receipts and they ask for names of people mentioned on those receipts and other documents. We provide names, and they ask for phone numbers. It is ridiculous.

Eighth, for 1996 and 1997 the claims process has apparently proceeding to adjudicate claims without regard to the draft Natural Resource Damage Assessment estimates of losses. While we think those estimates are woefully low (as explained below) the claims adjusters seem to think that there were and will be no losses at all.

The attached Exhibit B documents the change in Gross Lobster Sales during 1995 through 1997 for 33 different RILA claimants represented by Kirkpatrick and Lockhart LLP ("K&L"). Each of these 33 have filed for lost profits during those years. These 33 claimants presented herein are a subset of all K&L clients, which in in turn is a subset of all of the lobstermen who fish the waters off Rhode Island. The following summarizes the lobster losses experienced by this small group of 33 claimants:

- Using the analysis of Gibson et al.[1] losses from the Spill in 1996 and 1997 for adult equivalents is projected as 45,847 and 165,493 adult equivalents, respectively, for a total of 211,340 adult equivalents during 1996 and 1997.

[1] Gibson, et al., Estimation of Lobster Stranding Following the North Cape Oil Spill in Block Island Sound and Equivalent Adult Estimates and Stock Status of lobster Involved in the North Cape Oil Spill in Block Island Sound.

• Using the actual lobster catch figures of the 33 claimants (converted from adult equivalents by applying an estimated $3.25/lb. and 1.25 lb./lobster) losses for the Spill are calculated as 190,902 lobsters in 1996 and 243,912 lobsters in 1997, a total of 436,814 lobsters lost. This total figure of actual lobster loss exceeds the projected loss by 225,474 lobsters or 107 percent.

• Moreover, during 1997 there were no closures of fishing grounds and the above 3 claimants demonstrably increased fishing efforts in an attempt to mitigate damage losses in 1997 amounted to an estimated 78,419 lobsters (+47 percent) more than projected by the NRDA.

Finally, the adjusters are trying to make us prove negatives, and wholly ignoring what caused the damage. We show documented losses from lobstermen who fished quite close to the closed area. They say that we have to prove that nothing else caused the losses. They ignore the fact that the responsible party pled guilty to criminal conduct that caused the spill, and That:

> The National Transportation Safety Board determines that the probable cause of fire damage aboard the tug Scandia and subsequent grounding and pollution from the barge North Cape was the Eklof Marine Corporation's inadequate oversight of maintenance and operations aboard those vessels, which permitted a fire of unknown origin to become catastrophic and eliminated any realistic possibility of arresting the subsequent drift and grounding of the barge. Contributing to the accident was the lack of adequate Coast Guard and industry standards addressing towing safety.

Our clients are fed up. We are probably going to reluctantly abandon the OPA process and file a lawsuit in court. I regret This course of action, and am frankly embarrassed to say that the process I helped create, and that I endorsed and convinced my clients to follow, just does not work—at least not the way it should.

We to request that that the rules be changed to force the responsible party and the Fund to pay more promptly and without the improper resistance that exists today.

Thank you.

KIRKPATRICK & LOCKHART,
Washington, DC 20036, July 13, 1998.

DANIEL SHEEHAN, *Director,*
National Pollution Funds Center,
4200 Wilson Boulevard, Suite 1000,
Arlington, VA 22203–1804.

Re: North Cape Oil Spill

DEAR MR. SHEEHAN: When the *North Cape* barge discharged its toxic cargo into the waters off of Moonstone Beach in Rhode Island on January 19, 1996 (the "Spill"), few sensed the awesome significance of that event. Experts from varied fields have made measurements, taken samples, counted populations, and generally worked to obtain a full understanding of the consequences of the Spill. Reports have been written and a Natural Resources Damage Assessment will one day be released for public scrutiny. However, at this point in time—over 2½ years after the Spill—many of the Rhode Island fisherman have not been compensated at all for the harm they have suffered.

We have represented well over 100 fishermen and businesses that were impacted, to one degree or other, by the Spill. In a frustratingly tedious process, we have pursued claims with Turnabout Services, Ltd ("Turnabout") on behalf of these claimants. Although every claim has been fully and consistently documented, few have been settled quickly and equitably. Many had to be resubmitted to the National Pollution Funds Center (the "Fund" or "NPFC") for payment after being denied or offered ridiculously unfair and wholly unjustified offers by Turnaboat. Still others have been recently subsumed to Turnaboat or will be submitted soon. The dollar value of claims submitted to date to Turnaboat and the Fund that are still awaiting resolution is well over $3 million.

We learned early on that there was no "book" or guidance from the Federal Government or private fisheries that could tell the lobstermen who fished the Rhode Island waters just what he should do after the Spill to save his livelihood. Each responded with his individual fashion, based upon what he thought would allow him to make a living at lobstering. After the closed areas were reopened, some lobstermen stayed in their historic fishery within the coastal waters that were closed after the Spill. Despite best efforts, the catch of many of these lobstermen plummeted by a third to a half of their pre-Spill catch.

Other inshore fishermen, when they saw that their lobster traps produced a greatly reduced, or nonexistent catch, pulled their traps and went to areas outside the closure zone so at they could, in effect, find new grounds or "chase" surviving lobsters that might have migrated from the impacted area, and obtain at least some sort of catch. Of course, these fishermen had to compete with others who were also displaced by the Spill, and with those whose traditional fishing grounds were located outside the closure boundaries to begin with. In most every case, these displaced fishermen caught far fewer lobsters than before the Spill.

The final group of fishermen, who were located outside the closure boundaries in the first place, were now faced with increased competition from the displaced fishermen, and consequently saw their catch become greatly reduced as well.

Here is what we do know: The lobstermen who have stayed within the closure area; the lobster who have gone out of the closure area in whole or in part, and the lobstermen who have remained outside the closure area and now must compete with the displaced fleet, all have and are experiencing real losses in their livelihood because of the Spill. Nothing else explains why their catches have drastically decreased since January 19, 1996. Under the Oil Pollution Act of 1990 ("OPA") each is entitled to be made whole. In fact, instead of recognizing the probable causal relationship between the 1996 spill and the demonstrable 1996, 1997, and now 1998 losses, our clients are being required to prove their losses beyond doubt and to prove a negative—that nothing else could possibly account for these losses.

In this regard, while we recognize and accept the responsibility for documenting these losses, OPA does not require that losses be proved beyond a reasonable doubt, or otherwise to the degree required by a court of law. fact, that is exactly what the process was designed to avoid:

> Finally, we make it easier for victims of oil spins to recover for economic damages, natural resource damages, subsistence loss, and others. They can seek reimbursement from the spiller or directly from the $1 billion Federal Trust Fund. The 1978 Amoco Cadiz spill off the coast of France was the biggest spill in history to come ashore. *The litigation on that spill is still going on after 12 years, and not one penny in damages has been paid. This bill will make sure that doesn't happen.*

136 Cong. Rec. H6935 (Aug. 3, 1990) (statement of Rep. Jones during adoption of conference report accompanying the Oil Pollution Act of 1990) (emphasis supplied).

Our Approach

At the initial stages of our involvement with the claims process, our approach was straightforward. For each claimant we asks the following questions:

What would a claimant have made if not for the Spill?

What amount of damages would make that claimant whole?

In answering these questions, we compiled the income of each claimant after the Spill, and then compared it with a "base year, usually 1995 or an adjust version of 1995, that would stand as the income standard before the Spill. So if a claimant had earned net income of $100,000 before the Spill, and then experienced lower catches that resulted in a net income reduced to $80,000 after the Spill, we could conclude that the party had been damaged In the amount of $20,000, more or less, during that time period. Each claim was different and on some occasions we would factor in the historic growth trends of a business or an increase in lobster pots fished. But overall, the analysis was straightforward.

Turnabout's Approach

Unfortunately, this simple analysis has been unduly complicated by Turnabout, the adjuster hired by the responsible party (Eklof Marine) to handle and minimize payment of claims. In a meeting at Turnaboat offices on June 11, 1998, after more than 2 years of repeated and duplicative demands that we document losses, Turnaboat disclosed for the first time that it was only authorized to pay claims for damages incurred outside the former closed areas at the rate of 3.1 percent regardless of individual proof of loss. Accordingly, a fisherman who has been forced out of his traditional fishing grounds by the Spill, and who attempts to mitigate damages (i.e., feed his family and pay the bills) by fishing outside the imaginary line drawn in the water in January or February 1996, and who can show that his income has decreased by $100,000 after the Spill, will be offered only $3,100 by the representatives of those who have caused this great harm to our waters.

How does Turnabout justify this 3.1 percent rule? At the aforementioned June 11, 1998 meeting, Turnabout representatives cited the Cobb/Clancy report[1] as establishing that about 107,000 adult, or near-adult, lobsters were killed in the immediate aftermath of the Spill. We have found no reference whatsoever to a lobster mortality rate of "107,000" in the Cobb/Clancy report. In any event, Turnabout then applies a "harvest rate" of 9.5 percent to to arrive at an adjusted figure of 101,650 lobsters lost. Next it multiplies this figure by 1.25 lbs./unit to arrive at 127,062 lbs. of lobster lost. Turnabout divides this lost lobster figure by what it deems to be the local 1996 lobster catch in Area 539 during 1996 to arrive at the 3.1 percent figure. This approach is based on spurious me of data deigned solely to pay the injured fisherman the least amount possible.

NPFC Approach

In this same vein, the NPPC, through and with its adjuster Hull & Cargo Surveyors, Inc., has finalized a settlement offer on one claim to date. In that claim, the final 5 months of damages have been totally denied by applying information that is as faulty and counterintuitive as the Turnaboat 3.1 percent position. Attached as Exhibit A is a table that purports to show the "Summary of Monthly Lobster Landings (pounds)—Point Judith" for the years 1995 and 1996. This information, the Table states, was obtained from the National Marine Fisheries Service, and alleges that landings at Pt. Judith have increased by 15.9 percent after the Spill. Based on this, Hull & Cargo chose to ignore tax returns and other data that show our clients have actually incurred great losses, concluding that if the landings at Pt. Judith increased, the availability of lobsters to inshore lobstermen must have increased as well. As explained below, that is simply nor the case.

While we may infer that the intent of adjusters working for the Responsible Party is to pay the absolute bare minimum on all claims, we are greatly concerned that the Fund appears to be adopting the same approach and deciding, claims by "rule" rather than on their merits.

Impartial Analysis

We believe the best and most accurate approach remains that which the law and regulations contemplate: each claimant documents his own losses. However, if one is to even consider general data to consider claims, at the very least relevant data should be considered and it should be impartial, and reasonably accurate. For example, there is an ongoing assessment of the Rhode Island lobster fishery that culminates each year in a report by the Rhode Island Division of Fish and Wildlife (the "RIDFW") titled "Rhode Island Lobster Research and Management Project Annual Report/Completion Report." This report results from the work of Thomas E. Angell, a lobster biologist with the RIDFW.[2] Mr. Angell has produced a table that breaks out the Area 539 Landings from the Total Rhode Island Landings. This table is attached as Exhibit B. Attached as Exhibit C is a chart delineating the boundaries of Area 539.

The table at Exhibit B shows two distinct trends:

1. The Total Rhode Island Landings have increased after the Spill; and
2. The Area 539 Landings (Inshore) have decreased by about 33 percent in each of the years after the Spill.

By and large, the claimants we represent attempt to earn their livelihood in or very near Area 539. As stated, many have documented real losses from 25–50 percent within this area. Yet Turnaboat ignored their documented losses, ignored this study, and instead has decided to pay only 3.1 percent of any damages within Area 539 that are outside the former closure areas. Turnaboat bases this position on an "analysis" indicating that only 101,650 adult, or soon to be adult, lobsters were killed by the Spill in Area 539. This "analysis" cannot stand the light of day when contrasted with losses suffered by lobstermen and the actual catch figures contained in Exhibit B, which reveal an overall reduction in adult, caught lobsters of one mil-

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[1] North Cape Oil Spill: An Assessment of the Impact on Lobster Populations. J.S. Cobb; M. Clancy January 5, 1998.

[2] W. Angell is the project leader and coordinator for the Rhode Island Marine Fisheries Council (RIMFC) Lobster Industry Advisors' Committee and a member of the Atlantic States Marine Fisheries Commission (ASMFC) Lobster Plan Development Team (PDT), ASMFC Lobster Technical Committee, and participates in the Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC) process. Moreover, Mr. Angell's job objectives as defined in the above-referenced Annual Report are: (1) to process, analyze, and report on biological and population statistics collected during this project, and to characterize the Rhode Island commercial fishery for lobsters; and (2) to continue a data collection program to obtain biological and population statistics on Rhode Island lobster resources and to characterize the Rhode Island commercial lobster fishery.

lion pounds per year in Area 539 during 1996 and 1997. We fear that similar results will occur in 1998.

The reason that the total Rhode Island Landings have increased is easily explained by the fact that the offshore fishing fleet, whose catch does nor occur in Area 539 but which are brought to Pt. Judith, has experienced a remarkably productive 1996 and 1997.[3] Their success is being used by Turnabout to deny the severe damages experience by the inshore fishermen.

More than 2½ years after the Spill, little has changed. Contrary to the stated intent of OPA to "make it easier for victims of oil spills to recover" our clients have been forced into a defensive and adversarial position. Accordingly, on our side of the fence are lobstermen with damages that are easily provable using tax returns, financial data and affidavits. Some of these victims have had to declare bankruptcy in the aftermath of the Spill. Others have drastically curtailed expenditures necessary to maintain or upgrade their livelihood. On the other side of the fence are those found by a court of law to be responsible for the Spill and liable for their negligent and criminal behavior; those adjusting for the damages claims resulting from the negligent and criminal behavior; and those specifically directed by Federal law to avoid a repeat of the *Exxon Valdez* oil spin claims process. All these parties have ignored the unmistakable evidence of massive damage caused by the North Cape oil spill.

Conclusion

The unequivocal factual data submitted for claimants and compiled by the Rhode Island Division of Fish and Wildlife and Thomas E. Angell, demonstrate actual losses well in excess of 3.1 percent. It is inconsistent with OPA for the Responsible Party and the Fund so demand detailed and extensive proof of losses, and then decide every claim based on demonstrably irrelevant data, and a 3.1 percent rule that is illegal and wrong. We request that the Fund reconsider the settlement posture it has taken to date regarding the Spill, and demand that the Responsible Party do the same. Otherwise, our clients may be forced to forego the demonstrably ineffective OPA process, and bring suit in court.

Respectfully submitted,

BARRY M. HARTMAN,
THOMAS F. HOLT, JR.
PETER N. MCISAAC

EXHIBIT A

ABC LOBSTER, INC. NORTH CAPE OIL SPILL LOSS—JANUARY 19, 1996

SUMMARY OF MONTHLY LOBSTER LANDINGS (POUNDS)—POINT JUDITH

(Mandatory reportings by dealers to port agents)

Information provided by John Spavins of the U.S. Department of Commerce—National Marine Fisheries Service

Month	Zone					Total
	Unknown	0 Coastal	1 < 3 miles	2 3–12 miles	3 > 12 miles	
1995:.						
January	27,522		11,613	14,002	19,718	72,855
February	9,403		10,245	7,239	13,430	40,317
March	56,590		8,014	9,272	14,634	88,510
April	41,445		42,112	16,071	23,909	123,537
May	68,342		18,100	15,778	21,175	123,395
June	54,639		65,922	55,288	77,778	253,627
July	235,298		202,865	109,903	43,960	592,026
August	242,952		125,060	130,821	55,046	553,879
September	304,094		104,801	162,719	81,385	652,999
October	169,001		101,273	127,163	71,825	469,262
November	128,721		93,240	50,593	10,119	282,673
December	73,458		49,054	12,962	2,592	138,066
Total 1995	1,411,465	0	832,259	711,811	435,571	3,391,146

[3] Of course, inshore fishermen do not have the equipment or resources to "compete" with the offshore fleet.

SUMMARY OF MONTHLY LOBSTER LANDINGS (POUNDS)—POINT JUDITH—Continued

(Mandatory reportings by dealers to port agents)

Information provided by John Spavins of the U.S. Department of Commerce—National Marine Fisheries Service

Month	Zone					Total
	Unknown	0 Coastal	1 < 3 miles	2 3–12 miles	3 > 12 miles	
1996:.						
January	41,405	1,448	6,981	7,386	1,476	58,696
February	35,090	2,142	2,754	3,178	632	43,796
March	46,438		2,136	2,638	527	51,739
April	94,079		6,750	6,115	26,207	133,151
May	63,413		107,006	13,634	3,635	187,688
June	96,218		52,270	24,176	9,154	181,818
July	224,293		64,208	109,972	34,730	433,203
August	578,189		150,049	207,499	82,998	1,018,735
September	217,559		204,856	96,187	46,912	565,554
October	164,297		197,495	59,422	23,767	444,981
November	130,552		101,259	41,858	8,371	282,040
December	72,891		413,220	35,585	7,118	528,814
Total 1996	1,764,424	3,590	1,309,024	607,650	245,527	3,930,215

EXHIBIT B

Rhode Island Lobster Research and Management Project

NMFS Statistical Area 539 Landings

Rhode Island Inshore Landings

(Data Source: NMFS Weighout/Canvass Landings Data base)

Year	Area 539 Landings (Inshore)	Total Rhode Island Landings
1991	4,388,120	7,445,169
1992	3,010,084	6,763,086
1993	3,246,286	6,229,001
1994	3,577,553	6,474,399
1995	3,151,915	5,363,810
1996	2,104,604	5,579,874
1997	2,135,065	5,587,678

* [illegible]
OFF = 2672681

M	TH	TOTAL INSHORE	TOTAL OFFSHORE	TOTAL INSHORE/OFFSHORE	OFF %
1	① * 71519 ② 72133	* 62612 61998	134131	42.49 87%
2	* 27352 28479	* 42241 41114	69593	2.35702
3	* 31635 36014	* 94698 90318	126333	78.50838
4	* 63770 71975	* 125967 117762	189737	70.80063
5	* 60099 75569	* 138996 123526	199095	77.90401
	* 289714 323182	* 180541 147073	470255	45.51869
7	* 665766 778979	* 250407 137194	916173	39.71144
8	* 530283 636645	* 327949 221587	858232	50.61642
9	* 262838 396689	* 558679 524828	921517	80.22901
10	* 305994 364158	* 345890 287726	651884	68.46576
11	* 256470 290834	* 194741 160377	451211	50.94711
2	* 125689 144197	249960 231452	375649	71.44945
[illegible]	② 3318854	2144956	5363810	

Source: Tom Angell, Rhode Island DEM, July 16, 1998

	TOTAL INSHORE	TOTAL OFFSHORE	TOTAL
	① 30228 ② 33848 (+½ OFF)	85474 81854	115702
2	8155 8678	55491 54968	63646
3	7653 10585	63911 60979	374518
4	33037 37212	150069 145894	183106
5	77036 120054	192864 149846	269900
6	100758 114563	206398 192593	307156
7	421687 493671	344362 272378	766049
8	511817 699286	707784 520315	1219601
9	327114 462513	449983 314584	777097
10	235569 337223	423144 321490	658713
11	194375 251886	282806 225295	477181
12	157163 358211	512996 311948	670159

Source: Tom Angell, Rhode Island DEM, July 16, 1998

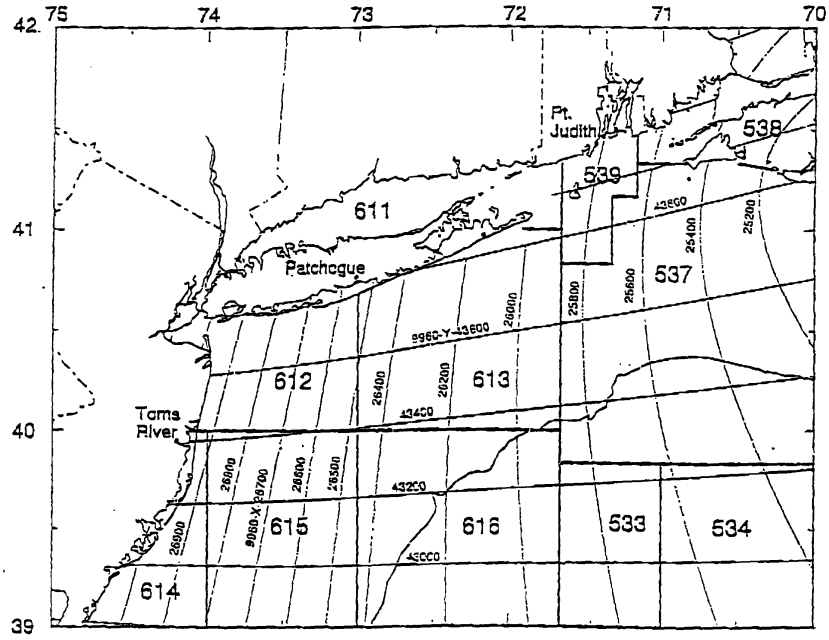

Chart 3. Chart area for Southern New England

EXHIBIT A

North Cape Oil Spill
Analysis of Lobster Sales: 1995-1997
for Various Claims Filed

CLAIM #	1995 GROSS LOBSTER SALES	1996 GROSS LOBSTER SALES	1997 GROSS LOBSTER SALES
1	$63,162	$56,878	$42,432
2	$115,818	$57,114	$75,632
3	$158,695	$105,119	$78,336
4	$148,278	$107,113	$118,036
5	$47,380	$25,905	$41,729
6	$197,265	$178,625	$152,925
7	$14,599	$12,496	$11,368
8	$113,234	$98,856	$100,732
9	$98,983	$100,228	$58,231
10	$31,011	$28,212	$27,202
11	$103,030	$76,750	$73,334
12	$24,111	$15,463	$10,595
13	$129,331	$91,589	$90,256
14	$141,176	$117,473	$101,832
15	$129,392	$133,316	$105,499
16	$14,086	$18,760	$17,521
17	$163,374	$136,659	$136,351
18	$83,004	$70,153	$95,697
19	$20,768	$24,683	$17,055
20	$200,090	$165,720	$148,445
21	$106,178	$80,386	$64,242
22	$230,534	$187,271	$167,775
23	$14,599	$12,496	$11,368
24	$117,053	$96,900	$117,488
25	$166,815	$125,978	$105,933
26	$102,442	$89,363	$83,873
27	$342,426	$304,957	$268,281
28	$301,478	$221,619	$218,372
29	$114,677	$97,698	$113,671
30	$241,257	$155,019	$151,870
31	$3,044	$1,220	$3,579
32	$92,886	$86,930	$86,938
33	$120,843	$86,409	$63,530
TOTAL	$3,951,019	$3,167,358	$2,960,128
		19% decrease	7% decrease

BO-89401.01

Using an estimated price of $3.25 per pound and an estimated adult weight of 1.25 pounds per lobster, gross sales can be explained as follows:

YEAR	GROSS SALES	LOBSTER EQUIVALENTS	COMPARISON TO 1995
1995	$3,951,019	972,558	—
1996	$3,167,358	779,657	(192,902)
1997	$2,960,128	728,647	(243,912)

The following table presents the reduction in lobsters caught for the 33 claimants in comparison to the predicted losses based upon the total lobster kill estimates by Cobb and Clancy (9,039,185) and Gibson's strandings size distribution and adult equivalents calculations (See Table 3 from North Cape Oil Spill: Synthesis of Injury Quantification and Restoration Scaling for Lobsters, French, August 31, 1998).

YEAR	PREDICTED ADULT EQUIVALENT LOSS	LOSSES OF 33 CLAIMANTS	VARIANCE
1996	45,847	192,902	147,055 (+321%)
1997	165,493	243,912	78,419 (+47%)
TOTAL	211,340	436,814	225,474 (+107%)

U.S. Department of Transportation
United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Boulevard
Suite 1000
Arlington, VA 22203-1804
Staff Symbol: cm
Phone: (703) 235-4756

VIA OVERNIGHT AIRBORNE EXPRESS

5890

June 18, 1998

Mr. Gregory Grimes
Kirkpatrick & Lockhart
One International Place
Boston, Massachusetts 02110-2637

RE: CLAIM NUMBER: 016203-007 **(Claim -01)**
CLAIMANT: ABC Lobster, Inc.
CLAIMANT TYPE: Wholesale & Retail Lobster Sales
CLAIM TYPE: Loss of Profits and Eearning Capacity
CLAIM PERIOD: **January 19, 1996 through July 31, 1996**

Dear Mr. Grimes:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990 (OPA) [33 U.S.C. 2712(a)(4)], agrees to pay the attached settlement for your claim. This settlement represents full and complete compensation for this claim resulting from the January 19, 1996, T/B "NORTH CAPE" oil pollution incident. Please refer to the attached Claim Summary -01. enclosure 2, which shows the steps the NPFC followed in determining the amount of the settlement offer.

Please indicate acceptance of the settlement using the attached Release Form, enclosure (1). Return this form within 60 days of the date of this letter. If a written response is not received within the allotted time period, the offer is void. If the settlement is accepted, your payment will be mailed within 30 days of receipt of the Release Form.

If you disagree with the NPFC's determination and wish to seek a re-evaluation of this matter by the NPFC, you must submit in writing the basis for your disagreement. This re-evaluation request must be postmarked by 60 days from the date of this letter. Upon receipt of such information, the NPFC will render a final determination. You will then have 60 days from the date of the final determination to indicate written acceptance. If a written response is not received within this 60 day allotted time period, this offer becomes void.

KIRKPATRICK AND LOCKHART,
Washington, DC 20036, September 16, 1997.

DANIEL SHEEHAN, *Director,*
National Pollution Funds Center,
United States Coast Guard,
4200 Wilson Boulevard, Suite 1000,
Arlington, Virginia 22203–1804.

Re: 1996 North Cape Oil Spill Claim on Behalf of ABC Lobster, Inc. for Damages

DEAR MR. SHEEHAN: On behalf of ABC Lobster, Inc. ("ABC Lobster"), and pursuant to the Oil Pollution Act of 1990, 33 U.S.C. §§2701–2761 (Supp. 1997), Kirkpatrick & Lockhart, LLP ("Kirkpatrick & Lockhart") hereby submits the enclosed claim for damages suffered in the 1996 North Cape Oil Spill. Specifically, ABC Lobster seeks damages of $207,250.25 for lost profits and earnings capacity, embargoed lobsters and property rental for the period of January 19, 1996 through December 31, 1996. This claim does not include claims for long-term profits and earnings.

Also, it does not include claims for the reasonable costs of assessing damages. ABC Lobster reserves the right to bring such claims in the future.

The damages sought by ABC Lobster are the result of a 1996 oil spill off the coast of Point Judith, Rhode Island. Point Judith is the third largest fishing port on the east coast and generates millions of dollars of revenue. On January 19, 1996, the North Cape Barge, a barge operated by Eklof Marine Corporation, ran aground and spilled at least 800,000 gallons of oil into Block Island Sound, located at Point Judith. The spill required that the entire port be closed. The local fishing community suffered significant property damage and loss of earning capacity as a direct result of the spill. The impact of the spill extended far beyond this direct area and is expected to impact the lobster and related populations for years to come. ABC Lobster seeks compensation for lost profits suffered by its seafood dealership caused as a result of the spill. Because of the spill, ABC Lobster was unable to purchase lobsters from fishermen to sell, either in wholesale or retail markets, and thus suffered severe losses.

This claim was presented to Turnaboat Services, Ltd. ("Turnaboat"), the insurance company for Eklof Marine Corporation, in two parts. On May 31, 1996, ABC Lobster initially submitted a claim for $50,248.00 for its lost profits, embargoed lobsters and property rental from January 19, 1996 to April 30, 1996. Subsequently, on September 3, 1996, ABC Lobster provided supporting information (settlement tickets, retail sales records, etc.) for its claim and extended it until June 25, 1996. ABC Lobster's claim for January 19, 1996 to June 25, 1996 totaled $71,784.25. Turnaboat made an insufficient offer on this claim of $49,699.88. Turnaboat refused to increase the amount of this offer because it disputed the amounts ABC Lobster claimed it was owed for its sales of lobsters in the wholesale market. ABC Lobster considers Turnaboat's insufficient offer a denial of its claim.

Later, on May 14, 1997, ABC Lobster submitted its claim for lost profits from June 26, 1996 to December 31, 1996 for $135,466.00, making ARC Lobster's total claim $207,250.25. Turnaboat refused to evaluate this claim for the latter part of 1996, which ABC Lobster considers a denial of its claim. Thus, pursuant to 33 U.S.C. § 2713(c), ABC Lobster now elects to present its claims to the Oil Spill Liability Trust Fund ("Fund").

In support of this claim and pursuant to 33 C.F.R § 136.105, please find enclosed the following documents and information:

1. A copy of the representation letter granting Kirkpatrick & Lockhart the authority to file this claim on behalf of ABC Lobster (Exhibit A);
2. A copy of the National Pollution Funds Center Standard Claim Form (Exhibit B);
3. Affidavit of Albert B. Christopher, Jr. (officer and shareholder of ABC Lobster) (Exhibit C);
4. Identification information for ABC Lobster (Exhibit D);
5. List of witnesses (Exhibit E);
6. Copies of the May 31, 1996 and May 14, 1997 claims submitted to Turnaboat on behalf of ABC Lobster (Exhibit F);
7. Copies of all written communications between ABC Lobster and Turnaboat (Exhibit G); and
8. A summary of all oral communications between ABC Lobster and Turnaboat (Exhibit H)

As discussed in detail in these materials, ABC Lobster provided significant supporting documentation (settlement tickets, retail sales records, etc.) to Turnaboat in support of its claims. At the Coast Guard's request, we would be happy to supply copies of any or all of these materials. However, because these materials are quite lengthy, we have not provided copies herewith.

Please do not hesitate to contact the undersigned if you have any questions. Thank you for your prompt attention to this matter.

Respectfully submitted,

BARRY M. HARTMAN,
THOMAS F. HOLT, JR.,
LINDA L. RACLIN,
ELIZABETH L. SMITH,
Kirkpatrick & Lockhart, LLP

U.S. DEPARTMENT OF TRANSPORTATION,
U.S. COAST GUARD,
NATIONAL POLLUTION FUNDS CENTER,
Arlington, VA 22203, 27 October 1997.

Kirpatrick & Lockhart,
1800 Massachusetts Avenue NW
Washington, DC 20036.

DEAR MS. RACLIN: This is in response to the $207,250.25 claim submitted by ABC Lobster, Inc. for loss of profits and earning capacity, arising from the 19 January 1996 T/B *North Cape* oil spill. Before the National Pollution Funds Center (NPFC) adjudicates this claim, we request the following information from the claimant:

(1) Monthly financial statements for the claimant's period of loss, and for the years 1995, 1994 and 1993.

(2) According to Exhibit C of the claimant's submission, ABC Lobster states that it buys lobsters from "inshore lobstermen" and not from "offshore lobstermen". Please explain the difference between these two types of lobstermen. In addition. please explain and document why ABC Lobster considers lobster from "offshore lobstermen" unprofitable.

(3) Accord to Exhibit C of the claimant's submission, ABC Lobster states that because of the oil spill, it shut down its retail counter on 11 March 1996 to undertake renovations on the counter that were completed sometime in mid-April. When did ABC Lobster intend to make these renovations. and what impact did it expect to have on the company's profits?

(4) Regarding the "mark-up" of $1.50 per pound on lobster in ABC Lobster's analysis of lost lobster profits, please explain the purpose of the "markup", and how the claimant derived this figure.

(5) The claimant asserts that estimated daily lobster sales Averaged $1,893 per day from January through April 1996. What were ABC Lobster's actual January lobster sales just prior to the oil spill?

(6) Please provide the amount of lobster by pounds sold by ABC Lobster on monthly basis for 1996.

(7) Please provide the dollar amount of lobster sales by ABC Lobster on a monthly basis for 1996.

(8) Does ABC Lobster purchase lobster or any other types of seafood outside the State of Rhode Island? If not, why not?

(9) Please provide the amount of fish and shellfish by pounds sold by ABC Lobster on a monthly basis for 1994, 1995, and 1996.

(10) Please provide the dollar amount of fish and shellfish sales on a monthly basis for 1994, 1995 and 1996.

(11) After the finfishing and shellfishing bans were lifted, how did the oil spill result in continue lost profits into the summer, fall and winter of 1996? Please provide with this explanation with supporting documentation.

(12) Finally, we request all information ABC Company provided to the responsible party in support of this claim, that has not already been provided to the NPFC. We believe that it is in the best interest of the claimant, the responsible party and the NPFC that all parties have available all information used to adjust this claim.

The claimant is in the best position to provide sufficient, supporting documentation needed to demonstrate that his losses resulted from an oil spill subject to the Oil Pollution Act (OPA). Pursuant to the Claims Regulations (33 CFR 136.105(a)), the claimant bears the burden to provide all evidence to support his claim. Generally, it has been our experience that the greater removed the claim time period of an alleged loss is from the date of an OPA incident, the greater the documentation needed to demonstrate that the alleged loss resulted from the incident.

We ask that your client provide this information within sixty days of the date of this letter. The NPFC may have additional questions or request more information based upon the responses to these questions. If you have any questions would like to discuss the matter, you may write me at the above address or contact me by phone at (703) 235–4793.

Sincerely,

ERNIE WORDEN, *Claims Manager.*

KIRKPATRICK AND LOCKHART,
Washington, DC 20036 November 11, 1997

ERNIE WORDEN, *Claims Manager,*
National Pollution Funds Center,
United States Coast Guard,
4200 Wilson Boulevard, Suite 1000,
Arlington, Virginia 22203–1804.

Re: T/B NORTH CAPE oil spill Claim Number 016203–007

DEAR MR. WORDEN: We are writing on behalf of ABC Lobster, Inc. ("ABC Lobster") in response to your letter dated October 27, 1997, and as a followup to our telephone conversation of Friday, November 7, 1997.

First, enclosed please find copies of ABC's settlement tickets and other financial documents previously submitted to Turnaboat Services, Ltd. (attached hereto as Exhibit "J"). We believe this information should suffice to answer your requests numbered 1,5,6,7,9,10 and 12 from your October 27, 1997 letter. Note that these copies comprise the entirety of documents maintained by ABC Lobster. The remaining information requests can be addressed in the following manner:

Item 2: Inshore and offshore lobstermen differ for the most part from the point of view of equipment (offshore requires larger, more sturdy boats, longer lines for pots which are set at much greater depths, greater storage facilities to preserve catch, etc.), and length of trips (inshore trips last a day, at most; offshore trips are in multiple day segments). More importantly, for this claim, inshore lobstermen were prevented from fishing in their normal area due to closure of the fishery by State and Federal officials, and after the areas were reopened, were faced with a lobster population substantially depleted by the toxic effects of the oil spill. Offshore lobstermen, on the other hand, suffered chiefly through an inability to pass through closure areas, and by being unable to use (potentially contaminated) waters for recirculating purposes.

As discussed in the Affidavit of Albert B. Christopher, Jr., which was provided as Exhibit C in our September 16, 1997 submittal to the Fund, ABC Lobster has only bought lobsters from a select group of inshore lobstermen since its founding. This developing relationship with the inshore lobstermen has allowed ABC Lobster to acquire sufficient lobsters at a reasonable price in order to be profitable. ABC Lobster does not yet have this relationship with any of the offshore lobstermen who have chosen to enter into business relationships with other wholesale operations. It should also be noted that few offshore boats were coming into port after the spill due to the contamination of inshore waters.

Attached for your information please find Exhibit I which reflects the timing and substance of correspondence and conversations between Booka Smith and Turnaboat concerning the ABC Claim. This Exhibit should clarify some of your questions and concerns.

Item 3: Concerning the renovations of the retail counter, please see Exhibit I on the entry dated August 30, 1996.

Item 4: Please see the August 22, 1996 entry in Exhibit I.

Item 8: Please see Item 2, above, and the October 22, 1996 and November 6, 1996 entries in Exhibit I.

Item 11: Please see the entry dated September 11, 1996 in Exhibit I. Note generally that the high mortality rates to the lobster and to species that the lobster relies upon as a food source resulted in a much smaller population class of lobsters that could be caught by the lobstermen serviced by ABC Lobster.

Please do not hesitate to contact the undersigned with any further questions regarding ABC's claim for damages.

Respectfully submitted,

ELIZABETH L. SMITH, ESQ.,
GREGORY P. GRIMES, ENVIRONMENTAL CONSULTANT,
Kirkpatrick & Lockhart, LLP.

KIRKPATRICK AND LOCKHART,
Washington, DC 20036, December 18, 1997

ERNIE WORDEN, *Claims Manager,*
National Pollution Funds Center,
United States Coast Guard,
4200 Wilson Boulevard, Suite 1000,
Arlington, Virginia 22203–1804.

Re: T/B NORTH CAPE oil spill Claim Number 016203–007

DEAR MR. WORDEN: Thank you for responding to my inquiry regarding the status of ABC Lobster Inc.'s (ABC's") claim for damages incurred in connection with the North Cape Barge oil spill. It is my understanding that you are in the process of completing the paperwork needed to secure an outside accounting firm to review RBC's claim and that ABC can expect to receive an update on its claim on January 15, 1998.

Please understand that ABC has already experienced great difficulty in dealing with Eklof Marine Corporation (the party responsible for the North Cape Barge oil spill) and does not wish to repeat the experience with the United States Coast Guard. Accordingly, I am requesting that you contact me on January 15, 1998 to discuss the status of ABC's claim. I look forward to hearing from you.

Very truly yours,

ELIZABETH L. SMITH,

HULL AND CARGO SURVEYORS, INC.
San Rafael, CA 94901, January 6, 1998.

MS. ELIZABETH SMITH,
Kirkpatrick & Lockhart LLP
One International Place
Boston, Massachusetts 02110–2637

RE: 1996 North Cape Oil Spill Claim on Behalf of ABC Lobster, Inc. for Damages—NPFC File No.: 016203–007

DEAR MS. SMITH: We wish to advise you that we are the subcontractors for the United States Coast Guard National Pollution Funds Center on the above-referenced claim. We are currently reviewing the documentation you have previously submitted to the NPFC. After we have completed our review, we will contact you to set up a meeting to discuss the details of your claim and any additional information we may require.

If you have any questions, please feel free to contact me.

Sincerely,

ALBERT F. DUGAN, JR., VICE PRESIDENT.

KIRKPATRICK AND LOCKHART,
ONE INTERNATIONAL PLACE,
Boston, MA 02110, January 22, 1998.

ALBERT B. CHRISTOPHER, JR.
ANNE CHRISTOPHER,
606 Shannock Road,
Wakefield, RI 02879.

Re: North Cape Barge Oil Spill

DEAR ANNE AND AL: I am writing as a followup to our January 20, 1998 meeting with Hull & Cargo. In order to push along the process of settling ABC Lobster Inc's ("ABC's") claim for damages, I need you to forward to me the following documentation:

- a copy of ABC's tax return for 1997:
- copies of ABC's settlement tickets for the period December 31, 1996 to October 1, 1997;
- a copy of the State's offer to purchase ABC for $500,000; and
- copies of any documents evidencing the purchase of additional tanks immediately prior to the Spill (for example, check receipts).

Thank you in advance for your cooperation. Please do not hesitate to contact me with any questions, comments, or concerns.

Very truly yours,

ELIZABETH L. SMITH.

KIRKPATRICK AND LOCKHART,
ONE INTERNATIONAL PLACE,
Boston, MA 02110, January 22, 1998.

RICHARD H. MINER,
NEIL G. STODDARD,
Hull & Cargo Surveyors, Inc.,
Raynham Woods Executive Building,
175 Paramount Drive,
Raynham, MA 02767.

Re: 1996 North Cape Oil Spill ABC Lobster, Inc. Claim for Damages
H&CSI File No.: SF 980006 OS
NPFC Claim No.: 016203–007

GENTLEMEN: Thank you for taking the time to meet with Al Christopher and me yesterday to discuss ABC Lobster Inc.'s ("ABC's") claim for damages incurred in connection with the North Cape Barge oil spill. I hope that Al and I were able to alleviate any concerns or doubts you may have had regarding ABC's claim.

It is my understanding that at this juncture, you will have your accountants review ABC's claim and will make a recommendation of settlement to the National Pollution Funds Center within the next thirty days. As you know, almost 2 years have passed since Mr. Christopher filed this claim and justifiably, his patience is wearing thin. Accordingly, if there is anything I can do to speed the processing of ABC's claim, please let me know.

Very truly yours,

ELIZABETH L. SMITH.

HULL AND CARGO SURVEYORS, INC.
Raynham, MA 02767, 23 January 1998.

MS. ELIZABETH L. SMITH, ESQ.,
Kirkpatrick & Lockhart LLP,
One International Place,
Boston, MA. 02110–2637.

Re: 1996 North Cape Oil spill
ABC Lobster Claim
Your File No: 505715.701
H&CSI File No: SF 980006 OS
NPFC Claim No: 016203–007

DEAR MS. SMITH: We acknowledge receipt of your facsimile letter of 22 January 1998, and thank you for same.

In case there was any misunderstanding during our meeting, I want to clarify one point. As I told you at the meeting we, and our accountants, are in the process of reviewing the claim documentation at this time. We will, as soon as possible, advise you in writing of any additional documentation required, and of any questions that may arise an a result of our review of the documents. Following receipt of any requested additional documentation we will strive to complete our analysis of the claim, and submit a claim summary to the National Pollution Fund Center within thirty (30) days.

As we discussed, two (2) items that we will be requesting are copies of the original dealer slips with the boat name shown, and receipts and documentation supporting the installation of the increased storage capacity at the claimant's facility. As soon as we have finished reviewing the documents we will advise you of any other required information that we need to complete our analysis of your client's claim.

Yours truly,

RICHARD R. MINER,
Hull & Cargo Surveyors, Inc.

KIRKPATRICK AND LOCKHART,
ONE INTERNATIONAL PLACE,
Boston, MA 02110, January 23, 1998.

RICHARD H. MINER
Hull & Cargo Surveyors, Inc.,
Raynham Woods Executive Building,
175 Paramount Drive,
Raynham, MA 0276.

Re: 1996 North Cape Oil Spill ABC Lobster, Inc.
Claim for Damages H&CSI File No.: SF 980006 OS
NPFC Claim No.: 016203–007

DEAR MR. MINER: I am writing in response to your facsimile dated January 23, 1998.

As I mentioned in our meeting on January 20, 1998, ABC Lobster, Inc. ("ABC") plans to produce to you documentation evidencing the installation and increased capacity of the shore-side facility. Also, I discussed with Mr. Christopher the issue of producing original dealer slips with the boat name shown and he has agreed to produce these documents on the grounds that such information not be released into the public domain. If you agree to keep this information confidential, then I will forward the aforementioned documentation to you just as soon as I receive it from Mr. Christopher.

As I also indicated in our meeting, ABC has already produced all other documentation in support of its claim for damages. Accordingly, while Mr. Christopher would be happy to answer any specific questions your accountants may have, any requests for additional documentation will be fruitless. ABC has presented a complete claims package and Mr. Christopher has been kind enough to spend almost 2 hours of his time with you answering questions about his former business. It would shock the conscious to think that you would be unable to make a recommendation on ABC's claim within the next thirty days. For Mr. Christopher's sake and for his wife's sake, I urge you to make every effort to come to closure on ABC's claim.

Thank you for your attention to ABC's claim.

Very truly yours,

ELIZABETH L. SMITH.

HULL AND CARGO SURVEYORS, INC.
San Rafael, CA 94901, February 9, 1998.

MS. ELIZABETH L. SMITH, ESQ.
Kirkpatrick & Lockhart LLP
One International Place
Boston, MA 02110–2673

RE: ABC Lobster Inc.
1996 NORTH CAPE Oil Spill
Our File No. SP. 980006 OS
NPFC Claim No. 016203407

DEAR MS. SMITH: Our accountants have completed their review of the documents previously submitted by your office. I have enclosed their listing of the documents that were previously submitted. I have received a copy of your letter dated February 5, 1998 outlining the additional documents you have sent. The accountants will begin their review of these documents.

Although I acknowledge you have stated that we have received all of the documentation Mr. Christopher has, please provide the following documentation or provide an explanation of why this documentation does not exist:

1) The previous redacted settlement sheets did not include the periods April 1994 through December 1995 or May 1995 through December of 1995. We have not had time to determine if the settlement sheets for these time periods are included in your February 5, 1998 submission. If they were not, please either provide the settlement sheets for these dates or provide art explanation of why they cannot be provided.

2) Monthly summary of sales: 1996, 1997

3) Monthly summary of purchases (pounds): May and June 1996, 1997

4) Monthly of purchases ($): 1994, 1996, 1997

5) Monthly retail sales: May through December 1996, 1997

6) Rental income for temporary rental of tanks.

7) 1997 U.S. Tax return (We will need this for your unspecified fixture claim.)

Please provide answers or explanation to the following:

1) Provide explanation for the decline, from prior months, in pounds of lobster purchased in December 1995 and January 1 through 18, 1996.

2) Explain relationship of F/V *Miss Stacie* with ABC Lobster.

3) Explain the difference between summary of monthly purchases of $1,483,235 and purchases per the tax return for 1995 of $1,808,274 Please provide any corresponding support with your explanation.

Thank you for your assistance in this matter.

Sincerely,

ALBERT F. DUGAN, JR., *Vice President.*

Summary of Documents Provided as of 2/4/98

Source: ABC Lobster, Inc.

Item	Description
1)	Tax Returns
	1933
	1994
	1995
	1996
2)	Monthly sales ($) Summary
	1994
	1995
3)	Monthly Purchase (pounds) Summary
	1994
	1985
	January though April 1996
	June 28 through December 31, 1996
4)	Monthly Purchase ($) Summary
	1995
5)	Daily Retail Sales
	1993
	1994
	1995
	January through July 15, 1998
6)	Monthly Retail Sales Summary
	1993
	1994
	1985
	January through April, 1898
7)	Settlement Tickets for Lobster Purchases
	December 24, 1993 through April 6, 1994
	January 8, 1995 through May 4, 1995
	January 2, 1996 through March 27, 1996 (includes 2 tickets dated 12/15/95 and 12/23/95)
	May 2, 1996 through June 25, 1996 (includes 1 ticket dated 4/17/1996)
	June 28, 1996 through August 1, 1996
	July 28, 1996 through September 22, 1996
	September 14, 1996 through January 2, 1997

HULL AND CARGO SURVEYORS, INC.
San Rafael, CA 94901, February 12, 1998.

FAX TO: Ms. ELIZABETH L. SMITH,
Kirkpatrick & Lockhart LLP

Subject: ABC Lobster, Inc.

We have received the box of documents sent under your cover letter of February 5, 1998 and we wish to acknowledge that all settlement tickets in the timeframe that were previously missing have been received. Thank you for your assistance on this matter.

ALBERT F. DUGAN, JR.

KIRKPATRICK & LOCKHART LLP
ONE INTERNATIONAL PLACE,
Boston, MA 02110, February 20, 1998.

ALBERT F. DUGAN, *Vice President,*
Hull and Cargo Surveyors, Inc.,
2175 E. Francisco Boulevard, Suite A–5,
San Rafael, CA 94901.

Re: ABC Lobster, Inc.
1996 North Cape Oil Spill
Your File No. SF 980006 OS
NPFC Claim No. 016203–007

DEAR MR. DUGAN: Thank you for taking the time yesterday to speak with Greg Grimes and me about issues raised in a request for additional documentation in your letter to Elizabeth Smith dated February 9, 1998.

As a result of our conversation, it is our understanding that in your request for certain summaries of data (sales, purchases, etc.) you are not asking us to create anything that is not kept in the normal course of business. As long as we provided the underlying business records from which such a summary can be created, we will have fulfilled our responsibility under OPA. You indicated that you had no problem creating such summaries from our data, but wanted to make sure we had not done so already, so that when the Fund seeks reimbursement from Eklof; Eklof cannot claim that your doing this work duplicated that which we already did.

As I indicated to you, Eklof has been insisting that we create new documents summarizing business data. To the extent we have done so, we will, of course provide this to you. We may not, however, continue to do so in the future, particularly when Eklof denies that our costs of doing so are recoverable. We do not see why Eklof can insist on us creating new documents, when the Fund itself does not insist on it.

In addition, we understand that we need not provide 1997 tax returns to support our 1996 claim. As we indicated, when this claim was filed (in 1996) no such returns existed. Therefore we did not include it in our claim filed with Eklof. You have indicated that under these circumstances, and since the claim before you is only that which was denied by Eklof, no "new" data not previously submitted to Eklof needs to be submitted to you.

Finally, you indicated that other than the published guidelines on claims (in the CFR) you have no handbook or other written materials (including your contract with the Fund) that govern your evaluation of claims for the Fund, or contain criteria or other instructions affecting your consideration of the claims.

We look forward to working with you on the claims that are being submitted to the Fund for resolution. Please continue to direct your correspondence to Mr. Grimes.

Sincerely,

BARRY M. HARTMAN, ESQ.
GREGORY P. GRIMES, *Environmental Project Manager.*

HULL AND CARGO, INC.,
San Rafael, CA 94901, February 25, 1998.

Mr. BARRY HARTMAN, ESQ.,
Kirkpatrick & Lockhart LLP
One International Place
Boston, MA 02110–2637

RE: ABC Lobster, Inc.
1996 NORTH CAPE Oil Spill
Our File No.: SF 980006 OS
NPFC Claim No.: 016203–007

DEAR MR. HARTMAN: Thank you for your facsimile letter of February 20, 1997. Your letter reflects our conversation, except for two points that require clarification.

First, I did not indicate ". . . no new data not previously submitted to Eklof needs to be submitted . . ." for our review of your client's claim. I only agreed that the 1997 tax return would not be required for the current claim submission. As I mentioned, our review is not limited to the information that was provided to Eklof, or their claims representative Turnaboat. We are completing an independent claim review and measurement.

Secondly, you asked if I had guidelines from the NPFC on what to pay and not pay, and I referred you to the published guidelines on claims (in the CFR). Your letter is a much broader statement. Our contract of course provides some general guidelines that "govern" our evaluation of claims, but with regard to what is paid and not paid, we are guided by the published guidelines on claims (in the CFR).

We look forward to working with you and Mr. Grimes to resolve your client's claim as soon as possible.

Sincerely,

ALBERT F. DUGAN, JR., *Vice President.*

HULL AND CARGO SURVEYORS, INC.
San Rafael, CA 94901, February 25, 1998.

Mr. GREGORY GRIMES,
Environmental Project Manager,
Kirkpatrick & Lockhart LLP,
One International Place,
Boston MA 02110–2673.

DEAR MR. GRIMES: We have finished our preliminary review of the settlement sheets for which the claimant did not have summaries. Accordingly we have the following questions.

1) Please indicate the reason the following vessels stopped deliveries in 1995 and 1996.

- Spirit of Peace
- Ellen June
- Ziggy
- Whillden
- Ray Carr
- Hohn Keiper
- Steve Crandall
- H.T.
- Miss Nancy

2) Please indicate how deliveries from the following new vessels were obtained in 1996, and please indicate any other new vessels contacted to increase business.

- Fun Yet
- Cancel Bay
- Spud Mack
- Roy Carr
- Walter Kowal

3) Explain the difference of $325,039 between the summary of monthly purchases of $1,483,235 and purchases per the tax return for 1995 of $1,808,274. Please provide any corresponding support with your explanation. Please note that the purchases based on settlement sheets were $1,472,280.

4) Explain the difference of $353,750 between the purchases based on settlement sheets of $948,914 and purchases per the tax return for 1996 of $1,302,664. Please provide any corresponding support with your explanation.

We also await your response to our February 9, 1998 letter, and we would also recommend any assessment cost you may wish to submit for this claim at this time.

Thank you for your assistance in this matter.

Sincerely,

ALBERT F. DUGAN. JR., *Vice President.*

HULL AND CARGO SURVEYORS, INC.
San Rafael, CA 94901, March 4, 1998.

Mr. GREGORY GRIMES,
Environmental Project Manager,
Kirkpatrick & Lockhart LLP,
One International Place,
Boston MA 02110–2673.

DEAR MR. GRIMES: We completed on review of the settlement sheets and financial information you provided to date. Accordingly, we have the following questions.

1) Please explain the reduction in deliveries from 1995 to 1996 in the months of May through December (except August) for the vessels of the fishermen listed below.

Were any of the vessels or fishermen selling lobsters to sources other than ABC Lobster Inc.?

1. Mason Ann
2. Undertaker
3. Amelia Ann (no deliveries after August 1996)
4. Rachel & Henry
5. Jayne Sue
6. Heather Rose
7. Select Fisheries
8. Eider
9. Gillian (no deliveries after March 1996)

2) Please provide the explanation for the reduced lobster catch for *Miss Stacie* from 1995 to 1996 in the months of June through August. Please also provide the explanation of why there was none or minimal catch during the months of September through December 1996.

3) Please provide the daily retail sales summary for July 1996.

4) Our accountant needs to discuss purchases and sales with Mr. or Mrs. Christopher. Please have the individual who would best be able to discuss this aspect of the business contact Dawn Dunne, CPA of RGL Gallagher, at (415) 956–8323.

Thank you for your assistance in this matter.

Sincerely,

ALBERT F. DUGAN, JR., *Vice President.*

HULL AND CARGO SURVEYORS, INC.
San Rafael, CA 94901, March 4, 1998.

Mr. GREGORY GRIMES,
Environmental Project Manager,
Kirkpatrick & Lockhart LLP,
One International Place,
Boston MA 02110–2673.

DEAR MR. GRIMES: This is to confirm our conversation regarding the submission of your assessment costs for ABC Lobster Inc., which I requested in my facsimile of February 25, 1998. You have advised that you had not yet submitted these costs to the Responsible Party (RP), but you planned to submit them to the RP in the future.

I reviewed this information with the NPFC, and based on this information, you should not submit your assessment costs to our office or the NPFC until you have followed the necessary procedures per 33 CFR 136.103. Furthermore, the NPFC has advised that under 33 USC 2712(h)(2), no claim may be presented for recovery of damages "unless the claim is presented within 3 years after the date on which injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. . . ."

Sincerely,

ALBERT F. DUGAN, JR., *Vice President.*

KIRKPATRICK & LOCKHART LLP
ONE INTERNATIONAL PLACE,
Boston, MA 02110, March 20, 1998.

ALBERT F. DUGAN, *Vice President,*
Hull and Cargo Surveyors, Inc.,
2175 E. Francisco Boulevard, Suite A–5,
San Rafael, CA 94901.

Re: ABC Lobster, Inc.
1996 North Cape Oil Spill
Your File No. SF 980006 OS
NPFC Claim No. 016203–007

DEAR MR. DUGAN: This letter is in response to your letters dated February 25, 1998 and March 4, 1998, requesting additional information and clarification about the claim of ABC Lobster Inc.

I. February 95, 1998 letter

Item 1: Why certain vessels stopped deliveries in 1995 and 1996

The *Spirit of Peace* did not have dock space at the State docks in Point Judith. The boat was on the waiting list for dockage, but often times space opens only after an existing space-user dies or goes out of business. Since a space did not open up, the *Spirit of Peace* eventually made arrangements to dock at the Snug Harbor Marina. As a condition of this dockage, the *Spirit of Peace* was required to sell its catch to Al Conti at the Snug Harbor Marina.

For their own personal business reasons, the *Ellen June* made the decision to switch its catch to Champlin's.

The owner of *Ziggy* came down from Connecticut and worked part time. He stopped bringing lobsters to ABC due to illness (he is now deceased).

The *Whillden* is based in Block Island and normally offloads the lobster catch at that location.

Ray Carr worked lobstering part-time while seeking full-time employment. He stopped deliveries after finding a full-time job.

Keiper stopped hauling his own traps at this time.

Steve Crandall, Harry Towne and *Walter Kowal* sold small amounts to ABC during those times when their usual shore side facilities were closed.

Item 2: How deliveries from new vessels were obtained

For each party listed, the answer is the same: They simply didn't like where they were previously selling and decided to move their catch to ABC. ABC Lobster did not solicit their business and has not solicited the business of other fishermen. The business of ABC had grown from its inception due to the favorable treatment of fishermen by the Christophers. In other words, word of mouth accounted for their new business.

Item 3 and 4: Differences in purchases per tax returns and summaries in 1995 and 1996

Joseph Mansour of the accounting firm of Sansiveri, Kimball & McNamee addressed these issues with your accountant, Dawn Dunne, via telephone conversation on March 19. 1998.

II. March 4. 1998 letter

Item 1: Reduction in deliveries for certain vessels

All of the listed vessels experienced lower catches due to the Oil Spill. The Oil Spill resulted in the temporary closure of their fishing grounds, the loss of fishing time due to the need to remove (and later re-set) their gear, and to reduced catches when fishing resumed (stocks were virtually wiped out in many areas).

The *Amelia Anne* made a business decision to stop deliveries to ABC Lobster in August. 1996. This vessel made another business decision in 1997 and resumed deliveries to ABC.

Before starting deliveries to ABC Lobster, the *Gillian* had a relationship with the former Point Judith Lobster Company. After that company went out of business, the Gillian moved to ABC. The Point Judith Lobster Company later, under new ownership, became the Ocean State Lobster Company. The *Gillian* was owed money by the Point Judith Lobster Company and in order to recover as much as possible of the former Point Judith Lobster Company business, Ocean State agreed to pay to the *Gillian* the money owed by the Point Judith Lobster Company, as long as the *Gillian* agreed to re-start deliveries to Ocean State. The *Gillian* made the business decision to recover the moneys owed to them and moved from ABC to Ocean State on. or about, March 1996.

Item 2: Reduced catch for Miss Stacie

Five (5) lobster boats fished the area to the immediate western portion of Rhode Island waters, near the (Connecticut line. Three (3) of those boats, the *Undertaker, Amelia Anne* and *Miss Stacie,* delivered to ABC Lobster. This area was particularly hard hit by the Oil Spill, forcing these boats to move elsewhere. The *Miss Stacie,* which was owned by Al Christopher, was captained by a younger captain who was leery of competing with the larger vessels in the heavily fished eastern fishing grounds. Accordingly, the Miss Stacie was forced out onto less productive areas. This accounted for the reduced catch from June through August in 1996.

In September, the crewman on the *Miss Stacie* quit. It was also about this time that Al Christopher decided to sell the *Miss Stacie.* Since he had no crewman, and fishing had been poor, the captain spent much time in Maine hunting. This explains why there was no catch in September, 1996.

The low figures for October and November (and the zero figure for December) resulted from the necessity to remove all of the gear from the water to allow for the closing on the *Miss Stacie* (which was completed in November).

Item 3: Retail sales for July 1996

Attached please find the "Analysis of Monthly Retail Sales—1996", which should provide the necessary information in summary form.

Item 4: Purchase and sale information

Joseph Mansour of the accounting firm of Sansiveri, Kimball & McNamee addressed these issues with your accountant, Dawn Dunne, via telephone conversation on March 19, 1998.

If further clarification of any of the above information is necessary, please call me at your earliest convenience. I look forward to the speedy resolution of this claim.

Cordially,

GREGORY P. GRIMES, *Environmental Project Manager.*
PETER N. MCISAAC. ESQ.

HULL AND CARGO SURVEYORS, INC.
San Rafael, CA 94901, June 11, 1998.

Mr. GREGORY GRIMES,
Environmental Project Manager,
Kirkpatrick & Lockhart LLP,
One International Place,
Boston MA 02110–2673.

DEAR MR. GRIMES: The National Pollution Funds Canter (NPFC) has completed their review of our recommendation for ABC Lobster, Inc. Before we send it to you, we wanted to review a procedural issue avid you regarding this claim.

We have recommended a settlement offer for the claim period of January 19, 19 through July 31, 1996. For the period of August 1, 1996 through December 31, 1996 we cannot yet reasonably attribute the reduced deliveries of the fishermen who supplied your client to be the result of the oil spill based on the information and documentation you have provided. You claimed the reduced deliveries were due to the feet that "stocks were virtually wiped out in many areas." Although this may be true, the enclosed "Summary of Monthly Lobster Landings (Pounds)—Point Judith" for 1995 & 1996 indicates that significantly more pounds of lobster, approximately 743,245 pounds, were landed in 1998 than in 1996 in the time period of August 1 through December 31, 1996. Thus, we need to evaluate the fishermen who supplied your client to determine if their reduced deliveries to ABC Lobster, Inc. during the period of September through December 1996 were the result of the oil spill. (Your claim acknowledged that significantly more lobster were caught in August 1996 then in August 1995.) We would expect claims by the fishermen, if their reduced catch were due to the oil spill. (We currently have the claim submission of John. J. Swoboda win the F/V *Karen Ann*.) If we determine that their reduced catch and subsequent reduced deliveries to your client are due to the oil spill we would be able to address ABC Lobster, Inc.'s loss of profits claim during this period.

Considerlng the above, we can split the ABC Lobster claim into two time periods to facilitate a settlement to your client. We can make the claim period from January 19, 1996 through July 31, 1996 one claim, designated the 007–001, for which a settlement offer would be offered. The claim period of August 1, 1998 through December 31, 1996 would be designated 007–002.

Please let me know if you wish us to proceed in this manner. It not, we can provide you with one claim measurement for the period of January 19, 1996 through December 31, 1996.

I await your written response to this matter.

Sincerely,

ALBERT F. DUGAN, JR., *Vice President.*

RELEASE

Claim Number: FPN 016203-007 (Claim -01)	Claimant Name: ABC Lobster, Inc

I, the undersigned, **ACCEPT** the settlement offer of **$56,007** as full compensation for all claims arising from the January 19, 1996, **T/B "NORTH CAPE"** oil pollution incident associated with loss, damage, or cost suffered, acquired or accrued from January 19, 1996 to and including July 31, 1996.

This settlement represents full and final release and satisfaction of the incident under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)) for loss, damage, or cost suffered, acquired or accrued from January 19, 1996 to and including July 31, 1996. This settlement is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest, and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the Unites States to sue, compromise, or settle in my name and the United States is fully substituted for me and subrogated to all of my rights for this compensation arising from the incident. I warrant that no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Fund.

IN ORDER TO SECURE THIS SETTLEMENT, THE UNDERSIGNED WILL ALSO BE GOVERNED BY THE FOLLOWING CONDITIONS:

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. the cooperation shall include, but is not limited to, immediately reimbursing to the fund any compensation received from any other source for the same claim costs and damages, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that there is no pending action in court to recover the costs which are the subject of this claim.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including but not limited to 18 U.S.C. 287 and 1001).

Claimants Name (or name of authorized representative)	Date of Signature
Title of Person Signing	Signature

Witness Name	Date of Signature
Signature	

Encl (1)

Final

U.S. COAST GUARD
NATIONAL POLLUTION FUNDS CENTER
CLAIMS OFFICE

HULL AND CARGO SURVEYORS, INC.
2175 E. FRANCISCO BLVD. SUITE A-5
SAN RAFAEL, CA 94901

TELEPHONE (415) 485-1300 FACSIMILE (415) 485-1726

Claim Number :	016203-007 (SF 980006 OS)
Claimant:	ABC Lobster, Inc.
Type of Claimant:	Lobster Wholesaler & Retailer
Type of Claim :	Loss of Profits and Earning Capacity
Claim Period:	**January 19, 1996 through July 31, 1996**

CLAIM SUMMARY -01

You have submitted a claim for loss of profits in the amount of $107,239 for the period of January 19, 1996 through July 31, 1996 as a result of the oil spill from the barge **NORTH CAPE** on January 19, 1996. We have calculated a loss of profits and earning capacity of $56,007 for the claim period of January 19, 1996 through July 31, 1996 as a result of the oil spill. The calculation is for $48,959 from the wholesale operations and $7,048 from the retail operations. Your claim submission for the period from August through December of 1996 is considered a separate claim to facilitate a settlement payment to you. (See Claim Summary -02.)

Wholesale

We completed a review of your claim submission, met with you to review your operation and the basis of your claim, and requested copies of documents and additional information. We reviewed your claim using the following steps:

First, we reviewed the claim period. You claimed the period from the date of the spill, January 19, 1996, through July 31, 1996. To complete our review, we projected the pounds of lobster that would have been delivered to you during this period. We used your 1995 deliveries, as you did in your claim, as the basis for our projection. However, adjustments were made to both the 1995 and 1996 actual deliveries. These adjustments were made to consider the vessels that delivered lobsters to ABC Lobsters, Inc. that were lost or gained in 1995 and 1996 for reasons other than the oil spill. (See Schedule 2 which provides the details for all of the above.) In addition we made an adjustment to the actual deliveries in July of 1996 based on weather (See Schedule 3).

We considered that the difference between projected 1996 deliveries and your adjusted actual 1996 deliveries from January 19, 1996 through July 1996 can be reasonably attributed to the closures and the subsequent time required to recover from the closures. We noted the return in adjusted 1996 lobster deliveries to the adjusted 1995 lobster deliveries occurred at the end of the July 1996.

Next, we calculated gross profit during the period from January 19, 1996 through July 1996. Gross profit was calculated by multiplying lost deliveries (pounds) by a wholesale percentage to calculate lost wholesale deliveries. (See schedule 1.) Lost wholesale deliveries were multiplied by the claimed estimated gross profit per pound of $1.50 for January 19 through May 31, 1996 and $.50 for June and July to calculate lost gross profit.

Finally, we deducted non-continuing expenses from lost gross profit to calculate your net lost profit. (See Schedule 1.)

Retail

We calculated loss revenue for the period of January 19, 1996 through July 31, 1996. Lost revenue is calculated by subtracting actual revenue from projected revenue. We used a trend factor to project revenue. (See schedule 4 and 4-1.)

We then deducted the cost of sales from the lost revenue to calculate the lost gross profit.

Finally, we deducted non-continuing expenses from lost gross profit to calculate your net lost profit.

U.S. Department of Transportation
United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Boulevard
Suite 1000
Arlington, VA 22203-1804
Staff Symbol: cm
Phone: (703) 235-4756
5890

VIA OVERNIGHT AIRBORNE EXPRESS

June 18, 1998

Mr. Gregory Grimes
Kirkpatrick & Lockhart
One International Place
Boston Massachusetts 02110-2637

RE:	CLAIM NUMBER:	016203-007 **(Claim -02)**
	CLAIMANT:	ABC Lobster, Inc.
	TYPE OF CLAIMANT:	Wholesale & Retail Lobster Sales
	TYPE OF CLAIM:	Loss Of Profits & Earning Capacity
	CLAIM PERIOD:	**August 1, 1996 through December 31, 1996**

Dear Mr. Grimes:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990 (OPA) [33 U.S.C. 2712(a)(4)] denies payment on the above referenced claim involving the oil spill of January 19, 1996 from the T/B "NORTH CAPE." Please refer to the Claim Summary - 02, enclosure 1, for the basis of denial.

You may make a written request for reconsideration of this claim. This reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the reconsideration request. Reconsideration of the denial will be based upon the additional information you provide, and a claim may be reconsidered only once.

All correspondence should include the above claim number. Mail reconsideration requests to the following address:

US Coast Guard National Pollution Funds Center
c/o Hull & Cargo Surveyors, Inc.
2175 E. Francisco Blvd Suite A-5
San Rafael, CA 94901

Sincerely,

Ernst L. Worden
Claims Manager
U.S. Coast Guard
By direction of the Director

U.S. COAST GUARD
NATIONAL POLLUTION FUNDS CENTER
CLAIMS OFFICE

HULL AND CARGO SURVEYORS, INC.
2175 E. FRANCISCO BLVD. SUITE A-5
SAN RAFAEL, CA 94901

TELEPHONE (415) 485-1300 FACSIMILE (415) 485-1726

Claim Number :	016203-007 (SF 980006 OS)
Claimant:	ABC Lobster, Inc.
Type of Claimant:	Lobster Wholesaler & Retailer
Type of Claim :	Loss of Profits and Earning Capacity
Claim Period:	**August 1, 1996 through December 31, 1996**

CLAIM SUMMARY -02

You have submitted a claim for loss of profits in the amount of $100,011 for the period of August 1, 1996 through December 31, 1996 as a result of the oil spill from the barge **NORTH CAPE** on January 19, 1996. Your claim submission for the period from August through December of 1996 is considered a separate claim to facilitate a settlement payment to you for the claim period of January 19, 1996 through July 31, 1996.

We completed a review of your claim submission, met with you to review your operation and the basis of your claim, and requested copies of documents and additional information. We reviewed your claim using the following steps:

First, we reviewed the claim period. To complete our review, we projected the pounds of lobster that would have been delivered to you during this period. We used your 1995 deliveries, as you did in your claim, as the basis for our projection. However, adjustments were made to both the 1995 and 1996 actual deliveries. These adjustments were made to consider the vessels that delivered lobsters to ABC Lobsters, Inc. that were lost or gained in 1995 and 1996 for reasons other than the oil spill. We noted the return in adjusted 1996 lobster deliveries to the adjusted 1995 lobster deliveries occurred at the end of July 1996. The adjusted actual August 1996 adjusted deliveries were better than projected. In your claim submission you acknowledge this fact by allowing for a credit of 31,884 pounds during August 1996. We reviewed the difference between projected 1996 deliveries and your actual 1996 adjusted deliveries from September 1996 through December 1996. While we acknowledge that there were reduced deliveries by the fishermen, the reductions were not as great as you claimed after adjustments are made for the changes in the fishermen supplying you in 1995

and 1996. Further, we cannot yet reasonably attribute the reduced deliveries of the fishermen that supplied you during the period of September through December of 1996 to be the result of the oil spill based on the information and documentation you have provided. You claimed the reduced deliveries were due to the fact that "stocks were virtually wiped out in many areas." Although this may be true, the enclosed "Summary of Monthly Lobster Landings (Pounds) - Point Judith" for 1995 & 1996 indicates that significantly more pounds of lobster, approximately 743,245 pounds, were landed in 1996 than in 1995 in the time period of August 1 through December 31. Thus, we need to evaluate the fishermen that supplied you to determine if their reduced deliveries to ABC Lobster, Inc. during the period of September through December of 1996 were the result of the oil spill. We would expect claims by the fishermen, if their reduced catch was due to the oil spill. If we determine their reduced catch and subsequent reduced deliveries to you are due to the oil spill we would be able to address ABC Lobster, Inc.'s loss of profits claim during this period.

ABC Lobster, Inc.
North Cape Oil Spill
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SUMMARY OF MONTHLY LOBSTER LANDINGS (POUNDS) - POINT JUDITH

Source: Summary of Point Judith lobster landings (mandatory reportings by dealers to port agents)
Information provided by John Blevins of the U.S. Department of Commerce - National Marine Fisheries Service

Month	Zone					
		0	1	2	3	
		Distance from Shore (miles)				
	Unknown	Coastal	< 3	3 - 12	> 12	TOTAL
1995:						
January	27,522		11,613	14,002	19,718	72,855
February	9,403		10,245	7,239	13,430	40,317
March	56,590		8,014	9,272	14,634	88,510
April	41,445		42,112	16,071	23,909	123,537
May	88,342		18,100	15,778	21,175	123,395
June	54,639		65,922	55,288	77,778	253,627
July	235,298		202,865	109,903	43,960	592,026
August	242,952		125,060	130,821	55,046	553,879
September	304,094		104,801	162,719	81,385	652,999
October	169,001		101,273	127,163	71,825	469,262
November	128,721		93,240	50,593	10,119	282,673
December	73,458		49,054	12,962	2,592	138,066
Total 1995	1,411,465	0	832,299	711,811	435,571	3,391,146
1996:						
January	41,405	1,448	6,981	7,386	1,476	58,696
February	35,090	2,142	2,754	3,178	632	43,796
March	46,438		2,136	2,638	527	51,739
April	94,079		6,750	6,115	26,207	133,151
May	63,413		107,006	13,634	3,635	187,688
June	96,218		52,270	24,176	9,154	181,818
July	224,293		64,208	109,972	34,730	433,203
August	578,189		150,049	207,499	82,998	1,018,735
September	217,559		204,896	96,187	46,912	565,554
October	164,297		197,495	59,422	23,767	444,981
November	130,552		101,259	41,858	8,371	282,040
December	72,891		413,220	35,585	7,118	528,814
Total 1996	1,764,424	3,590	1,309,024	607,650	245,527	3,930,215

ABC Lobster, Inc.
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ABC Lobster, Inc.
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SUMMARY OF CLAIMED AND CALCULATED LOST PROFIT - JANUARY 19 THROUGH JULY 31, 1996 (A)

Summary

Month - 1996	As Claimed (Partial)				As Calculated		
	Retail	Wholesale		Total	Retail	Wholesale	Total
January 19 - 31	$333	$10,365	(B)	$10,698	$163	$3,337	$3,500
February	1,491	3,666	(B)	5,157	924	1,041	1,965
March	2,692	9,777	(B)	12,469	850	4,519	5,369
April	3,099	17,351	(B)	20,450	1,425	7,668	9,093
May	(C)	12,162	(C)	12,162	1,926	4,725	6,651
June	(C)	12,162	(C)	12,162	903	6,775	7,678
July	(D)	32,668	(D)	32,668	857	20,894	21,751
TOTAL LOST PROFIT	$7,615	$98,151		**$105,766**	$7,048	$48,959	**$56,007**

NOTES:

(A) The claimed lost profit of $100,011 for the period from August through December 1996 will be addressed separately.

(B) The claim does not indicate the periods for which it considered saved payroll. For purposes of of comparison to the calculation, claimed saved payroll of $2,511 was allocated to each month based on the months loss as a percentage of the total loss for January 19 through April 30, 1996.

(C) A claim computation was not provided for May 1 through June 25, 1996. Amount shown is based on a Kirkpatrick & Lockhart LLP letter dated September 16, 1997 that indicates a total claim for January 19 through June 25, 1996 of $71,784. Accordingly, the amount shown is based on $21,536 for May 1 through June 25, 1996 and $2,787 for June 26 through 30, 1996 for a total of $24,323 for May through June 1996 and for purposes of comparison to the calculation were assumed to be wholesale and split equally between May and June 1996.

(D) Amount is based on the claim computations provided with a Kirkpatrick & Lockhart letter dated May 14, 1997. The claimed amount is based on the difference in purchases between 1995 and 1996. The difference in purchases were valued at $.50 per pound for June 26 through September 30, 1996. There is no allocation between wholesale and retail.

ABC Lobster, Inc.
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SUMMARY OF CLAIMED LOSS

Claim Summary

Description	January 19 through July 31, 1996				August through December 1996 (C)	Total
	January 19 through April 30 (A)	May 1 through June 25 (B)	June 26 through July 31 (C)	Total		
Loss of Profits and Earning Capacity:						
Wholesale - Lobster	$41,160	(B)	$35,455	(B)	$100,011	(B)
Retail - Fish and Shellfish	7,615	(B)	-	(B)	-	(B)
Total Loss of Profits and Earning Capacity	48,775	$21,536	35,455	$105,766	100,011	$205,777
Other Costs and Expenses Incurred:						
Lost Profit - Lobster Sold to Eklof (D)	273	-	-	273	-	273
Rental - Use of Property by Eklof (E)	1,200	-	-	1,200	-	1,200
Total Other Costs and Expenses Incurred	1,473	-	-	1,473	-	1,473
TOTAL CLAIMED LOSS	**$50,248**	**$21,536**	**$35,455**	**$107,239**	**$100,011**	**$207,250**
CUMULATIVE	**$50,248**	**$71,784**	**$107,239**		**$207,250**	

NOTES:

(A) Amounts are based on claim computations provided with a Kirkpatrick & Lockhart letter dated May 31, 1996.

(B) A computation for May 1 through June 25, 1996 was not provided. Amount shown is based on a Kirkpatrick & Lockhart letter dated September 16, 1997 that indicates a claim for January 19 through June 25, 1996 of $71,784.

(C) Amounts are based on claim computations provided with a Kirkpatrick & Lockhart letter dated May 14, 1997. These claimed amounts are based on the difference in purchases between 1995 and 1996. The difference in purchases were valued at $.50 per pound for June 26 through September 30, 1996 and $1.00 per pound for October 1 through December 31, 1996. There is no allocation between wholesale and retail.

(D) Based on the difference between the claimed retail price of lobster sold to Eklof Marine Corp. of $700 and the amount of reimbursement by Eklof Marine Corp. of $427.

(E) Based on the use of property by Eklof Marine Corp. for January 20 through 21, 1996 (24 hours X $50 per hour).

ABC Lobster, Inc.
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CALCULATION OF LOST NET PROFITS - WHOLESALE

Schedule 1

	Lost Lobster Deliveries (Pounds)			Multiplied by:		Less: Non-Continuing Expenses (D)					
Month - 1996	Total (A)	Multiplied by: Wholesale Percentage (B)	Wholesale	Estimated Gross Profit Per Pound (C)	Lost Gross Profit	Supplies at 7.00 %	Shipping at 0.72%	Payroll at 25.97% (E)	Benefits at 13.51% (F)	Total	Lost Net Profit
January 19 - 31	2,757	95.00%	2,619	$1.50	$3,929	$275	$28	$255	$34	$592	$3,337
February	861	95.00%	818	1.50	1,227	86	9	80	11	186	1,041
March	3,734	95.00%	3,547	1.50	5,321	372	38	345	47	802	4,519
April	6,337	95.00%	6,020	1.50	9,030	632	65	586	79	1,362	7,668
May	3,904	95.00%	3,709	1.50	5,564	389	40	361	49	839	4,725
June	16,796	95.00%	15,956	0.50	7,978	558	57	518	70	1,203	6,775
July	51,805	95.00%	49,215	0.50	24,608	1,723	177	1,598	216	3,714	20,894
TOTAL	86,194		81,884		$57,657	$4,035	$414	$3,743	$506	$8,698	**$48,959**

NOTES:

(A) Please refer to Schedule 2.

(B) We understand that the majority of lobster purchases (deliveries) in pounds are used for the wholesale portion of the business with lobster used for the retail portion as needed. We estimated that 95% of lobster pounds would be used for the wholesale portion of the business. This results in 5% being allocated to the retail portion of the buisness to consider the lobster pounds that would have been necessary to achieve the calculated lost retail fish and shellfish sales. Calculated lost retail sales are shown on Schedule 4.

(C) Based on the claim and our analysis and review.

(D) Percentages calculated as a percentage of gross profit based on the 12-month period ended December 31, 1995. Please refer to Schedule 5.

(E) Considered to non-continue at 25% based on the claim and our analysis and review.

(F) Calculated as a percentage of payroll.

ABC Lobster, Inc.
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CALCULATION OF DIFFERENCE IN LOBSTER PURCHASES (DELIVERIES) IN POUNDS *Schedule 2*

Source: ABC Lobster, Inc. Settlement Sheets

Vessel	January 19 -31	February	March	April	May	June	July	Total
Projected (Adjusted Actual 1995)								
Vessels in 1995 and 1996 (Sch 2-1)	3,053	3,110	4,253	6,474	7,683	24,837	93,741	143,151
Vessels in 1995 Only (Sch 2-1)	325	-	-	653	375	2,751	16,386	20,490
Total Actual - 1995	3,378	3,110	4,253	7,127	8,058	27,588	110,127	163,641
Reductions:								
Vessels in 1995 Only (B)	325	-	-	653	375	2,751	16,386	20,490
Additions:								
Vessels in 1996 Only (C)	-	1,091	-	-	-	-	8,453	9,544
Caneal Bay - Actual	-	-	-	-	-	-	1,455	1,455
Caneal Bay - Shortfall (D)	-	-	-	-	-	-	2,426	2,426
Total Additions	-	1,091	-	-	-	-	12,334	13,425
Projected (Adjusted Actual 1995)	**3,053**	**4,201**	**4,253**	**6,474**	**7,683**	**24,837**	**106,075**	**156,576**
Less: Adjusted Actual 1996								
Vessels in 1995 and 1996 (Sch 2-1)	296	2,552	768	137	3,779	8,041	35,146	50,719
Vessels in 1996 Only (Sch 2-1)	-	1,091	-	-	-	-	9,908	10,999
Total Actual - 1996	296	3,643	768	137	3,779	8,041	45,054	61,718
Reductions:								
Vessels Lost in 1996 (A)	-	303	249	-	-	-	-	552
Additions:								
Weather (E)	-	-	-	-	-	-	9,216	9,216
Adjusted Actual 1996	**296**	**3,340**	**519**	**137**	**3,779**	**8,041**	**54,270**	**70,382**
DIFFERENCE	**2,757**	**861**	**3,734**	**6,337**	**3,904**	**16,796**	**51,805**	**86,194**
				To Sch 1				
CUMULATIVE	**2,757**	**3,618**	**7,352**	**13,689**	**17,593**	**34,389**	**86,194**	

NOTES:

(A) Reduces projection, for vessels with deliveries in 1996, to eliminate the effect of vessels that left for reasons not related to the oil spill. Please refer to Note A on Schedule 2-1 for the details of each vessel.
Reductions are based on deliveries in the following months (pounds are shown in "bold" on Schedule 2-1):
1) Gillian - February and March 1996.

(B) Reduces projection, for vessels with no deliveries in 1996, to eliminate the effect of vessels that left for reasons not related to the oil spill. Please refer to Note B on Schedule 2-1 for the details of each vessel.

(C) Increases projection to consider deliveries resulting from new vessels obtained in 1996, excluding Caneal Bay which is shown separately. Please refer to Note C on Schedule 2-1 for the details of each vessel.

(D) Increases projection to consider possible shortfall in deliveries for Caneal Bay, a vessel obtained in 1996. Projected deliveries for Caneal Bay were calculated by multiplying actual deliveries for Caneal Bay by the monthly percentage shortfall in deliveries net of reductions for vessels in both 1995 and 1996. Actual deliveries for Caneal Bay were subtracted from projected deliveries to calculate the shortfall in deliveries. Please refer to Schedule 2-2 for calculation of Caneal Bay - shortfall.

(E) Increases the actual deliveries to eliminate the effect of bad weather. There was "Hurricane" weather and several other series of days with wind greater than 20mph in July of 1996. Please refer to Schedule 3.

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North Cape Oil Spill
Loss - January 19, 1996

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SUMMARY OF LOBSTER PURCHASES (DELIVERIES) - POUNDS

Schedule 2-1

Source: ABC Lobster, Inc. Settlement Sheets

Vessel	Year	January 19 - 31	February	March	April	May	June	July	Total
Vessels in 1995 and 1996									
Karen Ann	95	584	1,525	315	1,028	644	3,589	15,680	23,365
	96	123	161	62	34	331	177	2,581	3,469
Difference		461	1,364	253	994	313	3,412	13,099	19,896
Undertaker	95					1,353	3,168	19,504	24,025
	96		93			1,049	1,552	7,282	9,976
Difference		-	(93)	-	-	304	1,616	12,222	14,049
Amelia Anne (A)	95		73			529	4,062	13,501	18,165
	96		255			454	3,325	8,070	12,104
Difference		-	(182)	-	-	75	737	5,431	6,061
Rachel & Henry	95				50	440	1,561	9,218	11,269
	96		249	251	26	112	511	4,323	5,472
Difference		-	(249)	(251)	24	328	1,050	4,895	5,797
Jayme Sue	95	1,248	229	1,510	1,454	2,015	3,059	7,365	16,880
	96		225	50		369	94	2,030	2,768
Difference		1,248	4	1,460	1,454	1,646	2,965	5,335	14,112
Heather Rose	95				535	1,458	2,447	10,843	15,283
	96		201	77	77	833	738	3,276	5,202
Difference		-	(201)	(77)	458	625	1,709	7,567	10,081
Miss Stacie (A)	95	450					3,262	7,279	10,991
	96					474	1,217	4,350	6,041
Difference		450	-	-	-	(474)	2,045	2,929	4,950
Select Fisheries	95	359	320	181	1,366	424	1,428	6,024	10,102
	96		108	79			264	1,468	1,919
Difference		359	212	102	1,366	424	1,164	4,556	8,183
Elder	95	412	916	1,802	924	428	1,117	3,688	9,287
	96	93	122			157	138	1,486	1,996
Difference		319	794	1,802	924	271	979	2,202	7,291
Gillian (A)	95								-
	96		303	249					552
Difference		-	(303)	(249)	-	-	-	-	(552)
Brian Thibeault	95		47	445	141	392	477	443	1,945
	96							86	86
Difference		-	47	445	141	392	477	357	1,859
Misty Lynn	95				976				976
	96	80	523						603
Difference		(80)	(523)	-	976	-	-	-	373
Cindy Diane	95						667		667
	96		312						312
Difference		-	(312)	-	-	-	667	-	355
Ray Carr (A)	95							196	196
	96						25	194	219
Difference		-	-	-	-	-	(25)	2	(23)
Subtotal - 1995		**3,053**	**3,110**	**4,253**	**6,474**	**7,683**	**24,837**	**93,741**	**143,151**
Subtotal - 1996		**296**	**2,552**	**768**	**137**	**3,779**	**8,041**	**35,146**	**50,719**
					To Sch 2				

North Cape Oil Spill
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SUMMARY OF LOBSTER PURCHASES (DELIVERIES) - POUNDS

Schedule 2-1

Source: ABC Lobster, Inc. Settlement Sheets

Vessel	Year	January 19 - 31	February	March	April	May	June	July	Total
Vessels in 1995 Only (B)									
Spirit of Peace	95						591	6,776	7,367
Ellen June	95	325			653	375	1,559	4,472	7,384
Ziggy	95						527	3,254	3,781
Whilden	95							1,767	1,767
John Keiper	95							41	41
Steve Crandall	95								-
Harry Towne	95						74		74
Miss Nancy	95							76	76
Subtotal - 1995		325	-	-	653	375	2,751	16,386	20,490
					To Sch 2				
Vessels in 1996 Only (C)									
Fun Yet	96		1,091					8,071	9,162
Spud Mack	96							382	382
Walter Kowal	96								-
Subtotal		-	1,091	-	-	-	-	8,453	9,544
Caneal Bay	96							1,455	1,455
Subtotal - 1996		-	1,091	-	-	-	-	9,908	10,999
					To Sch 2				
ALL VESSELS									
TOTAL 1995		3,378	3,110	4,253	7,127	8,058	27,588	110,127	163,641
TOTAL 1996		296	3,643	768	137	3,779	8,041	45,054	61,718

NOTES:

(A) The loss of the following vessels during 1996 was considered unrelated to the oil spill:
1) Amelia Anne - made a business decision to stop deliveries in August 1996.
2) Miss Stacie - lost its crewman and was later sold by the claimant.
3) Gillian - was previously with Point Judith Lobster Company and returned when it was restarted (new ownership) as the Ocean State Lobster Company.
4) Ray Carr - worked lobstering part-time and stopped deliveries when he began full-time employment.

(B) The loss of the following vessels was considered unrelated to the oil spill:
1) Spirit of the Peace - new dockage agreement required sale of catch to Snug Harbor Marina.
2) Ellen June - moved sale of catch to a competitor.
3) Ziggy - stopped sale of catch to ABC Lobster Inc. due to illness.
4) Whilden - is based in Block Island and normally offloads catch at that location.
5) Keiper - stopped hauling his own traps.
6) Steve Crandall and Harry Towne - sold catch to ABC Lobster Inc. when their usual shore side facilities were closed.

(C) Claimant indicated it did not solicit new business and new vessels were obtained as a result of word of mouth based on favorable treatment of fishermen.
1) Fun Yet - vessels settlement sheets indicate delivery to other shoreside facilities.
2) Spud Mack - no comments.
3) Walter Kowal - sold catch to ABC Lobster Inc. when its usual shore facilities were closed.
4) Caneal Bay - no comments.

ABC Lobster, Inc.
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CALCULATION OF CANEAL BAY SHORTFALL IN DELIVERIES *Schedule 2-2*

Source: ABC Lobster, Inc. Settlement Sheets

Description	Reference Schedule	July
1995		
Vessels in 1995 and 1996	2	110,127
Less: Reductions	2	16,386
Net Total		93,741
1996		
Vessels in 1995 and 1996	2	35,146
Less: Reductions	2	0
Net Total		35,146
Percentage Shortfall		
From 1995 to 1996		266.72%
Multiplied by:		
Caneal Bay - Actual 1996	2	1,455
Caneal Bay - Projected		3,881
Less: Caneal Bay - Actual 1996	2	1,455
CANEAL BAY - SHORTFALL		**2,426**
		To Sch 2

ABC Lobster, Inc.
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ANALYSIS OF LOBSTER PURCHASES - JULY 1996 *Schedule 3*

Source: ABC Lobster, Inc. Settlement Sheets

July 1996	Deliveries (Pounds) Projected Actual (A)	Less: Actual	Weather Related
1	483	483	-
2	604	604	-
3	322	322	-
4	470 (B)	165	305
5	470 (B)	-	470
6	470 (B)	415	55
7	1,126	1,126	-
8	648	648	-
9	725	725	-
10	932	932	-
11	954	954	-
12	870 (C)	524	346
13	870 (C)	-	870
14	870 (C)	25	845
15	870 (C)	445	425
16	870 (C)	419	451
17	2,164	2,164	-
18	2,593	2,593	-
19	2,379 (D)	915	1,464
20	2,379 (D)	14	2,365
21	2,379 (D)	759	1,620
22	3,081	3,081	-
23	3,006	3,006	-
24	3,035	3,035	-
25	1,003	1,003	-
26	1,204	1,204	-
27	2,680	2,680	-
28	4,909	4,909	-
29	4,385	4,385	-
30	3,486	3,486	-
31	4,033	4,033	-
TOTAL	54,270	45,054	**9,216**
			To Sch 2

NOTES:

(A) Lobster pounds purchased were adjusted to consider the effect of hurricane weather and several other series of days with wind greater than 20mph in July of 1996 as indicated by Notes B, C and D.

(B) Projected based on average pounds for July 1 through 3, 1996.

(C) Projected based on average pounds for July 9 through 11, 1996.

(D) Projected based on average pounds for July 17 through 18, 1996.

ABC Lobster, Inc.
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CALCULATION OF LOST NET PROFITS - RETAIL

Schedule 4

Month - 1996	Retail Sales: 1995	Multiplied by: Trend Percent (A)	Projected	Less: Actual 1996	Lost	Less: Cost of Sales (B)	Lost Gross Profit	Less: Non-Continuing Expenses (C): Supplies at 7.00 %	Payroll at 25.97% (D)	Benefits at 13.51% (E)	Total	Lost Net Profit
January 19 - 31	$2,136	102.65%	$2,193	$1,560	$633	$443	$190	$13	$12	$2	$27	$163
February	6,158	102.65%	6,321	2,726	3,595	2,517	1,078	75	70	9	154	924
March	8,057	102.65%	8,271	4,963 (F)	3,308	2,316	992	69	64	9	142	850
April	12,332	102.65%	12,659	7,110 (F)	5,549	3,884	1,665	117	108	15	240	1,425
May	21,074	102.65%	21,632	14,133	7,499	5,249	2,250	158	146	20	324	1,926
June	29,438	102.65%	30,218	26,706	3,512	2,458	1,054	74	68	9	151	903
July	62,702	102.65%	64,364	61,027	3,337	2,336	1,001	70	65	9	144	857
TOTAL	$141,897		$145,658	$118,225	$27,433	$19,203	$8,230	$576	$533	$73	$1,182	$7,048

NOTES:
(A) For calculation of trend percentage, please refer to Schedule 4-1.
(B) Cost of sales estimated at 70% based on the claim and our review and analysis.
(C) Percentages calculated as a percentage of gross profit based on the 12-month period ended December 31, 1995. Please refer to Schedule 5.
(D) Considered to non-continue at 25% based on the claim and our review and analysis.
(E) Calculated as a percentage of payroll.
(F) Includes a projected amount to eliminate the effect on sales resulting from the closure of the retail facility to remodel.

Description	1996: March 11 - 31	April 1 - 11
Average Daily Sales (G)	$184	$184
Multiplied by: Number of Days Closed	21	11
Projected Lost Sales Due to Remodel	$3,864	$2,024

(G) Average daily retail sales calculated as follows:

Description	Retail Sales
March 1 through 10, 1996	$1,099
April 12 through 20, 1996	2,024
Total	3,123
Divided by: Number of Days	17
Average Daily Sales	$184

ABC Lobster, Inc.
North Cape Oil Spill
Loss - January 19, 1996

RGL GALLAGHER LLP
Certified Public Accountants

CALCULATION OF REVENUE TREND PERCENTAGE - RETAIL

Schedule 4-1

Source: Claimant's summary of monthly retail sales and daily sales summaries

Month	Retail Sales: 1994	1995	Percent of Prior Year
May	$16,111	$21,074	
June	26,580	29,438	
July	56,962	62,702	
August	42,389	45,761	
September	26,092	25,341	
October	15,979	12,036	
November	8,868	7,830	
December	16,980	11,348	
TOTAL	$209,961	$215,530	102.65%

ABC Lobster, Inc.
North Cape Oil Spill
Loss - January 19, 1996

RGL GALLAGHER LLP
Certified Public Accountants

CALCULATION OF NON-CONTINUING EXPENSE PERCENTAGES *Schedule 5*

Source: Claimant's Federal Income Tax Return

Month	1995	Percent of Gross Profit
Gross Profit	$312,331	100.00%
Payroll (A)	$81,098	25.97%
Benefits	15,008	13.51% (B)
Supplies	21,850	7.00%
Shipping	2,237	0.72%

NOTES:
(A) Excludes compensation of officers.
(B) Calculated as a percentage of total compensation.

KIRKPATRICK & LOCKHART LLP

ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2637

TELEPHONE (617) 261-3100
FACSIMILE (617) 261-3175

ELIZABETH L. SMITH
(617) 261-3223
smithel@kl.com

February 5, 1998

VIA OVERNIGHT MAIL

Richard H. Miner
Hull & Cargo Surveyors, Inc.
Raynham Woods Executive Building
175 Paramount Drive
Raynham, MA 02767

Re: 1996 North Cape Oil Spill
ABC Lobster, Inc. Claim for Damages
H&CSI File No.: SF 980006 OS
NPFC Claim No.: 016203-007

Dear Mr. Miner:

Enclosed please find the following documentation submitted in connection with ABC Lobster Inc.'s ("ABC's") claim for damages stemming from the North Cape oil spill:

- copies of invoices and check stubs showing ABC's increase in holding capacity in 1996;
- a copy of the State of Rhode Island's written offer to purchase ABC for $525,200.00; and
- copies of ABC's settlement tickets for all relevant periods revealing the names of the sellers' boats.

With respect to the unredacted settlement tickets, it is my understanding that Hull & Cargo will not allow the information contained in these tickets to enter the public domain. As you know, lobstering is a highly territorial and secretive business and Al and Anne Christopher would be devastated if they could indirectly be blamed for the publication of such highly confidential information.

Please review the enclosed information and then contact me with Hull & Cargo's recommendation for ABC's claim. Thank you for your attention to this matter.

Very truly yours,

Elizabeth L. Smith

Elizabeth L. Smith

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Environmental Management
ASSOCIATE DIRECTOR FOR NATURAL RESOURCES MANAGEMENT
22 Hayes Street
Providence, R.I. 02908

February 12, 1996

Mr. and Mrs. Al Christopher
DBA ABC Lobster
P.O. Box 524
Wakefield, RI 02880

Re: Leasehold interest in Plat I-G, Lot 94-101 and the one story, 3,010 square commercial building situated thereon per lease with State of Rhode Island, dated July 27, 1993.

Dear Mr. and Mrs. Christopher:

The State of Rhode Island, pursuant to R.I. General Laws 37-6-1 et. seq., hereby offers to purchase the above described leasehold property for port development purposes.

Based on the appraisals performed for the Department of Transportation and the DEM, the State, SUBJECT TO THE APPROVAL OF THE STATE PROPERTIES COMMITTEE, offers to pay to the owners of record of said leasehold property, $525,200 in full settlement of all claims arising from the proposed purchase, including payment for any and all improvements thereon.

This offer does not include relocation benefits for which the tenant may be eligible pursuant to the Uniform Relocation and Real Property Acquisition Policies Act of 1970. The tenant will be registered for such benefits and advised of their entitlement separately.

This offer includes payment for any and all claims, debts, rights, and damages for all manner of actions and causes of action both in law and in equity, which against the State, you and/or all persons claiming by, through, or under you ever had, now have or ought to have, for or by reason of the purchase of said property by the State and is specifically conditional upon the conveyance by the seller of clear title, free and clear of tenants or other encumbrances.

The payment of the above State offer, SUBJECT TO THE APPROVAL OF STATE PROPERTIES COMMITTEE, will be made as soon as possible thereafter.

Original 2/12/96
2/20/96
Date

Malcolm J. Grant, Associate Director
Natural Resources Management/DEM

MARINE BIOTECH, INC.
54 West Dane Street Unit A
BEVERLY, MASSACHUSETTS 01915
U.S.A.

TEL: (508) 927-8720
FAX: (508) 921-0231

Invoice

8165

TO: ABC Lobster
83 State St.
Galilee, RI 02882
(401) 782-8088

DATE	ORDER NO.
	Al,Christophe Vewbal-Wares

SHIP TO: Same

SALESPERSON	DATE SHIPPED	SHIPPED VIA	F.O.B. POINT	TERMS
Naeg		Cust Pickup	Beverly, MA	Net 7

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	TFX-40 Titanium Chiller		1,650.
	RI Sales Tax		115
	Total Invoice Amount		1,765

8/15/96
Paid Check 1766

7/30/96

09781

PURCHASE ORDER

TO ABC Lobster	DATE 3/25/96
ADDRESS Scott Christopher	DATE REQUIRED
CITY, STATE, ZIP	TERMS
SHIP TO	HOW SHIPPED
ADDRESS	REQ. NO. OR DEPT.
CITY, STATE, ZIP	FOR

QUANTITY		DESCRIPTION	PRICE	UNIT
1				
2		Labor to fiberglass and		
3		Del-Coat Molkin Box		
4				
5				
6		Flat Piece	$450.00	
7				
8				
9				
10		pd ck # 4112		
11		$450.00		
12		3/25/96		
13				

IMPORTANT

PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES - PACKAGES, ETC.
PLEASE NOTIFY US IMMEDIATELY IF YOU ARE UNABLE TO COMPLETE ORDER BY DATE SPECIFIED.

PLEASE SEND _____ COPIES OF YOUR INVOICE WITH ORIGINAL BILL OF LADING.

PURCHASING AGENT: Jim Perkins

TC 5831

ORIGINAL

ODERNplastics

BRIDGEPORT, CT (203)333-3128 FAX:(203)333-4625
WARWICK, RI (401)732-0415 FAX:(401)732-5847
SPRINGFIELD, MA (413)785-1671 FAX:(413)736-6385
PEABODY, MA (508)531-3164 FAX:(508)531-2382

CUSTOMER: [redacted] 1600 JEFFERSON BLVD. WARWICK, RI 02888 [redacted]

CUST# 50[redacted] SO# 189249
Order Date 5/28/96 Page 1 of 1
Date Shipped Date Promised 5/28/96
Salesman 1 Order Writer RIS Placed by RITA
Customer PO# RETAIL ABC LOBSTER
Ship Via PU
Phone Terms C.O.D.

ALL CLAIMS MUST BE MADE WITHIN 5 DAYS AFTER RECEIPT OF GOODS. MERCHANDISE NOT RETURNABLE WITHOUT PRIOR AUTHORIZATION. CLAIMS FOR FREIGHT LOSS OR DAMAGE MUST BE FILED BY THE CONSIGNEE AGAINST CARRIER. SHIPMENTS ARE F.O.B. OUR PLANT.

RECEIVED IN GOOD CONDITION
X
DATE

[redacted]

CK# 1295
$126.35

Terms 118.08 Feb 0.00 Tax 8.27 Shp/Hnd 0.00 Tot 126.35

POOL & PATIO CENTER, INC.
[redacted]

CUSTOMER'S ORDER NO. | PHONE | DATE 10-2-96
NAME ABC Lobster
ADDRESS

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RET'D	PAID OUT	QTY.	DESCRIPTION	PRICE	AMOUNT
							1	1hp Mbr [illegible]		119.50
							1	Ref 1hp Pa[illegible]		[illegible]
								Tax # Y8943		
								Paid 11.99 10/18/96		
										11.8[illegible]
								POOL & PATIO CENTER 7760 Post Road North Kingstown, Rhode Island 02852 (401) 294-4225		
								10-2-96		
									TAX	
RECEIVED BY									TOTAL	[illegible]

5327 All claims and returned goods MUST be accompanied by this bill. Thank You

---

POOL & PATIO CENTER
Where Quality and Service Still Have Meaning
7760 Post Road
North Kingstown, RI 02852
(401) 294-4225

CUSTOMER'S ORDER NO. | PHONE 782-8088 | DATE 7-26-96
NAME ABC Lobster
ADDRESS

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RET'D	PAID OUT	QTY.	DESCRIPTION	PRICE	AMOUNT
							1	1hp Super Pump		325.00
								# 4548		"
								Tax #		
								Pd. Full Check # 4548		Tax # 8943 called 7/10
								Call with Tax #		
									TAX	
RECEIVED BY									TOTAL	325.00

1878 All claims and returned goods MUST be accompanied by this bill. Thank Y

PHONE 401-334-2330

THE CONKLIN LIMESTONE CO. INC.

PLANT AT LIMEROCK • RTE. 146 • RHODE ISLAND 02865
Mail Address: 25 WILBUR ROAD • LINCOLN • RHODE ISLAND 02865-6199

SOLD TO

Load 3 Ton

SHIP TO

2166 ABC Lobster
296 Great Island Rd.
Galilee RI

PLANT ☐ DELIVERED ☑ ZONE ☐

P.O. No. _____ TEL. No. 782-8086 DATE 7/18/96

CASH | CHARGE | C.O.D. | CREDIT

BAGS NO.	BAGS WT.	PRODUCTS	TONS	UNIT	AMOUNT
	80#	AGRICULTURAL LIMESTONE			
		AGRICULTURAL LIMESTONE BULK			
		AGRICULTURAL LIMESTONE SPREAD			
		DOLOMITE			
	50#	LAWN AND GARDEN SOIL SWEETENER			
	40#	PELLETIZED LIME			
		CONKLINITE (BULK) Canaanite	3	70.00	210.00
	50#	CONKLINITE #2 - 3			
	50#	CONKLINITE: #4 - 5 - 6	tax		12.60
	50#	CONKLINITE #7 - 8 - 9	delivery		25.30
	50#	WHITE MARBLE LINE MARKER			250.00

GROSS 20,640 DRIVER Henry 7/26/96
TARE 14,500 WEIGHER
Net Wt. 6140 3.07 Pd ck 4547 250

000119 Received By

CUSTOMER COPY

PARKER-LUTHER CO. 168706-BP

INVOICE

JOB NAME

QUAN.	DESCRIPTION	PRICE	AMOUNT
	New Motor		399 00
	Paid in full		
	Ck # 4876		
	Thanks		
	TOTAL MATERIALS		

INVOICE

№ 13465

ELECTRIC MOTOR SERVICE, INC.
3070 Post Road
WARWICK, RHODE ISLAND 02887
(401) 737-2534

P.O. NUMBER

DATE 9/25 94 19

NAME HBC Coleslaw

ADDRESS

CITY

PHONE 782-8088

DATE OF ORIGINAL INSTALLATION

MAKE Smith

H P 10

☐ ESTIMATE
☐ WARRANTY
☐ CONTRACT

R P 3600

PHASE 3

VOLTS 200

FRAME 215T

TB | C | P

ENG TEFC

TYPE

COMPLAINT

9/24/96
Pd Ck#4876
399

TOTAL MATERIALS	
TECHNICAL SERVICE TIME: ☐ SHOP ☐ HOME	
☐ PICK UP OR DELIVER ☐ SERVICE CALL CHARGE	
SHIPPING	
TAX	
CASH ON COMPLETION OF WORK — TOTAL	399 00

TECHNICIAN

DATE COMPLETED

SIGNATURE

Signature above constitutes acceptance of above work as being satisfactory—and that equipment has been left in good condition

invoice

Bertrand's Refrigeration, Inc.
228 High St. P.O. Box 671
Wakefield, Rhode Island 02880

Lic. #1141

Tel. (401) 789-3423
FAX (401) 789-8686

INVOICE NUMBER: 009269
INVOICE DATE: 08/20/96
PAGE: 1

Paid 4838 9/17/96 1541.52

OLD TO: ABC Lobster
P. O. Box 524
Wakefield, RI 02880

SHIP TO: ABC Lobster
Galilee, RI

SHIP VIA:
SHIP DATE: 08/06/96
DUE DATE: 09/19/96
TERMS: NET 30

CUST. I.D.: ABCLOB
P.O. NUMBER:
P.O. DATE: 08/03/96
OUR ORDER NO.: 96027
SALESPERSON:

DESCRIPTION	ORDERED	SHIPPED	UNIT	PRICE	NET	TAX
5 Started installation of chiller #4. ped unit to chiller barrel. 7 Leak tested with nitrogen. No leaks und. Ran wire from disconnect. 8 Wired customer's thermostat. Unit ill in a vaccuum. Opened valve and arged with factory charge. No water t. 9 Started system. Amps, pressures and frigerant okay. Unit on line.						
ndensing unit ell Model #CA5536VRD S/N L952563914	1.00	1.00	EA	687.0000	687.00	E
umulator	1.00	1.00	EA	98.2000	98.20	E
ctrical supply	1.00	1.00	TOTL	50.0000	50.00	E
nsformer	1.00	1.00	EA	32.9600	32.96	E
e delay	1.00	1.00	EA	29.9000	29.90	E
cuum pump oil	1.00	1.00	TOTL	10.0000	10.00	E
ing & materials	1.00	1.00	TOTL	50.0000	50.00	E
" sight glass	1.00	1.00	EA	24.2600	24.26	E
					Continued ...	

SUBTOTAL	982.32
TAX	
PAYMENTS	
TOTAL	

(Continued on page 2)

invoice

Bertrand's Refrigeration, Inc.
228 High St. P.O. Box 671
Wakefield, Rhode Island 02880

Lic. #1141

Tel. (401) 789-3423
FAX (401) 789-8686

INVOICE NUMBER: 009269
INVOICE DATE: 08/20/96
PAGE: 2

SOLD TO: ABC Lobster
P. O. Box 524
Wakefield, RI 02880

SHIP TO: ABC Lobster
Galilee, RI

SHIP VIA:
SHIP DATE: 08/08/96
DUE DATE: 09/19/96
TERMS: NET 30

CUST. I.D.: ABCLOB
P.O. NUMBER:
P.O. DATE: 08/03/96
OUR ORDER NO.: 9002?
SALESPERSON:

ITEM CODE/DESCRIPTION	ORDERED	SHIPPED	UNIT	PRICE	NET	TAX
Filter drier	1.00	1.00	EA	34.2000	34.20	E
Labor-mechanic	9.50	9.50	HR	50.0000	475.00	E
Labor-helper	2.00	2.00	HR	25.0000	50.00	E

WARRANTY: Parts-Manufacturers
Labor-30 days

SUBTOTAL	1541.52
TAX	0.00
PAYMENTS	0.00
TOTAL	1541.52

ABC LOBSTER, INC.
P.O. BOX 524
WAKEFIELD, RHODE ISLAND 02880
(401) 782-8088

EXPLANATION | AMOUNT

67-12/116

4771

PAY AMOUNT OF — Sixteen hundred dollars and 00/ — DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NUMBER	
9/5/96	Ocean State Lobster	4 lobster tanks	4771	$ 1600.00

CITIZENS BANK
Citizens Trust Company
Providence, Rhode Island 02903

AUTHORIZED SIGNATURE

⑈004771⑈ ⑆011500120⑆ 311 173 3⑈ ⑈0000160000⑈

ABC LOBSTER, INC.
P.O. BOX 524
WAKEFIELD, RHODE ISLAND 02880
(401) 782-8088

EXPLANATION: Inv 8765 | AMOUNT

67-12/116

4658

PAY AMOUNT OF — One thousand seven hundred sixty-five and 00/ — DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NUMBER	
8/15/96	Marine Biotech, Inc	chilled barrel	4658	$ 1765.00

54 West Dane St - Unit A
Beverly MA 01915

050567177 12 03 4039 081496

CITIZENS BANK
Citizens Trust Company
Providence, Rhode Island 02903

AUTHORIZED SIGNATURE

⑈004658⑈ ⑆011500120⑆ 311 173 3⑈ ⑈0000176500⑈

ABC LOBSTER, INC.
P.O. BOX 524
WAKEFIELD, RHODE ISLAND 02880
(401) 782-8088

EXPLANATION | AMOUNT

67-12/116

4548

PAY AMOUNT OF — Three hundred twenty-five and 00/100 — DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NUMBER	
7/24/96	Pool and Patio	Tank Filter Pump	4548	$ 325.00

050278016 14 4900 4937

CITIZENS BANK
Citizens Trust Company
Providence, Rhode Island 02903

AUTHORIZED SIGNATURE

⑈004548⑈ ⑆011500120⑆ 311 173 3⑈ ⑈0000032500⑈

KIRKPATRICK & LOCKHART LLP

ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2637

TELEPHONE (617) 261-3100
FACSIMILE (617) 261-3175
www.kl.com

BARRY HARTMAN
(202) 778-9301
HARTMABM@KL.COM

February 26, 1998

VIA FACSIMILE & U.S. MAIL

Albert F. Dugan, Vice President
Hull and Cargo Surveyors, Inc.
2175 E. Francisco Boulevard, Suite A-5
San Rafael, CA 94901

Re: ABC Lobster, Inc.
1996 *North Cape* Oil Spill
Your File No. SF 980006 OS
NPFC Claim No. 016203-007

Dear Mr. Dugan:

The following information is provided in response to your request for additional documentation in your letter dated February 9, 1998. Note that our response relates to the claim that was filed on behalf of ABC lobster for losses incurred between January 19 and December 31, 1996. Per your instructions, we are not providing information that would relate to a claim for losses after December 31, 1996:

Item 1 All relevant settlement sheets have been provided. Our client does not keep monthly summaries. Those submitted previously were prepared by us based on the demand made by Eklof, which would not accept the regular business settlement sheets.

Item 2 In the initial claims package (dated 5/31/96) submitted to Turnaboat the monthly summaries for the period from January 19 through April 30, 1996 can be found at page 8. Again, those were prepared based on Eklof's demand, and are not kept in the normal course of business. Settlement sheets for the balance of the year have also since been submitted, although not in summary form, since that form is not kept in the normal course of business.

Item 3 The May - June 1996 poundage data can be calculated from the settlement sheets. Again, summaries of this information are not kept in the normal course of business, but can be derived directly from this data.

Item 4 Monthly summary of purchase data ($) can be derived from the settlement sheets. Again, summaries of this information are not kept in the normal course of business, but can be derived directly from this data.

Item 5 Retail sales information for the period of January through July 1996 was provided as part of the amended (5/14/97) claims package (pp52-62). Retail sales information for August through December 1996 is attached hereto as Exhibit A.

Item 6 ABC Lobster, Inc. provided for temporary rental of their dock facilities (not tanks) to National Response Corporation, agents for Eklof, for unloading of oil skimming barges as part of the oil spill response. This information can be found in the 5/31/96 claims package beginning at page 9.

Answer/Explanation No.1 There was a decline in lobster purchases during the period of December 1995 through January 18, 1996 because fewer lobsters were either caught and or sold to ABC. This temporary lull may be due to a number of reasons, including maintenance, personal reasons, weather or just poor luck. However, it is most likely that storms during this time period resulted in lower catches for the in-shore lobster fishery.

Answer/Explanation No. 2 The F/V Miss Stacie was owned by Al Christopher and was captained by David Penantel.

Answer/Explanation No. 3 The purchases per the 1996 tax return include all species (fish, shellfish), including lobsters. The summary of monthly purchases only includes lobsters.

We look forward to the resolution of this claim.

Sincerely,

Barry M. Hartman GPG
Greg Grimes

Barry M. Hartman, Esq.
Gregory P. Grimes, Environmental Project Manager

Retail

August 1996

Thurs	1	1131	rain
Fri	2	1829	cloudy/sun
Sat	3	2610	cloudy
	4	3075	sun
Mon	5	1539	~~cloudy~~ fog/sun
	6	2126	sun/hot humid - beginning fog
	7	2319	fog cloudy
	8	~~1715~~ 1640	sun
Fri	9	2541	sun
	10	3122	sun
	11	3291	sun 80°
VJDay	12	2616	sun/cloudy cool
Sun	13	968	rain
	14	1834	sun/cloudy
	15	1762	sun
Fri	16	2440	fog cloudy Jen begins
	17	3720	sun
Sun	18	3129	sun
	19	1330	sun
Tues	20	985	sun
Wed	21	1455 (1455)	cloudy
	22	1560	sunny
Fri	23	2456	sun
Sat	24	2290	rain/cloudy
	25	1599	sun 80° home cloudy

			Aug 1996
Mon	26	1112	sunny
	27	815	cloudy
Wed	28	699	rain
	29	1359	sun
Fri	30	2470	rain
Holiday	31	3588	10043 Hurricane watch / sun / tornadoes

63110

September 1996

Sun	holiday weekend 1	3094	hurricane warning
Mon	2	1310	sun cool
Tues	3	500-	sunny. 85°
Wed	4	556-	school begins
	5	599	humid sun humid
	6	925	sunny humid
Sat	7	1056	rain
	8	905	fog cloudy damp drizzle
Mon	9	568	fog / cloudy sun p.m
	10	512	fog cloudy
	11	516	cloudy / damp
	12	643	rain / damp rough
Fri	13	292	rain / damp rough
Sat	14	740	rain / damp
	15	822	sun / cool
Mon	16	205	sun / cool
	17	230	rain / wind
Wed	18	160	rain / wind (sun) so short
	19	444	sun / cool
Fri	20	758	sun / cool
	21	1294	sun / 78°
	22	1040	fog / cloudy / rain
Mon	23	205	drizzle / cloudy / sun p.m
	24	421	sun / cloudy p.m
	25	132	sun / cold

Sept 1996

	26	381	sun/cold
Tu	27	536	cloudy/cold
	28	1859	cloudy/cold - sun
Sun	29	1453	rainy
	30	235	sun/cool

October 1996

Tue	1	247	sun / warm
	2	180	sun / cloudy
	3	257	sun / cold
Fri	4	331	sun / cold
	5	836	sun / cloudy / cold
Sun	6	1303	sun / cloudy / cold
Mon	7	90	sun / cool
	8	150	Cloudy / rain pm
	9	176	sun windy (storm)
Thurs	10	309	rain
Fri	11	617	sun cool
	12	1208	sun / cool
	13	902	cloudy / pm sun cool
Mon	14	673	cool / sun
	15	385	cool / sun
	16	125	warm / sun
Thurs	17	187	warm / sun
	18	587	warm / sun
	19	759	ne storm / warm pm
Sun	20	743	ne storm / rain
Mon	21	146	rain then sun
	22	205	rain
Wed	23	204	sun warm
	24	167	sun warm
Fri	25	619	sun warm

Holiday weekend

Oct 1996

Sat	26	810	warm sun	
—	27	669	warm sun	
Mon	28	183	rain	
—	29	183		
—	30	152	sun	
Thurs	31	592	sun cold	2589

$1400!

Nov 1996

Fri	1	315		cold / cloudy	
Sat	2	346		cold / cloudy	
Sun	3	670		cold / sun	
Mon	4	171		sun / cold	
	5	11		cloudy / sun	went away
Wed	6	31		cloudy / sun	
Thur	7	74	1618	rain damp	
Fri	8	274		cloudy / warm	
	9	358			stormy
	10	526			
	Holiday 11	725			
Tues	12	11	~~closed~~		
	13	105			
	14	65	2064		
Fri	15	577			
	16	282			
Sun	17	214			
	18	122	~~closed~~		
	19		closed		
	20		closed		
Thur	21	209	1404		
Fri	22	550		sun / cold	
	23	342		sun / cold	
	24	363		sun cold	
	25	233		cold	

November 1996

Tues 26 39.7 rain
Wed 27 622 sun | cold
28 Thanksgiving
Fri 29 ~~23~~30 sun cold
Sat 30 304 sun | cloud | rain

1993

8127

Dec 1996

Sun	1	483	rain
Monday	2		closed
	3	no sales	
	4	$369	sun / cool
Thur	5	170	sun / cool
	6		rain storm
	7	413	rain } NE storm 1435
Sun	8	72	rain
	9		
	10	389	sun/cool
Wed	11	71	
	12	183	rainy
Fri	13	252	cloudy
	14	318	rainy } Jen 1215
Sun	15	160	rainy
	16	88	rainy
	17	154	
Wed	18	169	
	19	127	
Sun	20	595	cold sun
	21	822	cold sun
Sun	22	785	cold sun
	23	1545	cold ~~sun~~ / cloudy
	24	3114	cloudy
Wed	25	Closed	

Dec 1996

26	258		
27	401		
28	900	cloudy	
29	572	rainy	
30	567	sunny/cold	
31	1547	snowy	4031

14334

KIRKPATRICK & LOCKHART LLP

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August 14, 1998

VIA FEDERAL EXPRESS

US Coast Guard National Pollution Funds Center
Hull & Cargo Surveyors, Inc.
2175 E. Francisco Blvd., Suite A-5
San Rafael, CA 94901

RE: ABC Lobster, Inc.
Claim Number 016203-007

Gentlemen:

This letter acknowledges receipt of the settlement offer and denial from the National Pollution Funds Center ("NPFC" or the "Fund") for the above claim. This claim was bifurcated into Claim -01 and Claim -02 for the time periods of January 19, 1996 through July 31, 1996 and August 1, 1996 through December 31, 1996, respectively. This bifurcation was done with our assent on July 24, 1998 in response to a letter from Hull & Cargo Surveyors, Inc. ("Hull & Cargo" or "H&C") dated July 21, 1998. Our approval of this action was based strictly upon representations from H&C that it would facilitate an offer of settlement for the first claim period, since certain other information was considered outstanding for the second time period.

The instant settlement offer provided $56,007 for Claim -01 and denied payment for Claim -02. By copy of this letter, ABC Lobster, Inc. ("ABC Lobster" or "ABC") hereby appeals these settlement offers based upon the following:

I. **The *North Cape* Oil Spill Caused Widespread Losses To The Lobster Population That Provided The Basis For ABC's Business**

The entirety of the settlement offer for the period of January 19, 1996 through July 31, 1996 is based solely upon H&C's conclusion that:

> "...the difference between projected 1996 deliveries and your adjusted actual 1996 deliveries from January 19, 1996 through July 1996 can be reasonably attributed to the closures and the subsequent time required to recover from the closures." (Claim Summary -01 p. 2)

Nothing in the H&C analysis acknowledges that any lobsters were actually killed as a result of the Spill. The H&C Claim Summaries strongly suggest that any damages to ABC resulted exclusively from the closures which prevented fishing for a certain time period and from the time required to re-set gear once the closures were lifted. However, it is incontrovertible that the *North Cape* Oil Spill resulted in devastation to the lobster stocks, leading to reduced catches by inshore fishermen and to lessened deliveries to ABC Lobster. In this regard, please find the following:

Exhibit A: North Cape Oil Spill: An Assessment of the Impact on Lobster Populations
Final Report; January 5, 1998; Cobb/Clancy; Executive Summary

First, note that this "Final Report" is reportedly still undergoing revision and that we believe that the numbers of lobsters killed by the Spill presented therein are seriously underestimated. With that caveat in mind, note that Cobb/Clancy concludes that:

> "Our best estimate of the number of lobsters of all sizes killed by the oil spill is 12,538,121." (Executive Summary, p. 3)

The magnitude of the devastation caused by the Spill is more fully delineated in many studies included in the Administrative Record for this Spill (the Record has not yet been finalized). We call your attention to the following reports in the Administrative Record which we have not included as attachments to this Appeal due to their size and presumed availability to H&C and the NPFC:

1. Estimation of Lobster Strandings Following the North Cape Oil Spill in Block Island Sound Gibson; Angell; Lazar July 1997

2. Equivalent Adult Estimates and Stock Status of Lobster Involved in the North Cape Oil Spill in Block Island Sound Gibson; Angell; Lazar July 1997

3. Estimates of Injuries to Marine Communities Resulting from the North Cape Oil Spill Based on Modeling of Fates and Effects French November 12, 1997

Each of the above reports clearly demonstrates that the discharge of approximately 828,000 gallons of toxic No. 2 fuel oil caused widespread mortality to the marine ecosystem in general, and to the lobster species in particular. This information is presented to show that the Spill negatively impacted the lobster supply and, thus, the profitability of ABC Lobster. Any consideration of the claim for damages brought by ABC has to be conducted with that fact in mind. Were it not for the Spill, the shoreside business of ABC Lobster, Inc. would have continued to operate and to grow in concert with an established lobster resource and the growing

acceptability of ABC as a shoreside facility to the lobster fishermen who chose in increasing numbers each year to do business with ABC.

II. The Effects Of The *North Cape* Oil Spill Did Not End On July 31, 1996

H&C appears to conclude that a higher than normal lobster catch in August 1996 constituted the endpoint of damages associated with the Spill. More than likely this is the cause of H&C's request to bifurcate the claim into two time periods, with Claim -01 ending on July 31, 1996. Claim -02, which ran from August 1, 1996 through December 31, 1996, was denied in its entirety. This denial was based upon a good catch in August followed by months of greatly lower catches from September through December, which H&C characterizes as insignificant:

> We noted the return in adjusted 1996 lobster deliveries to the adjusted 1995 lobster deliveries occurred at the end of July 1996. The adjusted actual August 1996 adjusted deliveries were better than projected. In your claim submission you acknowledge this fact by allowing a credit of 31,884 pounds during August 1996. We reviewed the difference between projected 1996 deliveries and your actual 1996 adjusted deliveries from September 1996 through December 1996. While we acknowledge that there were reduced deliveries by the fishermen, the reductions were not as great as you claimed after adjustments are made for the changes in the fishermen supplying you in 1995. (Claim Summary -02, p. 1)

August 1996 was a good month. The lobstermen had finally set all their gear after the Spill and they had ample motivation to fish as many traps as possible and as often as possible to mitigate their significant financial losses from the closure. However, August was the only good month as it became plainly evident that the fishery had been severely impacted. Using the "Summary of Total (Net) Lobster Pounds Per Month" provided to us by H&C on 3/16/98, note what happened after August:

	1995	1996	Difference
September	76,465	50,521	(25,944); -33.9%
October	70,418	26,095	(44,323); -62.9%
November	55,406	20,209	(35,197); -63.5%
December	17,652	9,480	(8,172); -46.3%
Total	219,941	106,305	(113,636); -51.7%

Clearly, these figures indicate the true impact of the Spill and belie any contention on Hull & Cargo's part that August was the endpoint of damages associated with the Spill.

III. The Claims Of ABC's Major Suppliers Bolster ABC's Position Of Decreased Profitability

The following claims have been filed with Turnaboat or the Fund by lobstermen who were the chief suppliers to ABC. This information is presented solely for the purpose of demonstrating that the reduced deliveries to ABC were the result of the Spill. These reductions were due to numerous factors, including: (a) temporary closure of the fishery; (b) reductions in lobster populations from the toxic effects of the Spill; and (c) increased competition due to displaced effort.

These claims are presented herein in response to H&C's assertion that:

> "...we need to evaluate the fishermen that supplied you to determine if their reduced deliveries to ABC Lobster, Inc. ...were the result of the oil spill." (Claim Summary -02, p. 2)

Attached for your evaluation are the following claims (note that the F/V Miss Stacie, which was owned by Al Christopher during the time frame of this claim, also experienced significant losses due to the Spill. Al Christopher plans on submitting a claim for damages for the F/V Miss Stacie with Turnabout in the near future):

Exhibit B:	John Swoboda (F/V Karen Anne)
Claim Amount:	1/1/97-12/31/97; $77,756 (Note: H&C is also hereby authorized to use the Swoboda claim 016203-015, presently at the Fund, in their analysis)
Exhibit C:	Scott Christopher (F/V Undertaker) 1/19/96-12/31/96; $45,313 1/1/97-12/31/97: $66,196
Claim Amount:	$111,509
Exhibit D:	Greg Lisi (F/V Amelia Ann)
Claim Amount:	1/19/96-12/31/97; $66,614
Exhibit E:	Jeff Jordan (F/V Rachel & Henry)
Claim Amount:	1/19/96-12/31/97; $87,164 (Note: This claim was originally submitted on 2/9/98 for a total of $82,361. Turnaboat has not yet provided K&L with its breakdown for the agreed upon settlement of $87,164).

Exhibit F: John Flanagan/Diversified Fisheries (F/V Heather Rose)
Claim Amount: 1/19/96-12/31/97; $32,455

IV. **Statistical Area 539 Landings Demonstrate An Approximately 33% Reduction In Catch In Both Years Following The Spill**

Attached as Exhibit G is a Table prepared by Tom Angell, a lobster biologist from the Rhode Island Division of Fish and Wildlife, who annually prepares a report titled "Rhode Island Lobster Research and Management Project Annual Report/Completion Report." This Table demonstrates that:

1. Total Rhode Island landings have increased after the Spill; and

2. Area 539 Landings (Inshore) have decreased by about 33% in each of the years after the Spill.

All of the lobstermen that provided catch to ABC Lobster, Inc. were inshore fishermen who worked in Area 539 and saw their catch drastically reduced. Note that the total Rhode Island Landings increased due to the high catches experienced by the offshore fishery.

The 33% loss demonstrated above is consistent with the 37% decrease for ABC as calculated by H&C in their submittal attached herein as Exhibit H. The "Summary of Lobster Amounts and Pounds by Year" shows a 1995 total of 500,703 pounds, which was reduced to 315,147 pounds in 1996, or a loss of 37.1% after the Spill.

V. **The Denial Of Claim -02 Was Based Upon Information That Was Incorrect**

Claim Summary -02 includes an exhibit titled "Summary of Monthly Lobster Landings (Pounds) - Point Judith." Upon our request, the landings figure for December 1996 was reviewed by Walter Anoushian, the local Rhode Island port agent for the National Marine Fisheries Services ("NMFS") responsible for compilation of this data. After investigation Mr. Anoushian determined that an error was made wherein a figure of 310,236 pounds was entered rather than the correct figure of 26,472 pounds. H&C's reliance in such egregiously faulty data calls into questions all the figures, data, and methodology it has utilized to date. Accordingly, we request that H&C avoid the use of any data from NMFS that has not been subjected to external audit and on this basis alone revisit its denial of Claim -02.

VI. A Growth Trend Percentage Should Be Applied To The Wholesale Portion Of This Claim

For reasons not delineated in the Claim Summaries for this matter, H&C applied a trend increase for the retail portion of ABC's business, but not for the wholesale portion. Failure to provide a trend increase for the wholesale lobster operations directly contradicts accounting principles and reason. ABC clearly experienced a healthy and consistent growth pattern due to its professional operation by Al and Anne Christopher. The record in this matter shows that there was every reason to believe that growth would have continued were it not for the Spill. In particular: (1) storage space had been added to allow for higher catches; (2) the lobstermen servicing ABC were either expanding the number of traps fished, or were going to fish an extended season (or both); and (3) the reputation of ABC for fair dealing had resulted in new fishermen switching their catch to ABC and there was no indication that this type of switching would not have continued.

When H&C developed a trend analysis for retail sales, it did so by the simple process of comparing the retail sales figures from May through December 1996 with a similar time period for 1995. The percentage increase derived in this fashion was then applied **across the board** to calculate the 1996 projected retail sales (See Schedule 4 and Schedule 4-1 from the Claim Summary). The following analyses follow a similar approach using different variables (purchases and sales), both of which support a significant trend increase for the wholesale portion of the ABC business, which H&C assumes to be 95% of the total business.

(A) Analysis using purchases (entire year): Attached as Exhibit I is a table using the actual purchases, in dollars, from 1993, 1994 and 1995 to establish a growth trend that is then projected into 1996 and 1997, the post-Spill period. This analysis shows that the actual purchases in 1996 and 1997 were -38.2% and -61.8%, respectively, in comparison to the Purchases Projected by the established growth trend of this business, were it not for the Spill. The trend percentages using this analysis were 71% in 1994, and 34.2% in 1995 (actual), and 16.48% in 1996 and 7.94% in 1997 (projected). (Note: Although the instant claim only goes through the end of 1996, the 1997 figures are included herein to demonstrate the ongoing destruction of this business brought about by the Spill and its lingering effects.)

(B) Analysis using sales (entire year): Attached as Exhibit J is a table using the actual sales figures, in dollars, from 1993, 1994 and 1995 to establish a growth trend that is then projected into 1996 and 1997, the post-Spill period. This analysis shows that the actual sales in 1996 and 1997 were -41.0% and -62.0%, respectively, in comparison with the Sales Projected by the established growth trend of this business. The trend percentages using this analysis were 66.2% in 1994 and 38.5% in 1995 (actual), and 22.4% in 1996 and 13.04% in 1997 (projected).

It should also be noted that Eklof, through its representative, Turnaboat, recognized a growth trend for ABC. Attached as Exhibit K is correspondence between Turnaboat and Kirkpatrick & Lockhart LLP ("K&L") dated October 29, 1996. This letter was included as Exhibit G in the claim presented to the Fund and shows that Turnaboat envisioned a 20% wholesale sales trend. In addition, Exhibit K shows that Turnaboat had agreed to pay $10,312 to ABC for lost retail sales from January 20 to June 30, 1996, while the instant settlement offer from the Fund has provided for a lower recovery ($7,048) for the more-extended time frame of January 20 through July 31, 1996.

The above exhibits demonstrate that the application of a trend increase in the order of 20% should be applied to 1996 projected wholesale figures for the ABC claim.

VII. Other Costs And Expenses Incurred Of $1,473 Were Not Addressed

In the "Summary of Claimed Loss," H&C lists the rental of the ABC property by Eklof on January 20 and 21, 1996 for $1,200 and lobster sold to Eklof for $273 under "Other Costs and Expenses Incurred." Turnaboat had agreed to pay these costs (See Exhibit K) and they were documented in the underlying claim. Since H&C gives no reason for a denial of this portion of the claim, we suspect that its non-payment is an oversight.

VIII. ABC Rejected A Substantial Offer To Purchase Its Business

As documented in the underlying claim and in correspondence from Elizabeth L. Smith of K&L to Richard H. Miner of H&C on February 5, 1998, the State of Rhode Island produced a written offer to purchase ABC for $525,200. Rhode Island wanted to use the space occupied by ABC for Block Island Ferry parking. This offer was rejected by Al Christopher due to the substantial growth experienced by the business since its inception, and the likelihood of increased growth in the future.

IX. The Adjustments Made To Both The 1995 And 1996 Actual Deliveries Were Improper And Unfair

Adjustments were made by H&C in an oversimplified fashion. Specifically, Hull & Cargo considered all the boats that delivered to ABC in 1995, H&C then subtracted from that total any boats that did not continue to supply their catch to ABC in 1996, and finally, H&C added any new boats that started doing business with ABC in 1996. This cursory analysis fails to take into consideration the fact that: There was an oil spill in January 1996 that shut down

many portions of the fishery up to June 25, 1996 and also devastated the lobster populations upon which the business of ABC Lobster was maintained.

Accordingly, the H&C approach is wrong for the following reasons:

1. The 1996 projections would only be valid in the absence of the Spill. The Spill made the H&C approach unworkable due to the many variables that could not be quantified. For example, the footnotes to Schedule 2-1 of H&C's offer on Claim -01 indicate, among other things, that the Amelia Anne made a business decision to leave ABC in August 1996 and that the Miss Stacie had difficulties with its crew and was later sold. However, if not for the Spill, these events probably never would have occurred.

2. The projections do not include boats that would have begun doing business with ABC Lobster in 1996 were there not extended closures and were there not a catastrophic loss to lobster stocks. In this regard, devastation of the inshore fishery presented a set of circumstances that made it difficult for new boats to shop around and come to ABC. Further, in the years prior to the Spill there was a steady increase in the catch and the number of boats that delivered to ABC. In short, each year new boats started supplying ABC and some boats went elsewhere, however, the net effect was a substantial increase in the number of boats and the volume of catch they offloaded at ABC. It is unfair to deduct those boats in Schedule 2-1 ("...the loss of the following vessels was considered unrelated to the Spill..." (p2)) if there is not an effort made by H&C to try to duplicate the growth trends (in the form of additional boats and increased catch) that would have occurred were it not for the Spill.

3. Schedule 2-2 of H&C's offer on Claim -01 calculates the shortfall for the Caneal Bay in July 1996. H&C should also have calculated the shortfall for this vessel for the period from January through June 1996 since this boat presumably would have been fishing during that time period had there been no Spill.

4. The projections ignore the historical growth of ABC and includes no wholesale trend. Said trend should have been calculated at a minimum of 20%.

X. The Adjustments To The Actual Deliveries In July 1996 Based Upon Weather Were Improper And Unfair

H&C further diluted the claim of ABC by making adjustments in Schedule 3 of its offer on Claim -01 based upon weather conditions in July 1996. H&C uses a wind speed of 20 mph as the weather threshold for this calculation and shows 11 days whereby partial deductions are made due to wind. This approach should be invalidated for the following reasons:

1. No source for the weather data is given. No wind speeds are given. No location for the measuring of wind speeds is noted.

2. Although weather related corrections are made for eleven dates, only two of those dates, July 5 and July 13, show no deliveries. Clearly this indicates that a wind speed of 20 mph was not an impediment for the inshore fishery.

3. Weather is not particular to July 1996. H&C made no apparent efforts to determine if wind-related weather impacted 1995 or any other year.

4. No positive correction is made for those days when the wind was so calm that additional work could be done.

5. No attempt was made to make corrections based upon other weather related events, namely, rain and snow storms.

6. The analysis seems to suggest that a day lost due to inclement weather would equate to a loss in catch. H&C fails to acknowledge that lobstermen work in 3, 4 or 5 day intervals followed by one or more days off. A day lost due to weather for the most part just means that a lobstermen will take a Tuesday, rather than a Friday, off from work.

7. There is no data presented in this claim to suggest that surficial wind speeds would somehow result in less lobsters entering traps 10-30 feet below surface. Especially considering the reduced stocks from the Spill, it does not make a great deal of difference whether or not a trap is pulled the day after it is set or two days later. Note that in each set of weather-affected days in Schedule 3, the days immediately following the presumed slowdown or non-fishing days evidence significantly higher catches. A logical conclusion from this fact is that the lobstermen are hauling traps with lobsters caught over a slightly longer time period, as reflected by higher catch per haul.

8. In order to demonstrate that the use of weather data by H&C was an improper method of adjusting the ABC claim, K&L contacted the National Climactic Data Center ("NCDC") at the National Oceanic and Atmospheric Administration ("NOAA"). At the request of K&L, NOAA provided Surface Weather Observations taken from the Point Judith Coast Guard Station during the months of June and July 1995, attached hereto as Exhibit L. Note the following:

(A) Although meteorological data was unavailable for 16 days (June 2, 4, 6, 8, 9, 11, 13, 15, 17, 18, 20, 22, 24, 26, 27 and 29), there were **5 days** (June 1, 7, 12, 14 and 25) in June 1995 with measured wind speeds exceeding the 20 mph (17.4 knots) threshold used by H&C.

(B) Although data was unavailable for 16 days (July 2, 4, 6, 8, 9, 11, 13, 15, 17, 18, 20, 22, 24, 26, 27 and 29), there were **3 days** (July 19, 28 and 30) in July 1995 with measured wind speeds exceeding the H&C threshold.

Note further that Table 3 from Exhibit L provides the following information from the NCDC applicable to the 20 mph (17.4 knots) threshold used by H&C:

Descriptive:	Fresh Breeze
Wind:	knots 17-21; Mph 19-24
Effects Observed at Sea:	Moderate waves, taking longer form; many whitecaps; some spray.
Probable Wave Ht. Feet:	6

The NCDC's characterization of a 19-24 mph wind as a "fresh breeze" clearly indicates that such wind speed is not out of the ordinary and is not a hurdle for the inshore fishery. In sum, all of the above data and discussion illustrate that the claim of ABC should not have been reduced due to weather conditions.

XI. The Calculation Of Non-Continuing Expense Percentages Was Faulty

There is no reason to deduct payroll and benefit costs with respect to retail sales. Such costs should not be considered variable due to the relative insignificance of the retail transactions. Note, for example, that payroll would not have increased if retail sales had increased by $10,000.

XII. The Proposed Settlement Failed To Include Interest

The second partial claims package of ABC Lobster, Inc., which sought damages for the time period of June 26, 1996 through December 31, 1996, was submitted to Turnaboat on May 14, 1997. This date of submittal to Turnaboat acts as the trigger for the 30 day period required by the Oil Pollution Act of 1990 for the initiation of interest accrual. See 33 U.S.C. §2705 (b)(1) (the period for which interest will be paid is the period beginning on the 30th day following the date on which the claim is presented). Interest should be computed on the ABC claim starting from June 13, 1997 (30 days after May 14, 1996).

XIII. **Full And Complete Compensation**

The instant settlement offer for Claim -01 contained the following language:

This settlement represents full and complete compensation for this claim resulting from the

January 19, 1996, T/B "NORTH CAPE" oil pollution incident. (**Claim -01**, p. 1)

A similar recitation was included in the "Release" whose execution would be precedent to an acceptance of a settlement in this matter.

Please be advised that the instant claims of ABC Lobster, Inc. do not include assessment costs. Per the March 11, 1998 letter from Albert Dugan of H&C to Gregory Grimes of K&L, these costs cannot be submitted to the NPFC until they have been first submitted to the Responsible Party ("RP"). As noted by H&C in the March 11, 1998 letter, K&L intends to submit these costs to the RP within the time frame allowable under 33 USC 2712(h)(2). In light of the above, and consistent with the fact that assessment costs for the ABC claims are ongoing, we request that settlement language be adjusted to allow for the future presentment of assessment costs.

If you have questions concerning any of the above assertions, exhibits, calculations, etc. that would assist in the fair evaluation of the ABC claim, please endeavor to seek clarification from the undersigned prior to rendering a final determination.

Very truly yours,

KIRKPATRICK & LOCKHART LLP

Thomas F. Holt, Jr.
Peter N. McIsaac
Gregory P. Grimes, Environmental Project Manager

U.S. Department
of Transportation

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd.
Suite 1000
Arlington, VA 22203-1804
Staff Symbol: (ca)
Phone: (703) 235-4764

5890
20 November 1998

ABC Lobster, Inc.
c/o Kirkpatrick & Lockhart
Attention: Mr. Thomas Holt, Jr.
One International Place
Boston, Massachusetts 02110-2600

RE: Claim Number 016203-007
T/B NORTH CAPE oil spill

Dear Mr. Holt:

This is in response to your inquiry regarding the status of the ABC Lobster reconsideration request. Pursuant to Federal contracting regulations, on 26 October 1998 we authorized our contractor, Hull & Cargo Surveyors, to provide the National Pollution Funds Center with a recommendation on ABC Lobster's reconsideration request.

As you know, we split the claim into two claims in order to facilitate payment to ABC Lobster. We anticipate our contractor's recommendation shortly on 016203-007(01) for lost profits from 19 January 1996 through 31 July 1996.

Regarding ABC Lobster's lost profits on 016203-007(02) for the time period of 1 August 1996 through 31 December 1996, the information provided (tax returns) in your reconsideration request is not sufficient for us to make any conclusion that ABC Lobster's losses arose from the T/B NORTH CAPE oil spill. These losses would be directly tied to any losses incurred by its suppliers. Therefore, the information which would best allow us to make this determination and measurement would be information from each of ABC Lobster's suppliers that includes contemporaneous documentation such as vessel logs, fishing logs, trawl logs, charts, etc. that provide: (1) the number, location, monthly placement of traps during the year for 1994 through 1996; (2) monthly summary of catch, pounds and dollars, by location from 1994 through 1996. Our contractor would also like to briefly interview ABC Lobster's suppliers. This is the same information we would need to adjudicate claims from the individual lobstermen. Coincidentally and fortuitously you represent some these lobstermen. You have indicated that you would be submitting claims for some of these lobstermen. Accordingly, we request that you provide the above information which will also allow us to adjudicate the second part of ABC Lobster's claim, and the anticipated individual lobstermen claim. Please advise our contractor, Dick Miner of Hull & Cargo Surveyors, whether ABC Lobster intends to provide this information. Mr. Miner may be reached at 508-828-2998.

Sincerely,

Ernie Worden

Ernie Worden
Claims Manager

ABC Lobster, Inc.
North Cape Oil Spill
Loss - January 19, 1996

RGL GALLAGHER LLP
Certified Public Accountants

SUMMARY OF LOBSTER AMOUNTS AND POUNDS BY YEAR

Source: ABC Lobster, Inc. settlement sheets

	1995		1996	
Vessel	Amount	Lbs	Amount	Lbs
Karen Ann	217,679	74,559	167,726	57,827
Undertaker	205,887	72,661	176,573	59,835
Amelia Anne	189,846	66,065	67,423	19,161
Rachel & Henry	153,058	52,452	135,913	45,437
Jayme Sue	108,308	35,666	59,294	22,461
Heather Rose	103,862	35,935	79,599	26,745
Miss Stacie	100,123	34,184	38,830	11,535
Spirit of Peace	98,231	33,597		
Select Fisheries	84,207	26,653	47,212	15,499
Elder	61,349	18,951	29,798	9,374
Gillian	59,757	19,762	4,834	1,162
Ellen June	51,544	17,504		
Ziggy	14,423	5,773		
Whilden	7,694	2,486		
Brian Thibeault	6,971	1,928	474	137
Misty Lynn	4,288	976	2,465	603
Cindy Diane	2,211	667	4,192	1,309
Ray Carr	1,031	339		
John Keiper	617	200		
Steve Crandall	614	206		
H.T.	267	74		
Miss Nancy	257	76		
Caneel Bay			38,447	13,348
Fun Yet			92,642	29,827
Roy Carr			966	238
Spud Mack			1,619	382
Walter Kowal			874	271
TOTAL	1,472,223	500,703	948,879	315,147

SUMMARY OF TOTAL (NET) LOBSTER POUNDS PER MONTH

Source: ABC Lobster, Inc. settlement sheets

	1995												
Vessel	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
Karen Ann	2,055	1,525	315	1,028	644	3,589	15,680	13,516	12,091	10,072	11,882	2,162	74,559
Undertaker					1,353	3,168	19,504	21,443	10,437	7,867	6,949	1,930	72,651
Amelia Anne		73			529	4,062	13,501	14,599	12,630	9,507	8,425	2,739	66,065
Rachel & Henry	540			50	440	1,561	9,218	12,322	10,130	8,809	7,386	1,996	52,452
Jayme Sue	2,132	229	1,510	1,454	2,015	3,059	7,365	8,289	2,012	3,544	3,280	777	35,666
Heather Rose				535	1,458	2,447	10,843	10,193	3,991	3,436	2,067	965	35,935
Miss Stacie	636					3,262	7,279	7,913	8,056	4,159	2,079	800	34,184
Spirit of Peace						591	6,776	8,360	5,528	5,927	4,057	2,358	33,597
Select Fisheries	1,189	320	181	1,366	424	1,268	6,024	6,217	4,825	2,648	1,272	919	26,653
Elder	819	916	1,802	924	428	1,117	3,688	3,207	3,200	2,093	323	434	18,951
Gillian									959	10,215	6,658	1,930	19,762
Ellen June	736			653	375	1,559	4,472	3,864	2,048	2,127	1,028	642	17,504
Ziggy						527	3,254	1,463	529				5,773
Whilden							1,767	719					2,486
Brian Thibeault		47	445	141	392	404	443	56					1,928
Misty Lynn				976									976
Cindy Diane						667							667
Ray Carr							196	143					339
John Keiper							41	116	29	14			200
Steve Crandall								206					206
H.T.						74							74
Miss Nancy							76						76
TOTAL	8,107	3,110	4,253	7,127	8,058	27,355	110,127	112,626	76,465	70,418	55,406	17,652	500,703

SUMMARY OF TOTAL (NET) LOBSTER POUNDS PER MONTH

Source: ABC Lobster, Inc. settlement sheets

	1996												
Vessel	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
Karen Ann	267	161	62	34	331	177	2,581	29,850	8,678	5,909	6,597	2,980	57,827
Undertaker	128	93			1,049	1,552	7,282	32,052	9,753	4,886	2,656	384	59,835
Amelia Anne		255			454	3,325	8,070	7,057					19,161
Rachel & Henry		249	251	26	112	511	3,684	22,292	7,321	4,341	4,182	2,469	45,437
Jayme Sue	208	225	50		369	94	2,030	10,719	3,521	2,123	2,087	1,035	22,461
Heather Rose	133	201	77	77	833	738	3,276	13,871	3,471	2,134	1,292	642	26,745
Miss Stacie					474	1,217	4,350	4,381		1,061	52		11,535
Spirit of Peace													0
Select Fisheries		108	79			264	1,468	8,319	2,792	1,204	847	418	15,499
Eider	93	122			157	138	1,486	3,176	2,727	945	402	128	9,374
Gillian	610	303	249										1,162
Brian Thibeault							86	51					137
Misty Lynn	80	523											603
Cindy Diane		312							997				1,309
Caneel Bay							1,455	4,743	3,443	1,597	1,244	864	13,346
Fun Yet		1,091					8,071	10,013	7,618	1,895	773	366	29,827
Roy Carr						25	194	19					238
Spud Mack							382						382
Walter Kowal											77	194	271
TOTAL	1,519	3,643	767	137	3,778	8,041	44,415	146,543	50,521	26,095	20,209	9,480	315,147

John P. Kelly & Associates
117 Kentucky Street
Vallejo, California 94590

phone (707) 552-0636
(800) 522-0333
fax (707) 552-7266

May 22, 1998

Gregory P. Grimes
Environmental Project Manager
Kirkpatrick & Lockhart, LLP
One International Place
Boston, Ma 02110-2637
Fax: (617) 261-3175

Re: T/B North Cape Oil Spill
Claim #: 016203-008
Claimant: Barry Kopf

Dear Mr. Grimes:

We have reviewed the documents provided by Berry Kopf through you. We have some additional questions we would like Mr. Kopf to answer.

We would like to know when the repairs were completed. The repair documents indicate the work was not completed until January 30, 1998, see the purchase order dated Jan 30/96. This appears to be work done by Carr Marine, based on the Boat Spartan check #9067 dated February 7, 1996 for the same amount, $373.93.

The invoice from Rhode Island Engine Co. does not refer to specific repairs. Please advise to what repairs does this invoice refer. This invoice has no date or reference.

Boat Spartan check # 9051 to R I Engine does not match any invoice. Please advise to which invoice this is for.

The invoice from Major Electric Supply Inc. dated 12-12-95 appears to be only part of the invoice. The items do not add up to the total. To what repairs does this invoice refer.

Re: T/B North Cape Oil Spill
Claim #: 016203-008
Claimant: Barry Kopf
May 22, 1998
Page2

The invoice from salt Pond Marine dated 11/30/95 appears to be for work under invoice #802 dated 10/31/95. To what repairs does this invoice refer.

Please provide the phone number for Carr Marine or how we can contact them.

We are providing RGI Gallagher's letter of May 7, 1998 regarding documents and information we require to evaluate the economic loss. Please request this information from Mr. Kopf.

To whom did Mr. Kopf sell his catch? Please provide the names and how we might contact them. Did Mr. Kopf have any agreements to sell to specific brokers or processors.

Did all other off shore lobstermen remain in Port Judith after the spill? Were other arrangements made by lobstermen to go to other ports to market their catch? How difficult would it be for Mr. Kopf to arrange alternative markets for his catch? This, we believe, will be an important area to clarify as completely as possible.

We will assist Mr. Kopf as much as we can, however, Mr. Kopf must provide the information and documentation necessary to support his claim that he could not go to his normal fishing grounds and could not market his catch if he did.

If you have any questions, please contact us.

Regards,

John P. Kelly & Associates

John P. Kelly
Enclosures:
CC: Ernie Worden, NPFC
Harvey Hartsfield, D. H. Lloyd

RGL GALLAGHER LLP
Certified Public Accountants

320 Montgomery St., Suite 200
San Francisco, CA 94104

Tel: 415/956 8323
Fax: 415/956 1405

May 7, 1998

Mr. John P. Kelly
John P. Kelly & Associates
117 Kentucky Street
Vallejo, CA 94590

Re: Claimant: Bruce Kopf (North Cape Oil Spill)
Loss Type: Lost Profits
Loss Date: January 19, 1996
Claim No. 6013-96-422
RGL File No. SF-0094790

Dear Mr. Kelly:

We have reviewed the additional documentation you provided in connection with the captioned matter, which includes:

Fleet Bank monthly bank statements for the following periods:
- January through April 1993,
- June through September 1993,
- April through July 1994, and
- September 1994
- Some additional settlement sheets.

We have not yet received the following documents:

Fleet Bank monthly bank statements for:
- May 1993,
- August 1994, and
- January through December 1996

Settlement sheets for 1993 through 1996 that have not been provided to date.

In addition, please provide answers or explanations to the following:
- Have all settlement sheets been provided to us? How often is one produced?

- Please provide the dates for the attached settlement sheets. Please note that these settlement sheets were included in the package you sent to us on May 5, 1998.

RGL GALLAGHER LLP
Certified Public Accountants

Mr. John P. Kelly
May 7, 1998

- Why are January 19 through March 29, 1995, gross sales significantly lower than those for the same period in 1994 and 1993? Please refer to the "Analysis of Gross Fishing Sales" summary that was attached to our April 28, 1998 letter to you.

We request that once the above information is available, please mail it to our office at the above address.

We trust the foregoing comments are clear. However, should you have any questions, please contact the undersigned or Marisa Chang.

Very truly yours,

RGL GALLAGHER LLP

Michael Diliberto III, CPA

New but no date!

SPARTAN DATE

TRIP STOCK 6226.52 CHAMPLINS

843.45 Osprey

GROSS STOCK 7069.97

EXPENSES; 155.91 S+S

7.45 Belmont

FOOD 2.28 Cumberland

ICE 55.00

FUEL 300.00

BAIT 300.00

BAIT PREP 185.00

SALT 36.00

OIL-FILTERS 130.00

PHONE

Shore Labor MISC. 300.00

TOTAL TRIP EXPENSES 1471.64

2799.17

2/5598.33

BOAT 2799.17

GROSS STOCK 7069.97

-TRIP EXPENSES 1471.64

5598.33

X_____ SHARE RATE

_____ CREW SHARE

5598.33

Jim 10%

559.83

5598.33

Dale 8%

447.87

5598.33

Reserve 10%

559.83

5598.33

Frank 7%

391.88

5598.33

Bruce 15%

839.75

SPARTAN DATE

TRIP STOCK	9,937.60
	1,478.75
GROSS STOCK	11,416.35

EXPENSES;

FOOD	161.97
ICE	66.00
FUEL	421.40
BAIT	400.00
BAIT PREP	358.00
SALT	42.00
OIL-FILTERS	130.00
PHONE	
MISC.	300.00
TOTAL TRIP EXPENSES	1879.37

~~1,[illegible]~~
476.47
2/ 9,536.98

GROSS STOCK 11,416.35
-TRIP EXPENSES 1,879.37
9,536.98
Jim x 13% SHARE RATE
1239.81 CREW SHARE

9536.98 9536.
Mike Trans. 8% Brud 20
Tonne 762.96 1907.4

953698
Reserve 9 ~~10~~%
~~[illegible]~~
858.32

John P. Kelly & Associates
117 Kentucky Street
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phone (707) 552-0636
(800) 522-0333
fax (707) 552-7266

May 27, 1998

Gregory P. Grimes
Environmental Project Manager
Kirkpatrick & Lockhart, LLP
One International Place
Boston, Ma 02110-2637
Fax: (617) 261-3175

Re: T/B North Cape Oil Spill
Claim #: 016203-008
Claimant: Bruce Kopf

Dear Mr. Grimes:

Thank You for your telephone call today. As we discussed, we wish to clarify as much as possible the details of Mr. Kopf's claimed loss.

If the information we have requested is not available or is too difficult to obtain, please advise us. Please provide the information you feel will prove Mr. Kopf's claim. We will review what you provide and direct it to the N. P. F. C. with our recommendation.

If you have any other questions, please contact us.

Regards,

John P. Kelly & Associates

John P Kelly

John P. Kelly
Enclosures:
CC: Ernie Worden, NPFC
Harvey Hartsfield, D. H. Lloyd

KIRKPATRICK & LOCKHART LLP

ONE INTERNATIONAL PLACE
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TELEPHONE (617) 261-3100
FACSIMILE (617) 261-3175
www.kl.com

GREGORY P. GRIMES
(617) 261-3171
GRIMESGP@KL.COM

May 28, 1998

Bruce E. Kopf
85 Sandhill Cove
Narragansett, RI 02882

Dear Bruce:

Attached for your information and review please find two letters from John P. Kelly requesting additional information for their evaluation of your Fund claim. We have already talked with Mr. Kelly about these letters since some of the information requested is clearly unreasonable for this claim.

Please call me at the above number after you have had the opportunity to review these letters so that we can discuss this.

Cordially,

Greg Grimes

Gregory P. Grimes
Environmental Project Manager

KIRKPATRICK & LOCKHART LLP

ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2637

TELEPHONE (617) 261-3100
FACSIMILE (617) 261-3175

PETER N. MCISAAC
(617) 261-3225
MCISAAPN@KL.COM

May 29, 1998

Ernie Worden, Claims Manager
National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804

Re: *North Cape* Oil Spill
Claimant: Bruce E. Kopf; Claim Number 016203-008

Dear Mr. Worden:

As per our conversation earlier this week, I am writing to address my concerns about the approach taken by John P. Kelly & Associates ("Kelly") with regard to the claim submitted on behalf of Bruce E. Kopf. In particular, I would like to draw your attention to certain issues raised in a May 22, 1998 letter from Kelly to Gregory P. Grimes of this office. That letter was copied to you and included a related May 7, 1998 letter from RGL International requesting further information in the evaluation of the above claim. (Copies of both letters are attached hereto).

The instant claim concerns losses incurred by Mr. Kopf in the immediate aftermath of the *North Cape* Oil Spill (the "Spill"). Mr. Kopf is an off-shore lobsterman who was unable to fish during the time period of January 19, 1996 (the date of the Spill) to March 29, 1996 (when he sold his boat). The claim is straightforward and simple: Mr. Kopf is requesting that he be compensated for his losses during that 69-day interval by a computation of his average earnings that he made during that interval in the three years prior to the Spill.

In support of the claim Turnaboat was provided with settlement sheets and bank statements that both established his income during the period in question and demonstrated that he fished historically during said period. Turnaboat denied the claim on May 9, 1997 under the theory that Mr. Kopf's fishing area was never closed and he could have landed his catch in another state. This leaves the National Pollution Funds Center (the "Fund") with only two real issues to resolve:

1. Given the circumstances of the Spill, was it reasonable for Mr. Kopf to decide to stay in port and not make arrangements for landing his catch at an alternative location not affected by the contaminated waters? and

2. If so, how should he be compensated?

Regrettably, this $23,762 claim is being scrutinized to a degree unwarranted by the narrow issues presented, and in direct contravention of the avowed aim of the Oil Pollution Act, namely, to compensate claimants quickly and efficiently without recourse to a level of proof that might be required in a court of law.[1] Note the following from the Kelly/RGL letter:

(A) *To whom did Mr. Kopf sell his catch? Please provide the names and how we might contact them. Did Mr. Kopf have any agreements to sell to specific brokers or processors.*

How can this be relevant to this claim? Mr. Kopf's historical fishing income, upon which this claim is based, has been established by bank statements, settlement sheets and, most importantly, by tax return information which demonstrates certain historic information upon which Mr. Kopf has had to pay taxes. A closer investigation, if it resulted in any change (unlikely) to his historic catch figures, would result in an increase to those figures and an increase to the resultant claim.

(B) *Did all other off shore lobstermen remain in Point Judith after the spill? Were other arrangements made by lobstermen to go to other ports to market their catch? How difficult would it be for Mr. Kopf to arrange alternative markets for his catch? This, we believe, will be an important area to clarify as completely as possible.*

This is an unduly burdensome and wholly unreasonable set of questions. The fishing fleet at Point Judith was devastated by this massive oil spill and was further baffled by the confusing statements and inept leadership of regulators governing the fishing industry. Mr. Kopf has stated under oath that he could not pass through the closure area with his catch since he used a recirculating system to keep his catch alive. He has also stated that he was not licensed to land his catch in other states, or that the ports were closed or were simply too far away. Should he now be required to conduct a retrospective cost/benefit analysis of these

---

[1] Finally, we make it easier for victims of oil spills to recover for economic damages, natural resource damages, subsistence loss, and others. They can seek reimbursement from the spiller or directly from the $1 billion Federal trust Fund. The 1978 *Amoco Cadiz* spill off the coast of France was the biggest spill in history to come ashore. The litigation on that spill is still going on after 12 years, and not one penny in damages has been paid. This bill will make sure that doesn't happen. 136 Cong. Rec. H6935 (Aug. 3, 1990) (statement of Rep. Jones during adoption of conference report accompanying the Oil Pollution Act of 1990).

"alternative markets"? Is this what was anticipated by OPA? Should Mr. Kopf be required to establish what "all other off shore lobstermen" did in response to the Spill?

(C) *We will assist Mr. Kopf as much as we can, however, Mr. Kopf must provide the information and documentation necessary to support his claim that he could not go to his normal fishing grounds and could not market his catch if he did.*

Again, Mr. Kopf has provided "the information necessary to support his claim." If the claim is to be evaluated in the realm of absolute possibilities, then it is certainly possible that Mr. Kopf could have gone to his normal fishing grounds and that he could have marketed his catch if he did. But in the real world aftermath of this immense ecological disaster and the subsequent rumblings of the imminent reopening of the fishing grounds, Mr. Kopf determined in his professional judgment that this was not a reasonable course of action to follow. Simply put, Mr. Kopf's actions and his damages were the result of a catastrophe caused by the *North Cape* barge and did not somehow derive from his own failure to pursue a course proposed by others years after the fact.

Accordingly, we request that the claim of Bruce E. Kopf be resolved in an expedited fashion without requiring more pages of superfluous and unnecessary documentation and explanations not dreamed of under the Oil Pollution Act.

Thank you for your attention to this matter.

Very truly yours,

Peter N. McIsaac
Gregory P. Grimes, Environmental Project Mgr.

TURNABOAT SERVICES, LTD.,
OIL SPILL CLAIMS CENTER,
P.O. BOX 558,
Narragansett, RI 02882, May 9, 1997.

KIRKPATRICK & LOCKHART, LLP,
1800 Massachusetts Avenue, NW,
Second Floor,
Washington, DC 20036–1800.

RE: IN NORTH CAPE Oil Spill at Pt. Judith, Rhode Island
Bruce Kopf
Claim No. 4013–96422
Your file No. 3524–325

DEAR MS. RACLIN: We have reviewed the above claim file, received at our office on March 27, 1997.

The documentation provided does not support that Mr. Kopf sustained a loss as a result of the spill. Specifically, Mr. Kopf is an offshore lobsterman and the area where he fishes was never closed. Mr. Kopf was not precluded from mitigating his loss by landing his catch at other nearby fishing ports (e.g. Montauk, NY; Stonington, CT; Sakonnet, RI or Westport, MA).

Further, the records provided indicate that Mr. Kopf stopped fishing on December 31, 1995 as he shows no earnings for the first 3 weeks of January 1996. This appears to be consistent with his historical fishing practices since at least 1994.

Based on the above, we are not in a position to proffer a settlement at this time. If further information becomes available, we will gladly review it for possible reconsideration.

Thank you for your cooperation and patience.

Very truly yours,

MICHAEL L. COLLYER, *Staff Adjuster,*
Turnaboat Services, Ltd.

KIRKPATRICK & LOCKHART LLP
ONE INTERNATIONAL PLACE,
Boston, MA 02110, March 26, 1997.

MIKE COLLYER,
Turnaboat Services, Ltd.
Oil Spill Claims Center,
P.O. Box 558,
7 Pier Market Place,
Narragansett, RI 02882.

Re: Rhode Island Oil Spill

DEAR MR. COLLYER: As you know, Kirkpatrick & Lockhart LLP represents Bruce Kopf with respect to his claim for damages arising out of the oil spill which occurred on or about January 19, 1996 in Block Island Sound, Rhode Island.

Enclosed please find a partial claims package for Mr. Kopf containing all of the information necessary to state a valid claim for certain damages directly relating to the Rhode Island oil spill for the period January 19, 1996 through March 39, 1996, together with all the documentation and information Eklof Marine Corp. has requested to support a claim for partial damages. This partial claim does not include claims for reimbursement of the reasonable costs of assessing damages (e.g. accounting fees), attorneys' fees or, in some cases, certain other costs resulting from the oil spill. Mr. Kopf reserves the right to bring such claims in the future, as appropriate.

Included in this package you will find a form indicating that we have provided all the information Eklof Marine Corp. requires to support a claim for partial damages. As with all previous partial claims we submitted, we consider the information and documentation provided in these packages to be complete so as to trigger the 90 settlement period required by the Oil Pollution Act of 1990. See 33 U.S.C. § 2713 (c)(2)(claims not settled within 90 days after the date presented to the responsible party may be submitted to the Oil Spill Liability Trust Fund).

Please process this partial claim and then forward to us a breakdown sheet outlining the terms of your initial partial settlement offer.

If you have any comments or questions, please direct them to the undersigned at the address and phone number listed on this letter. We look forward to working with you to assure the prompt and efficient processing and payment of these partial claims.

Thank you for your anticipated cooperation.

Very truly yours,

THOMAS L. CROTTY, JR.,
ELIZABETH L. SMITH.

KIRKPATRICK & LOCKHART,
Washington, DC 20036, January 30, 1998

DANIEL SHEEHAN, *Director,*
National Pollution Funds Center,
4200 Wilson Boulevard., Suite 1000,
Arlington, VA 22203–1804.

Re: Claim on Behalf of Bruce E. Kopf for Damages from 1996 Rhode Island Oil Spill

DEAR MR. SHEEHAN: Kirkpatrick & Lockhart, LLP ("Kirkpatrick & Lockhart") submits this claim pursuant to 33 U.S.C. § 2713 (Supp. 1997) on behalf of Mr. Bruce E. Kopf for dear ages suffered in the 1996 Rhode Island Oil Spill. Mr. Kopf seeks partial damages of $23,762 for lost profits and earning capacity for the period January 19, 1996 through March 31, 1996. This claim does not include claims for lost long-term profits and earnings. Mr. Kopf reserves the right to bring such claims in the future.

The damages sought by Mr. Kopf are the result of a 1996 oil spill off the coast of Point Judith, Rhode Island. Point Judith is the third largest fishing port on the east coast and generates millions of dollars of revenue annually. On January 19, 1996, the North Cape Barge, a barge operated by Eklof Marine Corporation, ran aground and spilled over 800,000 gallons of oil into Block Island Sound, near Point

Judith. The spill required that the entire port be closed and millions of lobsters died as a result of the spill. The impact of the spill extended far beyond this direct area and is expected to impact the lobster and related population for years in the future. The local fishing community suffered significant property damage and loss of earning capacity as a direct result of the spill. Many of the fishing boats and other equipment have been damaged or destroyed. Mr. Kopf seeks partial damages for the lost profits and earnings for the period January 19. 1996 through March 29, 1996.

Mr. Kopf presented this claim for short term lost earnings, to Turnaboat Services, Ltd. ("Turnaboat"), the insurance company for Eklof Marine Corporation on March 26, 1997. On May 9, 1997, Turnaboat denied Mr. Kopf s claim for partial damages.

In accordance with 33 C.F.R. § 136.215, enclosed are the following documents in support of Mr. Kopf's claim for property damages:

3 . A copy of representation letter granting Kirkpatrick it: Lockhart the authority to file this claim on behalf of Mr. Kopf (Exhibit A);

2. A copy of the National Pollution Funds Center Standard Claim Form (Exhibit B);

3. Affidavit of Bruce E. Kopf (Exhibit C);

4. Identification information for Mr. Kopf (Exhibit D);

5. A copy of the 1996 tax returns for Bruce E. and Dorothy M. Kopf (Exhibit E);

6. A copy of the claim submitted to Turnaboat on March 26, 1997, including tax returns and other financial statement (Exhibit F); and

7. A copy of communications between Mr. Kopf and Turnaboat Services, Ltd. (Exhibit G).

Please do not hesitate to contact the undersigned if you have any questions regarding this matter. Thank you for your prompt attention to this matter.

Respectfully submitted,

BARRY M. HARTMAN, ESQ.
THOMAS F. HOLT, JR., ESQ.
GREGORY P. GRIMES, *Environmental Project Manager.*
Kirkpatrick & Lockhart, LLP

U.S. DEPARTMENT OF TRANSPORTATION,
UNITED STATES COAST GUARD,
NATIONAL POLLUTION FUNDS CENTER,
Arlington, VA 22203–1804, 25 February 1998.

BRUCE E. KOPF,
One International Place,
Boston, MA 02110–2637.

RE: Claim Number 016203–003
T/B NORTH CAPE oil spill

DEAR MR. HOLT: This is in response to the loss of profits and earning capacity claim submitted by Mr. Bruce E. Kopf, arising from the T/B *North Cape* oil spill. The National Pollution Funds Center (NPFC) intends to hire, in accordance with Federal Government contracting regulations, a private claims adjusting company to adjust this claim. Once the NPFC has hired a claims adjusting company, I will immediately notify you of the name of the company and a point-of-contact person.

The Claims Regulations requires that each claim must be signed in ink by the claimant certifying to the best of the claimant's knowledge and belief that the claim accurately reflects all material facts (33 CFR 136.105(c)). The standard claim form signed by Mr. Kopf appears to be a copy and not the signed original. Please provide the NPFC with the signed, original standard claim form. We also note that Mr. Kopf's claim package includes unsigned Federal tax returns. As we noted in a letter to Kirkpatrick & Lockhart on 11 September 1997, we require copies of tax returns that have been signed by the claimant.

If you have any questions or would like to discuss this matter, you may write me at the above address or contact me by phone at (703) 235–4793.

Sincerely,

ERNIE WORDEN, *Claims Manager.*

KIRKPATRICK & LOCKHART,
Washington, DC 20036, March 9, 1998

ERNIE WORDEN, *Claims Manager,*
National Pollution Funds Center,
4200 Wilson Boulevard, Suite 1000,
Arlington, VA 22203–1804.

Re: T/B NORTH CAPE Oil Spill

DEAR MR. WORDEN: Per your request in letters dated February 25 and 26, 1998, please find the signed, original, standard claim forms to the NPFC for the following:

1. Claim Number 016203–008, Mr. Bruce E. Kopf
2. Claim Number 016203–009, Mr. Charles Follett dba Cindy-Bet, Inc.
3. Claim Number 016203–010, Mr. James D. Patterson
4. Claim Number 016203–011, Fran Dek, Inc.

If additional information or clarification is needed, please do not hesitate to contact the undersigned.

Sincerely,

BARRY M. HARTMAN, ESQ.
THOMAS F. HOLT, JR., ESQ.
GREGORY P. GRIMES, *Environmental Project Manager.*

JOHN P. KELLY & ASSOCIATES,
117 KENTUCKY STREET,
Vallejo, CA 94590, March 25, 1998.

GREGORY P. GRIMES, *Environmental Project Manager,*
Kilpatrick & Lockhart, LLP
One International Place
Boston, MA 02110–2637

Re: Bruce Kopf
North Cape Oil Spill
NPFC 016203–008

DEAR MR. GRIMES: We have been asked by the National Pollution Fund Center to investigate Bruce Kopf's claims for damage as a result of the North Cape Oil Spill.

As we discussed, please provide the all the claims document that were sent to Turnaboat Services, Ltd. Also, please provide any other information you feel will document your client's claim.

We look forward to working with you in this matter.

Regards,

JOHN P. KELLY,
John P. Kelly and Associates

KIRKPATRICK & LOCKHART, LLP,
Boston MA, March 26, 1998.

JOHN P. KELLY & ASSOCIATES
117 Kentucky Street
Vallejo, CA 94590.

Re: North Cape Oil Spill Bruce E. Kopf NPFC Claim Number 016903–008

DEAR JOHN: Per our conversation of March 95, 1998, it is my understanding that your firm will be evaluating the Fund submittal of Bruce E. Kopf for the National Pollution Fund Center. Per your request, please find enclosed a copy of the entire Fund submittal for Mr. Kopf.

I look forward to working with you on this matter.

Cordially,

GREGORY P. GRIMES, *Environmental Project Manager.*

JOHN P. KELLY & ASSOCIATES,
117 KENTUCKY STREET,
Vallejo, CA 94590, March 25, 1998.

GREGORY P. GRIMES, *Environmental Project Manager,*
Kilpatrick & Lockhart, LLP
One International Place
Boston, MA 02110–2637

Re: Bruce Kopf
North Cape Oil Spill
NPFC 016203–008

DEAR MR. GRIMES: We have reviewed the documents provided by Berry Kopf through you.

After reviewing The Affidavit of Bruce E. Kopf, we believe it necessary to request additional information from Mr. Kopf.

1. We wish to request documentation that Mr. Kopf's vessel actually needed to use circulating sea water.
2. We need to determine and confine Mr. Kopf's normal fishing area with maps or charts.
3. We need documentation of the amount and value of Mr. Kopf's landings by month for 1993–94–95.
4. We need documentation of the type of repairs to Mr. Kopf's vessel, the location of the repair facility and when the repairs were to be completed.
5. We need documentation of Mr. Kopf's intention to resume fishing in late January 1996.
6. We need documentation of the areas closed.
7. We need to know why the water circulation system could not be turned off while heading to Mr. Kopf's fishing areas.
8. We need to know why it was necessary to pass through the closed areas to deliver caught lobsters to an open port.
9. Please provide documentation of the sale of the Fishing Vessel *Spartan.*

After we receive this information, we may have further questions. We believe that these questions will provide essential information regarding this claim.

If you have any questions please contact us.

Regards,

JOHN P. KELLY,
John P. Kelly & Associates.

KIRKPATRICK & LOCKHART,
ONE INTERNATIONAL PLAZA,
Boston, MA 02110, April 27, 1998.

JOHN P. KELLY & ASSOCIATES,
117 Kentucky,
Vallejo, California 94590.

Re: TIB North Cape Oil Spill
Claim No. 01690–008
Claimant: Bruce E. Kopf

DEAR MR. KELLY: The following information is provided in response to your letter request for additional information dated April 10, 1998, and is answered by numbered paragraph.

1. It is the understanding of Mr. Kopf that circulating sea water is used on all lobster boats on the East Coast. It is the only way that lobsters are kept other than some boats which have refrigerated salt water systems. This occurs maims on vessels fishing lone trips or vessels catching red crabs.

The *F/V Spartan* is outfitted with three salt water pumps. The main pump is 4 inches and runs organ auxiliary engine. The other two smaller pumps run off the main engine. It is especially necessary to have circulating seawater in sub-freezing temperatures as the lobsters drop their claws under those conditions. Attached at Exhibit A please find documentation regarding the sale of the *F/V Spartan* to Violet Fish & Trap Corporation. If additional information to verify the existence or use of the circulating system is necessary. please feel free to contact the existing owner.

When there were lobsters on board from fishing. the circulating system served the following functions.

(a) It provided for a constant replenishment of oxygen for the lobsters and allowed for the dispersion of wastes (primarily: nitrogenous compounds) from the lobsters

stored on board: these lobsters were caught at a considerable distance off-shore and were densely packed and subjected to a long period of transport; the recirculating system was essential for their survival:

(b) In the winter. it provided an environment for the successful storage and transport of the lobsters without freezing; and

(c) The water served to cushion the impact of the massed lobsters on each other.

2. As stated in the Affidavit of Bruce E. Kopf, which was part of the Fund submittal. the fishing area for Mr. Kopf for the past 10 years was in an area about 80 miles south/southwest of Block Island to just north of Hudson's Canyon. See Exhibit B. which is a chart outlining the fishing grounds of the *F/V Spartan*, and Exhibit C, which is Mr. Kopf s trip log of his last trip to the "dumping grounds" prior to the Spill.

3. Exhibit D contains the following information responsive to this request:

(a) 1993 and 1994 Statement of Accounts for the *F/V Spartan;* and

(b) 1995 settlement sheets

(Note: Mr. Kopf was unable to locate all of the bank statements and settlement sheets responsive to your request [namely, 5/93, 12/93 and 8194 Statement of Accounts, and 3/95–6/95 settlement sheets]. However, the underlying claim submitted to Turnaboat, provided as Exhibit F in the claim to the Fund, is for damages solely for the period of January 19, 1996 to March 99. 1996. That submittal included the financial information required by Turnaboat, namely, bank statements for January, February, March, October, November and December, 1995).

4. As stated in his Affidavit, Mr. Kopf was making the repairs to his boat in early January 1996. The repairs were made at dockside and included replacing all deck lighting, plumbing and main pump replacement with spare, wiring upgrades, engine repairs and general maintenance. These repairs were made by Mr. Kopf and Carr Marine. See Exhibit E for copies of repair receipts. Note that Mr. Kopf effected the repairs prior to the Spill and was awaiting a favorable weather forecast to resume fishing.

5. Documents provided in the underlying claim clearly evidence that Mr. Kopf had fished in January 1995 and January 1994, as well as December 199 . The only reason Fir. Kopf was not fishing in January prior to the Spill was the aforementioned need to perform some maintenance on his boat. Said repairs were completed prior to the Spill.

6. The following information documenting the areas closed to fishing as a result of the Spill can be found at Exhibit F

(a) Barge North Cape Incident Fisheries Closures Prepared by Rhode Island Department of Environmental Management, Department of Health 23 January 1996.

(b) Federal Register Closure Notices dated 2/1/96, 3/19/96, 4/15/96, 5/6/96, 6/3/96 and 6/05/96.

7. At the time of the Spill on January 19, 1996 Mr. Kopf's Fishing Vessel *Spartan* was docked at Point Judith. In order to reach his off-shore fishing grounds after the Spill, Mr. Kopf would have had to travel through polluted waters which were closed to fishing. Theoretically, Mr. Kopf's vessel could operate with, or without. the use of circulating sea water. However, that is theory. In practice Mr. Kopf would only travel with the catch hold full of water since the weight of the water was necessary for the proper stabilization of the vessel. If Mr. Kopf had attempted to travel from port and through the closed waters with an empty catch hold. he would have been bounced around and experienced a particularly uncomfortable ride. Furthermore. if successful in traveling through the closure areas with a dry hold, Mr. Kopf would then have had to fill the system at sea a practice which could have damaged the baffles within the hold.

8. When Turnaboat denied the Kopf claim. they noted that he could have landed his catch at Montauk, NY, Stonington, CT. Sakonnet. Ri or Westport. MA. This was simply not the case for the following reasons:

Montauk, NY was closed for the winter; more importantly. Mr. Kopf no longer possessed a valid New York Landing Permit which would have allowed him to offload his vessel in a New York port;

Stonington, CT is over 90 miles south of Mr. Kopf's home port at Point Judith; in addition to this port being unreasonably out of the way (extended travel time and fuel costs), Mr. Kopf had never sailed to this port, had no knowledge of the shoreside facilities. indeed, did not even know if a shoreside facility at this location would be geared to handle his volume or if he could be fairly compensated for his catch at this location. Most importantly, Mr. Kopf did not possess a Landing Permit to be able to offload in Connecticut:

Westport, MA could only be reached by traversing completely around the closure area. a course unreasonably far removed from his fishing grounds. In addition. Mr. Kopf did not possess a Landing Permit for Massachusetts; and

Sakonnet, RI could only be reached by traversing completely around the closure area. a course unreasonably far removed from his fishing grounds and his home port. Furthermore, Mr. Kopf does not believe that the port facilities in Sakonnet, RI would have been able to accommodate his 70-foot vessel.

9. See Exhibit A.

Please call if you need further clarification on any of the above.

Cordially,

PETER N. MCISAAC. ESQ.
GREGORY P. GRIMES, *Environmental Project Manager.*

National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
(703) 235-4764 or (800) 280-7118

Standard Claim Form
Page 1

This form may be used for submitting claims to the U.S. Coast Guard, National Pollution Funds Center, for potential compensation from the Oil Spill Liability Trust Fund for uncompensated removal costs or damages resulting from an incident under the Oil Pollution Act of 1990.

1. **Claimant Name:** Bruce E. Kopf
   Address: 85 Sandhill Cove Road
   Narragansett, RI 02882
   Social Security #: 036-28-1458 Home Tel.#: (401) 782-6017
   Tax I.D.#: _____ Work Tel.#: ( ) _____

2. **Incident Information:**
   Date: January 19, 1996 Time: _____
   Name of vessel or facility causing damage: North Cape Barge (owned by Eklof Marine Corp.)
   Geographic location of incident: Off the Coast of Point Judith, Rhode Island
   Brief description of the incident: The North Cape Barge ran aground and spilled about 800,000 gallons of oil into Block Island Sound near Point Judith

3. **Type(s) of claim(s) and total amount for costs and damage(s) claimed:** $ 23,762
   ___ Removal Costs ___ Subsistence Use _x_ Profits and Earning Capacity
   ___ Natural Resources ___ Public Services
   ___ Government Revenue ___ Real or Personal Property

4. **Has claimant communicated with the responsible party?** ☐ No ☒ Yes

5. **Has the claim been submitted to the responsible party?** ☐ No ☒ Yes Date Submitted 03/26/97

6. **If the claim has been submitted to the responsible party, what action has been taken?** _____
   No Action ____ Denial X Paid in Part ____ Other (explain): _____
   Claim was denied by Turnaboat on 05/09/97.

7. **Has claimant commenced any action in court against the responsible party?** ☒ No ☐ Yes
   If yes, provide the name, address, phone number of your attorney, the court in which action is pending, and the civil action number: _____

8. **Has claimant submitted or planned to submit the loss to an insurer?** ☒ No ☐ Yes
   If yes, provide the name, address, and phone number of the insurer, and the policy number: _____

National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
(703) 235-4764 or (800) 280-7118

Standard Claim Form
Page 2

Submit a separate Page 2 for each type of claim. Attach additional information as necessary.

9. Claimant Name: Bruce E. Kopf
Soc. Sec.# 036-28-1458 Tax I.D.# _____

10. Type of claim submitted and claim amount: $ 23,762.00
___ Removal Costs
___ Natural Resources
___ Government Revenue
___ Subsistence Use
___ Public Services
___ Real or Personal Property
_X_ Profits and Earning Capacity

11. Description of the nature and extent of damages claimed: See Exhibits C and F (attached)

12. Description of how the incident caused the damage: See Exhibits C and F (attached)

13. Description of actions taken by claimant/representative to avoid or minimize damages:
See Exhibits C and F (attached)

14. Witnesses:
Name: Bruce E. Kopf Tel. No. (401) 782-6017
Address: 85 Sandhill Cove Road
Narragansett, RI 02882
Name: Dorothy M. Kopf Tel. No. (401) 782-6017
Address: 85 Sandhill Cove Road
Narragansett, RI 02882
Name: _____ Tel. No. _____
Address: _____

I, the undersigned, agree that upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim or action by the United States to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing to the Fund any compensation received from any other source for the same costs and/or damages and, providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover such compensation.

I, the undersigned, certify that, to the best of my knowledge and belief, the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under Federal law (including but not limited to 18 U.S.C. 287 and 1001).

15. Bruce E. Kopf 11/27/1993 Claimant's Signature Date
16. [signature] Jr. 3/5/98 Legal Representative Date

8/93

John P. Kelly & Associates
117 Kentucky Street
Vallejo, California 94590

phone (707) 552-0636
(800) 522-0333
fax (707) 552-7266

May 22, 1998

Gregory P. Grimes
Environmental Project Manager
Kirkpatrick & Lockhart, LLP
One International Place
Boston, Ma 02110-2637
Fax: (617) 261-3175

Re: T/B North Cape Oil Spill
Claim #: 016203-008
Claimant: Barry Kopf

Dear Mr. Grimes:

We have reviewed the documents provided by Berry Kopf through you. We have some additional questions we would like Mr. Kopf to answer.

We would like to know when the repairs were completed. The repair documents indicate the work was not completed until January 30, 1998, see the purchase order dated Jan 30/96. This appears to be work done by Carr Marine, based on the Boat Spartan check #9067 dated February 7, 1996 for the same amount, $373.93.

The invoice from Rhode Island Engine Co. does not refer to specific repairs. Please advise to what repairs does this invoice refer. This invoice has no date or reference.

Boat Spartan check # 9051 to R I Engine does not match any invoice. Please advise to which invoice this is for.

The invoice from Major Electric Supply Inc. dated 12-12-95 appears to be only part of the invoice. The items do not add up to the total. To what repairs does this invoice refer.

Re: T/B North Cape Oil Spill
Claim #: 016203-008
Claimant: Barry Kopf
May 22, 1998
Page2

The invoice from salt Pond Marine dated 11/30/95 appears to be for work under invoice #802 dated 10/31/95. To what repairs does this invoice refer.

Please provide the phone number for Carr Marine or how we can contact them.

We are providing RGI Gallagher's letter of May 7, 1998 regarding documents and information we require to evaluate the economic loss. Please request this information from Mr. Kopf.

To whom did Mr. Kopf sell his catch? Please provide the names and how we might contact them. Did Mr. Kopf have any agreements to sell to specific brokers or processors.

Did all other off shore lobstermen remain in Port Judith after the spill? Were other arrangements made by lobstermen to go to other ports to market their catch? How difficult would it be for Mr. Kopf to arrange alternative markets for his catch? This, we believe, will be an important area to clarify as completely as possible.

We will assist Mr. Kopf as much as we can, however, Mr. Kopf must provide the information and documentation necessary to support his claim that he could not go to his normal fishing grounds and could not market his catch if he did.

If you have any questions, please contact us.

Regards,

John P. Kelly & Associates

John P. Kelly
Enclosures:
CC: Ernie Worden, NPFC
Harvey Hartsfield, D. H. Lloyd

RGL GALLAGHER LLP
Certified Public Accountants

300 Montgomery St., Suite 1200
San Francisco CA 94104

Tel: 415/956 8323
Fax: 415/956 1405

May 7, 1998

Mr. John P. Kelly
John P. Kelly & Associates
117 Kentucky Street
Vallejo, CA 94590

Re: Claimant: Bruce Kopf (North Cape Oil Spill)
Loss Type: Lost Profits
Loss Date: January 19, 1996
Claim No. 6013-96-422
RGL File No. SF-0094790

Dear Mr. Kelly:

We have reviewed the additional documentation you provided in connection with the captioned matter, which includes:

Fleet Bank monthly bank statements for the following periods:
- January through April 1993,
- June through September 1993,
- April through July 1994, and
- September 1994
- Some additional settlement sheets.

We have not yet received the following documents:

Fleet Bank monthly bank statements for:
- May 1993,
- August 1994, and
- January through December 1996

Settlement sheets for 1993 through 1996 that have not been provided to date.

In addition, please provide answers or explanations to the following:
- Have all settlement sheets been provided to us? How often is one produced?

- Please provide the dates for the attached settlement sheets. Please note that these settlement sheets were included in the package you sent to us on May 5, 1998.

- Why are January 19 through March 29, 1995, gross sales significantly lower than those for the same period in 1994 and 1993? Please refer to the "Analysis of Gross Fishing Sales" summary that was attached to our April 28, 1998 letter to you.

We request that once the above information is available, please mail it to our office at the above address.

We trust the foregoing comments are clear. However, should you have any questions, please contact the undersigned or Marisa Chang.

Very truly yours,

RGL GALLAGHER LLP

Michael Diliberto III, CPA

New but no date!

SPARTAN DATE

TRIP STOCK

6226.52 CHAMPLINS

843.45 Osprey

GROSS STOCK 7069.97

EXPENSES; 155.91 S+S

7.45 Belmont

FOOD 2.28 Cumberland

ICE 55.00

FUEL 300.00

BAIT 300.00

BAIT PREP 185.00

SALT 36.00

OIL-FILTERS 130.00

PHONE

Shore Labor

MISC. 300.00

TOTAL TRIP EXPENSES 1471.64

2799.17

2/5598.33

BOAT 2799.17

GROSS STOCK 7069.97

-TRIP EXPENSES 1471.64

5598.33

X_____ SHARE RATE

_____ CREW SHARE

5598.33

Jim 10%

559.83

5598.33

Dale 8%

447.87

5598.33

Reserve 10%

559.83

5598.33

Frank 7%

391.88

5598.33

Bruce 15%

839.75

SPARTAN DATE

TRIP STOCK	9,937.60
	1,478.75
GROSS STOCK	11,416.35

EXPENSES;	
FOOD	161.97
ICE	66.00
FUEL	421.40
BAIT	400.00
BAIT PREP	358.00
SALT	42.00
OIL-FILTERS	130.00
PHONE	
MISC.	300.00
TOTAL TRIP EXPENSES	1879.37

~~1,[illegible]~~
4768.47
2/ 9,536.98

GROSS STOCK	11,416.35
-TRIP EXPENSES	1,879.37
	9,536.98
Jim	x 13% SHARE RATE
	1239.81 CREW SHARE

9536.98 9536.
Mike's Trans. 8% Brod. 20%
Turner 762.96 1907.4

9536.98
Reserve 9~~0~~%
~~9,[illegible]~~
858.32

KIRKPATRICK & LOCKHART LLP

ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2637

TELEPHONE (617) 261-3100
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GREGORY P. GRIMES
(617) 261-3171
GRIMESGP@KL.COM

June 19, 1998

Mr. Bruce E. Kopf
85 Sandhill Cove
Narragansett, RI 02882

Dear Bruce:

On June 17, 1998 Peter McIsaac of this office and I had an extended teleconference with representatives of the National Pollution Fund Center ("NPFC"), jointly with John P. Kelly, the adjustor hired by the NPFC to evaluate your claim. The purpose of the conference was to attempt to expedite and finalize your claim. While we were able to address some of the lingering concerns of the NPFC and Mr. Kelly, we agreed to try to produce the following materials to end their evaluation:

I. Settlement Sheets

Mr. Kelly has requested all of the settlement sheets for 1993, 1994 and 1995. The purpose of this request was to allow Mr. Kelly to determine the historic trends of your fishery. Mr. Kelly would like to conduct that evaluation even though we have informed him that some of your catch was conducted on a cash basis without the use of settlement sheets.

Requested	Submitted to date	Needed
1993	Oct, Nov, Dec	Jan through Sep
1994	Jan, Feb, Mar, Oct, Nov, Dec	Apr through Sep
1995	Jan, Feb, Oct, Nov, Dec	Mar through Jun

Please provide the "Needed" documents, or if you are unable to find them or they have been discarded, please let me know and I will inform Mr. Kelly.

II. Bank Statements

Mr. Kelly has a similar request for Bank Statements for 1995 and 1996:

Requested	Submitted to date	Needed
1995	Jan, Feb, Mar, Oct, Nov, Dec	Apr through Sep
1996	none	Jan through Dec

In terms of the 1995 figures, Mr. Kelly is seeking an explanation as to why the catch for January through March of 1995 was significantly less than the same time period during 1993 and 1994. It is my understanding that the low catch in the first quarter of 1995 was due simply to bad luck and the normal ups and downs of the fishery. Please confirm this answer or provide any additional explanation that you may have.

As far as 1996 is concerned, Mr. Kelly wants to verify that the fishing income that you reported in 1996 was from your skiff and did not entail the F/V Spartan. Mr. Kelly appears to be raising this issue since your 1996 Schedule C lists the business name as "F.V. Spartan" and indicates gross receipts of $26,043. Please confirm that the $26,043 was for income from your skiff.

III. Cash Transactions

Mr. Kelly would like to verify, if possible, a representative sampling of your cash transactions. Did you have any regular customers who bought from you on a cash basis? If so, please provide a few select names and phone numbers so that Mr. Kelly can call and verify this practice. Alternatively, if your cash sales were to tourists or other incidental customers, please let me know and I will inform Mr. Kelly.

IV. Other Offshore Lobstermen

If you know, please provide me with any information you may have concerning what the other offshore lobstermen at Point Judith did in response to the Spill. Do you know of any others who stayed in port? If some went to their fishing grounds despite the Spill, how did they land their catch? Did they go to alternate ports? If so, are there any circumstances that would have prevented you from doing the same thing?

Do you know if any others chose to traverse the closed area with their catch and who shut down their recirculating system? Did these fishermen lose some or all of their catch due to freezing?

I realize that we have gone through much of the above concerns of Mr. Kelly before and I appreciate your patience with their bureaucratic attention to details. Please call me at the above number after you have had the opportunity to review this letter so that we can discuss your answers to all of the above.

Cordially,

Greg Grimes

Gregory P. Grimes
Environmental Project Manager

John P. Kelly & Associates
117 Kentucky Street
Vallejo, California 94590

phone (707) 552-0636
(800) 522-0333
fax (707) 552-7266

June 24, 1998

Gregory P. Grimes
Environmental Project Manager
Kirkpatrick & Lockhart, LLP
One International Place
Boston, Ma 02110-2637
Fax: (617) 261-3175

Re: T/B North Cape Oil Spill
Claim #: 016203-008
Claimant: Barry Kopf

Dear Mr. Grimes:

I would like to confirm with you what was agreed in the telephone conference of 6-17-98 with yourself, Mr. Peter McIsaac of your law firm, and Mr. Donald Calkins, Mr. Ernie Worden, and Mr. Matthew Merriman of the NPFC.

1. Mr. Kopf will supply all of the settlement receipts available for 1994, and 1995.
2. Mr. Kopf will supply the monthly bank statements for 1995 and 1996.
3. Mr. Kopf will supply an explanation for the decline in income for January, February, and March of 1995.
4. I will follow up with the boat repair companies regarding the repairs to the F/V Spartan.
5. Mr. Kopf will provide the names and telephone numbers of the major customers who purchased lobsters on a cash basis.
6. You would provide to the NPFC a copy of your April 27, 1998 letter to me with attached news articles. (The NPFC has received this information.)

If you have any corrections regarding this summery please contact me.

Regards,
John P. Kelly & Associates

John P. Kelly
CC. Ernie Worden, NPFC

John P. Kelly & Associates
117 Kentucky Street
Vallejo, California 94590

phone (707) 552-0636
(800) 522-0333
fax (707) 552-7266

July 29, 1998

Paul Carr
Carr Marine
Fax 401-782-6500

Re: T/B North Cape Oil Spill
Claim #: 016203-008
Claimant: Barry Kopf

Dear Mr. Carr:

We have been asked by the National Pollution Funds Center to investigate Barry Kopf's claim for damages as a result of the North Cape Oil Spill.

As part of our investigation we wish to verify the type of repairs that were being done to Mr. Kopf's boat and the time your portion of the repairs began and ended. Also please verify where the repairs were taking place, dock side or in dry dock.

You can call us at the above telephone Numbers or in the evenings, Pacific time, at 707-552-3358

This information will speed the resolution of Mr. Kopf's claim. Thank you in advance.

Regards,

John P. Kelly & Associates

John P. Kelly

John P. Kelly
CC: Gregory Grimes, Kirkpatrick & Lockhart
Ernie Worden, NPFC

John P. Kelly & Associates
117 Kentucky Street
Vallejo, California 94590

phone (707) 552-0636
(800) 522-0333
fax (707) 552-7266

July 29,1998

Gregory P. Grimes
Environmental Project Manager
Kirkpatrick & Lockhart, LLP
One International Place
Boston, Ma 02110-2637
Fax: (617) 261-3175

Re: T/B North Cape Oil Spill
Claim #: 016203-008
Claimant: Barry Kopf

Dear Mr. Grimes:

We have not yet received the information that was agreed to during the telephone conference of 6-17-98. Our summery of June 24, 1998 listed the items that your office would supply. We are enclosing a copy for your convenience.

Please advise if there are any problems obtaining the agreed documents.

Regards,
John P. Kelly & Associates

John P. Kelly

Enclosure:
CC. Ernie Worden, NPFC

KIRKPATRICK & LOCKHART LLP

PETER N. MCISAAC
(617) 261-3225
mcisaapni@kl.com

GREGORY P. GRIMES
(617) 261-3171
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www.kl.com

August 25, 1998

John P. Kelly & Associates
117 Kentucky Street
Vallejo, California 94590

re: T/B North Cape Oil Spill
Claim No. 016203-008
Claimant: Bruce E. Kopf

Dear Mr. Kelly:

The following additional information is provided for consideration in your review of the above claim:

I. Bank Statements

1. Statement of Accounts for 1995 dated 3/31/95-9/29/95; (the balance of the year's Statements were included in the underlying claim submittal); and

2. Statement of Accounts for 1996 dated 1/31/96-11/29/96.

Note: Although the 1996 Statement of Accounts lists the "Boat Spartan" as the source of deposits, credits, etc., Mr. Kopf states that neither he nor his accountant bothered to change the account title and that the account in 1996 did not include any fishing income from the F/V Spartan.

II. Explanation for low first quarter 1995 income

Mr. Kopf believes that the low catch rate during this time period resulted from unusually heavy domestic fishing dragger traffic working in the area containing his lobster trawls. These draggers had been displaced due to closures of other areas that had taken place in preceding years. The draggers were often unfamiliar (or uncaring) with the distribution of offshore lobster gear fixed in the area. Although Mr. Kopf did not lose gear to draggers during the first quarter of 1995 (he lost gear shortly thereafter), the draggers would affect the lobster

catch by their scouring of the sea floor which resulted in the suspension of particulates over a wide area. This had the deleterious effect of minimizing the lobster catch until the area had recovered from the intrusion of the draggers.

In addition to the impacts of draggers described above, Mr. Kopf attributes the low first quarter catch to poor fishing luck. He noted that in the succeeding year, 1996, lobstermen working the area experienced exceptional catches.

Please call if you need further clarification on any of the above.

Cordially,

Peter N. McIsaac, Esq.
Gregory P. Grimes, Environmental Project Manager

John P. Kelly & Associates
117 Kentucky Street
Vallejo, California 94590

phone (707) 552-0636
(800) 522-0333
fax (707) 552-7266

November 30, 1998

Gregory P. Grimes
Environmental Project Manager
Kirkpatrick & Lockhart, LLP
One International Place
Boston, Ma 02110-2637
Fax: (617) 261-3175

Re: T/B North Cape Oil Spill
Claim #: 016203-008
Claimant: Barry Kopf

Dear Mr. Grimes:

We have not yet received all the settlement receipts for 1994 and 1995 that was agreed to during the telephone conference of 6-17-98. Our summery of June 24, 1998 listed the items that your office would supply. We are again enclosing a copy for your convenience.

Please advise if there are any problems obtaining the agreed documents.

Regards,
John P. Kelly & Associates

John P. Kelly

John P. Kelly & Associates
117 Kentucky Street
Vallejo, California 94590

phone (707) 552-0636
(800) 522-0333
fax (707) 552-7266

June 24, 1998

Gregory P. Grimes
Environmental Project Manager
Kirkpatrick & Lockhart, LLP
One International Place
Boston, Ma 02110-2637
Fax: (617) 261-3175

Re: T/B North Cape Oil Spill
Claim #: 016203-008
Claimant: Barry Kopf

Dear Mr. Grimes:

I would like to confirm with you what was agreed in the telephone conference of 6-17-98 with yourself, Mr. Peter McIsaac of your law firm, and Mr. Donald Calkins, Mr. Ernie Worden, and Mr. Matthew Merriman of the NPFC.

1. Mr. Kopf will supply all of the settlement receipts available for 1994, and 1995.
2. Mr. Kopf will supply the monthly bank statements for 1995 and 1996.
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5. Mr. Kopf will provide the names and telephone numbers of the major customers who purchased lobsters on a cash basis.
6. You would provide to the NPFC a copy of your April 27, 1998 letter to me with attached news articles. (The NPFC has received this information.)

If you have any corrections regarding this summery please contact me.

Regards,
John P. Kelly & Associates

John P. Kelly
CC. Ernie Worden, NPFC