

U.S. DEPARTMENT OF COMMERCE

+ + + + +

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION

+ + + + +

MARINE FISHERIES ADVISORY COMMITTEE

+ + + + +

TUESDAY,

JUNE 29, 2010

+ + + + +

The Marine Fisheries Advisory Committee met in the Prospector Hotel, 375 Whittier Street, Juneau, Alaska at 8:30 a.m., Alaskan Standard Time, Tom Billy, Chair, presiding.

MEMBERS PRESENT:

- TOM BILLY, Chair
- HEATHER D. McCARTY, Vice Chair
- TERRY ALEXANDER
- RANDY CATES
- ANTHONY CHATWIN
- PAUL CLAMPITT
- PAMELLA J. DANA
- BILL DEWEY
- EDWIN A. EBISUI, JR.
- MARTIN FISHER
- KENNETH FRANKE
- CATHERINE L. FOY
- STEVE JONER
- GEORGE C. NARDI
- TOM RAFTICAN
- KEITH RIZZARDI
- DAVID WALLACE

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

CONSULTANTS TO MAFAC:

RANDY FISHER
VINCENT O'SHEA

STAFF PRESENT:

MARK HOLLIDAY, Designated Federal Official
ERIKA AMMANN
JAMES BALSIGER
JON KURLAND
JAMES LECKY
HEIDI LOVETT
KARI MacLAUCHLIN
PHIL MUNDY
STEVE MURAWSKI (via teleconference)
JEEP RICE
ERIC SCHWAAB
ROB WOLOTIRA

ALSO PRESENT:

HEATHER BRANDON
BILL BROWN
TOM GEMMELL
STEPHANIE MADSON
MARY McDOWELL
PHIL MUNDY
ARNI THOMSON

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

C-O-N-T-E-N-T-S

WELCOME:

Tom Billy, Chair	4
Eric Schwaab, Asst. Administrator ..	4/8
Jim Balsiger	6

<u>INTRODUCTIONS:</u>	16
-----------------------------	----

REVIEW OF ACTION ITEMS:

Tom Billy, Chair	17
------------------------	----

DEEPWATER HORIZON - PART IOverview/Status of Oil Spill:

Eric Schwaab.....	21
-------------------	----

Science Enterprise:

Steve Murawski.....	33
---------------------	----

Questions:.....	63
-----------------	----

Regulatory Responsibilities:

Jon Kurland.....	106
------------------	-----

Jim Lecky.....	120
----------------	-----

Questions:.....	137
-----------------	-----

DEEPWATER HORIZON - PART II:Natural Resources Damage Assessments:

Robert Wolotira, NMFS.....	173
----------------------------	-----

Questions:.....	192
-----------------	-----

Fishery Disaster Declarations:

Eric Schwaab.....	205
-------------------	-----

Questions:.....	207
-----------------	-----

Lessons Learned from Exxon Valdez:

Jeep Rice, NMFS.....	212
----------------------	-----

Questions:.....	255
-----------------	-----

<u>SUBCOMMITTEE MEETINGS DISCUSSION:</u>	318
--	-----

ADJOURN:

Keith Rizzardi	401
----------------------	-----

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 P-R-O-C-E-E-D-I-N-G-S

2 8:34 a.m.

3 CHAIR BILLY: Good morning,
4 everyone. It's my pleasure to open another
5 meeting of the MAFAC Committee. I have really
6 been looking forward to this meeting, not only
7 because of the venue, but also there are a
8 number of very important issues that I believe
9 require and deserve our attention in our role
10 as advisors to the Secretary of Commerce,
11 NOAA, and NOAA Fisheries.

12 It's also a pleasure this morning
13 to, at the start, turn the meeting over to a
14 former member, Eric Schwaab, who is now the
15 Assistant Administrator for the National
16 Marine Fisheries Service and provide him an
17 opportunity to give some opening remarks.
18 Eric?

19 MR. SCHWAAB: Thank you, Tom.
20 Good morning, everyone. It's a great pleasure
21 to be with you in a new capacity. There are a
22 few new faces on the Committee since I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 departed, but for many of you I spent a good
2 bit of time sitting where you sit. So it is
3 first and foremost, I think, important for me,
4 knowing what you go through to participate in
5 these meetings, the preparation that is
6 involved and the engagement that we ask of you
7 to thank you for everything that you do for us
8 in NOAA Fisheries, across NOAA, and up through
9 the Department of Commerce.

10 You know, I also wanted to say at
11 the outset and I haven't had the opportunity
12 lately to do this, but it's the first time I
13 have had the opportunity to do this in front
14 of this group is to again acknowledge Dr. Jim
15 Balsiger who, I think, --

16 (Applause.)

17 MR. SCHWAAB: -- seems reasonably
18 happy to be back here in Juneau and seems
19 reasonably happy to be not sitting in this
20 seat, but, from my perspective, you know, Jim
21 was an important part of my movement into this
22 seat and an important part of, I think, my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 transition in the early days of my tenure as
2 the Assistant Administrator for Fisheries.

3 And so I want to take this
4 opportunity, particularly in front of this
5 group, particularly in this place, to thank
6 Jim not only for, you know, his service in his
7 long stay in D.C. as the Acting Assistant
8 Administrator, but to personally thank him
9 again for everything that he has done for me
10 during this transition.

11 DR. BALSIGER: Well, Eric, I don't
12 know if I can interrupt right now?

13 MR. SCHWAAB: Sure.

14 DR. BALSIGER: But I need to go to
15 that other call in a minute.

16 MR. SCHWAAB: Yes.

17 DR. BALSIGER: So I'm going to
18 skip out. And I didn't expect this, but thank
19 you. I appreciate it. But every minute for
20 me was a pleasure. Back in D.C., I enjoyed
21 the town. I enjoyed the job. And I'm
22 extraordinarily happy that you are sitting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 here and I'm back in that office.

2 So it worked out very well. So
3 since I live here, I do want to welcome you
4 here on behalf of the local people. The
5 regional office is just over here, you know,
6 where the Federal Building is, so I have a
7 fine, fine painting hanging on the wall there.

8 And if you have a chance to stop over and see
9 it, that's great.

10 You weren't there, Eric, but I got
11 it in Hawaii from this group. And so it's
12 extraordinary and I appreciate that. And I'll
13 let you get to work. We are looking forward
14 to seeing you all at our house tonight.

15 This morning when I got up, there
16 was no hot water and so I had a cold shower,
17 which I, of course, enjoyed. So Heather is
18 dealing with no hot water, but will be here
19 momentarily.

20 So again, looking forward to
21 seeing you and thanks very much for the kind
22 words. I'm going to skip out very shortly.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. FOY: I just have one
2 question, Jim. Who wired the hot water tank?

3 DR. BALSIGER: I'm not going to
4 talk about that.

5 MR. SCHWAAB: Thanks. Thanks,
6 Jim. You know, just another comment or two
7 about my transition into this role that I
8 think might be useful for you guys. I got the
9 call inquiring about my interest in this job,
10 which seems like, by the way, a long time ago
11 now. So you all recall that when you were in
12 Hawaii, I had just taken over the position and
13 thus I was unfortunately unable to be with you
14 in either capacity.

15 But that was just for review
16 perspective. A little over four months ago
17 when I took over, it seemed like in a lot of
18 ways longer than that and I'll divide that two
19 months into -- or that four months into two
20 important two month periods.

21 The first two months pre-oil spill
22 and the last two months since oil spill and,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you know, obviously, that has been not only,
2 you know, a tragic event, you know, and just a
3 very sad and frustrating set of circumstances
4 for everybody in the Gulf region, but it has,
5 obviously, been something that, and while this
6 pales in comparison to what people in the Gulf
7 region are going through, has been compelling
8 almost every waking moment of many people
9 across our Agency since that time.

10 But that was when I came into the
11 position. And we had a lot of important
12 topics that were on our plate in those early
13 days, you know, pre-oil spill. They remain on
14 our plate in addition to the oil spill. And
15 we are going to have opportunity to talk about
16 a number of those things over the course of
17 the next few days. And I will be here with
18 you in Juneau for the duration, although there
19 will be occasion when I have to step out to
20 take some calls or attend to some other
21 business.

22 But I think that actually to your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 credit, this agenda really, I think,
2 represents many of those critical and
3 important issues not only that are affecting
4 our organization and fisheries across this
5 country and around the world in the here and
6 now, but really represent some of the big
7 long-term challenges that we face as we try to
8 move beyond sort of the day-to-day reactive
9 aspects of the job that many of us face.

10 So you have got, you know,
11 obviously an important focus on oil spill.
12 I'm looking forward to being a part of that
13 conversation and saying a few words again
14 about that in a few minutes.

15 You have got before you the
16 Aquaculture Policy that has been an issue near
17 and dear to many of the people around this
18 table. It is an issue that I think is an
19 important part, as I know do many of you, of
20 our movement forward in ensuring seafood,
21 seafood supply, domestically produced, you
22 know, healthy products that provide important

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 jobs here in this country. And we look
2 forward to soon finalizing that policy. And
3 again, we will have a little more of an
4 opportunity to say more about that during the
5 course of the agenda.

6 We also have prominent on the
7 agenda the recreational fishing community
8 engagement. That is something that has been
9 prominent on my plate since day one. It was
10 prominent on my plate when I was sitting where
11 you sit. So I am extremely happy to have had
12 the opportunity over the last four months to
13 pick that up and move it forward, I think, in
14 a very aggressive way, but also in a way that
15 has reflected, I think, much of the advice
16 provided previously by the MAFAC and certainly
17 has reflected your continued engagement on
18 that topic.

19 I think it is great that we have
20 Jim Lecky here and a focus on your agenda on
21 protected resources. I don't know that there
22 has been a real focus on protected resources

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of late. I don't know that Jim has been with
2 the Committee in a while on these topics.

3 But be it in the Gulf or, you
4 know, any of the number of other important
5 places around the country, we have certainly,
6 and up here, very challenging and important
7 protected resource issues. And having the
8 opportunity for this Committee to engage on
9 those issues, I think, will be great.

10 We have, obviously, strategic
11 planning and budget which I never get to spend
12 enough time on, but are important drivers in
13 how we move forward as an Agency and where we
14 place not only our attention, but our
15 resources.

16 And Catch Share Policy, which Mark
17 has been working hard on and is, I think, very
18 close to fruition. So we look forward to
19 updating you on what I think is very important
20 progress with respect to Catch Share Policy.

21 We are also, of course, dealing
22 with enforcement issues with big science and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 data issues and a whole host of issues related
2 to sustainability of fisheries.

3 When people ask me why I would
4 take on this job, you know, one of the things
5 that I do say is I think this is a
6 particularly important time in the future of
7 fisheries and other aquatic resource
8 management concerns for this country.

9 And as we sit here today with the
10 Magnuson deadlines to end over-fishing and to
11 rebuild stocks that are right here at the fore
12 and now, I think it is important to recognize
13 while we address the challenges of Magnuson
14 and what it entails with respect to ending
15 over-fishing in 2010 or 2011, depending upon
16 the status of the particular stock, that we
17 also look a step beyond and recognize the
18 opportunity associated with what I would term
19 sort of a perpetual attention to addressing
20 over-fishing challenges.

21 And we really do have, I think,
22 the opportunity through the hard work of lots

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of people around the country, people in our
2 organization, people in councils all around
3 the country to, essentially, have a marker
4 where we move beyond that stage where we are
5 focused year in, year out over how to end
6 over-fishing.

7 And we think about what it means
8 to move sort of beyond that, in some respects,
9 kind of limiting focus and think about how we,
10 you know, grow fisheries opportunities, how we
11 improve sort of broad systemic protections,
12 not only of our aquatic ecosystems, but our
13 fisheries themselves, be they, you know,
14 commercial or recreational.

15 And so, you know, that is while we
16 fight with all of the day-to-day challenges
17 sort of at -- always sort of immediately in
18 the back of my mind is, you know, what is the
19 long-term sort of systemic improvement that is
20 available before us.

21 And I would just challenge each of
22 you to -- from the particular perspectives

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that you bring to the table -- to think about
2 that and think about particularly what kind of
3 opportunities are available to us.

4 And so I look forward very much to
5 being here with you around the table for the
6 next three days. But also, if not more
7 importantly, to be on the breaks and at some
8 of the social engagements here in Juneau that
9 we have planned.

10 And with that, Tom, I appreciate
11 the opportunity to say a few words and they
12 won't be my last few words if the agenda has
13 anything to say about it.

14 CHAIR BILLY: Okay.

15 MR. SCHWAAB: Are you going do
16 anything about introductions?

17 CHAIR BILLY: Okay. The agenda is
18 a full one, as I said earlier. And I think
19 that I need to work hard to keep us on time
20 and focused. It represents many opportunities
21 for this Committee to provide some meaningful
22 and timely input on a number of key topics.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And Eric has identified several of them.

2 I would like to remind the
3 visitors to sign in. There is a sign in sheet
4 out in the hallway. And I would also invite
5 the visitors, at this time, to provide us
6 their name and affiliation. So why don't we
7 start over here?

8 MR. SCHWAAB: And we should
9 apologize, by the way, for --

10 CHAIR BILLY: Sorry.

11 MR. SCHWAAB: -- I meant to say it
12 in my commentary that our backs are to you. I
13 feel terrible about that.

14 DR. RICE: I'm Jeep Rice. I'm
15 from the Auke Bay Fisheries Lab here in
16 Juneau.

17 MR. KURLAND: I'm Jon Kurland.
18 I'm with the Alaska Regional Office here in
19 Juneau.

20 MS. AMMANN: I'm Erika Ammann with
21 the NOAA Restoration Center.

22 MR. WOLOTIRA: I'm Rob Wolotira

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with the NOAA Restoration Center.

2 MR. THOMSON: I'm Arni Thomson,
3 Executive Director, Alaska Crab Coalition and
4 President of the United Fishermen of Alaska.

5 MR. BROWN: I'm Bill Brown. I'm
6 with the Recreational Fisheries Work Group and
7 I'm also on the Alaska Board of Fisheries.

8 MS. BRANDON: I'm Heather Brandon.
9 I'm with World Wildlife Fund.

10 MR. GEMMELL: Good morning. I'm
11 Tom Gemmell, Deputy Director of the Marine
12 Conservation Alliance based here in Juneau.

13 MS. McDOWELL: I'm Mary McDowell
14 with Pacific Seafood Processors Association.

15 CHAIR BILLY: Okay. Thank you
16 very much. Now, I'll go quickly through the
17 agenda and make several points that I hope
18 will help us in terms of our efforts over the
19 next three days.

20 One is that, for obvious reasons,
21 we've made the oil spill in the Gulf one of
22 the primary focuses of this meeting. And we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 thought that it was important even though it
2 continues to unfold and new information and
3 better understanding of the impacts and so
4 forth are coming out every day.

5 It is important if it's possible
6 that this Committee as an advisory to the
7 Secretary of Commerce take what information is
8 available and determine whether there are some
9 recommendations or advice that we can make
10 available to the Department and NOAA Fisheries
11 at this stage.

12 There is a fair amount of
13 information available from past spills and
14 some good information on lessons learned,
15 short-term impacts, longer term impacts, that
16 type of data and information. And
17 fortunately, in a way, we here have an
18 opportunity to take the time to look at that
19 type of information and perhaps come up with
20 some suggestions and a way forward.

21 My view is that this is only the
22 beginning and that it may well be that next

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 meeting we are going to have this on the
2 agenda again and follow-up and perhaps several
3 times, because it's that big of an event, that
4 big of a tragedy and one where it's a real
5 opportunity for this Committee to shine.

6 Beyond that, we have several other
7 topics that are ongoing issues in which NOAA
8 is trying to identify its policy and approach.

9 This includes aquaculture and we will get an
10 update on that and determine whether there is
11 anything in particular, we, as a Committee,
12 feel needs to be addressed by us at this
13 stage.

14 The Recreational Fisheries Summit
15 has occurred. A lot of good ideas came out of
16 that and they have been made available to us.

17 We will review that and the current plans for
18 how NOAA will proceed in that area and again
19 have an opportunity to provide our input to
20 that subject area.

21 As Eric mentioned, we haven't
22 spent a lot of time on protected resources and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this is a very important area of
2 responsibility for NOAA and NOAA Fisheries.
3 And it comes to the fore, obviously, in the
4 context of the oil spill, but even before the
5 oil spill, we were thinking about the
6 importance of taking a fresh look at that
7 area.

8 And a number of the Members of
9 this Committee identified examples of issues
10 that are long-standing and perhaps deserve our
11 attention and more importantly some
12 recommendations for NOAA to consider.

13 We also talked about identifying a
14 way in which this Committee could better
15 engage in the budget process. And we will
16 continue to explore that and hopefully have
17 some specific suggestions that we can share
18 with NOAA in that regard.

19 Obviously, the various
20 Subcommittees are going to play a very key
21 role at this meeting. And we have tried to
22 provide ample time, but I would encourage if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 needed, and working around the social events
2 that are planned, if needed, the Committees
3 take the time necessary so that our
4 recommendations and our input are the very
5 best ones that we can identify for advising
6 NOAA Fisheries up through the Department.

7 Are there any questions about the
8 agenda, any comments? No? Okay.

9 Well, then let's move on to our
10 first topic, which is the Deepwater Horizon
11 oil spill in the Gulf and again, it's my
12 pleasure to turn the floor over to Eric. And
13 he will share that with Steve Murawski, Jim
14 Lecky, and Jon Kurland as we look at sort of
15 the overall status of the spill and NOAA's
16 involvement, and, in particular, what NOAA's
17 responsibilities are by law and regulation as
18 it relates to the oil spill.

19 So, Eric, the floor is yours.

20 MR. SCHWAAB: Thank you, Tom. And
21 I think we are dialing up Steve now and we
22 have got, it looks like, the rest of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 morning devoted in some fashion or another to
2 the various aspects of the oil spill. And
3 what I will do is maybe frame that a little
4 bit and hopefully, over the course of our
5 discussions, we can focus as much as possible
6 in an interactive fashion and address the
7 particular points of concern that you have as
8 they relate to various elements of this
9 undertaking.

10 Let me say this, I think that from
11 the outset of the event, NOAA has been heavily
12 engaged in many different aspects of response,
13 understanding and long-term planning. I think
14 in some respects, our challenges there really
15 reflect the kinds of challenges that people in
16 the region are facing. And they continue to
17 be first and foremost the fact that this event
18 continues to evolve as we go forward.

19 And so as we have planned and
20 executed responses to various aspects of the
21 spill, we have done so in a constantly
22 changing environment, one where the volume of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 oil continues to expand, the movement of the
2 oil continues to not only expand, but shift
3 geographically around the Gulf region.

4 And you know, the understanding
5 associated with that process has been one that
6 has been very much an evolving set of tasks.

7 I think one of our first, at the
8 very early stages of the spill, questions that
9 were raised were protected resource questions
10 when the spill was only just beginning to be
11 understood. We knew that there were turtles
12 and marine mammals that were known to frequent
13 the spill area that we had not a lot of
14 understanding about.

15 And so Jim can speak in more
16 detail of this and I expect will, but one of
17 the first things that we did was initiate an
18 aggressive survey that was designed to
19 understand that. And that was within probably
20 three or four days of the original event, when
21 nobody yet understood anything about the kind
22 of volumes that we were even dealing with at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the time, let alone were going to deal with as
2 this continued to unfold.

3 One of the other things that we
4 did very early on, again when the size of the
5 spill was very small, was begin to institute a
6 closure process for areas of the Gulf that
7 were affected by the spill.

8 I think we understood very early
9 on, the industry understood very early on, and
10 I think everyone understands now that one of
11 the best things that we could do for the
12 region was to, essentially, try to define for
13 the public the limits of the areas impacted.

14 You know, at that point in the
15 early days, we were dealing with less than 10
16 percent of the federal waters in the Gulf that
17 were affected by the oil spill, so
18 significantly less than 10 percent.

19 And it was important that we be
20 able to get out front of that and tell that
21 story. And thereby protect, I think, the
22 integrity of seafood coming from the rest of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Gulf, so that to the extent that, you
2 know, opportunity would allow the fisheries
3 down there, be they commercial or
4 recreational, that were still open for
5 business, could conduct or go about business.

6 And so a big thread of activity
7 for us from the very beginning has been
8 understanding the trajectories of oil. This
9 is something that NOAA, more broadly than
10 Fisheries, was uniquely positioned to do with
11 our observational capacities, our
12 understanding of ocean currents, and our
13 understanding of weather.

14 And we have had trajectories that
15 have been developed now for two months on a
16 daily basis that have proven to be incredibly
17 accurate despite some criticisms to the
18 contrary in the early going. And those
19 trajectories have been the basis for our
20 fishery closure, which has subsequently been
21 augmented by extensive sampling and ramping up
22 of lab processing capabilities.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We are now at a point where the
2 fishery closure represents about 33 percent of
3 the federal waters and there are a number of
4 state waters that are equally affected by oil
5 and therefore subject to state level closures.

6 I was in New Orleans last week
7 where we had a joint meeting of FDA, EPA, NOAA
8 as well as the State Health officials and the
9 State Fishery officials to, essentially, come
10 to agreement on the protocols that we are
11 using for testing and the protocols that we
12 will use for reopening once oil has moved on
13 from affected areas. So that continues to be
14 a big part of our focus.

15 We are going to hear here from an
16 understanding capacity from Steve Murawski
17 shortly. So let me just say that Steve has
18 been not only for Fisheries, but for all of
19 NOAA, at the forefront of organizing,
20 deploying and analyzing and communicating our
21 best understanding of what is going on down
22 there in the Gulf region with respect to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 oil, the movements of the oil itself, effects
2 of dispersants and the movements of subsurface
3 oil, potential impacts on a host of living
4 marine resources, potential impacts on
5 habitats as well as, you know, our ability to
6 sort of understand the long-term implications
7 related to this effort.

8 We also have a space here to talk
9 about fishery disaster declarations. Those of
10 you in the region know that the Secretary has
11 declared fishery disasters for the Gulf States
12 from Louisiana east. And this disaster
13 process here, given the culpability of BP as a
14 private entity, represents, I think, some
15 pretty unique challenges for us as we seek to
16 best deploy whatever federal resources we can
17 muster.

18 There are ongoing regulatory
19 responsibilities that Jim will speak to
20 related to protected resources. This event
21 has very much been one in the public eye. And
22 in some respects, it seems like our attention

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on any given day is dictated by the inquiries
2 of Anderson Cooper and the like.

3 Because, you know, if today the
4 issue is what's happened to the turtles?
5 Well, the country cares about turtles for a
6 week and, you know, Jim has been right at the
7 forefront of that effort.

8 You know, I'm glad we're going to
9 hear about Natural Resource Damage
10 Assessments. Everybody, I think, inherently
11 understands that there are significant private
12 impacts, private damages, and a private claims
13 process that will unfold there. You know,
14 that's the subject of this \$20 billion escrow
15 account that we have all read about in the
16 news.

17 But equally, if not more
18 important, are the long-term impacts to public
19 trust resources. And as you will hear, the
20 Natural Resource Damage Assessment Process is
21 really designed to, essentially, secure on
22 behalf of the trust agencies at the federal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and state levels the dollars needed to,
2 essentially, rectify the public trust-related
3 damages that have been impacted down there.

4 You know, one of the things that,
5 frankly, I'm just going to say a couple more
6 things, has really impressed me is we
7 understand how disruptive this event is to the
8 economy and with the social fabric of the Gulf
9 region and the day-to-day challenges that it
10 is imposing for communities down there are,
11 just on the scale of this event from a natural
12 resource perspective, I think, unprecedented.

13 But the thing that has impressed
14 me is, in the face of that, there is not a
15 person you have talked to down there,
16 fishermen, tackle store owner, charter boat
17 operator, who doesn't say yes, we have big
18 short-term economic challenges, but the real
19 challenge here, the real responsibility here
20 is to ensure that when all is said and done,
21 we are doing what we can to restore these
22 habitats, to restore the function of this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ecosystem.

2 And to have the ability, I think,
3 to maintain that kind of focus on that long-
4 term objective is, I think, you know, a credit
5 to the appreciation that everybody in the
6 region has for, you know, the natural
7 resources of the Gulf region.

8 And I don't think there has been
9 an event, again, of this magnitude where the
10 connections between ecosystem health,
11 ecosystem productivity and the well-being of
12 communities and economic function of
13 communities has been so front and center in
14 the public mind.

15 And I think, you know, it's not
16 only sort of gratifying that people understand
17 that, but it may be perhaps the silver lining
18 in all of this that, you know, there is an
19 opportunity to remind the country that, you
20 know, we don't just get our fish from the
21 grocery store, you know.

22 You know, we don't just go to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 movies or the ballgame for entertainment, but
2 that these places are really important to us.

3 And perhaps it's something that we can use as
4 a lesson for other places across the country
5 where, you know, maybe the impacts are as
6 great, but they are being meted out over a
7 longer period of time.

8 And so the decline is more
9 insidious and less obvious than the impacts
10 that we see in the Gulf region. But they are
11 none the less important.

12 And so one more thing and I think
13 that is -- because I know it's on here and
14 that's the lessons learned from the Exxon
15 Valdez. On the private damage side as well as
16 on the public NRDA side, one of the things
17 early on that we did was, essentially, call
18 back up here to Alaska and the northwest and
19 say we've got this event unfolding. What
20 should we be doing?

21 And one of the first things they
22 said is you have got to get out early. You've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 got to get baseline samples of fish. You've
2 got to get baseline samples of water. And you
3 have got to be able to, you know, in a court
4 defensible way, sort of tell the story of this
5 impact to protect people's interest over the
6 long-term.

7 And so within one week of the
8 spill, we were out there collecting tissue
9 samples that will be, I think, an important
10 part of the public record as the response and
11 the assessment of the impacts of this event
12 continue to unfold.

13 With that, Mr. Chairman, I will
14 stop and perhaps, I know Steve is on the
15 phone, I'll turn the floor over to him with
16 your permission.

17 CHAIR BILLY: Okay. First, any
18 questions or comments for Eric? No? Okay.
19 All right. Steve?

20 MS. LOVETT: Steve are you on?

21 DR. MURAWSKI: Yes.

22 CHAIR BILLY: The floor --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DR. MURAWSKI: Yes, good morning.
2 How are you all?

3 CHAIR BILLY: Good.

4 DR. MURAWSKI: Sorry I can't be
5 there with you today. I'm in Pensacola. It's
6 a rainy day in Pensacola today. So I just
7 wanted to follow-up with a few remarks and
8 talk a little bit about some of the science-
9 related issues that we have got, you know,
10 from the broader NOAA perspective.

11 And of course, the seafood and
12 natural resource issues are, you know, some of
13 the major ones. I have a short, maybe not so
14 short, PowerPoint that I would like to run
15 through quickly just to kind of illustrate a
16 few of the points that Eric made about the
17 connectivity of all this.

18 It's a real interesting scenario
19 and I mean interesting not from the point of
20 view of interesting science, but as compared
21 with Katrina where the natural resource issues
22 were one aspect of it, the natural resource

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issues that surround this event are the
2 primary issues that we are all dealing with.

3 And so we see on a nightly basis
4 the seafood safety issues, the problem with
5 protected resources, understand the plight of
6 the fisherman, et cetera. And so this part of
7 NOAA, well NOAA in general, and this part of
8 NOAA are being thrust into the public
9 attention like, frankly, I have never seen in
10 my career. And I suspect none of us in all of
11 our careers have seen.

12 So it is really putting a
13 spotlight on what we know, why we know it, how
14 we know it, where our samples are and, you
15 know, people are really, you know, very
16 attuned to all the details.

17 So what I wanted to do with this
18 short PowerPoint is to go over some of the
19 things that NOAA is doing, so you get a sense
20 of, you know, how many different disciplines
21 are being brought into this. And I'll try to
22 conclude this quickly and get on to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 broader discussion.

2 So if we could go to Slide 2,
3 Heidi?

4 MS. LOVETT: Yes.

5 DR. MURAWSKI: So that's a long
6 list of the kinds of things that NOAA is doing
7 and what we consider the immediate action
8 mode, and that is the "response" to the spill.

9 Now, NOAA is a scientific support
10 arm of the Incident Command through the Coast
11 Guard's federal on-scene coordinator, which is
12 Admiral Watson, at this point. It was Admiral
13 Andrew.

14 So we are the primary science go-
15 to for all the questions that they have. And
16 so they have been asking us just every day a
17 whole series of questions that relate to the
18 various aspects of this spill.

19 You know, how much oil is coming
20 out of the wellhead, what are the effects of
21 dispersants. I'll tell you know, we have a
22 lot of institutional partners like USGS and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Environmental Protection Agency, but
2 nevertheless, we are the primary go-to for a
3 lot of science lessons they have.

4 So I won't go through all the
5 details on this list, but Eric made the point
6 of, you know, we need to know what the Gulf
7 was like on the day before the oil spill. We
8 have got a lot of baseline samples that were
9 collected. We were monitoring for the
10 potential contamination issues associated with
11 Katrina. And we did that monitoring for
12 almost a year afterwards.

13 And we saw a lot of the baseline
14 levels returned. And as Eric said, when the
15 well exploded, it sank on April 22nd. By
16 April 28th, we had the first samples in hand
17 and they were well before any kind of
18 significant oil had even left the site, never
19 mind, you know, contaminated some of the areas
20 that we see now.

21 And so those are the data that are
22 posted on the website now. And they show that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the level of contamination of PAHs and other
2 components of oil is really low, even compared
3 to other urban areas in the country.

4 And so that sets a baseline for
5 the recovery, the long-term recovery of this
6 area relates to seafood quality and, you know,
7 the potential carcinogenic and toxic
8 materials. And so really it's BP's
9 responsibility to restore this region to what
10 it was before. So we have got some, I think,
11 pretty good benchmarks.

12 We are trying to actually extend
13 those right now down to the Texas coast and
14 then all along the Gulf Coast of Florida,
15 because we literally do not know which way
16 this thing is going to go in the long-term.
17 You know, whether they are going to be
18 successful capping it off.

19 And so, you know, as we sort of
20 get our second wind here, we are going to try
21 to extend all those baselines just to make
22 sure that, you know, when we are talking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about, you know, areas where the oil has not
2 hit yet, then we have a good baseline for it.

3 Obviously, the seafood safety
4 issues are paramount, you know, in terms of
5 the size of those closure areas. But also, it
6 is the sort of fate and effects both at the
7 surface and at the subsurface oil that I'll
8 talk about in a little bit that is so
9 intriguing, because it has never been done at
10 this scale.

11 We have never had a controlled
12 release like this at such great depths nor
13 used a dispersant quantity that we were
14 talking about. So we have been involved in a
15 lot of the sub-sea hunt for dispersed oil.

16 One of the things I wanted to talk
17 about in this opening slide was that one of
18 the key elements that NOAA is producing is a
19 daily forecast of the weather. And that
20 includes both the, you know, working
21 conditions, you know, at the well site, but
22 also the sea-safe conditions and other things

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that affect the response effort.

2 And that includes, you know, all
3 the actions to do controlled burns as well as
4 the various vessels that are out there that
5 are scooping up oil. They all are very much
6 limited in terms of sea-state, so they don't
7 do controlled burns when it is a 6 foot swell
8 out there nor do they do a lot of skimming
9 operations, because a lot of these boats are
10 not necessarily, you know, big sea-going
11 vessels.

12 And so all of the skimming and
13 burning activities have actually been
14 suspended right now, as we have got basically
15 6 to 8 foot waves out there, but they are
16 still collecting the tanks though.

17 The point is that NOAA's weather
18 operations are really important to this and it
19 includes things like air quality which are
20 important to workers' safety.

21 So, Heidi, can you go to the next
22 slide? The next slide is a little bit of what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is produced every day and that's the daily
2 surface oil forecast. And so this is a
3 combination of observations from aircraft.
4 There are two specially equipped aircraft that
5 actually have a set of sensors that can
6 measure not only where it is, but how thick it
7 is.

8 Some satellite observations, both
9 the satellites we are all familiar with and
10 some that we are not familiar with, and then
11 vessel operations. So on a day-to-day basis,
12 you can get some idea of the density of where
13 this is.

14 And this also includes the ability
15 to forecast where oil is going to be and
16 that's based on six operational oceanographic
17 models. So it gives some sense of not only
18 where it lies, but also where it is going to
19 lie over the next 48 hours. And that gives
20 some warning to the state about, you know,
21 what beaches we expect it might be washing up
22 on and also gives that information to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 responders.

2 And so if you flip to the next
3 one, Heidi, one of the big issues that we have
4 ongoing is where is the oil now and is it
5 likely to enter the loop current and be
6 transported much more broadly?

7 The graphic that you see is a
8 cartoon of, and I think this is actually
9 today's, where the oil has been observed at
10 the surface. So you see the well and the star
11 and then that gray area is where we have
12 observed surface oil. And you can see it's
13 all pretty much north and west of the well
14 site.

15 Very little is, you know, between
16 the well site and down to the loop current.
17 And you see a really interesting phenomenon
18 there and that is that the loop current has
19 produced this eddy that is almost completely
20 detached from the loop current itself. And it
21 looks like that eddy is going to start working
22 its way west as a detached feature.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So I actually think -- and this
2 whole scenario started almost exactly when the
3 well exploded. And that is instead of the
4 normal flow where it comes up the Yucatan and
5 goes up towards New Orleans and then right
6 back down, which potentially could have
7 transported a lot of that oil towards the
8 Florida shelf and to the Florida Straits.

9 Now, you can see that oil, because
10 of the prevailing south winds, is pretty much
11 blown to the northward and then it is
12 disassociated from the loop current features.

13 And so we think that over the next couple of
14 weeks that this will be the scenario.

15 So the bottom line is very little
16 is likely to be transported through the
17 Florida Straits any time soon. That being
18 said, even if it does reconnect, it's very
19 likely that instead of liquid oil, it is going
20 to be things like weather tarballs and other
21 things that might end up in the Florida
22 Straits and further north.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And I just want to say one thing
2 and that is there is a couple of surveillance
3 vessels in the Florida Straits that Incident
4 Command in Miami has and they are basically a
5 tarball patrol. And they are in the Florida
6 Straits, you know, on the lookout for any kind
7 of things that might escape detection, at this
8 point.

9 They haven't confirmed any
10 tarballs down there that are actually origin
11 of the site. So that will be in the operation
12 side.

13 So the next slide is how do we
14 know what the heck is going on? And one of
15 the things that NOAA has been doing is putting
16 a bunch of oceanographic instruments into the
17 loop current, both from ships, these
18 alternative things called gliders, which they
19 float up and down, and also used one of its
20 hurricane hunters to drop these sondes into
21 the loop current.

22 So what that does is gets you the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 temperature and salinity features and that
2 tells you a lot about what is going on at
3 depth and allows those models to become
4 better. And so in fact, I think, there is
5 another P-3 flight today.

6 That whole loop current eddy has
7 floated far to the south. In fact, the middle
8 of the eddy is in the international doughnut
9 hole. And most of the eddy is actually in
10 Cuban EEZ waters, which present a unique
11 challenge of trying to figure out what is
12 going on.

13 If we go to the next one, this is
14 sort of a coat of many colors graphic. That
15 is the daily changes in the surface expression
16 of oil that happened over time. And you could
17 see that this is all the different daily
18 forecasts that we had and it included that
19 green edge that is way up to the east and
20 extends down to the edge of the EEZ.

21 That was sort of a one or two day
22 forecast that happened a few weeks ago. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 honestly, we haven't actually seen oil down
2 there in any appreciable amount since then, so
3 there is a question of, you know, was it
4 actually surface oil that we saw there with
5 the model forecast, was it a few tarballs?

6 And of course, you know, that
7 extends the closure area fairly significantly
8 far south. So one of the important things is
9 to try to get some monitoring in there. If we
10 don't have oil there now, under what
11 circumstances are we going to roll up the
12 closed area without, you know, thinking that
13 it is going to potentially be over the top
14 with seafood?

15 So if you go to the next graphic,
16 that's the current closed area boundaries.
17 And you can see it extends pretty far south.
18 As Eric said, it's about a third of the Gulf
19 and it's about 8,000 square kilometers, so
20 it's a very large area.

21 Two areas that we are working
22 right now are off the West Florida shelf. You

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 can see that that closed area gets inside the
2 200 meter contour. That's the area of pretty
3 active reef fish, snapper, grouper, barn fish
4 and as well, if you go to the next slide, the
5 area offshore is a fairly active swordfish and
6 tuna, elephant tuna area.

7 So there are a couple of cruises
8 out there right now to try to take some
9 samples of the seafood and see if we can maybe
10 extend that closed -- move that closed area
11 boundary farther offshore and then roll it up
12 northward a little bit, based on the lack of
13 presence of oil right now, but verify it with
14 seafood samples.

15 So the next slide is this long
16 arrow that shows the differences between
17 things that feed at the low trophic levels,
18 like oysters and shrimp, and things at the
19 higher trophic levels, like the finfish and
20 dolphins.

21 And there is a real interesting
22 scenario here where the things like oysters

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and shrimp, they tend to retain the metabolism
2 products of oil, which are these polycyclic
3 aromatic hydrocarbons. Whereas things like
4 fish and the dolphins would actually excrete
5 most of this very quickly.

6 So, you know, based on past oil
7 spills, we would see that once the oil is
8 gone, the fish would clear it out of their
9 flesh relatively quickly within a matter of
10 days and the only place you would actually
11 find it is in their excretory system, in
12 particular, their gallbladders, right? Which,
13 unless you ate the fish gallbladders, wouldn't
14 present a health problem.

15 Whereas things like oysters and
16 shrimp, you might actually have a longer tail
17 of them cleaning out. And so our sampling is
18 basically trying to look primarily for PAHs in
19 the gall bladders of the fish, although we are
20 testing the flesh and, as well, the whole
21 muscles for oysters and Gulf shrimp.

22 And you can even see this effect

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in the baseline samples where for some of
2 these PAHs that we think are problematic, they
3 do have higher baselines for oysters and
4 shrimp than they do for the finfish.

5 Again, you know, our sampling
6 should be key to making sure that they all are
7 well below the action thresholds that have
8 been established currently by FDA and NOAA.

9 The next slide is a little -- this
10 is a daily snapshot of where some of our
11 samples are coming from. So this is June
12 11th. We had 152 samples of fish and
13 shellfish. They came in that day. You can
14 see a lot of our samples that come in from the
15 closed area, the sampling is extended east and
16 west and as well as including, you know, what
17 is going on.

18 I can tell you that of all the
19 samples that we have collected and it's over
20 850 now, we have not seen one sample that has
21 actually exceeded the action level of FDA,
22 which is a good thing. Even in areas that are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 oiled heavily right now, we have not seen hot
2 samples.

3 Now, that doesn't mean that they
4 are not there or that they won't accumulate,
5 but overall so far, you know, the seafood
6 seems to be in relatively good condition.
7 There has been one sensory sample that has
8 flunked and that is a smell and taste sample.

9 So overall, so far so good.

10 So the next one is the
11 distribution of yellowfin tuna. You can see
12 the yellowfin, and this is June and July
13 logbook data, get pretty far. They certainly
14 are in the closed area and they are up around
15 that wellhead, but there is a significant
16 yellowfin distribution off to the left.

17 And this is where we are hoping,
18 you know, there is an active fishery ongoing
19 for yellowfin. You know, in order for us to
20 really assure the seafood supply, we need to
21 make sure that if animals are getting oiled up
22 in the closed area and swimming out, that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 catch that as part of our surveillance.

2 So this is why we are kind of
3 moving to market-based sampling as well as
4 trying to sample at the edges of the closed
5 area, say, for example, with this current
6 cruise that we have got out on the NOAA Ship
7 Delaware II, which will be taking swordfish
8 and yellowfin samples, both inside the closed
9 area considered the open part, but also in
10 these open areas as well.

11 The next graphic is for swordfish
12 and you can see swordfish really are most
13 declined at this time of the year up along
14 that 400 meter contour, which goes, you know,
15 basically, from Key West where it started, all
16 the way up to northeast of the well site in De
17 Soto Canyon. So we will be taking some
18 samples up there.

19 The next one is a plot we get
20 every day on turtles. I won't spend a lot of
21 time on a lot of these slides, but this is the
22 current slide. We've got something like 550

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 turtles that have been stranded. Importantly,
2 we have got about a quarter of them actually
3 in rehab now. There are a lot, which is a
4 good thing.

5 We are trying to do more work
6 offshore to intercept turtles that are oiled
7 before they wash up as mortalities. You can
8 see what the historic range for strandings are
9 relative to where we are at the baseline. And
10 we are somewhere around five times the
11 baseline. Sorry, a lot higher than that. We
12 are nearly ten times the baseline.

13 So it was very clear that, you
14 know, the totality in this event is resulting
15 in a lot more turtle stranding than we have
16 ever been used to.

17 The next one is a picture of one
18 of these small Kemp's Ridley Turtles that are
19 offshore that has been oiled. You can see
20 that that really gets all over them. And, you
21 know, they weren't -- if we didn't pick those
22 animals up and clean them up, they would be in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 some serious problems.

2 Again, the idea here is to try to
3 intercept these animals that are getting oiled
4 offshore and get them into some of the
5 aquariums around the Gulf area and get them
6 cleaned up and back there.

7 The next set of graphics, and I'll
8 go through this very quickly, is this search
9 for subsurface oil. And I note a number of
10 you have seen that in the papers and
11 elsewhere. The deal here is, there is three
12 efforts ongoing as part of the condition to
13 allow BP to use up surface dispersants at the
14 wellhead, they have to keep a ship on-site at
15 all times sampling for oxygen content of the
16 water as well as, you know, sampling for the
17 presence of oil and other things.

18 And so we have got a continuous
19 set of data almost from the start of use of
20 dispersants. We have had three NOAA vessels
21 in there helping out and we have sponsored
22 other carriers and academia and others have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 been involved in some of this work.

2 And so far we have had at least
3 seven research vessels involved in all of
4 this, so it has been a big effort, you know,
5 towing all kinds of equipment.

6 The next one is kind of a bullseye
7 diagram. And this is a compilation of all the
8 samples that have been taken in and around the
9 wellhead. You can see it's pretty
10 substantial. It's approaching 400 separate
11 samples that we have taken at distances from
12 basically ground zero all the way out to 40 or
13 50 kilometers away.

14 And you can see most of the
15 samples are concentrated to the southwest and
16 that's really because that's where most of the
17 positive hits on subsurface oil are.

18 If you look at the base of that
19 map, it's really kind of interesting because
20 the well site itself is in a valley that is
21 surrounded by a bunch of salt domes that has
22 flattop features. And so, you know, tracking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 where it is going to go, there is a complex
2 oceanography that, you know, kind of winds its
3 way around those salt domes. And you know, it
4 has given some, you know, tracking to where we
5 are actually seeing some of the subsurface oil
6 features.

7 The next set of diagrams, and I'll
8 go through them real quick, is, we actually
9 seem to isolate a feature between 1,000 and
10 1,300 meters, which is between 3,300 and 4,600
11 feet down, really deep. And so I'll show you
12 just the sequence of three pictures. One at
13 1,000, so that's the diagram that you have.
14 You sort of see a little bit of different
15 color shading, you know, south and west of the
16 wellhead.

17 If you go to the next slide at
18 1,100 meters, you see a little bit more.

19 If you go to the next slide at
20 1,200 meters, you see a little bit more closer
21 to the wellhead. And at 1,300 meters, you
22 really kind of see a large, you know, sort of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 colored feature there around 4 kilometers.

2 So that gives you some sense of,
3 at least, some of the earlier data that we had
4 where we think we might have some subsurface
5 oil.

6 Now, if you go to the next one,
7 which is called maximum fluorescence at
8 distance, this is an instrument that responds
9 to the presence of oil. And you can see that
10 all the fluorescence from this UV light really
11 is within the distance of about 10 kilometers
12 to the wellhead.

13 And when we actually take oil
14 samples, the average concentration is 1:2
15 parts per million, which is relatively low.
16 And certainly relatively low compared to a lot
17 of the media stories about, you know, rivers
18 of brown oil flowing all over the place. So
19 this is really kind of what we are dealing
20 with.

21 And when we actually do more work
22 on it, there are very fine particles that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be consistent with chemical dispersion
2 of the oil. So it looks like, at least to a
3 certain extent, the dispersants are doing
4 their job.

5 The next one is an interesting
6 feature and that is we are running one of our
7 acoustic vessels over there and you can see
8 that the area is very active with methane
9 seeps around all the salt domes and this is
10 just one of the methane seeps that, you know,
11 was visualized by Thomas Jefferson.

12 So sorting out what is a natural
13 hydrocarbon in this area versus what is the
14 oil spill is not a trivial matter. And
15 actually, I think, that has confused some of
16 the earlier press reports that you saw here
17 that there is a lot of hydrocarbon in the
18 water here.

19 So the next one is, and again just
20 a couple of quick graphics, we had Gordon
21 Gunter, which is a fishery survey vessel in
22 there, and it ran a few rings at 20 kilometers

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and 5 kilometers and actually 3, so I just
2 want to show you quickly the next graphic is
3 these so-called curtain plots, which are the
4 acoustic signal you get from the surface at
5 the bottom in these different rings.

6 And so you can see some real
7 interesting features. We think those two
8 stripes are something called the deep
9 scattering layer, which is a biological
10 phenomenon of zooplankton that move up and
11 down, you know, goes from light to dark, and
12 not the oil itself. The oil itself, as I said
13 before, seems to be confined to that deeper
14 stratum.

15 And we think that at least between
16 some of the data we have got here that we can
17 track part of this using acoustics, which is
18 going to be helpful. But of course, they all
19 have to be validated with the returned water
20 samples, from deep waters.

21 So the next graphic is just a
22 summary of where we are. Again, as I said,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 when given the actual sampling, it's in the
2 low parts per million in the very near field
3 to parts per billion to trillion farther and
4 then a lot of negative results when we get
5 even farther out.

6 And that fingerprinting of the MC-
7 252 oil is pretty critical, because there is a
8 lot of oil floating around the Gulf and we
9 took a sample about 140 miles east-southeast
10 and we had about the same oil concentrations,
11 but we had definitely fingerprinted it to not
12 just oil. So we need to be pretty good about
13 that.

14 You know, there are lots of people
15 doing things and we really do think we need to
16 kind of circle our wagons on that.

17 So over and above that, the next
18 graphic is, so what living resources are
19 potentially at risk here? We know bluefin
20 tuna spawn from April to June in this general
21 vicinity and certainly in the extended area to
22 the south and east. There are a number of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 cruises out there. We know things like sperm
2 whales and other large mammals utilize that De
3 Soto Canyon as a primary area.

4 There are a number of activities
5 and we got to try to index the baselines for
6 what is going on.

7 The next slide is, so where are we
8 going to go in the next, you know, after we
9 sort of do the immediate response? And it's
10 pretty clear that, you know, we need to try to
11 understand and put into context what this oil
12 spill is going to mean to the ecosystem.

13 What we're going to try to do is
14 more work on the dispersant issues.
15 Obviously, at some point, we will get a cap on
16 the well and we will be able to start looking
17 at reopening. We are going to do some more
18 monitoring to make sure that we understand the
19 tail of dispersant and in particular the oil
20 as it tapers off, you know, in terms of
21 potentially impacting the species.

22 And, as Eric highlighted,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 understanding the human dimensions of this
2 affects not only the fisheries issues which
3 are important for NOAA Fisheries, but also the
4 other human dimensions as it relates to the
5 economies. The cost is a really important
6 aspect.

7 And unless we go out and get some
8 of those data right now, it's going to be
9 really difficult for us to put those in
10 context, you know, six months or a year from
11 now.

12 The next one is an interesting
13 picture of an aircraft using those
14 dispersants. We are in uncharted territory
15 about the use of dispersants overall. There's
16 over a million and a half gallons that has
17 been used in this area.

18 We don't know if there are tipping
19 points. And we certainly don't know anything
20 about deep-sea applications of dispersants.
21 You are likely to see a report coming out
22 today from the EPA or at least in the next

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 couple of days about what we know and what we
2 don't know about the use of dispersants.

3 They have been testing in a lot of
4 laboratory animals, but until we started doing
5 some work on the local species, which is
6 underway now, it's never been tested in real-
7 life situations or Gulf of Mexico species that
8 are involved here.

9 The next one, the last one, is
10 really, you know, where are we with some long-
11 term issues? And that is, you know, what the
12 ecosystem-level impact is going to be with all
13 this reduced carbon in this environment. It's
14 an area that is challenged with hypoxia and
15 other things, because it has too many
16 nutrients in it.

17 What are the long-term
18 socioeconomic impacts of the spill? If Exxon
19 Valdez is any guide, we are going to be into
20 this for a very long period of time, decades,
21 in terms of trying to understand this. So we
22 are trying to transition from our immediate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 response to the things that might take us to,
2 you know, what are the restructuring aspects
3 of this, both to the ecosystem and to, you
4 know, people's lives?

5 The last one is kind of just a
6 plea to, you know, we need to try to put all
7 of these human activities and natural
8 phenomena into context. And so we've got this
9 ecosystem diagram that many of you may have
10 seen.

11 You know, it's kind of fresh, you
12 know, given the fact that we have got a
13 hurricane going over the Yucatan right now. I
14 mean, we drew this graphic up a couple of
15 years ago, all of these things seem to be
16 interacting as it relates to this oil spill
17 right now.

18 So with that, I'm sorry I have
19 taken a little bit more time than you have
20 allotted, but I'm happy, you know, to join
21 with Eric in any questions you might have.

22 CHAIR BILLY: Okay. Questions for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Steve? Randy?

2 MR. CATES: Steve, you said a
3 couple of things in your presentation that
4 caught my attention. I have a couple of
5 questions. One is do you feel you have all
6 the tools available for monitoring? Are you
7 happy with those?

8 DR. MURAWSKI: Well, you know, the
9 questions keep outstripping the tools at this
10 point. I mean, we have so many questions
11 about, you know, for example, is the oil still
12 going to affect stock? The degree of hypoxia
13 and other things.

14 One of the things about this spill
15 is it's opened up some new avenues for us.
16 Number one, as it relates to the spill, we
17 have been able to appeal to the Coast Guard
18 for funding for, you know, basic monitoring,
19 like seafood sampling, which is going to be
20 paid for through the Coast Guard by BP. And
21 so that has helped out.

22 We also know that the academics in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the region are going to benefit from some
2 research funding that is going to help out.
3 We need to be very careful because we are
4 potential litigants against BP and, you know,
5 there is some confusion.

6 We have an awful lot of tools.
7 Every ship on the east coast is here, number
8 one. Every available ship. We have got a lot
9 of tools. Do we have everything? I think
10 what is going to happen is more questions are
11 going to come up. And I think we are
12 outpacing the ability of what could actually
13 answer all these questions.

14 You know, frankly, we pretty much
15 got almost everybody that is relevant in the
16 fishery services involved in this, at this
17 point. And so we are pooling all our
18 resources from elsewhere. So what that is
19 doing is straining the other requirements that
20 we got in NOAA to do alongside of this as
21 well.

22 So I don't think we have got, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 know, resources that are adequate to this job.

2 Eric, if you want to talk about that as well?

3 MR. CATES: I have a quick
4 suggestion. If you guys haven't -- Eric, if
5 you haven't done so, you should reach out to
6 DIA and the DoD.

7 MR. SCHWAAB: Oh, yes.

8 MR. CATES: And the reason is,
9 I've worked with some of the things he has
10 talked about, ocean gliders, hyperspectral
11 imaging, they have a long history of having to
12 monitor the oceans for elements in the oceans
13 to see what unfriendly countries are doing.

14 And I can tell you some of the
15 things you mentioned, there are tools there
16 that I'm not sure you folks have available.
17 But if you are looking at trying to do remote
18 monitoring because of things will spread,
19 those are great resources.

20 MR. SCHWAAB: Yes. I don't know.
21 Steve, do you have any -- is there any
22 interaction with DoD on some of these

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 resources?

2 DR. MURAWSKI: Actually, there is
3 quite a bit. I didn't -- I probably shouldn't
4 tell you this, but there is a Predator out
5 there. And you know, so, you know, fishermen
6 beware.

7 CHAIR BILLY: We already knew
8 that.

9 MS. LOVETT: We knew that, yes.

10 DR. MURAWSKI: I don't think they
11 are using all their capabilities for that.

12 MR. CATES: Steve?

13 DR. MURAWSKI: Yes?

14 MR. CATES: If you --

15 DR. MURAWSKI: There are also some
16 satellite resources that we can't talk about
17 that are helping out. And military has
18 launched a bunch of their gliders into the
19 pattern, which are helping to choose some of
20 the Navy models, you know, for tradition.

21 MR. CATES: Well, if you do talk
22 to DoD, mention in particular DIA, because

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that's the agency that will open the doors for
2 you.

3 MR. SCHWAAB: Steve, are there,
4 besides hellfire, are there bunker busters on
5 those Predators?

6 DR. MURAWSKI: Not quite, not
7 quite.

8 CHAIR BILLY: All right. Bill?

9 MR. DEWEY: Hi, Steve. It's Bill
10 Dewey, Taylor Shellfish. Not surprisingly, I
11 have a couple of shellfish-related questions.

12 You mentioned in your talk about how oysters
13 and shrimp deal with PAHs differently than
14 fish do.

15 Can you give me some idea what the
16 -- you know, if the oyster reefs there in the
17 Gulf do get oil, what sort of recovery time
18 you are looking at?

19 DR. MURAWSKI: Sure. Actually,
20 you know, Katrina is a good experience,
21 because, you know, we had -- everybody was,
22 you know, concerned about the toxic plume, so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there was a bunch of sampling on oysters and
2 shrimp there. And we saw that clearing out
3 within a matter of months. That data got back
4 down to baseline levels.

5 If you look at the baseline levels
6 for a couple of these PAHs, most of them are
7 at undetectable -- they are at the limits of
8 detection for most of the finfish, you know,
9 it's around .2 parts per million -- sorry,
10 parts per billion.

11 And in the oysters it is about 1,
12 you know, so it's five times for fish, but
13 still it is way below any action level which
14 is more like 35. All right?

15 So, you know, we would be looking
16 for, you know, animals like the shrimp and the
17 fish to recover back down to those baseline
18 levels of about 1 part per billion. And it
19 would occur in a matter of months.

20 MR. DEWEY: That's reassuring.
21 Thanks. So another shellfish-related
22 question, you know, the oyster industry in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Gulf is plagued by this naturally occurring
2 bacteria, *Vibrio vulnificus*, and there has
3 been some stories in the press here recently
4 that those levels may increase as a result of
5 the oil in the water, because it's a bacteria
6 that apparently thrives on the oil.

7 Can you enlighten us at all on
8 that?

9 DR. MURAWSKI: Well, I actually
10 don't know that. I thought *Vibrio* was --
11 well, I know that out near the well site the
12 amount of bacterial activity has increased to
13 a very large extent as, you know, basically
14 the bacteria that will, in theory, disperse in
15 oil is the bacteria hasn't done it to an
16 extent where it has inhibited the amount of
17 oxygen.

18 I don't know that specifically,
19 that *Vibrio* would be differentially impacted
20 by that. I'll find out for you.

21 MR. DEWEY: Thanks.

22 DR. MURAWSKI: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Okay. Keith?

2 MR. RIZZARDI: Hi, Steve. Keith
3 Rizzardi. I think you recognized, you know,
4 BP as a future litigant here and to some
5 extent it seems as we are developing our data,
6 we are in the learning as we go mode.

7 My concern is that the baseline
8 data that you get remain viable many years
9 from now. And it is apparent that in a lot of
10 these cases you have a protocol for how you
11 develop the data.

12 Well, what about the parameters
13 that were entirely new like dispersants or
14 some of these other pieces of data you are
15 collecting? How are you ensuring that the
16 samples that you get today will still be
17 viable for comparison purposes, you know, five
18 years from now when this event is in the
19 litigation stages?

20 DR. MURAWSKI: Well, one of the
21 things about the whole court surroundings on
22 this is that we have a very strict chain of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 custody, a protocol for all that stuff
2 because, you know, people say well, you know,
3 it's got out of your possession -- it's sort
4 of evidence in a court case, any court case,
5 right?

6 So there is a very strict protocol
7 for this, even including data that we are
8 collecting on contracted vessels for BP that
9 there is either EPA or NOAA and in many cases
10 both people that are recording. You know, the
11 samples come up, they get archived, they get
12 stamped, they get sealed and that kind of
13 stuff.

14 So those samples are going through
15 that process. And all those samples that were
16 developing under that are going to the
17 certified laboratories that are not directly--
18 you know, the money comes from BP, but they
19 are an arm's length away.

20 And so they are archiving the
21 samples as well as doing the sampling for, you
22 know, hydrocarbon and other things. So we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 feel pretty confident that we're not mingling
2 that role, you know, because of the chain of
3 custody issues that we've got.

4 MR. RIZZARDI: How about the QA/QC
5 issue and, you know, the method you use today
6 as you go on and you learn might have to be
7 changed.

8 DR. MURAWSKI: Yes. Well,
9 actually, we have seen a little bit of that.
10 You know, for example, people are very
11 concerned about the level of oxygen down
12 below. And one thing that we found in one of
13 our inter-agency groups is that by using
14 sampling, the oxygen, using the oxygen meter,
15 the oxygen meters themselves have a little
16 membrane on them.

17 And right in the manufacturers
18 manual it says, look, if you put them in oil,
19 it changes the characteristics of what you are
20 getting, right? So we have actually changed
21 the protocol to go back to reviewing the
22 oxygen measures the old fashioned way. You

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 know, as opposed to using these mirrors just
2 because it's unreliable.

3 And so a little bit of that is
4 kind of looking at best practices and making
5 sure that we are collecting data that we can
6 consistently interpret in the long-term.

7 MR. RIZZARDI: I'm glad to hear
8 you are being very sensitive to it. And one
9 totally separate question is, have you done
10 any monitoring of the deep-water coral habitat
11 that was really close to the location of the
12 wellhead?

13 DR. MURAWSKI: Yes, that's a good
14 question. So there is actually one of the
15 vessels that had gone out early called the
16 Pelican and it was an academic vessel and
17 actually had been chartered by NOAA to do a
18 deep coral cruise about 9 miles north of the
19 well site, right? So they kind of repurposed
20 and they went, you know, looking for the
21 plumes around the wellhead.

22 But I can tell you that we are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 very interested in deep coral impacts for the
2 natural resources damage assessment part. And
3 I think you will see a number of cruises out
4 there doing exactly that. There is very good
5 monitoring on a number of those areas down
6 there.

7 MR. RIZZARDI: Thank you.

8 MS. FOY: Hey, Steve, Cathy Foy
9 here. Last week I was looking for those
10 cruise reports from the Pelican and I couldn't
11 get a hold of them. Are they out yet?

12 DR. MURAWSKI: Let's see, well,
13 remember the Pelican is primarily an academic
14 vessel. We have got some data from them and
15 they are included in some of the stuff you
16 just saw, but those aren't necessarily under
17 NOAA's control. And so you have to go to a
18 woman named Samantha Joy to actually get the
19 data, you know, from that.

20 My understanding was that they
21 have not got their hydrocarbon data back from
22 their laboratory yet, even the Pelican 1

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Cruise. So, you know, there is -- one of the
2 problems with all of the testing labs,
3 certified testing labs in that region are
4 plugged right now with all kinds of samples.

5 And so there is a time lag, which
6 actually creates a little bit of an issue if
7 you're trying to respond in real time for
8 things. But I think, you know, if you want
9 some access to those data, I think you might
10 want to ask Samantha for it.

11 NOAA issued a report last week and
12 we're likely to issue two more this week of
13 what we're finding. And those will go up on a
14 public website.

15 CHAIR BILLY: Okay. George?
16 Tony? Okay. Sorry.

17 MR. CHATWIN: Thanks, Steve. It's
18 Tony Chatwin here. Thanks for the
19 presentation. I had a question on the data
20 availability; specifically the GIS data. I
21 think the interactive map on the web is
22 fantastic, but I wondered if there is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 actual GIS data that might be available for
2 those?

3 DR. MURAWSKI: You have a good
4 point. What we're trying to do is push all
5 the data themselves out to a website called
6 data.gov. Now, don't go there right now,
7 because it isn't populated with all the data,
8 but, you know, people want to actually have
9 the raw data and not just the stuff that is on
10 this geoplatform.gov, which has all the GIS
11 layers.

12 So look for us to push more of the
13 data directly out there. Also, look for us on
14 that geoplatform one, where you've got all the
15 oil spill data and the baseline samples, we're
16 going to put a lot of the natural resource
17 information that we've got from all the
18 historic surveys up there, too.

19 Like, for example, the yellowfin
20 and swordfish data I showed you, because, you
21 know, from a response point of view, it's
22 important to know, you know, on a day to day

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 basis what potential resources are at risk.
2 And so we are going to push more of the
3 historic data that has been collected, both
4 ichthyoplankton and fish surveys and mammal
5 surveys out there.

6 MR. CHATWIN: That's great to
7 hear. Do you have an estimate of a time line?

8 DR. MURAWSKI: I think some of the
9 data are going to go up there relatively soon,
10 probably this week. I don't know what
11 data.gov is doing, but we are under a lot of
12 pressure to make all these data transparent.

13 MR. CHATWIN: That's great. I
14 just have to educate a board.

15 DR. MURAWSKI: Yes. Tony, if you
16 want to use any of those slides, I know you
17 are particularly interested in the turtle
18 issues right now and that's going to be
19 important.

20 You know, that strategy, you know,
21 I told you that about a quarter of those
22 turtles are now in rehab. And when we started

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 off, you know, basically, you know, with some
2 of the shoreline stuff, all of them were dead.

3 And we all think that there is a
4 real opportunity to intercept a lot of these
5 turtles that are swimming around and
6 particularly a lot of turtles swimming around
7 in the oil and get them out of there before
8 they become mortalities.

9 MR. CHATWIN: Yes. And so then I
10 have another question. I mean, watching how
11 NOAA has been tracking and modifying the
12 closure on a real-time basis and it just seems
13 to me that -- I felt that that was something
14 new coming out of NOAA, the tracking of sort
15 of a moving target. And then having to track
16 the boats in and out of the closures and the
17 closure modifying every day.

18 It seemed to me that it could be,
19 if applied to fisheries management, could be a
20 new paradigm in terms of realtime area
21 management. I don't know if there is any sort
22 of NOAA plan on how to adapt that to -- this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is not exactly related to the scope -- and
2 adapt that to more refined area management in
3 fisheries.

4 DR. MURAWSKI: Well, you know,
5 this is a daily activity. You know, we get
6 those oil reports every day and the forecast.

7 Again, there is a large group in Seattle that
8 is making those oil forecasts every day. And
9 so there is a meeting every day to see if
10 we've got the whole of those forecasts
11 covered, you know, with the current closures
12 and the boundaries are changed by noontime
13 every day and it's posted.

14 This results -- you know, we never
15 had a manual for this kind of thing before.
16 And so we are cutting into some new territory
17 here. I don't know if, Eric, you want to
18 comment on this one?

19 MR. SCHWAAB: Yes. No, I think
20 that's right. The only thing I would just add
21 is, I mean, this is not dissimilar to what we
22 do, for example, at dynamic area closures on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the right whale movements and some of those
2 kind of things.

3 So while that is not done every
4 day and I don't think that we would want to
5 get into an everyday kind of thing like this
6 on too many -- under too many circumstances,
7 it's, you know, not completely unique.

8 MR. RANDY FISHER: Eric, what's
9 the legal basis for the closures then?

10 MR. SCHWAAB: So we basically set
11 up a -- we basically took a regulatory action
12 that in the regulatory action itself sort of
13 sets out the parameters for a daily adjustment
14 to the map. And then it's an emergency
15 regulation which we have to renew. We have
16 renewed it once already.

17 DR. MURAWSKI: The basis is the
18 Magnuson Act. Those are Magnuson Act closures
19 which give us the ability to --

20 MR. SCHWAAB: Yes, yes.

21 MR. MILES: -- respond every day
22 like this.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Okay. Another one?

2 MR. RANDY FISHER: Well, the
3 reason why I asked the question is, if I
4 understand, you said that there was not a
5 sample that didn't meet FDA requirements,
6 which means for the purposes of public health
7 then, the samples you gain or you gather
8 aren't -- don't exceed FDA requirements. So
9 that was the basis of the question legally
10 what you were -- where you drew the line.
11 That's why I asked the question.

12 CHAIR BILLY: Okay. Paul?

13 MR. CLAMPITT: Hello, Steve. This
14 is Paul Clampitt. I've got a question about -
15 - there was a huge spill in like '79 in the
16 Gulf of Mexico. I think it comes close to
17 this. Correct me if I'm wrong. And I'm
18 wondering if we learned anything from the
19 outcomes of that spill and if we can expect
20 kind of the same outcomes with this one?

21 DR. MURAWSKI: That's a very good
22 point. And it's a question we have been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 asking, too. So in '79 there was a runaway
2 subsurface well in Mexico off the Campeche
3 and, of course, that's a big shrimping ground
4 there.

5 We learned a few things from it.
6 I mean, it was an underwater runaway well, but
7 it was only a couple hundred feet down. It
8 wasn't, you know, 5,000. That well ran for
9 nine months unrestricted, you know, put out
10 millions of gallons of crude. A lot of that
11 washed ashore. Some of it as far north as
12 Padre Island, Texas.

13 It wasn't monitored very well.
14 There were a few -- NOAA was down there on one
15 of its research vessels for a while. The
16 Mexican government didn't have anywhere near,
17 you know, the level of resources that we are
18 putting on this one.

19 One thing is, you know, you can
20 still find that oil, you know, in certain
21 places, but overall, I mean, it's not like the
22 Campeche, you know, stopped being a productive

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 shrimping ground and those kinds of things.

2 And five years after, you know,
3 you didn't have that oil up on the beach on
4 Padre Island. I guess, generally speaking,
5 you know, life went on there, you know. And I
6 think, actually, it's hard to draw parallels
7 because it's different oil and different
8 circumstances and it's, you know, different
9 depths. But the ecosystem was able to clear
10 it, you know, relatively quickly.

11 And I think that's one of the big
12 differences between this and Valdez is that,
13 you know, particularly, the surface
14 temperatures here are much warmer and that
15 means, you know, a lot of things are going to
16 metabolize a lot quicker and move to the
17 ecosystem.

18 That doesn't mean that we are not
19 going to have serious consequences for a long
20 time, but the hopeful thing about Ixtoc was
21 that five years afterward you had a functional
22 ecosystem down there. And so we are trying to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 actually, you know, throw a net out a little
2 bit and see what we can learn, you know,
3 specifically about, you know, some of the
4 science things that happened there. But
5 that's a very good point.

6 MR. CLAMPITT: Thank you.

7 CHAIR BILLY: Okay. Martin, did
8 you have anything?

9 MR. MARTIN FISHER: Thank you,
10 Tom. With the Ixtoc spill, Steve, wasn't a
11 lot of that burned off at the surface? And
12 could you tell us a little bit about the
13 different composition crude versus the sweet
14 Louisiana crude?

15 DR. MURAWSKI: Yes. Well, I don't
16 know about how much of that was burned at the
17 surface. I just, you know, haven't come
18 across that. This crude is a lot less dense
19 than that one was, which means that, you know,
20 you have a lot more light material involved in
21 it. And potentially a lot more volatile
22 elements that are going to leave the compound

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 relatively quickly.

2 This one is around 40 percent
3 methane which is good in one sense that, you
4 know, it's a very light material and that a
5 lot of it is going to hit the surface. But it
6 also creates issues for us, you know, with all
7 the methane in the water, is that going to
8 chew down the oxygen budget as well?

9 And the other thing is, you know,
10 there is a lot of other compounds, light
11 compounds, besides methane that are being
12 stripped off.

13 Now, I'll tell you an interesting
14 story. I don't mean to go too long on this,
15 but there was an area around 20 miles to the
16 southeast where some sampling was done and
17 they found oil at the bottom, but it was so
18 heavily fractionated. Basically, the only
19 thing that remained was the waxy part of the
20 oil.

21 So it couldn't actually be
22 fingerprinted to this thing. And so it was --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we couldn't actually identify this as oil,
2 because all of the biomarkers were gone. And
3 so the question is if this in fact is oil,
4 what kind of process would actually, you know,
5 result in all of the elemental compounds of
6 the oil, you know, going away, except for the
7 heaviest parts?

8 Is it the dispersement? Is it
9 the, you know, tremendous pressure under those
10 things? And those are big unknowns. We just
11 really don't know what is going on.

12 MR. MARTIN FISHER: Steve, one
13 more follow-up question, if you don't mind.
14 In the escapement estimates, how much of --
15 what percentage of the actual estimate of
16 escape oil is methane, if any at all?

17 If they are saying a million
18 gallons a day, how much of that is methane or
19 is none of it methane?

20 DR. MURAWSKI: I don't think any
21 of it is methane. You know, they are counting
22 basically the actual liquid oil that they are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 getting.

2 MR. MARTIN FISHER: Thank you.
3 Because you said you felt like it was 40
4 percent of the --

5 DR. MURAWSKI: 40 percent of what
6 is coming out of the wellhead is methane. And
7 so part of that is being -- most of that
8 methane is being flared off at the surface,
9 the part that they are collecting, but then
10 there are other parts that are actually coming
11 up. But the 35 to 60,000 barrels is oil.

12 MR. MARTIN FISHER: Thank you.

13 CHAIR BILLY: George?

14 MR. NARDI: Steve, George Nardi.
15 Just back to some of the resources in the
16 Gulf. It has been discussed that the oil is
17 changing some of the behavior of the fish in
18 the Gulf and I'm concerned with the spawning
19 behavior. And I'm just wondering if you have
20 any comments on that.

21 And NOAA in regards to following
22 up with that post, hopefully, spill capping

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the wellhead and clean up to see if -- do you
2 think any of those behavioral changes would be
3 permanent or would they recover to, you know,
4 the norm corresponding of the fisheries in the
5 Gulf?

6 DR. MURAWSKI: Right. No, that's
7 a good question though. You know, one thing
8 that we haven't seen is a lot of wind rows of
9 dead fish. You can see that in shallow water
10 oil spills a lot. So far, we haven't gotten a
11 lot of reports of those kinds of things which
12 is a hopeful thing.

13 One of the things that we are most
14 worried about though is particularly up north
15 of the well site is with all that oil and
16 dispersant and subsurface oil in there, is
17 that going to disrupt eggs in water being, you
18 know, a major mortality factor? Not only for
19 the fish, but for the entire ichthyoplankton
20 part of the ecosystem?

21 So we've got a number of cruises
22 that have been accomplished and we want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concentrate more on that. You know, it could
2 be that we just have a spawning disruption,
3 you know, with eggs and larvae in one year,
4 but that doesn't, you know, degrade the
5 capacity of the underlying stocks to do that.

6 There are a lot of variables in
7 there and including the fishing effect, you
8 know, so those are just things that we are
9 going to have to plow through.

10 CHAIR BILLY: Okay. We are
11 running a little behind, so, Steve --

12 DR. MURAWSKI: Okay. I'm afraid
13 I've got another important meeting I have to
14 run to. I defer to Eric on the rest of the
15 questions, if I could?

16 CHAIR BILLY: All right.

17 MR. SCHWAAB: Thanks, Steve.

18 DR. MURAWSKI: On all the hard
19 ones, right?

20 CHAIR BILLY: We'll take a couple
21 more and then we are going to break.

22 DR. MURAWSKI: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Let's see, who did I
2 have? Steve?

3 MR. JONER: Hi, this is Steve
4 Joner. If you're still there, Steve, or Eric,
5 I know there are a lot of fishermen and
6 vessels involved in cleanup, but what sort of
7 organized effort is there with the fishing
8 industry in this monitoring the tracking?

9 DR. MURAWSKI: Well, let me try
10 part of that. We have actually got a
11 substantial number of vessels under contract,
12 you know, particularly the other seafood
13 samples, you know, for the seafood testing
14 part. Because, you know, we have got, you
15 know, six NOAA vessels in there, but that's
16 nowhere near the requirement that we have in
17 order to do this.

18 Particularly when we get the well
19 capped off and people are going to want us to
20 open up these areas as quickly as possible,
21 you know, we are trying to ramp up to, you
22 know, what it would take to actually do that,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to sample these areas and tests to make this
2 determination. And so that's going to be a
3 big concern for us.

4 But we are employing fishers to
5 actually undertake that.

6 CHAIR BILLY: Okay. Bill?

7 MR. DEWEY: Yes. Steve, Bill
8 Dewey again. Just to follow-on to George
9 Nardi's question. You know, oyster larvae are
10 actually, you know, so sensitive they are used
11 by EPA for pollution bioassays, so clearly
12 they are in jeopardy here. And I just wonder
13 if there are any specific assessments relative
14 to that that Gulf industry relies almost
15 entirely on or they do rely entirely on the
16 natural reproduction down there for the Gulf
17 oyster production.

18 So is there anything specific
19 being done in that regard?

20 DR. MURAWSKI: Well, I know as you
21 know, that a lot of the growing facilities
22 actually moved, particularly in the Louisiana

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 out to western Louisiana to try to maintain
2 some of their productivity and try to get
3 animals out of the direct path of any oil in
4 that region.

5 I don't know of any specific
6 studies that the states are doing about, you
7 know, oyster larvae and those kinds of things,
8 but it's an obvious kind of thing to do.

9 Okay. I'm afraid I've got to sign
10 off.

11 CHAIR BILLY: Okay.

12 DR. MURAWSKI: So if Eric can take
13 care of the rest of them, that would be great.

14 CHAIR BILLY: Okay. Thank you.

15 MR. MILES: Thanks, everybody.

16 CHAIR BILLY: Thanks, Steve.

17 MR. SCHWAAB: Thank you, Steve.

18 MS. LOVETT: Thanks, Steve.

19 CHAIR BILLY: I have a couple
20 follow-ups. One is, maybe I have been missing
21 it, but it would seem that one of the best-
22 kept secrets is there is over 800 samples and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they are all negative, which brings me to a
2 point, a possibility which is that NOAA
3 Fisheries in conjunction with FDA and perhaps
4 EPA think about some means of communication to
5 the public that would not only now, but in the
6 future, once it's capped and the areas are
7 opened back up, would communicate to the
8 public about the safety of the product and
9 what is behind any assertion that is made.

10 It would have to be done very
11 carefully, but it would be a real service to
12 the public, to the consumer and, obviously, to
13 the industry as well.

14 MR. SCHWAAB: Yes. Just a
15 comment, you know, that's a big ongoing
16 challenge and putting the -- I mean, you know,
17 a good part of those samples, you know, the
18 vast majority of them are either baseline
19 samples or perimeter samples.

20 But you are right that, you know,
21 that is ultimately going to be a very
22 important part of the story, particularly as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we continue down this road of trying to focus
2 on the closure area as the first line of
3 defense for, you know, protecting the
4 integrity of the rest of the seafood coming
5 out of the Gulf, the rest of the fishing
6 opportunity in the Gulf and it is going to be
7 more important as we get into reopening.

8 CHAIR BILLY: Yes.

9 MR. SCHWAAB: Which, you know, as
10 you heard Steve say, we are working
11 aggressively in some areas that were either
12 lightly oiled or, you know, where oil has
13 moved away for some period of time, which is
14 particularly true in that, western, you know,
15 west of the Mississippi Delta.

16 So, Tom, you're right. And that
17 data is going to be an important part of
18 telling that story. But I would maybe ask,
19 you know, Members of the Committee from down
20 there, Martin, Pam, others.

21 I mean, we have been, up to and
22 including the present, pretty aggressively

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 stating the position that, you know, there
2 continue to remain significant areas of the
3 Gulf that are open for business. And that's
4 still a hard sell. I think the industry is
5 finding that to be really true.

6 CHAIR BILLY: Yes, Pam?

7 MS. DANA: I think one of your --
8 our biggest challenges is the media and how
9 they have just -- I mean, how they are
10 portraying this. So you can communicate
11 messages and I think you would have a very
12 valid point there. You can communicate the
13 messages about the 800 samples, but if there
14 comes somebody who -- I mean, the media is our
15 big enemy here.

16 It has just, you know this
17 firsthand, killed the tourism. And then if
18 you try to combat tourism or do marketing, try
19 to combat what is going through the media, it
20 is the next day that a tarball will show up on
21 the beach. And then so, you know, there goes
22 the media again.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And just for your reference, Eric,
2 there is a widespread perception out there,
3 and Martin, you can tell me if you agree, that
4 the Federal Government, NOAA may use this in
5 the longer term not to open up the waters. I
6 mean, this will be a decade-long closure of
7 the federal waters.

8 So there is the communication. I
9 don't think that that's the intent. But at
10 least where I'm at, that's what they are --

11 MR. SCHWAAB: Right. So what's
12 the presumptive motivation there?

13 MS. DANA: To shut down the
14 beaches.

15 MR. MARTIN FISHER: Since y'all
16 are all bought and paid for by TIA.

17 (Laughter.)

18 MS. DANA: Am I wrong there? Are
19 you hearing it from --

20 MR. MARTIN FISHER: In the
21 commercial community -- I'm sorry, can I?

22 CHAIR BILLY: That's all right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Yes, please.

2 CHAIR BILLY: Martin, you are
3 next.

4 MR. MARTIN FISHER: In the
5 commercial community that I'm from, that's not
6 -- I think that's more of a recreational
7 perspective.

8 MS. DANA: No, not in my area.

9 MR. MARTIN FISHER: Not in your
10 area?

11 MS. DANA: No.

12 MR. MARTIN FISHER: Okay. There
13 are two things I would like to offer some of
14 the questions that I heard that I would like
15 to expand on the answer. One was for Tony.

16 We already have a BMS Program for
17 pelagic and reef fish-permitted vessels in the
18 Gulf. And every marine protected area or
19 habitat of special concern, whatever they are
20 called, has an electronic boundary around it,
21 so to speak. And if boats get within an
22 certain proximity, alerts go out to NOAA.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So we already have that system in
2 place. Does that go towards your --

3 MR. CHATWIN: Well, you know, so
4 that's one piece of the puzzle. The other
5 piece is that the areas with the boundary are
6 now moving and being tracked on a daily basis.

7 MR. MARTIN FISHER: True.

8 MR. CHATWIN: So you could manage
9 the fishery where needed. For example, around
10 spawning aggregations that are not necessarily
11 fixed in time and place.

12 MR. MARTIN FISHER: If you could
13 identify where the spawning aggregations came
14 from.

15 MR. CHATWIN: So you can have
16 satellite tags, things like that.

17 MR. MARTIN FISHER: And the other
18 thing I wanted to clarify with Eric. My
19 understanding of the close on this, it's a
20 projected, within 72 hours oil is expected to
21 be within the boundary and that it isn't
22 actual sighting or -- somebody in the back is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 nodding. Is that --

2 MR. SCHWAAB: Right. So the
3 closure area is based on the trajectories.
4 Generally, we get 24, 48, 72. We generally
5 rely on the 48-hour trajectory to form the
6 basis of the action.

7 After the fact, the reopening,
8 there is a fork in the road. So if we can
9 come back after the fact and determine that
10 the oil that was projected to be there was
11 never there, then we simply can adjust the
12 line back, which we have done.

13 MR. MARTIN FISHER: I have seen
14 that, yes. We've rolled back the line.

15 MR. SCHWAAB: Where it gets
16 tougher and it's particularly down along that,
17 you know, southeast edge is when there is less
18 certainty about whether oil was there or not.

19 MR. MARTIN FISHER: Yes.

20 MR. SCHWAAB: Then we have to --
21 or let me say it a different way. If we can't
22 confirm pretty clearly that there was never

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 oil there, then we have to go through the
2 sampling protocols before we can reopen.

3 MR. MARTIN FISHER: Okay.

4 MR. SCHWAAB: Which is what we are
5 doing right now down along that southeast edge
6 and Steve spoke specifically to that. But
7 there is a lag time there associated with
8 collecting samples and then processing them
9 through the system.

10 MR. MARTIN FISHER: Mr. Chairman,
11 my other offering was for Steve. I'll keep it
12 short.

13 BP is running the Vessel of
14 Opportunity Program. They are the ones that
15 are directly employing recreational and
16 commercial boats for oil, you know, searching
17 for oil, dealing with oil, skimming the oil,
18 cleaning the beaches, whatever.

19 MR. JONER: Is this being
20 coordinated with the long-term tracking that
21 Steve just described?

22 MR. MARTIN FISHER: Absolutely. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mean, that's something -- you can't -- if you
2 have a reef fish permit on your boat, now,
3 boats that do not have reef fish permits or
4 pelagic permits that don't have VMS, then
5 there is no way to really record where they
6 are at.

7 But any vessel that is in the
8 program that has an active reef fish permit or
9 pelagic permit must have its VMS on the letter
10 if they are working with EPA or not.

11 MR. SCHWAAB: So let me just
12 clarify, the vast majority of boats that are
13 contracted are contracted through that Vessel
14 of Opportunity Program with BP.

15 The contract vessels that Steve
16 referred to that we are using to supplement
17 our seafood sampling are contracted directly
18 through us. We are not utilizing the BP
19 contracted boats for that purpose.

20 CHAIR BILLY: Okay. Vince?

21 MR. O'SHEA: Two quick things.
22 One, I spoke to the Commandant of the Coast

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Guard on Friday and one of the comments that
2 he made was that BP was actively going after
3 and trying to employ as many boats as possible
4 to do skimming.

5 And he was speculating -- or
6 basically said, I don't know why there is
7 anybody in the Gulf that is not skimming oil
8 right now, that BP can pay for it, they have
9 the money for it. And he kind of implied that
10 it was reluctance by a certain category or
11 group of people not to engage in that. That's
12 just a piece of information.

13 The second, though, is the 800
14 samples strikes me as a great example of the
15 abundance of caution that NOAA is using here
16 in defining the closed area. And while that
17 might not necessarily help things inside the
18 closed area, it would certainly seem to be a
19 positive outside the closed area for two-
20 thirds of the Gulf of why that seafood is safe
21 and people should be able to use it and sell
22 it and eat it. Thanks.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Paul?

2 MR. CLAMPITT: Yes. I have a
3 question for Eric. There is a lot of
4 discussion about the danger of these
5 dispersants, just the nature of the period.
6 And you know, we read about it in the press
7 and I'm wondering if there is any discussion
8 of the dispersants. You know, are we better
9 off without them? Just a question.

10 MR. SCHWAAB: Yes. So there are a
11 number of, I guess, different ways to answer
12 that, Paul, but I think the first place you
13 have to start is that this is a tradeoff,
14 right? So the presumption is that while there
15 is some risk associated with utilizing the
16 dispersants, that that risk is a more
17 favorable one to take than simply allowing,
18 you know, that volume of oil to continue to
19 move unchecked, particularly on shore into,
20 you know, those sensitive marsh ecosystems and
21 the like.

22 So that's been sort of the basic,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ongoing calculation. It's the lesser of two
2 evils question.

3 Having said that, obviously, there
4 are a number of unanswered questions and the
5 need for continued analysis of, you know, what
6 those implications are, particularly related
7 to the subsurface injection, which is, you
8 know, sort of occurring in unprecedented
9 fashion.

10 You know, you heard Steve talk
11 about a lot of that work. And I think you
12 heard Steve also reference the fact that there
13 is likely to be sort of a follow-up science
14 document, if you will, relating to, you know,
15 the ongoing collaboration among federal
16 scientists and others about sort of that
17 tradeoff.

18 And then the last thing I would
19 say is that from the outset -- well, let me
20 say two more things. From the outset, both
21 FDA and EPA, which regulates dispersant use,
22 have continued to sort of say and, I think,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Martin you shared around EPA's statement about
2 the, you know, environmental consequences of
3 dispersants. They continue to still view them
4 as relatively benign, even at high volumes.

5 And then lastly, we are continuing
6 to do or have ramped up both for ecosystem
7 purposes, as well as for seafood safety
8 purposes, some additional laboratory
9 investigations where fish are particularly
10 challenged with Corexit in the lab. So that
11 we can understand how it processes through
12 fish tissue, so we know what to look for in
13 the chemical analysis, but also from an
14 ecological perspective, we can analyze the
15 potential impacts physiologically to fish from
16 the Gulf region in a lab setting.

17 MR. CLAMPITT: Thank you.

18 CHAIR BILLY: Okay. We are going
19 to break. I've got four or five people on a
20 list. Let's try to keep it to 10 minutes, do
21 what we have to do and get back. Bring your
22 coffee in here. And we are going to get back

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on the schedule, but we will come back in time
2 to ask some more of these questions.

3 (Whereupon, the above-entitled
4 matter went off the record at 10:17 a.m. And
5 resumed at 10:35 a.m.)

6 CHAIR BILLY: Okay. I'm going to
7 move on now and invite Jim. Where did he go?
8 Oh, there he is. There he is. Jim.

9 MR. KURLAND: I guess we're going
10 to switch this around.

11 CHAIR BILLY: Oh, okay. So
12 whichever -- who is first? Jon?

13 MR. KURLAND: Jon.

14 CHAIR BILLY: All right, Jon. Jon
15 Kurland, Assistant Regional Administrator for
16 Habitat Conservation. Jon, the floor is
17 yours.

18 MR. KURLAND: All right. So I'm
19 Jon Kurland and I'm based here in Juneau and
20 I'm pinch-hitting to give you a sense of the
21 Habitat Conservation program's involvement
22 with OCS development activities.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The sense I got was that folks at
2 MAFAC may not all be familiar with how the
3 Fishery Service gets involved in working with
4 Minerals Management Service and other agencies
5 on some of these non-fishing activities -- our
6 consultative role, our role under NEPA and so
7 forth.

8 So I'm going to talk a little bit
9 about those sorts of process issues and then
10 just to touch specific on Deepwater Horizon.
11 And then pass the baton to Jim Lecky who will
12 talk about the protected resources side of
13 things.

14 Okay. So avenues for the Habitat
15 Program to be involved in these issues. There
16 are several different statutes that apply,
17 which govern Habitat's role here. NEPA is the
18 broadest, I guess, and, as you all are
19 probably aware, any Federal Agency that is
20 authorizing or funding or carrying out a major
21 federal action that may have a significant
22 adverse effect on human environment, has to do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 an Environmental Impact Statement.

2 So when they do an EIS, other
3 agencies often chime in and review and comment
4 on those and sometimes serve as cooperating
5 agencies. So that's one of our roles in this
6 process is, the Habitat Program through the
7 regional offices around the country and field
8 offices gets involved in commenting on agency
9 actions. And I'll go into that in a little
10 bit more detail.

11 The Magnuson-Stevens Act is
12 another piece of this. The Essential Fish
13 Habitat provisions of the Act, which formalize
14 our consultative rule and set up procedures
15 and I'll talk about that a little bit.

16 The Fish and Wildlife Coordination
17 Act is a broader umbrella for different
18 coordination mechanisms between agencies to
19 identify and minimize adverse effects on fish
20 habitat, so I'll touch on that.

21 One thing I won't touch on past
22 this slide is this last bullet here, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Damage Assessment, Remediation and Restoration
2 Program or DARRP, which we fondly call it.
3 Rob Wolotira will make a statement about this
4 later on.

5 So I put it up here just sort of
6 as a placeholder so you know this is part of
7 NOAA's habitat program, but specific on the
8 natural resource data assessment side of
9 things. And Rob will go into that a little
10 bit later.

11 So the next one. So under NEPA,
12 when a lead agency, such as Minerals
13 Management Services, is preparing an analysis,
14 an environmental assessment or particularly an
15 Environmental Impact Statement, they will
16 often go to expert agencies and ask those
17 agencies to help them out with their analysis.

18 So sometimes MMS asks us to serve
19 as a formal cooperating agency, which
20 typically we do by reviewing pre-released
21 drafts, helping scope out the analysis,
22 providing technical information to help

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 evaluate environmental consequences of an
2 action.

3 More commonly than serving in that
4 formal cooperating agency role, we serve as
5 simply a commenting agency. So we will review
6 and comment on a draft Environmental Impact
7 Statement. If other parts of NOAA are
8 commenting as well, then our comments are
9 folded together and NOAA submits one
10 integrated comment letter to the action
11 agency. And then, just like any other
12 comments, the action agency responds in the
13 final NEPA analysis.

14 So we try to honor the cooperating
15 agency requests when they come in. There are
16 times when due to competing priorities, staff
17 limitations, that sort of thing, we can't
18 serve as a cooperating agency, but we may
19 still serve in a commenting function.

20 Let's see -- oh, the only other
21 thing I'll mention on this is the types of
22 actions that are covered here. So when you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are talking about the oil and gas world,
2 Minerals Management Service, which has just
3 undergone a name change, but anyway, that part
4 of Interior is the lead federal action agency.

5 And their actions tend to be their
6 five year plans, which require a NEPA
7 analysis, their lease sales and some specific
8 exploration and development activities. So
9 those are the kinds of actions for which we
10 are commenting through the NEPA process.

11 Magnuson-Stevens Act is probably
12 our most direct handle on these things. And I
13 think you all know under the '96 amendments to
14 the Act, that's when the Essential Fish
15 Habitat provisions were added that formalized
16 this consultative role.

17 So any federal agency that
18 authorizes, funds or carries out an action
19 that may adversely affect Essential Fish
20 Habitat must consult with the Secretary
21 through the National Marine Fishery Service.

22 There is a mapper tool on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 website, a GIS-based tool that agencies can
2 use to identify areas that have Essential Fish
3 Habitat and for which species and then they
4 come to us and consult. And there is a
5 consultative process that is laid out in
6 regulations. I won't go into the details of
7 that.

8 But we have a separate mandate, in
9 addition to the consultation responsibility on
10 the action agency. NOAA Fisheries is required
11 to provide conservation recommendations. And
12 we have to provide those recommendations on
13 any action that would adversely affect EFH.
14 And that requirement also applies to state
15 agency actions.

16 So although states aren't required
17 to consult with NOAA Fisheries, if we learn
18 about a State Agency action that would
19 adversely affect EFH, NOAA Fisheries is
20 required to provide conservation
21 recommendations.

22 If habitat area is a particular

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concern, which is a subset of Essential Fish
2 Habitat, if those particular areas might be
3 affected by the action, we comment on those
4 kinds of impacts during the same process.

5 It's important to keep in mind
6 that the end product of that consultation is
7 technical advice. It's recommendations,
8 conservation recommendations from NOAA
9 Fisheries to the agency that has jurisdiction
10 over that activity. It is non-binding.

11 So we are providing conservation
12 recommendations. The action agency has to
13 consider those recommendations along with
14 other public interest factors, the cost, the
15 logistics, safety issues, technology, whatever
16 other factors may come into play in deciding
17 whether it is practicable to implement the
18 advice from NOAA Fisheries on ways to avoid or
19 minimize adverse effect.

20 There is a requirement on the
21 action agency to respond in writing, however.

22 So if they disagree with NOAA Fisheries'

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 advice, they have to give us a letter and
2 explain in some detail which recommendations
3 they are accepting, which ones they are not.
4 And if they are not accepting, why not. So
5 that helps round out the administrative
6 record, if you will, as to how they consider
7 NOAA Fisheries advice.

8 The last thing I'll say on this is
9 that almost all of our EFH consultations are
10 blended into other environmental review
11 processes. So we try to fold it into the NEPA
12 process or the Clean Water Act permitting
13 process that the Corps of Engineers
14 administers, things like that. So try to fit
15 it into other environmental reviews for the
16 sake of efficiency.

17 The Fish and Wildlife Coordination
18 Act, I mentioned that that's kind of a broader
19 authority that federal agencies have to
20 consult with us regarding activities that
21 would alter a waterway and basically ways to
22 prevent or minimize impact to fish and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wildlife resources.

2 Under this umbrella, Minerals
3 Management Service coordinates with us on
4 their annual studies planning. They go
5 through a process annually of determining what
6 studies are going to be conducted for impacts
7 to fisheries or marine mammals, also other
8 resources and they solicit input from us.

9 We are, in the Alaska region,
10 pretty active in commenting on that. I
11 understand in the Gulf, there has been a
12 little bit less of a history in commenting on
13 those things. But the idea is an avenue for
14 input on some of the studies that go to inform
15 the decisions that MMS ultimately has to make.

16 Also, after the studies are
17 conducted, MMS hosts what they call
18 information transfer meetings. And there has
19 been a long history of those here in Alaska as
20 well as in the Gulf. And that is something
21 that NOAA Fisheries participates in on kind of
22 a resource available basis. So we are not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 always participating in those things, but that
2 is a chance for dissemination of the results
3 of some of these studies developed through the
4 annual studies planned.

5 So just two more slides here. And
6 this is focused specifically on the Deepwater
7 Horizon incident. And I developed these in
8 coordination with my counterpart, Miles Croom,
9 who is in our Southeast Regional Office at St.
10 Petersburg.

11 So NOAA Fisheries did complete a
12 programmatic Essential Fish Habitat
13 consultation with MMS looking broadly at OCS
14 development and resale activities in the Gulf
15 of Mexico, that was in 1999. And separately
16 consulted on the five year plan developed for
17 oil and gas lease sales in the west and
18 central planning areas of the Gulf.

19 The conclusions of that weren't
20 earth-shattering. It was basically kind of
21 memorializing different conservation measures
22 that have been developed over time

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 incrementally under that 1999 programmatic
2 consultation, things that MMS has proposed
3 through its NEPA planning process and so
4 forth.

5 So some of the standard
6 stipulations and regulations that MMS puts
7 into place, but it's keyed on the information
8 that the action agency provides. So as with
9 any consultation that we do, the action agency
10 assesses the anticipated effects of their
11 action.

12 And, in the case of something like
13 this, their response planning capability.
14 They tell us how they think they will be able
15 to respond and, based on that, we provide
16 advice. If it turns out that they can't deal
17 with things as well as they thought, you know,
18 that's, I guess, an unforeseen circumstance or
19 something that may not have been fully
20 contemplated by the consultations.

21 So if you are trying to piece this
22 together after the fact, to what extent did

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 NOAA Fisheries foresee some of the things that
2 went wrong in this process, it is keyed on
3 what the action agency provides in their
4 assessment of their ability to deal with these
5 things.

6 Post-spill, we also have been
7 working extensively with the Army Corps of
8 Engineers and the states and some of the other
9 partners on some of their response activities
10 such as the emergency authorizations to try to
11 contain a spill or keep it out of the
12 sensitive marsh areas and that sort of thing.

13 Examples are pretty extensive.
14 Sand berm construction in Louisiana, filling a
15 cut that had been created by hurricane
16 activity in Alabama and some of the boom
17 systems and other things to protect coastal
18 habitats and inlet areas.

19 The EFH consultation process,
20 again, I'm told from my counterpart in the
21 Gulf, has been really helpful to our Southeast
22 Region in this case, just to try to make sure

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that people are thinking about potential
2 consequences here.

3 If you are cutting off these
4 coastal ecosystems from the natural transport
5 patterns and that sort of thing, that is going
6 to have some consequences. And the idea is to
7 try to make some informed decisions to the
8 extent we can and balance those risks a little
9 bit.

10 You know, everybody is very
11 concerned about trying to keep the oil out,
12 but there may be pretty significant hits on
13 current year classes and maybe some longer-
14 term consequences as well.

15 So the consultation process has
16 been a good avenue, a good statutory mechanism
17 to make sure that NOAA Fisheries is involved
18 in some of those discussions with the agencies
19 that they have to permit or authorize
20 effectively.

21 That's really all I have. So I
22 can take any questions now or we can hear from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Jim and then we can handle the discussion all
2 together. However you prefer.

3 CHAIR BILLY: Let's go ahead with
4 Jim and then --

5 MR. KURLAND: Okay.

6 MR. LECKY: Okay. All right. So
7 thanks. I'm Jim Lecky, Director of Protected
8 Resources. I have actually been in this
9 position for about five years. This is my
10 first MAFAC meeting, so I'm excited to be here
11 and glad you're finally taking on some
12 endangered species issues.

13 So, sticky situation in the Gulf.

14 So usually all regional offices have both the
15 protected resources and a habitat conservation
16 function and they tend to collaborate and work
17 really closely together in providing the
18 comments on NEPA and the Fish and Wildlife
19 Coordination Act comments and the like.

20 So all the processes that Jon just
21 talked about, that occur as part of the
22 permitting review process, Protected Resources

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 feeds information into that process as well so
2 that that information is considered. And we
3 have been successful in areas over the years
4 in having areas excluded, for example, from
5 lease/sale activities.

6 Back in the '80s we were able to
7 keep stuff away from Mercury Islands, for
8 example, in the Southern California area. Up
9 here, we have been able to keep some of the
10 lease/sale offerings offshore in the Chukchi,
11 so they don't interfere with some of the
12 coastal subsistence harvest activities and
13 things of that nature.

14 And those usually occur as a
15 result of Fish and Wildlife Coordination Act,
16 kind of, comments and comments in the eco-
17 process.

18 But subsequent to that, as the
19 Agency goes forward, each Agency has an
20 affirmative obligation under the Endangered
21 Species Act to consult with National Marine
22 Fishery Service for species under our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 jurisdiction.

2 The purpose of that consultation
3 is to help those agencies meet their
4 obligation under the ESA to ensure that
5 activities they authorize aren't likely to
6 jeopardize the continued existence of a
7 species.

8 So we are looking at, in those
9 consultations, what the baseline conditions of
10 the species are, what the baseline conditions
11 of the habitat are, what are all the
12 activities for affecting those species in
13 those areas and habitat.

14 And then we are asking the
15 question, given all those challenges that
16 those species face, can they still survive and
17 recover with the additional impact of another
18 activity? And in this specific case it's a
19 five year lease/sale plan that was analyzed.

20 There also is an obligation under
21 the Marine Mammal Protection Act to avoid
22 taking marine mammals and there is a process

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that we use to authorize the take of marine
2 mammals incidental to activities in specific
3 areas, specific geographic areas incidental to
4 specific activities.

5 There is a limitation on the
6 estimated small number of animals which is
7 problematic for us to deal with in the context
8 of oil and gas. And maybe we'll talk a little
9 bit about that later tomorrow, I think.

10 We have completed a five-year rule
11 to authorize incidental take of mammals
12 associated with rig removal in the Gulf.
13 There are a lot of explosives that are used as
14 part of the rig removal process. That does
15 expose small-toothed cetaceans for the most
16 part to, at minimum, harassment and maximum,
17 potential injury from the shock waves
18 associated with that.

19 We're in the process of looking at
20 authorizing seismic activities in the Gulf as
21 they impact marine mammals. Our challenge
22 there is dealing with the small numbers issue.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Seismic vessels introduce a lot of sound. In
2 the Gulf, there is a lot of seismic research
3 exploration activity ongoing at one time.

4 And it is actually possible that
5 they are disturbing, at least, large numbers
6 of mammals with minimal impact on the
7 population. So trying to reconcile how that
8 gets weighed in the small numbers calculations
9 is a legal challenge for us that we continue
10 to wrestle with.

11 We have not ever received an
12 application for incidental take of mammals for
13 drilling operations from the Gulf and so we
14 have a process for that.

15 So that's sort of the history. We
16 did -- I guess, I will comment more
17 specifically on the biological opinion. There
18 was a biological opinion written on the five-
19 year plan, 2007 through 2012.

20 That biological opinion looked at
21 all of the activities associated with oil and
22 gas in the Gulf. It looked at everything from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 resale authorization up through development.
2 So it included all those activities.

3 It did analyze the effects of
4 spills. It looked -- and it talks about what
5 we learned from the Ixtoc case as well as some
6 of the other spills. So spills on the
7 magnitude of what is going on now occur about
8 once every decade.

9 One of the first ones that you
10 might recall is the one off Southern
11 California in 1969. And after all these
12 spills, there is usually lessons learned that
13 are applied and modify the process.

14 So after the Southern California
15 spill in 1969, shallow hazard surveys and
16 measures were put into place to identify
17 fracture zones and things that might erupt
18 during a drilling operation.

19 After Ixtoc's, there was a lot of
20 investment in blowout prevention technology
21 that supposedly was to be effective in these
22 circumstances.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And sort of the mindset, I think,
2 during that consultation was this wasn't
3 anything new. The first deep well in the Gulf
4 of Mexico was drilled in 1975. The first
5 ultra deep well was drilled in the 1980s. And
6 there are, I wrote actually down some numbers,
7 over 120 production wells in waters deeper
8 than 1,000 feet.

9 Excuse me, there are 951
10 production wells in waters deeper than 1,000
11 feet and there is 120 production wells in
12 waters deeper than 5,000 feet. That's data
13 off of MMS' webpage.

14 So there is a lot of experience
15 with this technology and there is a lot of, I
16 guess, information about numbers of wells. It
17 indicated that, you know, spills of the
18 magnitude of Ixtoc are low-probability. So in
19 those situations, you kind of act, okay, well,
20 how are you safeguarding against the effect of
21 that very rare event occurring?

22 And so that's when you look at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what are the mitigation methodologies? And
2 the thought process, at the time, was, is
3 there had been a lot of progress in oil spill
4 prevention and blowout prevention and things
5 of that nature.

6 And so the long and the short of
7 it is, in that biological opinion, the
8 probability of a spill was discounted as being
9 negligible, the likelihood being negligible,
10 you know, and the authorizations for oil-
11 spill-related taking were relatively small.

12 The big impacts that we were
13 worried about in that biological opinion dealt
14 with vessel traffic and ship strikes for both
15 mammals and turtles and the impacts of noise,
16 again, on both mammals and turtles and those
17 were dealt with and levels of take were
18 authorized associated with those kinds of
19 takes.

20 So this is unprecedented. It
21 wasn't anticipated. And we are now under what
22 are called the Emergency Consultation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Provisions. We are not asking the question,
2 will this activity jeopardize the species
3 here? I mean, emergency consultation, we are
4 saying how can we work with the federal on-
5 scene coordinator or the federal incident
6 commander, depending on the type of event that
7 it is, to ensure that we are minimizing the
8 impacts of the event on threatened species?

9 And we also want to document the
10 kinds of take that are ongoing, so that we can
11 quantify that information to help us in how
12 takes are happening. And you know, we want to
13 document the impacts to the habitat
14 environment, so that that can all feed into
15 remediation strategies later.

16 It also is good information that
17 feeds into the damage assessment process for
18 quantifying the damages to the natural
19 resources in the Gulf.

20 And finally, resetting the
21 baseline for future consultations is a big
22 part of the emergency consultation process as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 well.

2 So that's what we are doing right
3 now. We have initiated consultation. We
4 actually have a memorandum agreement with the
5 Coast Guard, MMS, which is now the Bureau of
6 Ocean Energy Management, and EPA on how we
7 will consult in oil spill events. And we have
8 staff on-scene providing input to the on-scene
9 coordinator and advice on how to do these
10 things.

11 So what we are doing right now is
12 immediately upon notification of this spill,
13 we mobilized our stranding networks. We have
14 stranding networks in all of our regions.
15 They are primarily made up of volunteer
16 organizations. And most of the ocean areas
17 around the country participate in those
18 networks.

19 There are other facilities that
20 are capable of handling animals and we have
21 got those folks up. California actually has a
22 very robust rehabilitation and response

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 capability. A fellow from UC Davis organizes
2 that for them. Dr. Michael Ziccardi, we
3 employed him right off the bat and got him
4 down in the Gulf to help set up our response
5 strategies.

6 So there are recovery teams
7 looking at that. There are response
8 capabilities. Most of the oiled turtles that
9 we are collecting are actually staying in
10 Louisiana at the moment at an Audubon
11 facility, but other places are beginning to
12 accept them as well.

13 So we are collecting, treating and
14 rehabbing animals. We have a few dolphins in
15 rehab, at least one. We have, I think, only
16 released a couple of turtles so far. Most of
17 them are in rehab.

18 We are also working with the on-
19 scene commander trying to minimize the effects
20 of the response, trying to get on the water
21 and find turtles that are going to be exposed
22 to oil, so that we can collect them and get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 them treated. We are training staff on how to
2 handle and respond to animals.

3 We are working with those
4 facilities to ensure that we are trying to
5 document the cause of the stranding. A
6 substantial portion of the early strandings of
7 turtles, the first 150 or so that came in,
8 obviously, were not the result of the oil
9 spill. There were strong indications of
10 grounding, unrelated to oil spill.

11 Most of the turtles that have come
12 in dead are not heavily oiled and so we are
13 collecting tissue samples and doing
14 histopathology and chemical analysis on those
15 to see if we can find evidence of oiling that
16 could be attributable to identifying those
17 animals as killed by the oil spill.

18 Most of the live animals that we
19 are collecting are heavily oiled, akin to that
20 picture that was in Steve's presentation this
21 morning. And finally, I already mentioned
22 input to the process.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So the concerns that we are
2 struggling with right now in the spill are
3 incidental mortality. We are documenting what
4 we can, but we are concerned there is a lot of
5 mortality ongoing that we don't see.

6 So for example, juvenile turtles
7 and most of the turtles that are being taken
8 now are juvenile Kemp's Ridleys which are
9 endangered species endemic in the Gulf of
10 Mexico, a few loggerheads, a couple of greens
11 and some -- I don't know if we have caught too
12 many of the leatherbacks yet, but there is a
13 potential for that. And most of them are
14 juveniles.

15 They are in the pelagic phase of
16 their life cycle getting ready to transition
17 to a neritic phase, but in that pelagic phase,
18 they hang out in convergence zones and they
19 tend to be associated with sargassum paddies.

20 They feed on the crustaceans that live in
21 those sargassum paddies.

22 Those are the areas where the oil

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is converging and collecting naturally. Those
2 are the places that BP is trying to bring all
3 that stuff in together, so that they can get
4 it thick enough to burn it.

5 So the burn zones are actually, we
6 are concerned, consuming a fair number of
7 turtles as well. We have collected turtles in
8 areas adjacent to those being burned, but we
9 haven't actually been able to get into the
10 burn sites or put measures in place prior to
11 burning that would allow us to collect turtles
12 out of there.

13 It has been a safety issue, but we
14 are working with the incident command to get
15 vessels out there, get some eyes in those
16 areas and some resources on those burn boats
17 to see if we can't collect some of those
18 turtles out of that oiled water before they
19 actually torch those areas. So that's a big
20 thing.

21 Hatchlings, this is the end of the
22 nesting season. Hatchlings will be coming out

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of the sand in the next month and through the
2 rest of the summer, July, August, September,
3 are months when hatchlings will emerge.
4 Mostly beaches along Alabama and the western
5 Florida panhandle are used by loggerheads, a
6 few Kemp's Ridley, some greens, occasional
7 leatherback.

8 We are concerned those hatchlings
9 are going to swim right out into those
10 convergent zones, because that's what they do.

11 And so we have employed or are ready to
12 employ a process for collecting those nests
13 along those beaches and moving them to the
14 east coast of Florida and letting them go into
15 that.

16 A number of those turtles actually
17 get entrained in the loop current and wind up
18 in the Atlantic anyway. So we think it is
19 probably a safer thing to do then let them try
20 and survive in the oil that they will be
21 exposed to in the Gulf. That likely will
22 start in the next several weeks, that activity

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to help mitigate that.

2 The hatchlings, the Kemp's Ridley
3 hatchlings themselves, the bulk of that
4 hatching occurs on Mexican beaches, Rancho
5 Nuevo and Southern Texas. We think that those
6 are probably okay for now and we are going to
7 let those go. A much bigger effort to try and
8 relocate those than the ones that are in the
9 Gulf anyway.

10 And finally, the lasting and long-
11 term impacts. I would, I guess, just make a
12 comment to be a little bit critical of our
13 agency, Eric, so -- you know, Steve talked
14 about jumping out and getting baseline data
15 days before the beach -- the oil hits an area.

16 Well, for mammals and turtles, you
17 really need baseline data from years prior to
18 an event, so that you can understand what the
19 trends and the abundance have been, what the
20 growth rate in the populations are.

21 And you can assess how this event
22 might affect those things. Well, we don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have that data, unfortunately. We really cut
2 back on our marine mammal surveys, one of the
3 first things that I had to supervise was
4 canceling our bottlenose dolphin cruise three
5 years ago. That would have been our first
6 cruise in a number of years to give us good
7 information on bottlenose dolphin abundance
8 and distribution in the Gulf.

9 So it has been a budget issue for
10 us, you know, trying to keep up with that, but
11 it's a struggle. And I think one of the
12 lessons learned from Ixtoc is that there
13 wasn't good follow-up. One of the lessons I
14 think I learned from Valdez that we'll
15 probably hear about is, there probably wasn't
16 adequate survey follow-up associated with that
17 either.

18 So hopefully we will make a big
19 investment and take a big chunk of that money
20 that has been set aside for environmental
21 monitoring to put programs in place so that we
22 can have the long-term data and assessments

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that we need to do a better job and guide what
2 impacts are on protected resources.

3 So that's it for me. Thanks.

4 CHAIR BILLY: Okay. Let's take
5 some questions. Maybe I'll kick things off.
6 Did this spill create a new paradigm for your
7 whole area of responsibility? And what I mean
8 by that is, has it changed all the parameters?

9 Has it changed how you define things for
10 future involvement and commenting and so
11 forth? Is that what this potentially will end
12 up doing?

13 MR. LECKY: Well, I think it's
14 premature to know. I think that it may. For
15 example, so if we looked at the probability of
16 an event like this happening and applied it to
17 our own lives, none of us would have got on an
18 airplane and flown up here for this meeting.

19 So it does get to, how do you
20 ensure that there is an adequate response?
21 How do you ensure that you can shut one of the
22 things off in a couple of days instead of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 months?

2 And I think we are going to start
3 taking harder looks at those kinds of
4 questions as we go through the permitting
5 activity in ensuring that those things are
6 well-established and in place.

7 Now a big concern, there is a lot,
8 I have seen, of draft legislation floating
9 around already on how to do things. And I'm a
10 bit concerned that we are reacting and we
11 don't even know what the problem was yet. I
12 think there really needs to be a thorough
13 forensic analysis of what went wrong.

14 I don't know if the process was
15 broken or if people were just not following
16 the process. If it's the latter case,
17 changing the process doesn't fix the problem.

18 So I think we need to really find out what
19 happened before we start designing new
20 remedies and new approaches.

21 CHAIR BILLY: One last follow-up.

22 Is there enough data to do what, in the food

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 safety area, we refer to as a quantitative
2 risk assessment for this kind of a spill? Is
3 the science such that you could do something
4 like that? And if not, what else -- you
5 mentioned the need for more data.

6 MR. LECKY: Well, I think we need
7 more data on species and where they are and
8 what they are doing and how they use their
9 habitats, so we can better understand how
10 these kinds of events affect them.

11 In terms of a quantifiable risk
12 assessment, you know, there are tens of
13 thousands of wells drilled around the world
14 and the incidence of spills like this is
15 really, really rare.

16 CHAIR BILLY: Yes.

17 MR. LECKY: But, God, when they
18 happen, they are catastrophic. And so, you
19 know, I don't know that it necessarily changes
20 the math very much, but it certainly ought to
21 change the scrutiny of our response
22 capabilities a lot.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Yes. Part of what I
2 was thinking was the ability up front to fine-
3 tune NOAA's input and the response that you
4 get by being driven more by better data
5 analysis.

6 MR. LECKY: I think the thing that
7 NOAA could do better if we had -- and even
8 probably with the data that we have now, we
9 probably could do a better job of identifying
10 areas of concern, identifying, you know,
11 probably everybody's areas and areas that they
12 are concerned with.

13 We could do a better job of
14 identifying what the resources are that are at
15 risk. You could talk about, you know, in an
16 event of a catastrophic event, what are the
17 resources that would be impacted? How long?
18 How would they likely be affected? How long
19 would it take them to recover? Those kinds of
20 things, I think, we could do probably a better
21 job of quantifying.

22 CHAIR BILLY: Yes. Okay. Thanks.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LECKY: Jon was trying to get
2 in on that point.

3 CHAIR BILLY: Yes. Jon?

4 MR. KURLAND: I would just add, if
5 I may, that I think Eric alluded to this in
6 his conference that this is a big assault on
7 the ecosystem and it's, you know, the
8 functioning of these habitats. It's important
9 to keep in mind that Eric referred to that and
10 sort of the contrast, little impacts being
11 meted out over a long period of time.

12 And it's important to keep in mind
13 that we are facing those little assaults to
14 habitat all the time now and probably not
15 paying adequate attention to sort of the
16 cumulative effects of those little insults
17 that add up over time to something that can
18 have consequences comparable to something like
19 this.

20 It captures our attention in a
21 much more striking way, I guess, when it is a
22 big incident like this, but I just think it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 important to think of that context that the
2 Agency is involved in some capacity in trying
3 to get a handle on these little assaults to
4 habitat all the time.

5 And over the long timeframe,
6 that's something that is really a significant
7 challenge for the resources that we are
8 responsible for managing.

9 CHAIR BILLY: Keith?

10 MR. RIZZARDI: Jon, I think that's
11 an important point about the cumulative sum of
12 the little impacts. But my concern here is we
13 have one catastrophic impact that so warps all
14 the little ones as to almost rendered
15 meaningless what we are doing for all these
16 efforts.

17 We had a consultation in this MMS
18 that anticipated 100 total mortalities over 40
19 years. And now we are looking at 422 from
20 this singular event. So everything you are
21 doing on the individual scale with all the
22 little cumulative impacts is almost rendered

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 meaningless by this huge event.

2 So, Jim, I hear you talking about
3 the "reasonably likely to occur" standard that
4 we applied through all of our regulatory
5 framework. And first, let me say, I give a
6 lot of credit to the NOAA staff in the way you
7 administered all of the regs and all of the
8 programs.

9 I went through, in detail, all
10 your documents. You identified overwhelmingly
11 the issues that are reflected by this
12 incident. You identified the likelihood of
13 big spills. You identified the need for two
14 wells to be drilled. You identified the need
15 for more frequent consultation and for better
16 information.

17 Despite all that good effort by
18 NOAA staff, this happened. And I think the
19 issue I want to raise is, we could have done
20 more to prevent this from happening, had
21 NOAA's recommendations been followed.

22 In the Essential Fish Habitat

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 consultation process, you said you should
2 drill two wells every time you do an
3 exploratory well. Why didn't that happen?
4 And what's the consequence for failing to
5 follow the explicit recommendation from NOAA?

6 You identified the potential for a
7 catastrophic spill. Now, what's interesting
8 is a catastrophic spill, by your calculations,
9 was about a million gallons. We are so far
10 past that. And it seems to me that we need to
11 change the threshold of what we evaluate as
12 reasonably likely to occur.

13 It may be that, like you said, we
14 wouldn't have gotten on the plane, but maybe
15 what we have been doing in the past is keeping
16 that threshold of foreseeability too high.
17 And I think we need to get tougher in our
18 consultations and in our implementation of the
19 Endangered Species Act and of our regulatory
20 mechanisms to make it clear that if you don't
21 follow these recommendations, there are
22 consequences.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I mean, you just told me, I think,
2 there is no application for marine mammals
3 that was ever submitted. No review of marine
4 mammal incidental take, which --

5 MR. LECKY: Right.

6 MR. RIZZARDI: So now we have all
7 this marine mammal take that is unauthorized.
8 What's the consequence? Will there be civil
9 penalties? Will there be criminal
10 prosecutions? What about the fact that the
11 incidental take has been so vastly exceeded
12 for sea turtles? Will there be prosecutions?

13 I mean, we have some amazing
14 questions in front of us because of this
15 incident. But what it says to me is we need
16 to be reevaluating our regulatory process.
17 And we need to be evaluating how, at the front
18 end, can we prevent this. Because all the
19 recommendations of NOAA staff that they didn't
20 listen to, we wouldn't have been talking about
21 an event of this magnitude.

22 I mean, I have a lot of issues

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 here I want to talk about, but I'll start with
2 that and just look for some responses and some
3 feedback.

4 MR. LECKY: Well, I guess I'm just
5 going to respond to that. I appreciate what
6 you are saying, Keith. And I think there
7 probably is -- you know, it is going to come
8 down to sort of the calculation, calculus of
9 what's the probability of a catastrophic
10 event.

11 MR. RIZZARDI: Yes.

12 MR. LECKY: And so I think it is
13 going to be, how do you minimize that and how
14 do you respond to it when it does happen,
15 because the probability will never go to zero.

16 MR. RIZZARDI: Yes.

17 MR. LECKY: No matter what you do.

18 MR. RIZZARDI: Right.

19 MR. LECKY: So how do we prepare
20 ourselves better for the eventuality, I think,
21 is the challenge. I do think that we need to
22 better understand what happened and I really

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 don't think that people know exactly what
2 happened. There has been implications of, you
3 know, malfeasance, almost, I guess, in how
4 they approached the transition with this.

5 And apparently one of the more
6 dangerous times in drilling wells is trying to
7 transition from exploratory to development.
8 This was a well that they wanted to go back
9 and develop. Very similar to the event in the
10 Timor Sea last year, so there is some basic
11 process things that are being called into
12 question.

13 We really need to better
14 understand what happened in this event before
15 we get too far down the road with how we are
16 going to make changes. But I do think there
17 are some things we can do to prepare ourselves
18 better.

19 MR. RIZZARDI: Tom, can I --

20 CHAIR BILLY: Yes.

21 MR. RIZZARDI: Well, let me ask
22 are we starting a reinitiation of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 consultation? For example, with this
2 moratorium that was put on drilling, which, to
3 me, I mean, I know it has been politicized,
4 but it seems a very logical response, because
5 you are so vastly in excess of all incidental
6 take review, you have to go back and it seems
7 reinitiate consultation on a whole bunch of
8 biological opinions and a whole bunch of
9 projects to reevaluate, because your baseline
10 has so fundamentally changed for all of these
11 critters.

12 Everything you previously expected
13 has been thrown out. You have this massive
14 event that has occurred. You've got to go
15 back and redo the evaluation. I'll go back to
16 your biop. Your biop anticipated a non-lethal
17 take of 238 turtles.

18 MR. LECKY: Right.

19 MR. RIZZARDI: We are so far past
20 that and that was over 40 years.

21 MR. LECKY: Right.

22 MR. RIZZARDI: One event, we just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 blew it out. So --

2 MR. LECKY: Yes, yes.

3 MR. RIZZARDI: -- are we
4 initiating?

5 MR. LECKY: So we will reinitiate
6 at some point. But right now, we are in the
7 middle of the catastrophe and all of our
8 resources are involved in the emergency
9 consultation and response. But at some point,
10 you know, when this all settles down, we will
11 have to, one, complete the emergency
12 consultation to sort of create a document that
13 lays out what the impact was, what the total
14 take was and then we will need to go back and
15 reinitiate consultation.

16 There are already letters from
17 several environmental groups encouraging us.
18 Actually, they are 60-day letters, so they are
19 threatening us to reinitiate consultation.
20 Not only with MMS, but also with EPA. And EPA
21 actually has not consulted on the effects of
22 this. So it needs to do that in the future.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RIZZARDI: Does that mean that
2 the 120 wells in the water is more than 1,000
3 feet deep and the 20 in the water is more than
4 5,000 feet deep? Do they just continue to go
5 on under their previous approach or are they
6 now doing the preventative measures that
7 should have been done for this disaster?

8 MR. LECKY: I don't know the
9 answer to that. So those are production wells
10 I mentioned. They are already functioning
11 properly and not spilling oil and they are not
12 going to transition. So I don't know, but,
13 you know, at the end of the day when we
14 reinitiate consultation like we did in this
15 lease/sale consultation, we'll be looking at
16 all of the activities that are in the Gulf.

17 So it will either be part of the
18 baseline or part of new activities. And I
19 think to the extent there are remedial
20 measures that could be identified or risk
21 aversion measures that can be identified that
22 are applicable to those other things, that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be a place for those to be applied.

2 But I think right now, it's a
3 little premature to figure out how that is
4 going to play out.

5 CHAIR BILLY: Tony?

6 MR. CHATWIN: Thank you. I think
7 it's a great discussion. One issue that I
8 wanted to explore further is the issue of
9 baseline. And I mean building on your
10 comments that, you know, you wish you were in
11 a position where you already had the
12 information you have for a baseline.

13 And I wanted to know what it is
14 that we can do about that? Because I'm
15 thinking protected species, there is a mandate
16 to understand what the level of population is
17 and what the takes are for protected species
18 resources, but not necessarily their prey and
19 that prey base, unless it is a species that is
20 of commercial interest, then there is
21 Essential Fish Habitat for that.

22 And then the Essential Fish

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Habitat, you have different levels of
2 information, you know, presence, absence and
3 then all the way up to density-dependent
4 reproduction and different habitat type.

5 So all the elements are there, but
6 they don't get implemented fully. So from the
7 Exxon spill we learned that one of the biggest
8 impacts -- and this is, we know that already,
9 is the prey base, was the prey base for it.
10 It doesn't necessarily mean that it is going
11 to be the prey base there, but everybody is
12 concerned about that.

13 But if we try to find information
14 on what the prey base -- the population levels
15 of the prey base in the Gulf, that is
16 something that seems to me that falls through
17 the cracks of how things are structured
18 between Essential Fish Habitat and regulatory
19 -- you know, the Endangered Species.

20 How can we change that?

21 CHAIR BILLY: I think that's a
22 great question. And my suggestion would be to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ask it again in the Subcommittee meeting.

2 MR. CHATWIN: All right.

3 CHAIR BILLY: And formulate the
4 best possible response, something that we can
5 turn into a recommendation. You know, I agree
6 with you completely, so but I think there are
7 several more hands. I'm going to try to
8 manage the time a little more.

9 So next, I have Bill.

10 MR. DEWEY: So, Jim, I understand
11 both on the -- actually both on the EFH and on
12 Protected Resources there are programmatic
13 consultations done. But I wasn't clear from
14 the information I read in the presentations
15 what is done as far as looking at the effects
16 of an individual project like this Deepwater
17 Horizon spill.

18 What is done just beyond the
19 programmatic review?

20 MR. LECKY: Well, it depends on
21 the area. You preface it that way. I think
22 in the Gulf things were probably too lax. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 don't know that we have looked specifically at
2 the Deepwater Horizon Project.

3 The current permitting process
4 once a lease has been let, the company has
5 purchased a lease, they have invested in
6 geophysical exploration and characterize the
7 potential resources and they want to drill an
8 exploratory well.

9 They put together an exploratory
10 plan, submit that to MMS. And MMS has 30 days
11 to approve or deny that. It is really not
12 much time to do a thorough analysis. But
13 those kinds of analyses suffer from the same
14 weaknesses, the potential of a spill is really
15 low. And so it kind of gets discounted in the
16 analysis.

17 So I guess I may just leave it
18 there. I think that's the oversight. Now,
19 when they do transition from exploration into
20 development and they are going to put a
21 facility out there, that gets a broader
22 environmental review and depending on where,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it might actually trigger a full blown
2 Environmental Impact Statement.

3 MR. DEWEY: During that 30 day
4 review that MMS is doing, are they engaging
5 other federal agencies for comment?

6 MR. LECKY: Yes. They put those
7 out for -- it actually goes out for broad
8 public comment and we use the tools that Jon
9 talked about to comment on that. If we think
10 there is a specific endangered species issue
11 that hasn't already been addressed in the
12 broader programmatic biological opinion, we
13 have an opportunity to raise that.

14 MR. DEWEY: Okay.

15 CHAIR BILLY: Paul?

16 MR. CLAMPITT: Yes. Jim, I wanted
17 to follow-up on something you mentioned
18 earlier at the very end of your talk. You
19 talked about how, you know, they are out there
20 trying to get a baseline now and you were
21 suggesting that should have been done earlier,
22 if I'm not misunderstanding your position.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LECKY: The species I worry
2 about, yes.

3 MR. CLAMPITT: Yes. And Tony was
4 saying that everything apparently is, you
5 know, in position to have that done, but I
6 don't think that's true. My question is, is
7 there a mandatory requirement to assess the
8 populations of protected resources after they
9 are determined to be endangered? I don't
10 think there is, is there?

11 MR. LECKY: Well, there is a
12 mandatory requirement to have a population
13 abundance estimate that is current for marine
14 mammals, but not for endangered species.

15 MR. CLAMPITT: Okay. Well --

16 MR. LECKY: For marine mammals, so
17 that's --

18 MR. CLAMPITT: Well, what about
19 endangered marine mammals?

20 MR. LECKY: Well, they are covered
21 by the Marine Animal Protection Act as well.
22 And so you have to have a current population

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 abundance.

2 MR. CLAMPITT: But I have looked
3 at those things and they don't appear to be
4 very current to me. I mean, for instance,
5 sperm whales, they haven't been -- there
6 hasn't been a realistic assessment of their
7 population for, I don't know, 20 years. And I
8 don't even think, at that point, there was an
9 assessment.

10 MR. LECKY: So, yes, the species
11 that we are most worried about in the Gulf are
12 bottlenose dolphins, sperm whales and there is
13 a small endemic population of Bryde's whales.

14 MR. CLAMPITT: Exactly.

15 MR. LECKY: And we don't know much
16 about them either.

17 MR. CLAMPITT: Right.

18 MR. LECKY: I mean, you are right.
19 There isn't good current population estimates
20 for most of those species.

21 MR. CLAMPITT: And is that just a
22 funding problem?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LECKY: Mostly it's funding,
2 yes.

3 MR. CLAMPITT: I mean, this is --
4 these are animals that can stop all
5 development in the Gulf and there is really no
6 baseline for any of them, correct?

7 MR. LECKY: Well, I mean, we can
8 calculate a baseline.

9 MR. CLAMPITT: Well, right.

10 MR. LECKY: I won't say there's no
11 baseline. But it is old and it is in some --
12 relative to some species, it is pretty weak.
13 There is probably bars around estimates. For
14 some species, it's a little bit better. I
15 mean, we do know relatively a lot more about
16 bottlenose dolphins than we do about Bryde's
17 whales, for example, and sperm whales are kind
18 of in the middle.

19 MR. CLAMPITT: And so -- yes, you
20 have answered my questions.

21 MR. LECKY: So, yes.

22 MR. CLAMPITT: We don't need --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LECKY: Well, and really it
2 has been a resource issue. It takes -- you
3 know, it's not something that academia is
4 going to be good at. It really takes a long-
5 term investment in doing things over and over
6 again. So you don't have to have a survey
7 every year, but it would be nice if you had,
8 you know, a survey every three to five years
9 that had a fair number of transects out
10 through and across EEC and the Delta or in the
11 Gulf.

12 MR. CLAMPITT: Well, from my
13 understanding, there has really never been a
14 survey on sperm whales, but they are using
15 whaling data.

16 MR. LECKY: No. Well, there were
17 surveys, there were comprehensive surveys in
18 the '80s. The old CTAP in the '80s addressed
19 those. There have been some more recent
20 surveys, not comprehensive surveys, but there
21 have been some.

22 MR. CLAMPITT: But you would agree

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that it's really not realistic? I mean, if
2 you're going by a survey that was done in the
3 '80s.

4 MR. LECKY: Right.

5 MR. CLAMPITT: Thank you.

6 CHAIR BILLY: Martin?

7 MR. MARTIN FISHER: My question is
8 innocuous, painless.

9 CHAIR BILLY: None of us believes
10 you.

11 MR. MARTIN FISHER: I thought I
12 heard you say there is 120 production wells
13 deeper than 5,000 and 110 for 1,000. I missed
14 the geographical region. Is that just in the
15 Gulf?

16 MR. LECKY: That's just in the
17 Gulf.

18 MR. MARTIN FISHER: Okay.

19 MR. LECKY: These are -- I pulled
20 this data off of MMS' webpage, so it is what
21 it is. But so 951 production wells deeper
22 than 1,000 feet.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MARTIN FISHER: 951, okay.

2 951?

3 MR. LECKY: 951.

4 MR. MARTIN FISHER: That's a lot.

5 MR. LECKY: Okay. 120 deeper than
6 5,000.

7 MR. MARTIN FISHER: In the Gulf?

8 MR. LECKY: In the Gulf.

9 MR. MARTIN FISHER: That are
10 actually production wells?

11 MR. LECKY: Production wells.

12 MR. MARTIN FISHER: Actually
13 production wells. Wow.

14 MR. LECKY: The numbers of
15 exploratory wells, there are over 3,000
16 exploratory wells between 1,000 and 5,000
17 feet.

18 MR. MARTIN FISHER: Say that one
19 more time.

20 MR. LECKY: There are over 3,000
21 exploratory wells drilled between 1,000 and
22 5,000 feet.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MARTIN FISHER: Wow. Thank
2 you very much.

3 CHAIR BILLY: Okay. Cathy?

4 MS. FOY: Jim, I was just
5 wondering if there was any way that NOAA could
6 get in line, push to the front of the line
7 when it comes to revenue sharing from the oil
8 and gas companies to fund some of that
9 baseline data collection? Can we get that in?

10 I'm looking through the Minerals Management
11 site and counties, parishes, American Indian
12 tribes, reclamation funds from water projects,
13 it seems like we could get some pass-through
14 money.

15 MR. LECKY: So you're talking
16 about generally and the royalties that the oil
17 industry produces?

18 MS. FOY: Yes.

19 MR. LECKY: Sharing those?

20 MS. FOY: Yes. They call it a
21 royalty in kind.

22 MR. LECKY: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. FOY: Asset management.

2 MR. LECKY: Well, so I don't know
3 a whole lot about this, but here is what I do
4 know, so take it with a grain of salt, I
5 guess. A portion of the royalties that are
6 paid to the Federal Government go to the
7 states for those kinds of projects.

8 The royalties that come to the
9 Federal Government, they go in the Federal
10 Treasury and require appropriations to
11 allocate back to the federal agencies.

12 MS. FOY: Right.

13 MR. LECKY: So I think at a
14 minimum, we would need some legislation to do
15 what you want to do.

16 MS. FOY: Yes.

17 MR. KURLAND: There is a program
18 that MMS administers of Community Impact
19 Assistance Program, I believe. A lot of that
20 is funding that's going through the states --

21 MS. FOY: Yes.

22 MR. KURLAND: -- to offset those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 local communities connected somehow to OCS
2 development.

3 MS. FOY: It seems like now would
4 be a good time, in the sense we have got a lot
5 of public attention --

6 MR. KURLAND: Right.

7 MR. LECKY: Right.

8 MS. FOY: -- from --

9 MR. LECKY: So one thing that
10 actually might be -- so actually, MMS, you
11 know, had a relatively robust, still does,
12 Environmental Studies Program. They actually
13 do find a substantial amount of work. We had
14 actually a couple of surveys up here that got
15 canceled this year, because the President took
16 the lease/sale opportunities off the table.

17 They were funding some of our bow
18 head whale research and we had a right whale
19 cruise up here that they were going to fund.
20 We are working cooperatively with MMS and the
21 Navy on the Atlantic Seaboard to try and
22 recreate some of the old CTAP coast-wide

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 surveys that are going to provide us with some
2 funding.

3 And we are providing in kind
4 resources with our vessels and aircraft. So
5 they want to go look at sea turtle and marine
6 mammal abundance and distribution for the next
7 several years across the Atlantic Seaboard.
8 And we want or are actually hoping to carry
9 that into the Gulf.

10 So I think maybe the way that you
11 want is through either -- well, so you could
12 do it two ways. We could invest more in MMS'
13 Studies Program and partner with them or there
14 could be a bigger appropriation reallocation
15 of that money to MMS' budget. Again, I think
16 that would require some legislation.

17 CHAIR BILLY: Randy?

18 MR. CATES: Jim, thanks for your
19 presentation. I am finding your comments very
20 common sense answers to a real problem. Some
21 of the numbers you put out tell me that what
22 we have been doing as far as drilling wells is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 pretty extensive. And we have a problem,
2 obviously.

3 What we need to do is find ways of
4 doing it better and not ways of shutting the
5 industry down, otherwise, we wouldn't be able
6 to even get here.

7 I have gone through an
8 environmental assessment. I have gone through
9 a Section 7, so I know firsthand what it
10 takes. And I know the abuse that can happen
11 from NOAA to the industry.

12 I was surprised when you said it's
13 a 30 day process to get a permit for an
14 exploratory well. In aquaculture, it's a
15 year, to put it mildly. It took me over a
16 year. To get an Army Corps permit, it's
17 almost nine months of meeting with the
18 agencies.

19 So the answer is not we can't shut
20 down the oil and gas industry nor should we
21 try. So we should have things more in
22 balance. That would be a comment I have. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would ask the question I wanted to ask at the
2 last presentation that I think is relevant to
3 both you and Eric.

4 And that is how are we doing in
5 response to the spill? Is NOAA doing
6 everything it can be doing in response? We
7 hear a lot going on in the media and I know
8 firsthand that the media is the worst enemy
9 for our industry and for NOAA, in fact. And
10 yet, we rely on the media for information.

11 We talk about global warming and
12 we always refer to the media. But this is a
13 good example of the media not doing a good job
14 in explaining that only 33 percent of the area
15 is shutdown or some of the information coming
16 out.

17 So the question I have is how are
18 we doing as far as NOAA's response and the
19 Government's response?

20 MR. LECKY: Well, I guess, I think
21 we are doing great. Could we do more? Yes, I
22 think we could do a lot more. I think we are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at least -- well, I think you heard Steve's
2 presentation that was pretty thorough in terms
3 of seafood safety and kind of establishing the
4 baseline factors and some of the media
5 questions. That's good work.

6 In terms of, you know, responding
7 to -- like I laid out the concern about
8 animals being burned in the burn sites, that's
9 sort of a coordination issue. There is sort
10 of controlled chaos down there, I think, is
11 maybe the way to think about it.

12 There is a lot of activity on the
13 water. There is, I forget the numbers, maybe
14 4,000 vessels of opportunity that are involved
15 in this.

16 MR. CATES: I think it's more than
17 that now. Are you getting 6,000.

18 MR. LECKY: Yes. So those guys
19 are out there under BP contracts skimming oil.

20 Some of them worry about turtles, some of
21 them don't. We are trying to get resources to
22 make sure that the folks are educated. We are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 trying to work through the Incident Command
2 Center to make sure that happens. But there
3 are a lot of decisions that go on almost daily
4 instantaneously and it's hard to get input to.

5 And we are just doing the best we can through
6 that process.

7 There is also, you know, we talked
8 about tradeoffs with the use of dispersants,
9 you know, and since you burn, you know, it's
10 similarly a tradeoff that, you know, burn that
11 oil and put it in the atmosphere and it winds
12 up on the beach. And so where is the better
13 spot for that.

14 MR. CATES: One quick follow-up.
15 When this is over and then you go up through
16 the review process and make recommendations to
17 the changes to Mineral Management, as far as
18 permitting, I think MAFAC will play a real
19 important role, very important role, because
20 whatever you impose on one industry will
21 inadvertently happen to another industry.

22 And I always caution commercial

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and rec fishing industries about some of the
2 regulations to a point where you cannot
3 conduct business.

4 MR. LECKY: Right.

5 MR. KURLAND: Right.

6 MR. CATES: I mean, in Hawaii,
7 Essential Fish Habitat is every body of water
8 around our state. NOAA has said it's
9 Essential Fish Habitat. I wasn't even allowed
10 to put a cage together in a commercial dry
11 dock harbor without weighing the zinc and
12 reporting the weight of the zinc.

13 Any other industry that -- rec
14 fishing industry couldn't live with that
15 standard, if you had to hire your boat out and
16 measure the amount of zinc that is eaten up on
17 a monthly basis, for example.

18 So we've got to be careful about
19 regulations and changes and just handle one
20 that is going to affect everything.

21 MR. LECKY: So I just want to make
22 one comment on that, because I think some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 tools NOAA has are, you know, we talked about
2 Magnuson Act, Fish and Wildlife Coordination
3 Act, Endangered Species Act, Marine Mammal
4 Act, those really are oversight bodies.

5 The Endangered Species Act
6 particularly is a backstop against extinction.

7 It never was envisioned to be the primary
8 regulatory mechanisms.

9 There is a primary regulatory
10 mechanism here, it's the OCS Lands Act. And I
11 think, you know, when we get beyond this thing
12 and we have time for a thorough forensic
13 analysis to figure out what exactly went wrong
14 and how -- I think the OCS Lands Act is what
15 needs to be really focused on and how can we
16 make that process more robust?

17 How can we make that process more
18 open to input from the science that NOAA has?

19 And, you know, I don't know if NOAA has got
20 huge expertise in how to field the best
21 blowout, but I bet that expertise resides some
22 place. How do you get it into the process?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So that's kind of where I think
2 the regulatory frame work discussions that
3 focus on what's the best tool and how to
4 modify that to make it more responsive should
5 be discussed.

6 CHAIR BILLY: Okay. Jim? Jim,
7 you're going to be around the rest of the day?

8 DR. BALSIGER: Yes.

9 CHAIR BILLY: Okay. Good.

10 MR. RIZZARDI: Real quick follow-
11 up.

12 CHAIR BILLY: All right. Real
13 quick.

14 MR. RIZZARDI: On that point, have
15 you worked on having an MOA with the Bureau of
16 Ocean Energy to follow-up? I mean, now you
17 have got this new agency that is supposed to
18 have a new mindset. If they are willing to
19 embrace NOAA's feedback, then we would be in a
20 much better position to be responsive to
21 Randy's concern on how energy production will
22 go on and everything else.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LECKY: Right, right.

2 MR. RIZZARDI: Are they open to
3 that?

4 MR. LECKY: So they are about a
5 week old now, I think. I mean, they are
6 answering their phones that way now. So I
7 think my guess is yes, they will be responsive
8 to that. I think, you know, we are -- that's
9 one of the things we are talking about is how
10 do we get our expertise on science and natural
11 resource information available to them and how
12 do we make sure that they do a better job of
13 considering using that.

14 MR. RIZZARDI: Your group has a
15 very tough job, Jim.

16 CHAIR BILLY: Okay. I want to
17 move on now. Rob? Rob Wolotira, he is a
18 habitat specialist at the Restoration Center
19 in Seattle. Welcome. Talk to us about
20 natural resources damage assessments.

21 MR. WOLOTIRA: Good morning,
22 everybody.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ALL: Good morning.

2 MR. WOLOTIRA: I can tell by the
3 quantity and the quality of the questions that
4 this problem down in the Gulf is of great
5 concern to the Committee.

6 I was asked to come in here today
7 at the last minute to provide you with some
8 information about the Natural Resource Damage
9 Assessment process, NRDA, and to talk also
10 somewhat about what we are doing with the
11 gravities in the Deepwater Horizon.

12 I have got about 20 slides, which
13 I think I'm going to try and fly through,
14 because I believe that there are lots of
15 questions that you could be asking me and I
16 don't want to delay things too much longer.

17 Okay. So basically, NRDA, is a
18 legal process to determine injuries to -- for
19 the loss of public resources. And then
20 appropriate amounts of restoration are needed
21 to be able to compensate for that loss.

22 The goal, of course, is to make

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the public whole and it involves the use of
2 trustees, federal, state as well as processes
3 of agencies to be able to actually represent
4 the public and demonstrate -- we have to go
5 and demonstrate causality in order to be able
6 to do restoration.

7 Here is where we have a problem.
8 We have to be able to bring information
9 together in litigation quality so that we can
10 force the issue with the responsible party to
11 be able to do the restoration necessary to
12 restore those resources that were injured.

13 And this is part of the problem is
14 that we have to prove that those organisms
15 were injured by this oil. We have problems
16 with the sea turtles. An oiled sea turtle is
17 dead. We have a lot of them now.

18 But what would cause that death?
19 Was it because it was oiled? Did the animal
20 die prior to that and then was covered with
21 oil? These are problems that we have to
22 address whenever we are bringing anything

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 together and putting into our damage
2 assessment information, our evidence to be
3 able to prove our case.

4 Okay. So, you know, essentially
5 we have public concerns and you have private
6 concerns. Public are either environmental or
7 they are also punitive in terms of penalties
8 and fines. And of course then with private
9 concerns you have loss of revenue, impacts on
10 property and that sort of thing.

11 Then with environmental issues you
12 have response and cleanup. Then you also have
13 then this compensation for natural resources,
14 which is NRDA, which is the Natural Resource
15 Damage Assessment, which was enacted with the
16 Oil Pollution Act of 1990.

17 You know, basically, the Act, you
18 know, establishes a way of being able to prove
19 liability. It also designates natural
20 resource trustees and it also then defines
21 natural resource damages to include the cost
22 for restoring, rehabbing, replacing or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 acquiring the equivalent of what was lost.

2 And of course, it also deals with
3 identifying the diminution of the values of
4 those resources while they were pending
5 restoration. And of course, we have to deal
6 with trying to identify reasonable
7 assessments.

8 And then at the end, what we also
9 were required to do, we, NOAA, was to put
10 together a set of rules to be able -- for us
11 to follow to be able to try and do this.

12 Okay. So provide the damage that
13 needs reconstruction of loss of use of natural
14 resources, a lot of words go into trying to
15 make this statement legally correct. Collect
16 damages to make the environment a public
17 whole. And only natural resource trustees may
18 assess recovered damages. Some recovered must
19 be used for restoration.

20 Now, we may use our rules to be
21 able to actually go and collect those damages.

22 The trustees include federal trustees, NOAA,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as well as Department of the Interior, the
2 bureaus, Department of Agriculture and,
3 occasionally, the Department of Defense and
4 also the Department of Energy.

5 You've got state trustees, the
6 Governor appoints them, and they can include
7 municipalities in some instances. There was a
8 spill in the State of Washington where the
9 City of Bellingham was one of the trustees.

10 Also, you have federally
11 recognized tribes. Now, you can't see very
12 well down in here and this might even be
13 blocking it, but there is an exception for
14 Alaska. Within the State of Alaska, the
15 tribes are not identified as trustees.

16 Now, the corporations may be
17 trustees, but not the individual tribes.
18 That's just the way the law works.

19 So the focus is on restoration.
20 There is an expanded role available to the
21 responsible party and this is an extremely
22 important thing to mention and it's also just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 spread all throughout the OPA '90 legislation.

2 It's that we have to try wherever
3 possible to collaborate and cooperate with the
4 responsible party in being able to come up
5 with a way of being able to assess what
6 injuries occur and to identify which damages
7 occur from that.

8 We don't have to, but they sure as
9 heck want us to. Our alternative would be to
10 say if you are not being responsive, we can
11 turn around and ask the Coast Guard to allow
12 us access to the Oil Spill Liability Trust
13 Fund to be able to then conduct whatever
14 studies need to be done to be able to
15 accomplish what we need to do to prove the
16 case.

17 However, that's really a last
18 resort. And we have to be careful in that,
19 too, because we are responsible for whatever
20 we are studying. What I mean by that is that
21 there was a case, New Carissa, in Coastal
22 Oregon where there was a lot of work done that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was paid for by the Coast Guard of the Spill
2 Fund, but then the Spill Fund went back and
3 did an audit on the work that was being done.

4 And they said, you know, there are
5 some of these studies that we really don't
6 believe are providing the right information
7 for damage assessment. This is Fish and
8 Wildlife Service, they were asked to return
9 the funds. And of course, it was a very
10 unhappy experience. And this process also is
11 open to the public.

12 Okay. So basically, within that
13 maneuver process, the National Resource Damage
14 Assessment process, we have got three phases.
15 You have got the pre-assessment phase and a
16 restoration phase and then a restoration
17 implementation phase.

18 What this really means is that
19 during your pre-assessment phase, you are
20 basically -- this is when the oil is on the
21 water and you've got to determine, one,
22 jurisdiction and then, two, determine the need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to do that restoration or, basically, you are
2 identifying, okay, what resources could
3 potentially become injured?

4 That's pre-assessment. We are in
5 that now.

6 The restoration planning phase is
7 the actual conducting of damage assessment,
8 the injury assessment work which determines
9 the injury and then quantifies the injury.
10 And then we have also the need then for
11 restoration selection.

12 Selecting the scale. Select and
13 scale preferred restoration actions and then
14 develop a restoration plan. Okay. Then we
15 have the implementation phase.

16 So the goal is to determine the
17 nature and extent of the injuries. Injury is
18 observable or measurable adverse change in a
19 natural resource or impairment of a natural
20 resource service.

21 So it's important here to identify
22 services because, in many ways, a lot of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 injuries associated with an oil spill relate
2 to economics, as well as to ecological
3 services.

4 Okay. So we must determine then
5 exposure, a pathway and an adverse change.
6 All these things must be done. And also we
7 need to determine that this is a result of the
8 actual discharge or an injury as a result of
9 the response actions or a substantial threat
10 of discharge.

11 Something that Eric had talked
12 about earlier or we were talking about in
13 terms of fishery closures, recreational
14 fishery closures, often times done as -- you
15 know, because of an imminent threat to the
16 presence of oil coming onto or into certain
17 locations.

18 Okay. Why don't we just jump down
19 to -- can you jump to Slide 17?

20 MS. LOVETT: I'll do it.

21 MR. WOLOTIRA: Yes, please. There
22 we go. Okay. The Restoration Plan,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 basically, it has to undergo public review
2 during the draft process. This has to be
3 done. The public has to have input. Okay.
4 And it describes the activities that were
5 performed, the injuries and the results.

6 It evaluates alternatives,
7 identifies the preferred alternative, a final
8 tentative plan is developed again only after
9 considering public comment. Then the final
10 plan becomes the basis for damage claimed to
11 responsible party.

12 Okay. So the plan is presented to
13 the responsible party to implement or to fund
14 the trustees to actually conduct or to
15 implement the plan. If the party declines,
16 then, basically, we can either pursue a claim
17 as a civil action or we can seek appropriation
18 from the Oil Spill Liability Trust Fund.

19 On small spills, this is really no
20 major problem. With something the size of
21 Deepwater Horizon, this certainly could be.
22 As you talked about, you know, we're looking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at paradigm changes here. Monitoring the
2 Restoration Bill is always a question. Okay.

3 In summary, NRDA is restoration
4 focused. So you determine the type of
5 restoration needed for compensation, consider
6 it early throughout the process and uses and
7 losses must be balanced and directly scaled to
8 restoration.

9 It is also a legal process guided
10 by OPA and NOAA Regulations. We are required
11 to demonstrate causality and loss sheets. The
12 polluter pays. Getting the restoration
13 requires a lot of cooperation and it is the
14 cooperation between the trustees and
15 responsible party as well as different aspects
16 of response as well as the NRDA process. And
17 it also requires public involvement.

18 Very quickly, you have a perfect
19 storm and a perfect NRDA. This is something
20 that occurred in the year 2000. 550,000
21 gallons of oil were spilled by a tanker in the
22 Mississippi River south of New Orleans. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 trustees collected samples, used to predict
2 the injuries.

3 We used models to predict the
4 injuries. We used to have to have get
5 analysis to estimate habitat injuries. All
6 the ecological injuries were addressed with a
7 Marsh Restoration Project.

8 Okay. All of the injuries were
9 all related to one restoration project, which
10 is an extremely important aspect to consider.

11 We are having to deal with that right now
12 down in the Gulf. But it's going to be very
13 difficult to be able to restore marine mammal
14 losses by something that is going to be
15 occurring say in intertidal marshes along the
16 coast of Mississippi, Alabama, Louisiana.

17 It was also lost human use, as was
18 said, that was determined and, basically, what
19 was interesting about this is that they,
20 basically, breached an area down in the lower
21 portion of the Mississippi's main channel,
22 created a 100 acres of so of new marsh tidal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 land, which proved to be adequate for all of
2 the injuries we found.

3 They also had a dock that was
4 built to enhance recreational usage for taking
5 care of the loss use injury. And this is what
6 is interesting. The final restoration
7 planning was issued December 2001. That's
8 just a year, a little over a year of when --
9 after the incident.

10 And, in fact, it was finalized
11 then less than three years from the time of
12 the incident. Everything was built. And this
13 was the largest natural resource damage
14 assessment, oil spill, except for things
15 related to the Hurricane Katrina situation.

16 You know, this is the way it
17 should occur, that's three years. I was
18 involved in some NIU situation up on an Alaska
19 Island that occurred in 2004. And I have a
20 call or I have an email right now asking if I
21 can get together with the responsible parties
22 technical representatives to talk about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 restoration options.

2 It is 2010. There are problems.
3 Some of the problems are associated with being
4 able to get all of our trustees to be able to
5 agree on an appropriate restoration. A big
6 problem is also in being able to get some of
7 the trustees to make decisions. Often times
8 they are afraid to make a decision because it
9 may be the wrong one, but, essentially, a
10 decision has been made then.

11 It's difficult. It's a very, very
12 difficult process and it becomes even more
13 difficult in the Deepwater Horizon because we
14 are dealing here with a situation where we
15 have five states as well as federal trustees
16 and we all have to be on the same page.

17 Quickly, okay. Well, these are
18 the working groups that have been already
19 identified and are working and have been
20 working in the field now for about 70 days,
21 some people almost the entire 70 days, working
22 on water column, working on fish, shellfish

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and plankton, submerged aquatic vegetation,
2 shoreline habitat, sub-tidal habitats, shallow
3 and deepwater corals, birds, marine, mammals
4 and turtles, terrestrial wildlife and human
5 uses.

6 These are all active groups right
7 now. And again, we are in the preassessment
8 phase and the restoration planning has begun.

9 But, you know, we are dealing with
10 an issue where we have got 150 million gallons
11 and counting, so this does put us pretty close
12 to Ixtoc right now. And you know, we probably
13 have, well we have at minimum, two months to
14 go until that relief well is drilled.

15 You know, this is really nearly a
16 mile below the surface. It's geographically
17 large. Right now, the potential spread of
18 some of the plume is something in the
19 neighborhood of -- it's less than the distance
20 from Prince William Sound to Kodiak, but, you
21 know, we're at 70 days and counting right now.

22 You know, we have the offshore

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 species where we have concerns about. We are
2 talking about prey-based problems. We have
3 got giant squid that really -- we really don't
4 know what the situation is in association with
5 the present -- at the present time.

6 There is an immense amount of
7 loss, recreational use and it is
8 jurisdictionally very complex, because of
9 Texas, Louisiana, Alabama, Mississippi and
10 Florida and everyone has their concerns, their
11 regional concerns and we have to speak
12 together in one voice.

13 There is, of course, extreme
14 visibility and, of course, lots of political
15 pressures to be able to come up with some
16 results.

17 So what I tried to present to you
18 was just very quickly an idea about the damage
19 assessment process. We have to base whatever
20 we are doing on restoration. The restoration
21 has to be adequate, but it cannot be more than
22 what is needed to compensate for the injuries.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And it all has to be collected in a
2 litigatively robust manner, because of the
3 potential that we may have to take this to
4 court. It's all the problems we have to deal
5 with.

6 And talking about trying to make
7 some advances in technology as we are going
8 along, we had collected a sample of source oil
9 on May 21st -- yes, it was on May 21st. And we
10 were told by BP that, you know, it was fine.
11 It was just a pure product and that there
12 wasn't any dispersant associated with it.

13 Well, we are finally now getting
14 results back from the laboratories on a lot of
15 the initial samples that we delivered to them.

16 And lo and behold, while we thought that this
17 was a pure product, it turns out it wasn't.

18 And what happens is up until now,
19 they had been using stuff like a gas
20 chromatography to be able to look at the
21 chemical signatures within these samples.
22 Well, it turns out that gas chromatography

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 doesn't really identify a lot of the
2 constituents of Corexit. And if you used, as
3 we now know, high performance liquid
4 chromatography it will do that.

5 So it is a learning process all
6 the way through. Yes, I think there are
7 30,000 people that are involved totally in the
8 effort right now. I'm not sure how many
9 people we have working on assessing damages,
10 but again, we are still past the baseline data
11 acquisition phase, but we are just still in
12 preassessment with being able to get a good
13 accurate picture as to what resources are
14 being injured.

15 And then also what we have to do
16 is to be able to come up with those specific
17 types of studies that would be able to prove
18 the injury, because everybody and their sister
19 have concerns and interest in specific
20 resources. And a lot of questions about
21 deepwater corals, a great concern. But you
22 know, what is it exactly we can do in terms of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 assessing injuries to those corals as well as
2 what can we do in terms of restoration options
3 that are specific to deepwater corals?

4 I don't know. We are
5 investigating that at the present time. What
6 we do have to do, again, is work down through
7 all of our options and make sure that those
8 that we have chosen are the ones that are
9 going to be able to prove the case.

10 So with that, I'll finish and I'll
11 entertain any questions if you have any.

12 CHAIR BILLY: Randy?

13 MR. RANDY FISHER: You mentioned a
14 perfect storm. I think this group is about to
15 see it. I have gone through a NRDA process.
16 I'm actually involved in it in Hawaii with the
17 ship grounding. And where we are at with it
18 is something you touched on, in that where the
19 trustees and the responsible parties don't
20 agree on the assessment and then it goes to
21 the next steps.

22 And I had the opportunity to sit

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 through a series of meetings and watch that
2 process take place, because I was the guy
3 doing their reef restoration. And it is
4 pretty amazing to me where you have -- I can
5 see firsthand the trustees not being
6 reasonable and putting a price tag that is to
7 the moon, in our case, and the responsible
8 party willing to pay, but something more
9 reasonable.

10 I cannot imagine how that process
11 is going to take place in the Gulf with so
12 many trustees, such a large event. And my
13 question is I don't even think OPA, the
14 funding, if it goes to the part you touched on
15 where if you don't agree, then you can go to
16 the OPA Fund and force the action.

17 I don't even think the OPA Fund
18 has enough funds in it if it went through that
19 process.

20 MR. WOLOTIRA: That's a good
21 question. I don't know. I do know that in
22 about 2003 or 2004, it didn't have any money

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in it, because, of course, it is funded by a
2 surtax on each imported barrel of oil.

3 And the law that required this had
4 expired. And the Administration, at that
5 time, had chosen not to or at least, well,
6 it's my opinion they had chosen not to,
7 reissue it.

8 MR. RANDY FISHER: The question I
9 would have is, is it possible to create a
10 better process?

11 MR. WOLOTIRA: Certainly. I think
12 we have made some improvements since Exxon
13 Valdez. I think the important aspect is yes,
14 these catastrophic incidents occur about once
15 a decade. And trying to be able to retain the
16 institutional knowledge, making sure we do
17 actually learn our lessons, which sometimes we
18 don't, these are all things that can be done.

19 MR. RANDY FISHER: But is NRDA
20 federally mandated? Well, I guess my
21 question is if it's the law today, can -- I
22 don't know if you can change it. But I mean,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I cannot imagine that it is going to be a
2 normal process.

3 MR. WOLOTIRA: Well, OPA and NRDA
4 came about as a result of Exxon Valdez. What
5 is going to happen now after this incident has
6 come to a conclusion, your guess is as good as
7 mine. But I think that because of the
8 difficulties that we're seeing in terms of the
9 volume area, the problems that we are having,
10 just to be able to grasp the overall problem,
11 there should be ways in able to improve.

12 MR. RANDY FISHER: The Chairman
13 and Eric, it seems to me MAFAC has a real
14 opportunity. And if you look what our mandate
15 is, we are basically to give advice for all
16 marine living resources. This is it.

17 CHAIR BILLY: I agree.

18 MR. RANDY FISHER: And the
19 question is, is this body ready to make itself
20 relevant? We have been asking ourselves that
21 since I have been a Member.

22 CHAIR BILLY: I can only speak for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 myself, yes.

2 MR. RANDY FISHER: But having gone
3 through the NRDA process, I don't think the
4 group really grasps on what is about to
5 happen. And how you've got to have a common
6 sense approach. I don't see that happening.

7 CHAIR BILLY: Yes. I have a
8 question that one of my neighbors works for
9 Justice and he is involved in laying the
10 groundwork for both the criminal and civil
11 action in this case, in this disaster.

12 Is that separate, completely
13 separate and apart from this process?

14 MR. WOLOTIRA: Absolutely. It is
15 separate from the process we use. We use
16 similar information. We can use similar
17 evidence. But this is totally related to
18 being able to identify what natural resources
19 were lost and how to get them back.

20 CHAIR BILLY: Could they be joined
21 together? It sounds like it might be some
22 overlap or, you know, their process of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 preparing for a case and collecting the data
2 and all the analysis and all the experts and
3 so forth, sounds like a similar track to this.

4 MR. WOLOTIRA: Well, the similar
5 track is that we are looking carefully at
6 being able to prove our story with regard to
7 loss of resources.

8 CHAIR BILLY: So are --

9 MR. WOLOTIRA: Okay. But what a
10 significant portion of the case also relates
11 to is the activities that occurred up to the
12 actual incident. So now, I don't know.

13 CHAIR BILLY: Well, it's just a
14 thought.

15 MR. WOLOTIRA: I'm thinking about
16 other situations where --

17 CHAIR BILLY: Eric?

18 MR. WOLOTIRA: -- there were the
19 potential to be able to try and tie together
20 the criminal information as well as the damage
21 assessment. This had to do with dead birds.
22 And the agents were out there collecting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 information with the biologists. But then
2 when it came time to be able to get the
3 biologists to be able to go and to do the
4 analyses on the dead birds, the information
5 was held under lock and key because they had
6 not developed the case yet to prove the
7 criminal problem. And so consequently, that
8 was a complication.

9 CHAIR BILLY: Okay. Eric?

10 MR. SCHWAAB: Well, actually, I
11 was just going to try to get some
12 clarification on that point. So, Robert, you
13 said that the data collected is similar. I
14 mean, essentially, there is potentially three
15 different tracks of proceedings here.

16 One is the public trust claim,
17 which is the NRDA process.

18 MR. WOLOTIRA: Yes.

19 MR. SCHWAAB: The second is the
20 private claims, which can originate from any
21 number of places. And then the third is any
22 kind of potential criminal action.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And presumably with some
2 limitations, the data that is collected to
3 demonstrate the impacts could be used across
4 all the same data, not necessarily just
5 similar data, but the same data at some
6 point --

7 MR. WOLOTIRA: I'm sorry.

8 MR. SCHWAAB: -- could be used --

9 MR. WOLOTIRA: That's correct.

10 MR. SCHWAAB: -- in each of those
11 proceedings.

12 MR. WOLOTIRA: That is correct.

13 MR. SCHWAAB: Yes.

14 MR. WOLOTIRA: Except there are
15 three separate tracks that some time are in
16 parallel and can be -- and information can be
17 co-used. But there are a lot of aspects that
18 diverge.

19 MR. SCHWAAB: Right.

20 MR. WOLOTIRA: And so we have to
21 be very careful on how we can proceed down our
22 path.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Okay.

2 DR. RICE: Can I comment on that?

3 CHAIR BILLY: Sure.

4 DR. RICE: In the case of the
5 Exxon Valdez, which was pre-OPA '90, there was
6 a criminal action and a civil action also, but
7 also the Natural Resource Damage Assessment
8 action. And one function that the criminal
9 action had was that there was leverage in
10 order to get some of the damage assessments.
11 And it was really key to that, because, at
12 that time, it is a \$1 billion settlement,
13 which in this particular spill event, it's
14 like small potatoes. But that was a huge
15 record at the time and it wouldn't have
16 happened without the criminal aspect.

17 CHAIR BILLY: Okay. Okay. Keith?

18 MR. RIZZARDI: In the case of the
19 Exxon Valdez, there was a process called
20 contingent valuation that was a big part of
21 the damage determination. Is that part of the
22 NRDA process or is that part of the civil

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 process? And how is that playing in right now
2 into the Agency's efforts for this?

3 MR. WOLOTIRA: It's a lot of -- it
4 can be a portion and is a portion of the NRDA
5 process in many cases, that's the issue of the
6 afternoon.

7 MR. RIZZARDI: How are we coming
8 about with the public perception of damage for
9 the contingent valuation process in this
10 instance?

11 MR. WOLOTIRA: Contingent
12 valuation just means that you can ask a
13 person, you have never seen that bird, but
14 what value would you give on just knowing that
15 that bird is still around? That's pretty
16 simplified, but that's kind of what it is.

17 So what ends up being developed is
18 a long list of questions that then has to be
19 answered in a very specific way to be able to
20 come up with then some idea of coming up with
21 what is the public's contingent value on a
22 resource that has been lost?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. FRANKE: So just to build on
2 Randy's point, you know, about how difficult
3 this process can be, that's an area where I
4 think MAFAC could be really helpful in
5 contributing to the dialogue on perceptions,
6 value and trying to give some definition on
7 the things to look at and the questions to
8 ask.

9 I mean with the diversity at this
10 table, we are a good body for that.

11 MR. WOLOTIRA: Contingent
12 valuation is one economics test that can be
13 conducted, certainly can be conducted. It is
14 extremely expensive, because there has to be a
15 tremendous amount of time putting together the
16 original information, the questionnaire and
17 then also just training all the people that
18 are going to be asking the questions and the
19 way that they are going to be comparable with
20 a variety of legal concerns.

21 There are other economics issues
22 that could provide the end result more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 inexpensively and that's really why right now
2 there are 22 teams out collecting recreational
3 use types of information either from boat
4 harbors or from boat launches, various places
5 along the beaches in all five states.

6 CHAIR BILLY: Okay.

7 DR. RICE: Can I just make one
8 comment --

9 CHAIR BILLY: Yes.

10 DR. RICE: -- on contingent
11 valuation? In regards to Exxon Valdez, that
12 was the ballgame. In terms of the \$1 billion
13 settlement to the natural resource damages
14 about \$950 million of that is on contingent
15 valuation. It was actually about 2 billion,
16 but they didn't have guts enough to go for 2
17 billion, so they settled for 1 billion.

18 The total value of pink salmon are
19 varying, of copepods, of eagles, what's the
20 value of an eagle? What's the value of an
21 otter? Those things don't have values that
22 you can, you know, credibly quantify. And so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 basically, it's the contingent valuation
2 across the settlement. So it's a tremendously
3 important tool.

4 MR. WOLOTIRA: We are actually
5 addressing this issue from the aspect of doing
6 modeling, three dimensional modeling,
7 ecosystem modeling that is going to get to
8 issues of being able to identify the numbers
9 of the different trophic levels, different
10 species that are potentially going to be
11 damaged by this spill.

12 CHAIR BILLY: Okay.

13 MS. LOVETT: I was just going to
14 request, Jeep, if you want to come up here
15 now, if you are going to answer any more
16 questions, just so the reporter can hear you.

17 DR. RICE: All right.

18 MS. LOVETT: I don't know if you
19 are speaking now or after lunch.

20 CHAIR BILLY: No, he is going to
21 speak after lunch.

22 MS. LOVETT: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Are you going to be
2 around a while after lunch?

3 MR. WOLOTIRA: I will be around as
4 long as you want me to be.

5 CHAIR BILLY: That's fine. All
6 right. I want to squeeze in one last speaker.
7 You are going to have to hold your questions
8 until this afternoon. Eric, you want to tell
9 us briefly about fish disaster declarations?

10 MR. SCHWAAB: Okay. So I told Tom
11 I could do this in three minutes. You all
12 have explored extensively fishery disaster
13 declarations. This one is interesting,
14 challenging and different in a couple of major
15 ways.

16 One of which is, and I mentioned
17 earlier that the disaster declaration has
18 already been made by the Secretary for the
19 four states, you know, Louisiana and east,
20 that the nature of the damage continues to
21 grow over time. We, as yet, don't know what
22 the full extent of that is going to be.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And in fact, several aspects of
2 the damage could be stories that would unfold
3 for a long time yet to come.

4 The second is that there is, you
5 know, a very clearly and highly visible third
6 responsible party. So the challenge that we
7 have in this case is, as we work through the
8 prospects of federal appropriations, they are
9 going to be, number one, while, you know,
10 significant on the surface, modest in
11 comparison to this \$20 billion escrow
12 commitment that has already been made by BP.

13 And so the question that we are
14 exploring with the Gulf States is, you know,
15 how to use that in a way that is most
16 effectively sort of adding value or meeting
17 needs that aren't currently being met
18 effectively by the prospect of this escrow
19 fund. That is a conversation that is underway
20 now.

21 In fact, you know, while we
22 anticipate Congressional action on some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 appropriation in the near future, what we are
2 trying to do with Gulf States is sort of tee
3 that up now, so that, you know, if and when
4 money is appropriated, we will be able to move
5 very quickly and effectively with some kind of
6 a plan to use that money. And again, you
7 know, most effectively in the context of sort
8 of this fairly dynamic circumstance where you
9 have got this big escrow fund sitting out
10 there.

11 CHAIR BILLY: Okay.

12 MR. SCHWAAB: We can take
13 questions or comments after lunch, now or
14 after lunch.

15 CHAIR BILLY: Yes.

16 MR. SCHWAAB: Whatever your
17 pleasure is.

18 CHAIR BILLY: Yes. Martin?

19 MR. MARTIN FISHER: Eric, could
20 you speak -- the Governor of Florida asked for
21 Section 312 and 315 under MSA and the
22 Secretary said it needs to be 312.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SCHWAAB: Right.

2 COURT REPORTER: Could you repeat
3 that, sir? I didn't hear that with the
4 motorcycles.

5 MR. MARTIN FISHER: I'm sorry.
6 What I said was that the Governor of Florida
7 requested the Secretary of Commerce declare
8 under Section 312 and 315 of the Magnuson-
9 Stevens Act. And the Secretary came back and
10 only more or less granted 312.

11 Mississippi, Alabama and Louisiana
12 did not ask for 315. My question is how come
13 -- do you have any idea why the Secretary
14 chose not to give us 315?

15 MR. SCHWAAB: Yes. So the primary
16 challenge is that under 315, you have to have
17 this comprehensive economic analysis as a
18 basis for action. And that is challenged
19 substantially by the first point I made.

20 MR. MARTIN FISHER: Okay.

21 MR. SCHWAAB: Of course, the
22 tradeoff is the presumptive state match, which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is, you know, frankly, often waived in the
2 Congressional appropriation anyway. And we
3 might anticipate that to be the case here.

4 MR. MARTIN FISHER: Well, for me,
5 that's not the biggest issue. The biggest
6 issue is that 312 excludes the recreational
7 community officers.

8 MR. SCHWAAB: Right. So the third
9 point, and we have actually had significant
10 discussion about that, the expectation is that
11 you require the commercial impact to make the
12 determination. But once you have made that
13 determination, there is a fair history that
14 allows us, and we expect it will be a
15 substantial part of the equation in this
16 process, to extend assistance in some fashion
17 to recreational-related businesses.

18 MR. MARTIN FISHER: So you are
19 basically saying that whatever the impact is
20 in the commercial community, you can use that
21 for the model, the economic model to go with a
22 315?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SCHWAAB: Basically.
2 Basically, to get over the threshold of
3 affirming a disaster declaration, but then
4 once, again, presuming we get -- and right
5 now, the Senate language is pretty -- you
6 know, includes specifically recreational
7 business-related impacts that that won't be --
8 that the 312 determination won't be a
9 constraining factor in the ability to extend
10 assistance to recreational businesses.

11 MR. MARTIN FISHER: It would be
12 really helpful if you or your staff or
13 somebody could compose a letter to the
14 Governor of Florida stating that, primarily
15 because we have this quasi-task force that
16 meets two or three times a week put together
17 by the FWC, Florida Wildlife Commission.

18 And there is a lot of
19 dissatisfaction with the fact that the
20 Secretary did not go to 315 and no
21 understanding of the process for why not. So
22 that would really, really help. That would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 really soothe a lot of people's anguish.

2 MR. SCHWAAB: Thanks.

3 MR. MARTIN FISHER: Thank you.

4 CHAIR BILLY: Okay. We are going
5 to break now for lunch. Everyone be back at
6 1:30.

7 (Whereupon, the above-entitled
8 matter went off the record at 12:21 p.m. and
9 resumed at 1:40 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 guys.

2 The Exxon Valdez is a very
3 historic still. It was the largest spill,
4 obviously up until the present spill. Jon
5 Kurland talked about NEPA. The Trans-Alaska
6 Pipeline is the very first major project that
7 went through the NEPA process.

8 And that's what I was actually
9 hired to do is work on marine aspects of the
10 Environmental Impact Statement for the NEPA
11 and Trans-Alaskan Pipeline. And then to set
12 up a group of biologists and chemists that
13 would work on toxicity, you know, questions.
14 And part of the issue was that there was no
15 oil toxicity data relevant to Alaska.

16 And the upshot of all of that was
17 when this bill came along many years later, we
18 are set up with chemistry expertise and
19 biology expertise and laboratory expertise,
20 field expertise, so that we became major
21 players in the hunt, so to speak, for the
22 truth following the Exxon Valdez spill.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And we partnered with lots of
2 other agencies, like Fish and Wildlife Service
3 and USGS, who did the audit work. We
4 partnered with lots of other biologists and
5 other agencies, because we had the chemistry
6 expertise to go with that.

7 So when I started reflecting on
8 this talk though, so what I really came down
9 to was that I'm sure it would be an
10 interesting historic journey to go through the
11 Exxon Valdez, but really the bottom line here,
12 and this really should be the title of the
13 talk, what did we learn from Exxon Valdez that
14 carries over and informs the present Deepwater
15 Horizon event?

16 And so I'll try to address my
17 remarks to kind of slant very heavily toward
18 that sort of concept.

19 Next slide, please. Real quick,
20 I'm going to -- this is kind of an outline.
21 So real quick, I'll run a few rather gross
22 comparisons of both events. And then I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to get to the five big wows from the
2 Exxon Valdez spill.

3 And if you walk away with nothing,
4 you should be walking away with those four or
5 five concepts, hopefully. Okay.

6 Real quick then. The very first
7 thing that comes to mind is that no two spill
8 events are the same. And this certainly would
9 be true of this particular event.

10 Next slide. These events are very
11 much different. One is a ship running
12 aground, the other one is a blowout. So the
13 events are different. The scales are going to
14 be different, but, right now, they are a
15 little bit along the same lines. Both these
16 two spills combined -- or independently are
17 head and shoulders above any other spill in
18 U.S. waters, nearing about 500,000 gallons.

19 This one is 11 million gallons.
20 Now, we are well over 100 million gallons, 150
21 million gallons, maybe, who knows, who can
22 count that high and how accurate are the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 counts? But nevertheless, these two are head
2 and shoulders above the other spills. And now
3 the current spill is going to be head and
4 shoulders above the Exxon Valdez.

5 The timelines are very different.
6 I've got 40-day and three-day and that's as
7 you see in my talk, Day 3 of Exxon Valdez, 70-
8 knot winds and in just 24 hours we had 150
9 kilometers of shoreline contaminated.

10 I doubt that we had probably much
11 more than 10 kilometers of shoreline
12 contaminated by Day 40 and I don't know where
13 we are now at Day 70. It's significantly
14 above that. But it still doesn't compare to
15 the amount of kilometers yet. I have every
16 confidence that it probably will exceed Exxon
17 Valdez, but it isn't there yet.

18 You will have -- the chemistries
19 of each of these two spills is different.
20 Exxon Valdez is going to be much more viscous.
21 This is a lighter, thinner crude. All oils
22 kind of look alike superficially as you touch

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 them and see them and what not. But you know,
2 it's really all about the chemistry, the
3 compounds within it are different.

4 They are in the same classes of
5 compounds, but the compositions will vary, of
6 course. And that then affects the physical
7 properties such as the viscousness of it, how
8 thick it is, but also it affects the toxicity
9 and how thin it is will determine how well --
10 how easy it is to disperse. These things have
11 these characteristics that impact the other
12 criteria.

13 Now, we are going to talk about
14 it. So real quick, no dispersants were used
15 in Exxon Valdez of significance. Burning was
16 not done. Skimming was not done. All those
17 three major treatment classes are in operation
18 periodically with the current Deepwater
19 Horizon spill.

20 And I'm also just going to
21 casually hit politics. And I thought the
22 easiest way to kind of symbolize that was, in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Alaska we have got two Senators and one
2 Representative. And 85 of those folks from
3 the five Gulf States. So you can just guess
4 that then the politics, of course, is really
5 ramped up.

6 It's like the Exxon Valdez on
7 steroids sort of thing. And certainly the
8 President is involved in the background in
9 Exxon Valdez. The President is no longer in
10 the background here with the Gulf of Mexico.
11 He is, you know, literally under attack at
12 times. So the politics is just ramped up.

13 All right. Let's get on with the
14 spill event. I said it was a tankard. Here
15 is part of wide reef here, a big boulder
16 embedded into the bottom of the tanker. So
17 this is a shipwreck. It gives you a little
18 bit of idea of scale.

19 Also notice that this isn't a
20 catamaran, but that's what the reef did to the
21 bottom of the hull, hulled 11 of the 8 cargo
22 tanks.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Next slide. The highest priority
2 though is the lighter off the remaining cargo.
3 And that's what is happening here with the
4 Baton Rouge lightering off the oil out of the
5 11 cargo tanks. And for this reason, because
6 the vessel is intact, burning was not an
7 option, basically, because why would you want
8 to attempt to burn and wreck this vessel and
9 probably release more oil? So it was very
10 quickly decided to keep the vessel intact,
11 lighter it off rather than set the thing
12 afire.

13 Next slide, please. I'm going to
14 go through very, very quickly what happened on
15 Day 1, 2, 3, et cetera, for just a set of the
16 first seven days and also make a couple of
17 points.

18 So on Day 1, the oil was spilling
19 and pooling up around the tanker. Everything
20 is relatively calm.

21 Day 2, more oil is being spilled.
22 Remember we've got 28-plus riptides that are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going up and down, up and down twice a day,
2 that's putting a little hydraulic pressure, so
3 to speak, on getting oil out of the tanks.

4 And then on Day 3, big things
5 happen. A big push out of the north with 70-
6 knot winds and also boom, boom, boom and you
7 see that in the next three, four or five days
8 we're contaminating.

9 Basically, we moved the oil 150
10 kilometers except where it is run around and
11 ashore and then trapped in various bays like
12 Snug Harbor, et cetera. And we have
13 contaminated probably 150 or so kilometers of
14 beach.

15 And for that reason, skimming was
16 not an option. We didn't have the skimmers in
17 place, in hand. We certainly couldn't have
18 handled that volume of oil anyway. You would
19 have had to have a skimmer a fourth the size
20 of the Exxon Valdez or something of that sort
21 and that scale of operation doesn't exist.

22 Once it comes on shore, skimming

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is no longer an option. Dispersants are not
2 longer an option.

3 So, basically, at seven days, we
4 end up with this. And all hopes of containing
5 this event are dashed, at this point in time.

6 Next slide. Certainly, I'm not
7 going to trouble you with a lot of pictures.
8 You can see these sort of things, but we had
9 our dead carcasses, so to speak. And look at
10 the numbers here. This is the median: 500,000
11 birds were killed.

12 And I was talking with Rob and the
13 number of carcasses right now are in the low
14 100s or low hundreds, somewhere in that
15 neighborhood. So several orders of magnitude
16 lower.

17 So far in the Gulf spill, we are
18 asking ourselves the question is it because
19 the birds aren't there? Because we haven't
20 found the birds? They haven't come aground?
21 You know, we don't know why, so it's hard to
22 compare the two, but maybe at the end of a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 year or the end of six months, we will know
2 what the -- have a better estimate on this
3 count.

4 Four thousand sea otters were in
5 our kill. You don't have sea otters, but you
6 have sea turtles and other species, so you are
7 going to run into this sort of thing.

8 Basically, if you live and breathe
9 at the surface of the oil, you're going to
10 die, unless you are taken in and saved. And
11 there is just kind of like no two ways about
12 that.

13 Next slide. Okay. Now, that's
14 kind of -- well, I had another key word in
15 there. It said predictable. Everything about
16 the 500,000 birds and sea otters and
17 everything and damaging the habitat, coating,
18 those are all predictable consequences that
19 happen with Amoco Cadiz and happened with all
20 the other hundreds of spills as time has
21 evolved on.

22 What I'm going to talk about now

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is the long-term effects and persistence that
2 we see with the Exxon Valdez. And that is
3 unpredicted because none of those other spills
4 have been tracked over time and as intensely
5 as the Exxon Valdez.

6 So worldwide, Exxon Valdez about
7 in the mid-'50s, '55, in terms of size, was
8 number one in the U.S., but the one record it
9 holds right now, which will probably be broken
10 too, it is that this is the number one spill
11 in the world in terms of the amount of money
12 spent and studied.

13 Okay. So we have studied this
14 spill more intensely than any other spill in
15 world history. And for that, we know a lot
16 more than we do about any of the other spills.

17 Okay. The first story I'm going
18 to tell or first big wow is -- yep, there are
19 going to be long-term effects. And I'm going
20 to use the poster child for that, which are
21 killer whales.

22 And this comes from a short-term

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 exposure, meaning in the days or weeks
2 following the spill, next slide, real quick on
3 the biology, it has a biology kind of similar
4 to ours, in the sense that they live four or
5 five, six decades. Very low reproductive
6 rates. One female is only going to have four
7 or five or so calves in her lifetime.

8 It is organized along the
9 matrilineal lines into discrete pods. There
10 is two types, fish-eating ones and marine-
11 mammal-eating ones. And these two pod types
12 have different languages. They are not
13 intermarrying, so to speak. They are
14 separate.

15 Next. Okay. Now, a point was
16 made earlier about, Steve Murawski talked
17 about, you know, hustling out there and
18 getting baselines. And then Jim talked about,
19 you know, we don't get the baselines from
20 biology perspectives. So you can rush out
21 there and get chemical baselines before the
22 spill advances, but you need time in order to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 get the biological baselines.

2 With this particular species, we
3 do. It's rare. We have baselines for pink
4 salmon and some of the other commercially
5 harvested species and this is really like
6 almost the only non-commercial species where
7 we have a biological baseline. So this is a
8 rare event.

9 This baseline started five years
10 before the spill in 1984. And it was done
11 with photo-IDing the individuals. So when you
12 look at the dorsal fin, this guy is doing a
13 roll and the white saddle patch, these are all
14 fingerprints for specific individuals.

15 Next slide, please. And two pods
16 were photographed in the slicks. AB pods,
17 there are three, I think there are three pods,
18 three fish-eating pods in Prince William Sound
19 and then this transient pod AT1 that goes into
20 Prince William Sound and also a little bit
21 down by Kenai Fjords.

22 These two particular pods were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 photographed in the spill and this happens to
2 be an AT1 pod being photographed on about day
3 -- this is with the Exxon Valdez on the reef.

4 So these guys are in oil right now. And they
5 are in about Day 6 or so of the spill.

6 Notice also that it's still winter
7 out in late March in Alaska.

8 Okay. Next slide. Okay. So what
9 happened with the spill? Well, these guys
10 when they die, they sink, they don't float, so
11 we don't have any real carcasses to work with.

12 But in the photo-ID work, we see the
13 population numbers and then the year after the
14 spill, both populations that are photographed
15 in the spill at one time or another in the
16 first two months of the spill, lost 40
17 percent, 40 percent of their numbers.

18 And each of them is kind of an
19 independent replicant of the other, because
20 they have different biologies in terms of what
21 to eat and how they associate, et cetera, so
22 kind of disappointing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 AT1, as you see, is showing no
2 signs of recovery. And in fact, when we get
3 out here in another two decades, they will
4 probably be extinct. There are no
5 reproductive-age females left in this
6 population.

7 It will not combine with another
8 pod, because these guys don't speak the same
9 language and it's as simple as that. They
10 have a different culture, so to speak.

11 These guys, as you can see, are
12 recovering. They still have quite a ways to
13 go. This is 2005 data, but it's not much
14 better today. And maybe two decades or so
15 they will be up here to where they were pre-
16 spill level. So they have got a ways to go,
17 another two decades before they get to about
18 where they were prior to the spill.

19 Okay. The next story I'm going to
20 talk about, number two, is that embryos are
21 very, very sensitive, down in the parts per
22 billion.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Now, let me caution you about
2 units. We can talk about parts per million as
3 oil or parts per million or billion of PAH,
4 polycyclic aromatic hydrocarbons. So the
5 numbers I'm going to give you here are not of
6 the total oil, but just of the specific
7 compounds like benzene or benzopyrene,
8 perchloroethylene, those sorts of heterocyclic
9 aromatic hydrocarbons that are toxic and
10 that's our unit of measure when we are doing
11 these chemistries.

12 Okay. So what we found when we
13 were looking at pink salmon embryos, I should
14 have said that the work, by the way, that I
15 just reported on was done by Craig Mackin. He
16 is a contractor with the National Marine
17 Fishery Service. This work here, the field
18 work, done in the field was all done by ADF&G,
19 Alaska Department of Fish and Game.

20 And for four years, they found
21 elevated embryo mortalities in the pink salmon
22 strains within the skull area. And this asks

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the question of, jeez, just how is that
2 working? It was surprising and perplexing,
3 not so much in 1989, when you remember the one
4 beach picture and oil is everywhere and
5 imagine a stream that has to cross that, but
6 in later years '91/92, et cetera, all the way
7 up through '93, you didn't see that sort of
8 oil on the surface. There was some oil there
9 maybe, but it was much more hidden.

10 Next slide. Well, this is kind of
11 how it works. This is a typical pink salmon
12 stream at low tide. Pink salmon will spawn
13 from roughly about right here up to about
14 there. And 75 percent of the production in
15 Prince William Sound comes from intertidal
16 spawning, 75 percent.

17 So, yes, they spawn in fresh
18 water, but the habitat is in this intertidal
19 zone. Okay. And that's because you only have
20 to go up here a little ways and boom you are
21 into a very steep slope, because this area is
22 very young geologically, 1964. This

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 particular stream raised 13 or 14 feet in 3
2 minutes and 15 seconds with the Alaskan
3 earthquake.

4 Parts of the Hinchinbrook raised
5 27 feet in 3 minutes and 15 seconds. So, you
6 know, this is very young geologically and it
7 is happening continuously, so the pink salmon
8 have adapted by using this lower habitat.

9 Okay. Next slide. This is what
10 this stream would have looked like in 1989.
11 We never did see oil in the stream itself, but
12 we saw oil along the sides. Okay. And what
13 we found in later years is that we could put a
14 -- we could sample water from the spawning
15 gravel, the eggs are down in here in the
16 gravel, and we could detect oil.

17 Okay. We could put a dye in a
18 hole here and we could detect it in the
19 sandpipes over here, over here, so this oil on
20 the side it can get down into the water
21 soluble fracture, I should say, can get down
22 into where the eggs are. So that was the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 physical mechanism.

2 Next slide. And so what we
3 learned to do in the laboratory now through
4 some long-term tests is that -- could we
5 replicate what was happening in the field?
6 Could we prove that what ADF&G was observing
7 was more than likely happening because of the
8 oil?

9 That was still a running question
10 in 1991 or so when we started these tests. So
11 what we did is we're going to expose eggs for
12 months. They spawn in September and they come
13 out in April, so they are in the gravel for a
14 little over six months, seven or eight months
15 or so. So we are going to have really long-
16 term exposures.

17 We are going to make the doses
18 really low, parts per billion, single digits
19 and that's to the PAH, okay, up to the oil.
20 And then, in the end, when they come out
21 voluntarily, come out of the incubators
22 voluntarily, we are going to put a wire tag in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 their nose when they are just this little big,
2 just this big, not very much and the tag codes
3 are going to reflect which dose group they
4 were in: controls, or dose of 1 or dose of 2,
5 et cetera.

6 And then we will release them to
7 the wild environment and we wait a month and
8 three -- or a year and three months and they
9 return. Then we have to sort out the adults.

10 Get the wire tags back out of the nose,
11 decode it. Find out what dose that adult
12 returned from.

13 So this is a very challenging
14 experiment. We ran the doses from very low,
15 zero, on up through and these doses here don't
16 look like oil. Yes, you can tell that that
17 one is oil. But what we really want to know
18 is what is going to happen in these doses
19 here?

20 We weren't confident that this
21 would work really great, so we have some high
22 doses where we are really trying to kill them

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 like straight away.

2 Next slide. And this is the
3 result. Basically, that if we give them a
4 dose of this five parts per billion, we get a
5 20 percent reduction from there to there. A
6 20 percent reduction in the adult returns.
7 And if we give them a dose of about 19 to 20
8 parts per billion, then we are giving them a
9 reduction of 40 percent.

10 Okay. Well, that's pretty
11 interesting. We didn't believe that the very
12 first year, so we repeated it.

13 Next slide. And so we can get the
14 same sort of effect in different years. So
15 notice that the increment going down, this is
16 at 18 parts per billion, about 40 percent
17 reduction. Even though the control one year
18 was better than the other year in terms of the
19 controls, but the hit that the exposed group
20 to 18 parts per billion is still the same
21 proportion.

22 So pretty good evidence that these

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 guys are not as good in the wild environment
2 as their controlled counterparts. So we could
3 prove then that there is a mechanism there
4 that even though those fry that we were
5 tagging looked normal, looked healthy by the
6 naked eye, that they were just not as fit as
7 their control cohorts.

8 Okay. A quick summary of that.
9 ADF&G had a four-year effect in the streams
10 that they can measure and did. Of course,
11 Exxon countered these studies. They did a
12 study for one year. ADF&G actually did this
13 for nine years.

14 ADF&G looked at five times the
15 number of eggs and a couple of times more of
16 the streams, so they had very good statistical
17 power. Exxon didn't find the same effect, but
18 they didn't have the statistical power. They
19 didn't have the numbers.

20 So ADF&G had a pretty good study.
21 And then our laboratory thing basically
22 confirmed the mechanism. And in doing so, it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 changes the toxicity paradigm, basically. It
2 goes from parts per million.

3 When we were doing bioassays in
4 the '80s, and so was the Tiburon Lab, we were
5 concerned about parts per million of toluene,
6 benzene, naphthalene, things like that and we
7 were up in the part per million scales and
8 finding effects, but our exposures were short-
9 term. It wasn't necessarily with embryos and
10 now we are down in the three orders of
11 magnitude, parts per billion.

12 So we're three orders of magnitude
13 lower when we talk about parts per billion
14 compared to parts per million, so that changes
15 things.

16 This third big wow I'm going to
17 talk about is that oil persists. And this
18 really wasn't a consideration at the time of
19 the 1991 settlement. We knew that it would
20 take a year or two or three or four or
21 whatever to clean it off the surface.

22 There was a huge cleaning effort,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 10,000 people were involved in the cleaning
2 effort in 1989 summer and 1990 summer compared
3 to the 30,000 in the Gulf, but that's still a
4 pretty big army, especially by Alaska
5 standards. It really stretched the physical
6 logistics a lot.

7 And they were pretty physical in
8 the cleaning. High pressure hoses and that
9 sort of stuff and it cleaned the surface off
10 very well, but it didn't clean down below the
11 surface.

12 And in 1999, this is the year of
13 the ten year anniversary, okay, 60 Minutes
14 comes up to Prince William Sound, so does ABC
15 news, et cetera, and they want to get the tour
16 out to Knight Island or some other island and
17 can we find oil? And if you have a guide,
18 know where to dig, yes, you can find oil.

19 And this here is basically liquid
20 oil. It's about that far below the surface
21 and that means it is in the anaerobic zone.
22 You only have to go about 3 inches or so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 depending on how tight the sediments are and
2 you get into an anaerobic layer.

3 And so if you are down below where
4 oxygen is at, then the oil will persist.

5 Okay. So we knew that there was
6 some oil out there, but we didn't know how
7 much or where. And we went into a very large
8 study. It took all summer long. It took four
9 21-day field charters, 24-day charters. And we
10 went to about 100 sites. 91 of them, though,
11 were randomly selected, randomly in a
12 stratified design in the oil area and over
13 half of those sites we found oil.

14 Okay. 38 sites without oil. And
15 it's physical. Here is a young man from
16 Tatitlek digging one of 9,000 pits that were
17 dug that summer. And Mandy Lindenberg on our
18 staff looked at every single one of the 9,000
19 pits that you turn over and there is oil in it
20 and if so, how much?

21 Next slide. Most of the digging
22 was in this sort of beach. And so not the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 nice white sandy beaches you see at Pensacola,
2 but a bolder, armored beach. Many fry, the
3 rock-up, this is Mike Angi, who is trying to
4 rock-up and you dig a hole underneath.

5 Next slide. This is what you see.

6 In some areas you see a very light sheen.
7 Some areas you see droplets. So using what I
8 would call this doesn't worry me, I guess,
9 would be a way to put it. Yes, it's got oil
10 contamination, but nature is taking care of
11 it.

12 And then you get to this sort of
13 hole down here where it is literally liquid
14 oil. You can light this on fire. And when
15 you add up the number of holes and the amount
16 of square footage we did and run it through
17 the models, it says that inside Prince William
18 Sound we had about 80,000 liters of oil
19 remaining and that's 2001.

20 So 10 years, 12 years after the
21 spill we still had a lot of oil.

22 Okay. Go ahead and hit the thing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So you're going to advance. Go ahead, one
2 more time. It won't work, so then we will
3 just move on. And I figured that would
4 happen.

5 But what the hand does is it just
6 gets down in the oil and comes up all oily, a
7 very nice visual exercise of that. Audiences
8 outside of Kodiak, they groaned, they will
9 groan in Cordova. Here you guys might not
10 have groaned.

11 But okay. Let me make one more
12 point about this distribution of oil, then, in
13 Prince William Sound. And we assumed that the
14 majority of oil would be near the high tide
15 line. What was termed the bathtub ring in
16 this zone right here. But in actuality, we
17 find that the oil is fairly evenly distributed
18 throughout the intertidal zone with the
19 majority of it, basically, right smack dab in
20 the middle of it.

21 And when you consider the tides go
22 high and then low, this is really the median

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of the high tide, median of the total tide,
2 not knee-high tide.

3 And so this is where a lot of oil
4 basically got pounded into the surface through
5 capillary action. And so what? What's the
6 significance of it? Well, there is not a lot
7 of biology happening up here in the upper
8 meta-zone until you get to the wetlands maybe.

9 But down here, we've got mussels.

10 We've got fucus. We've got an algae going on
11 here. And if I was going to dig a clam, it
12 would be right down here in this zone here,
13 lots of clams in this area. And that is of
14 significance to the species that are hunting
15 for prey.

16 So now we have got oil down where
17 predators are going to maybe dig a hole for a
18 clam and get it. And you will see that impact
19 a little later.

20 Next, a real quick summary then.
21 One thing is, after 10 years, 12 years, we
22 just had a heck of a lot more oil than we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would have ever expected or predicted. And
2 that was a surprise. And one of the legacies
3 of the Exxon Valdez, so to speak, is that it
4 is now 21 years and we still have the third of
5 three lawsuits that is pending, okay, and
6 that's called the reopener clause.

7 And so I, for one, am getting
8 about six -- well, I have gotten six FOIAs,
9 for example, since January 1, because we have
10 this pending lawsuit with Exxon over the
11 reopener clause. And it has everything to do
12 with this oil that is remaining. Okay. This
13 oil that is lingering.

14 The second point that's down there
15 in the lower part of the intertidal zone where
16 the biology of the food is. Okay. So now,
17 let's get to the biological effect of that
18 lingering oil. And that would be the sea
19 otters.

20 There are other species, Harlequin
21 ducks are impacted. And there are a couple of
22 other bird species, but this is the poster

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 child, so to speak, for the lingering impact--
2 long-term effects, I should say, from
3 lingering oil. Okay. And this is the best
4 data.

5 So this is a project led by USGS,
6 Jim Bodkin, because he is a sea otter guy.
7 But we are linked with them because of all
8 those pits. Okay.

9 Next slide. Okay. This is the
10 impact of the spill, so to speak, in a couple
11 of different scales here. So we've got the
12 scale of Prince William Sound and these guys
13 are recovering, western Prince William Sound.

14 This is where the heart of the oil went, of
15 course, in the zone. And we have got a
16 positive trajectory, so the animals are
17 rebuilding.

18 When we look at Northern Knight
19 Island, which is just one of these little sub-
20 areas of western Prince William Sound, and you
21 see that the population was just holding
22 constant through those years.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 This here is for the northern
2 Knight Island area, this is the number of
3 carcasses that were hauled off, 165 of them.
4 So that should be a recovery point, to say at
5 least, you would think.

6 And what we have here is non-
7 recovery and even worse, kind of faltering
8 there towards the late 2000s.

9 Next slide. In one place, Herring
10 Bay, which is arguably the hardest-hit bay in
11 Prince William Sound and, basically, we are
12 flatlining there. There's 38 carcasses hauled
13 out of there and nobody has come back to
14 return. So this habitat has got plenty of
15 food in it, but it's still contaminated to the
16 point that nobody is -- the population is not
17 expanding and so it's not -- none of the
18 expanding guys are coming into reinvade that
19 bay and reestablish. So we still have
20 recovery that is needed here.

21 Next slide. One of the questions
22 was, was it food or was it oil? From the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 previous slide, the lack of recovery, what was
2 the cost? Well, they assumed, they predicted
3 that it was food, because oil wasn't around.
4 This is prior to 1999. They didn't see any
5 oil in the mid-1990s.

6 Okay. And so they also know that
7 these species, like the Harlequin duck and the
8 sea otter, they need to eat a lot. And the
9 overwinter in this habitat, they are not
10 migrating south to the Sun Belt. They need to
11 eat a lot.

12 And by a lot, I mean, a huge
13 amount. So 25 percent of the otter, 25
14 percent of the body weight per day for a sea
15 otter. Okay. So for us 200-pound guys, and
16 I'm probably being generous there, we would
17 need to eat 50 pounds, okay? Fifty pounds.
18 Think about that. What did you have for
19 lunch? Did you have a whole pound, you know?

20 Well, you've got 49 more to go through the
21 rest of the day.

22 So, you know, that would be a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 struggle. So these guys have to work pretty
2 hard and they do.

3 Next slide. This is them digging
4 pits out here in the high tide. This actually
5 is the same beach as the one I just described,
6 remember the peat and the oil was there. And
7 these guys are digging holes about right
8 there, okay.

9 Next slide. There is the pits and
10 there is the otters there. Okay. So that
11 begs the question, well, all right, they dig a
12 lot of pits. They got to eat a lot. Well,
13 just how many pits is that? How many
14 intertidal pits is that? Okay.

15 Next slide. Well, Bodkin got a
16 pretty good deal. He takes his time and depth
17 recorder. It's a little bit bigger than a
18 quarter. They have to dive with a rebreather
19 device, come up underneath a sea otter, so
20 they have got to swim 300 or 400 yards. They
21 have got this net device thing, it's kind of
22 cone-shaped that comes up underneath a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sleeping otter and spring the trap, so to
2 speak, and then the skiff comes over and then
3 they got this almost 100-pound snarly, all
4 claws and all teeth sea otter that is not
5 appreciating this.

6 And then they take him back to a
7 bigger boat, anesthetize them and place this
8 time and depth recorder in it and then
9 rerelease him and then come back a year later.

10 They got a radio tag on him also, so they can
11 locate that otter.

12 And this is the typical pattern.
13 Sleep, sleep, sleep, swim over to where they
14 want to forage and then dive, dive, dive,
15 dive, look at all of those repetitive dives.
16 Yep, I'm full. Rest, swim, dive, dive, dive.

17 So they are doing this two or three times a
18 day.

19 And next slide. The mothers, they
20 want to dive the shallow dives, that means
21 they are going to leave their baby up
22 unprotected at the surface for the least

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 amount of time. So they'd be just really
2 happy to dive 5 or 6 or 10 feet down in order
3 to get a clam.

4 So next slide. So here is the
5 dive depths. And they go all the way out
6 here. Here is 85 meters. These are in
7 meters, depth. So some of the strongest of
8 the males can get down to almost 100 meters.
9 That is a huge amount. The males peak out at
10 about 15 to 20 meters. The females are
11 peaking out at about 5 to 10 meters.

12 But the only bars that matter here
13 are the last ones over here on the end. Next
14 slide. And that is these that are in the
15 intertidal zone. So at high tide, these guys
16 don't come out of the water. So they will
17 dive in the upper and lower intertidal when
18 the water is covering it at high tide. And
19 they will dig those pits and become exposed,
20 then, to oil.

21 So up to about 18 percent of the
22 females, 7 percent of the males are digging

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 enough dives in the intertidal zone that they
2 will become contaminated with that oil in the
3 lower intertidal zone.

4 Next slide. How many pits do they
5 dig then? Let's do the math real quick. This
6 is two full years of data done from 2003 to
7 2005. And it is done for 65 otters. They did
8 n of 16, but they calculated it for those 65
9 otters that we saw in that lower diagram
10 there, lower curve for the Northern Knight
11 Island. Those 65 sea otters dig about 200,000
12 pits per year collectively, for the 65 of
13 them.

14 And over a 20-year period, next
15 slide, they are digging 4 million pits.
16 That's a lot of work. And, you know, I tease
17 Mandy, come on Mandy, you only dug 9,000, you
18 know, and it took you all summer to dig it.
19 And you didn't even do that.

20 Okay. So this is what an
21 intertidal zone looks like and all these are
22 sea otter pits. Okay. Nice algae, good

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 clamming area, obviously.

2 Okay. Next slide. Okay. I'm
3 getting to my last message here and that is
4 about, well, it's a little bit about fish,
5 it's with herring. And I have got it labeled
6 "Watch Out for the Ecosystem Surprises."

7 Pacific herring are a big deal.
8 They are a commercial fishery in Prince
9 William Sound. It's a relatively small
10 fishery. It is kind of a mom and pop fishery.

11 It affects oh, probably, 100-plus permits,
12 maybe 150 permits, something of that sort.

13 But the one thing that herring do
14 is they spawn right around April 1st, April
15 15th and they are the very first cash crop of
16 the year. If you are a salmon/herring
17 fisherman, you've got your last salmon check
18 last October and then this would be your first
19 crop this year, so to speak.

20 The salmon fishery starts a month
21 or so, six weeks after this, the fishery. And
22 so while you don't make a huge amount of money

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 maybe, it's the first incoming shot of the
2 year. So it's pretty important to them.

3 Well, let me finish.

4 MS. LOVETT: Oh, I'm sorry.

5 DR. RICE: Go back one slide.

6 Okay. The point is that these guys continue
7 to struggle today, so -- you're right, you
8 should have moved on even though I wasn't
9 ready.

10 MS. LOVETT: I apologize.

11 DR. RICE: And this is what the
12 pink salmon -- or excuse me, the herring were
13 doing in 1989. They are reaching a pretty
14 large high. Years earlier, they had been low.

15 So, you know, herring do ebb and flow, so to
16 speak. And they are at a high in '89.

17 There are certainly some short-
18 term impacts. Larvae were affected and
19 whatnot, but it didn't take out the standing
20 stock. And yet, the standing stock crashed
21 four years later. And by standing stock, I'm
22 talking about 85 percent of it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And it's certainly normal for the
2 8, 9, 10 year-olds that are getting towards
3 senescence and for them to fall out of the
4 population, but it's not appropriate for 85
5 percent of the 3-year-olds or 4-year-olds or
6 5-year-olds, et cetera, across the board to
7 all fall out of the population.

8 So this is a very unusual and
9 abnormal event. Like I said, it is one thing
10 for populations to ebb and flow, okay, but
11 it's another that they crash.

12 So why did they crash? Well, they
13 crashed specifically in that particular year
14 because of disease. But why the disease? Is
15 it linked to oil? Well, there is a lot of
16 indirect evidence that would suggest that it
17 might be that, because there is no huge crash
18 anywhere else in Alaska.

19 There is no other disease event in
20 Alaska that compares to this, relative to
21 herring anyway. So you know, but that's not a
22 smoking gun. That's just kind of -- it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 enough for all of the herring fishermen in
2 Cordova though. That's all the evidence they
3 need to link it to Exxon Valdez.

4 But as scientists, we need
5 something better than that. And
6 unfortunately, we are never going to get
7 better data than that. So this is as good as
8 it gets, so to speak, unfortunately.

9 So where are we at today? Well,
10 today, the population kind of dawdles along.
11 And it hasn't increased and now we are 20
12 years, 18 years past that crash. The trustees
13 are very -- well, they want answers. They
14 want to know, well, if we can't figure out why
15 this thing crashed and that's really
16 irrelevant now, the big question is: why
17 aren't they recovering?

18 Why aren't they bouncing back?
19 And so there is like 10 different core studies
20 that are focused on that issue. And they are
21 funded for about three years and I don't know
22 what answers they will get, but it is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 priority.

2 So getting back to the herring.
3 The last slide, I think. Oops, next slide.
4 Why haven't they recovered? And well, one of
5 the consequences that we are discovering is
6 that the humpback whales are eating a huge
7 amount of herring, those guys there.

8 And so this is a shot of a group
9 of bubble feeders that are coming up
10 underneath and forcing a school toward the
11 surface and then coming up through them.
12 Whales will eat herring, but just how much?

13 Well, our calculations for Prince
14 William Sound are showing that it's on the
15 order of 10 to 20 percent of the standing
16 stock. And so that's not enough of a hit, so
17 to speak, to drive that population into
18 extinction or anything. But it is enough,
19 plenty enough, so to speak, it's the
20 equivalent of a fishery, it's enough to stop
21 them from recovering and that appears to be
22 what is happening.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So they got suppressed for
2 whatever reason, probably the oil, but we
3 can't prove it, but now they are being held
4 down by predation and disease and they are not
5 recovering.

6 So this is what I mean by an
7 ecosystem surprise, you know. What will
8 happen with the Gulf spill, with the plumes of
9 oil, for example, underneath the surface and,
10 you know, are you going to affect some sort of
11 species, some copepod, for example, that
12 nobody has a clue about? But it's an
13 important energy link, so to speak, in the
14 ecosystem, you know, you can have a domino
15 effect.

16 For Prince -- for Alaska, in
17 general, this forage fish is arguably very,
18 very important. It is probably the most
19 important forage fish throughout the range of
20 Alaska. There are other forage fish,
21 eulachon, sand lance, et cetera, capelin.

22 But this one has a range

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 throughout all of Alaska and is in numbers
2 that completely swamp the other forage fish
3 species. So it is arguably the most important
4 fish supporting humpback whales. A number of
5 different species, kittiwakes and harlequin
6 ducks, well, not harlequin ducks, but a number
7 of -- Pigeon Guillemots, a number of different
8 species of birds, a number of other marine
9 mammals and a number of fish, salmon being one
10 of them, for example.

11 So a very important energy
12 component of the ecosystem and we don't know
13 enough about it and we don't consider the
14 sound returned to 100 percent, so to speak,
15 until they are.

16 And I think that is all I've got
17 to say in direct. This is a large herring
18 spawn taking place inside Prince William
19 Sound. Thousands of tons there spawning, so
20 they are in big numbers.

21 So any questions, if I have time?

22 CHAIR BILLY: Heather?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BRANDON: Gee, thanks. It
2 brings back memories.

3 DR. RICE: Not all of them good, I
4 know.

5 MS. BRANDON: No, that's true. It
6 makes me sweat. Can you talk a little bit
7 about the Exxon Valdez Trustee Council and how
8 that was all set up and how it continues and a
9 little bit more about the reopener and just
10 sort of that piece of it?

11 DR. RICE: Kind of the management
12 and politics of it, so to speak.

13 MS. BRANDON: Yes.

14 DR. RICE: Well, remember I said
15 that Exxon Valdez is kind of a historic event
16 in the sense of the first major NEPA thing and
17 then Rob showed a slide about OPA '90. So OPA
18 '90 happens the year after the spill, so we
19 are operating under different conditions prior
20 to the passage of that law.

21 And so, at that time, it was all a
22 litigation sensitive environment, meaning it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was secret, and so we, as in the trustee
2 scientists, are doing studies. We may have a
3 contract with a university guy that, you know,
4 any data we get is secret and is restricted.
5 And it's that way.

6 Exxon has their parallel studies.
7 And so for the very first year, and I
8 remember this pretty well, each Agency,
9 whether they be a state or federal, the ones
10 that were going to be the trustees, have
11 responsibilities toward their respective
12 species.

13 And so we had salmon studies. And
14 we had bird studies by Fish and Wildlife
15 Service and that sort of thing. And everybody
16 is kind of taking care of their Agency needs,
17 so to speak.

18 And it was kind of run by the
19 agencies, not a lot of oversight, if any. And
20 then the lawyers got involved by the end of
21 the summer and, at that time, under the laws,
22 we are now kind of restricted to doing studies

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that are going to bring back money. So only
2 studies that have value.

3 So copepods have no value, so
4 we're not going to study copepods. We will
5 study eagles though, and we will study salmon,
6 and we will study herring.

7 So the lawyers are in charge for
8 the next time period. And then the settlement
9 comes along in 1991, which is just two years
10 after the spill event, and that's
11 unprecedented really.

12 If you look at Amoco Cadiz, that's
13 not settled for close to 15 years. I think it
14 is 13 years. So two years. And one of the
15 reasons why, and I alluded to it earlier in a
16 peanut gallery comment about because there are
17 criminal charges brought against the CEOs, the
18 two of them, Chairman of the Board and
19 President of the company, because there's
20 criminal charges, we have leverage on getting
21 a settlement.

22 And so I think if it wasn't for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the criminal charges, they would have probably
2 fought back on the contingency aspects of the
3 spill. And as a result, the result of all of
4 that is that okay, we will settle for a
5 billion dollars and not go to jail, which they
6 didn't.

7 And so then the trustees now
8 finally have an official start. They got a
9 billion dollars. What the heck are you going
10 to do with it all? And so the agreement
11 between the state and the federal government
12 was there will be three state trustees and
13 three federal trustees. And they would use
14 those funds, first, to pay back the two
15 governments for the damage assessment studies
16 that they were doing prior to that.

17 And that's kind of an important
18 point to push us toward a settlement and also
19 push toward OPA '90 being passed was that the
20 spending on the spill prior to the 1991
21 settlement didn't involve one Exxon dollar.
22 That was all state and federal funds. Okay?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 State and federal funds, that's a pretty big
2 monetary tax, so to speak, to put onto those
3 two governments to basically go and try and
4 figure out what all happened, especially at
5 the scale of this.

6 So that put in logic flows, so to
7 speak, you get the spiller to approve through
8 the OPA '90 process so that we are using his
9 funds, rather than -- well, we are probably
10 spending in the red, not even using tax dollar
11 funds.

12 The State of Alaska did
13 appropriate funds, but Congress never really
14 did. So it was kind of a murky process. So
15 OPA '90 helps on that aspect.

16 The trustee process starts and
17 they pay back the two governments out of that
18 process and then they start. They first
19 continue on with damage assessment for the
20 first year or so, and then that continues.
21 They start then looking at ways to restore the
22 Sound, so they start buying back land to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 protect it.

2 One of the -- marbled murrelets
3 for example, is either threatened or
4 endangered or almost, don't know enough maybe
5 to do that, so buying the land to protect that
6 species. Buying land to prevent it from being
7 logged. So I don't have the numbers at my
8 mental fingertips, but it's I'll say \$300 or
9 \$400 million, eventually over a 20 year period
10 gets spent going down that pathway.

11 We spend probably another \$100 or
12 \$200 million in that neighborhood probably on
13 further damage assessment type studies. There
14 are some things that are built like the Alaska
15 SeaLife Center Museum in Kodiak to help
16 compensate those villages, those towns for
17 damages.

18 So the process became, with the
19 '91 settlement, an open process, so the public
20 now had a stake in this, so to speak. A
21 public advisory group is set up to advise the
22 Trustee Council, and all business is conducted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in the open. Proposals are now reviewed, peer
2 reviewed and approved, maybe even modified
3 before they are funded.

4 Again, an open process. And there
5 is also accountability now that if you did
6 take the money and produce -- spend it for
7 this project, you had to produce. So it's
8 much more of an open process. And that
9 process continues to this day, although the
10 amount of money they have left is certainly
11 declining. It's in \$100 million range,
12 roughly.

13 Just to continue on herring
14 briefly, their main focus right now are
15 probably, main research focus, I would say, is
16 on herring and trying to figure out why they
17 are not recovering along with the other
18 restoration projects they continue to fund.

19 Does that do it for you?

20 MS. BRANDON: That's kind of what
21 -- I guess one of the things that I wanted
22 people to hear about is that there was a chunk

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of money that was put aside.

2 DR. RICE: Big chunk.

3 MS. BRANDON: A big chunk and it
4 was controlled by the governments and it was,
5 you know, informed by the public process. And
6 it aimed to restore those species that were
7 the most damaged in Prince William Sound.

8 And it may not be a model that
9 could be reproduced exactly, but it certainly
10 is a model for a spill affected area. And I
11 just wanted people to hear about how it was
12 set up and how it was governed.

13 DR. RICE: Maybe just one more
14 comment about the reopener clause you
15 mentioned that. During the 1991 settlement,
16 the reopener clause was for \$100 million and
17 that's for damages that we weren't smart
18 enough to perceive of or know about at the
19 time in 1991.

20 And the Attorney General, and I
21 can't think of his name, put that in there for
22 the state, put that in there, and Exxon,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because if you look at the literature, there
2 is no long-term damage from spills that
3 happened previously, so they didn't have any
4 problems agreeing to that clause because they
5 presumed and believed that there wouldn't be
6 any long-term damages that they don't see at
7 that moment in time.

8 So that continues today. It had
9 to be filed three or four years ago and was.
10 We are trying to get, I think, \$92 million out
11 of them to do more cleaning. And I don't know
12 -- that's all secret, behind the closed door.

13 I don't know where that is going to go, but
14 one of the impacts on me, because of that, is
15 that I get these FOIAs for the studies we
16 continue to do.

17 CHAIR BILLY: Vince?

18 MR. O'SHEA: Thank you, Mr.
19 Chairman. I had two questions for you, Jeep.

20 You changed units on us here at one point and
21 you said there were 11 million gallons spilled
22 and you found 80,000 liters.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DR. RICE: Yes, I did.

2 MR. O'SHEA: Is that 20,000
3 gallons of oil or was it 20,000 --

4 DR. RICE: 80,000. Yes, 80 liters
5 would be about 20,000 gallons.

6 MR. O'SHEA: Right.

7 DR. RICE: So, you know, in terms
8 of --

9 MR. O'SHEA: Out of 11 million?

10 DR. RICE: Yes. So it's not a lot
11 in one sense, but it's a lot if you are
12 digging a hole.

13 MR. O'SHEA: Right.

14 DR. RICE: If you are digging the
15 hole there it's a lot.

16 MR. O'SHEA: And then the other
17 quick question is what happens if -- I thought
18 there was a thing about Kah Shakes herring
19 fishery collapsing down in southeast along the
20 same time frame.

21 DR. RICE: Well, it didn't
22 collapse; it moved. It moved over to Cat

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Island and then part of that is within the
2 3,000 meters of Annette Island, which is its
3 own Indian Reserve, Native Reserve. They are
4 not Alaskan Indians. But the Canadian Indians
5 have moved there.

6 And so when the Alaska Native Land
7 Claim Settlement came along years later, they
8 were not included in the Alaska Native Land
9 Claim Settlement, so they continue that
10 Reservation and there is no fishing by anybody
11 with an ADF&G permit anyway inside that 3,000
12 meters.

13 MR. O'SHEA: But it's not a
14 decline in a population that someone could
15 look at and say that --

16 DR. RICE: No.

17 MR. O'SHEA: -- there was
18 something else going on to herring in Alaska?

19 DR. RICE: Correct.

20 MR. O'SHEA: Okay. Thanks.

21 CHAIR BILLY: Steve?

22 DR. RICE: And how much it moves,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you know, we can't assess within that 3,000
2 meters.

3 MR. O'SHEA: Right.

4 DR. RICE: So what that population
5 does within that 3,000 meters, we don't know.

6 MR. O'SHEA: Right. Thanks.

7 MR. JONER: Can we continue the
8 questions from before lunch or are we reset on
9 that? This fits, I think.

10 CHAIR BILLY: Okay.

11 MR. JONER: So it's for each of
12 our three speakers on this for Jeep and for
13 Jim and Robert. And talking about damage
14 assessment restoration, and Robert gave a
15 definition of injury as observable or
16 measurable at first change in a natural
17 resource or impairment of a natural resource
18 service.

19 We had a little bitty oil spill
20 down in the Strait of Juan de Fuca in '91. It
21 was about 500,000 gallons. It's a Tenyu Maru
22 event. It was a Japanese mothership that was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 t-boned by a Chinese freighter in the fog and
2 it sank within minutes.

3 And we had that half a million
4 gallons go in Puget Sound mainly on the Cape
5 Flattery area and then down as far as the
6 Oregon coast. So you know, they formed the
7 trustees and they had a settlement. And
8 unfortunately from my perspective, because I
9 believed the real damage was done to the
10 things we didn't see, the larval black cod
11 that were up on the surface right at that
12 time.

13 There was a primary nursery on the
14 west coast there. And all the other marbled
15 fish, zooplankton, that fish depend on, but
16 nobody could see them, but people see marbled
17 murrelets and birds on the beach, so that's
18 where the money went.

19 There were several hundred acres
20 of old growth purchased for marbled murrelets.
21 Unfortunately, I didn't have any bodies to
22 prove my point. And that's the issue here is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that, you know, I think we collectively are
2 woefully unprepared for this.

3 And as Captain O'Shea will tell
4 you, we are supposed to be always prepared,
5 right?

6 MR. O'SHEA: That's right.

7 MR. JONER: At least when you are
8 in the Coast Guard you are. But I was glad to
9 hear Jim say that, that you know, we don't
10 have the baseline data. And I have been on my
11 soap box for 19 years about that. And I feel
12 like maybe this Gulf spill will get somebody
13 to listen, at least up in our area. We have a
14 golden opportunity, and the situation is ripe
15 because there is a National Marine Sanctuary
16 there.

17 And we have told the sanctuary
18 folks it's nice to know about the coral, but
19 let's look at other things first. Let's do a
20 real detailed monthly assessment cataloging
21 what is there because it's a matter of time, I
22 don't know how many freighters enter the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Strait every day, but it's several carrying
2 all that Alaska oil down to Puget Sound, it's
3 a matter of time before something bad happens
4 and there is an Exxon Valdez size oil spill
5 there, and we still 20 years later won't know
6 anything. So, you know, I'm just -- I'll tell
7 you if we don't do something now, this week if
8 we come out of here with a real strong message
9 that let's get ready for this, then that's
10 going to be good. If we don't, it's going to
11 be real bad.

12 DR. RICE: Maybe just a quick
13 comment on that. During the Exxon Valdez when
14 we were working under the previous law, we
15 were very species-oriented. In other words,
16 we were concerned about the herring or the
17 salmon or whatever sea otters, whatever each
18 Agency was concerned about. Nobody was in
19 charge of the intertidal zone.

20 It wasn't a department, so there
21 was no Department of the Ecosystem, so nobody
22 knows about the copepods or the zooplankton or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 whatever. So now, as we go on in time, NOAA
2 is more interested now or is still driven by
3 species management, but we now know that over
4 the horizon we need to evolve towards
5 ecosystem management.

6 And that's going to take base
7 dollars to do that. And we actually like
8 doing ecosystem studies in Prince William
9 Sound, but they are not NOAA's dollars,
10 they're trustee dollars. So when we look at
11 herring and humpback whale relationships and
12 whatnot, those aren't NOAA dollars or U.S.
13 government dollars, those are trustee dollars.

14 So we are getting a look at the
15 ecosystem. Maybe through this build-up that
16 will happen, but it's really hard to do
17 ecosystem research with the dollars that have
18 come through the base process, almost
19 nonexistent.

20 CHAIR BILLY: Okay. Randy and
21 then Martin.

22 MR. CATES: You said something

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that caught my attention. Is this possible or
2 have you seen it in this region where you have
3 a protected species so abundant that it starts
4 impacting another species or recovery of
5 another species as you alluded to? And if so,
6 what would you do?

7 DR. RICE: That sounds like a
8 setup question here.

9 MR. CATES: It seems we are having
10 that problem in Hawaii.

11 MS. LOVETT: Yes, right.

12 MR. CATES: The result is the loss
13 of human life --

14 DR. RICE: Well, in the case --

15 MR. CATES: -- with shark attacks.

16 DR. RICE: -- in the case of
17 humpback whales and herring, it's pretty
18 obvious to us we haven't got the papers out in
19 print yet, but we are within a year, I think,
20 within six months or so. And I think the
21 conclusion you would draw after reading, there
22 is 10 core papers here, five of them directed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at herring, five directed at humpback whales,
2 and we are looking at three populations.

3 The one there in Prince William
4 Sound, the one right here local, which hasn't
5 been fished on since 1974 or so, and they
6 haven't recovered and another stock over in
7 Sitka where the herring populations there are
8 as high as -- they had a record harvest year
9 this year, so they are doing very well.

10 So we're comparing humpback whale
11 predation on those three. Well, they don't
12 impact the Sitka population, because they are
13 doing very well and they are high. And so the
14 prey is swamping the predator in Prince
15 William Sound and locally here the populations
16 are very curtailed, cut down. And so now the
17 predator is not being swamped and he now is
18 cropping back the surplus, so to speak, that
19 would get those populations to recover.

20 So why haven't humpback whales
21 been restored? They have been protected now
22 for a number of years. They are expanding in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the north Pacific at around 5 to 8 percent per
2 year. That means they double every 18 years
3 or so. So they have doubled a couple of times
4 since the late 1950s or so. And it's probably
5 time to take them off the list, but we haven't
6 done that work or you haven't done that work
7 or somebody hasn't done that work.

8 MR. CATES: That's a setup for
9 tomorrow. A real quick follow-up question for
10 Eric. What do you do when you have two
11 species that are impacting each other and they
12 both need protection?

13 MS. FOY: For instance, if you
14 need a for instance, killer whales and Steller
15 sealions.

16 MR. CATES: Yes, good. Good
17 choice.

18 MR. SCHWAAB: I mean, I don't
19 know. I would refer to Jim there on that.

20 MR. LECKY: I will do it.

21 MR. SCHWAAB: That's a good
22 question. I mean, from a -- you know, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 question is really from a regulatory
2 perspective.

3 MS. FOY: Just a for --

4 MR. LECKY: So the real question
5 is --

6 MS. FOY: -- instance.

7 MR. LECKY: -- why do you care?
8 What do you want to get out of it? Right? I
9 mean, those are natural interactions. They
10 are part of the ecosystem and they go on.

11 MS. FOY: Yes.

12 MR. LECKY: Do they really need to
13 be regulated? Well, they need to be regulated
14 if you don't want -- if you want sea lions to
15 be the de-listed so you can fish on pollock,
16 then you care about Steller sea lions being
17 eaten by killer whales. So there is
18 overarching economic consideration that you've
19 got to ask for.

20 MS. FOY: Right.

21 MR. LECKY: So, you know, places
22 where we have tools, we try and use them.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Columbia River we are actually removing some
2 California sea lions from the Columbia River
3 in order to facilitate recovery of spring
4 chinook. When there are two -- well, so I
5 don't see us doing that with killer whales.

6 MS. FOY: No, no. I don't either.

7 MR. LECKY: That just wouldn't
8 fly.

9 MS. FOY: But do we take another
10 look at whether or not our pollock measures
11 are effectively helping the population?

12 MR. LECKY: Right.

13 MS. FOY: Or whether or not it's a
14 predator pit that is causing the problem.

15 MR. LECKY: Right, right. Yes, so
16 doing the science to be able to distinguish
17 those questions is part of the process.

18 MS. FOY: Expensive.

19 MR. LECKY: Yes, yes.

20 MR. CATES: I mean, we're still
21 spending millions of dollars or a significant
22 amount of money to protect humpback whales.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We have a sanctuaries, and NOAA spent an
2 ungodly amount of money and it's pretty
3 obvious, but they probably don't need
4 protection and they are impacting on other
5 species. So why are we doing that?

6 I mean, the amount of money that
7 is spent in Hawaii is incredible. And the
8 regulations that go into effect on -- in areas
9 to protect humpback whales doesn't seem like
10 they need protection.

11 MR. LECKY: Right.

12 CHAIR BILLY: Martin?

13 MR. MARTIN FISHER: Thank you, Mr.
14 Chairman. I would like to thank Mr. Joner for
15 stepping on the wine glass and linking all the
16 past three speakers together, so I can go
17 where I want to go, too.

18 Jeep, where did Jeep go?

19 DR. RICE: I'm right here.

20 MR. MARTIN FISHER: Oh, sorry.
21 I've got a couple of questions, an idea, and
22 then I've got a link-up question for Eric and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Robert, if he's still here.

2 Was there any deception on the
3 part of the Exxon Corporation in the beginning
4 in terms of how much oil was escaping out of
5 the rigger?

6 MR. CATES: That sounds like
7 another setup question.

8 MR. MARTIN FISHER: Well, we can
9 move on.

10 MR. CATES: It's a fixed amount.

11 DR. RICE: Well, I'll answer it
12 real quick. Basically, Exxon was in charge of
13 lightering off that oil and it shipped it back
14 to the boom, went right back to the terminal
15 and off-loaded it. It probably had water in
16 it, too, a little bit of water and whatnot,
17 but, you know, they did all the accounting.

18 And so, you know, I know, Riki
19 Ott, you know, I think 11 million gallons is
20 really more like 20 or some other number. I
21 mean, who knows. But there is no way to know,
22 so we go with the official number, 11.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And it's kind of like your Gulf of
2 Mexico spill. There is no meter down there to
3 count, so, you know, it's kind of hard to come
4 up with realistic numbers, and you are never
5 going to know what the actual number was --

6 MR. MARTIN FISHER: Okay.

7 DR. RICE: -- in the Gulf of
8 Mexico either.

9 MR. MARTIN FISHER: My second
10 question for you was -- and this sounds
11 simple, even to me. But couldn't a whole
12 bunch of people with some appropriate backing
13 equipment play like otters and dig a lot of
14 holes and suck -- I mean, it's only 80,000
15 gallons. That's not that much oil.

16 DR. RICE: Well, it's a one little
17 number detail, and that's because I cut this
18 pretty short, is that that's spread out over -
19 - it's not one beach of 80,000.

20 MR. MARTIN FISHER: I'm sure. No,
21 I understand that.

22 DR. RICE: It's a whole bunch.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 There might be a little pocket beach that's
2 the size of this room and it has got some oil
3 in it, and that's replicated in a whole bunch
4 of places and it's right next to a place that
5 from here over is clean or whatever. And
6 within this beach, it's only right over here
7 and not there or there. So it's --

8 MR. MARTIN FISHER: Are all the
9 places identified?

10 DR. RICE: They are. That report
11 is not out yet. It's part of the litigation
12 support. So the report by Jacky Michelle will
13 come out, I'm sure. And her firm has taken
14 all this data and then modeled it because we
15 went to 91 sites which as, I didn't tell you
16 this, it's only 20 percent of the total number
17 of beaches, so she basically made models of
18 that to tell you what was happening in the
19 other 80 percent.

20 And so she now has pretty good
21 estimates of where it is and that was in
22 support of trying to get some more money for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the cleaning. But there is one major issue
2 and that is that it is now 21 years after the
3 fact and should you now clean?

4 In other words, will you do more
5 harm than good? And that's a stumbling block.

6 And we, unfortunately, don't know the answer.

7 Knowing what I know now, if you asked me that
8 question in 1995 or something like that, I
9 would have said hell, yes, get in there and
10 clean it up now.

11 I'm not so sure. Now, I suspect
12 we would do more harm than good. With what
13 little is left there, the sea otters are
14 periodically breaking into it, exposing it to
15 air, and the ecosystem is handling it at that
16 rate, and I suspect we ought to let the
17 process continue that way.

18 But I don't know if that's -- I
19 don't know how many would agree with that.
20 But that's kind of where I'm at.

21 MR. MARTIN FISHER: Thank you.

22 And then I have my question for Eric. Do we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 yet know from BP, have they released or
2 provided us a chemical composition of Corexit?

3 And maybe Robert would know.

4 MR. WOLOTIRA: Go ahead.

5 MR. SCHWAAB: Well, I mean, I
6 don't have a direct answer. I think EPA has
7 it. And I think they --

8 MR. WOLOTIRA: We have it.

9 MR. SCHWAAB: You can get it.

10 MR. WOLOTIRA: Well, we have
11 samples of the Corexit.

12 MR. MARTIN FISHER: That's not the
13 same thing.

14 MR. WOLOTIRA: But the problem is
15 it's proprietary information, which means that
16 it is difficult to get our chemists to be able
17 to look at it even though our toxicologists
18 could start studies with it.

19 Now they are working on being able
20 to get that legal issue taken care of.

21 MR. MARTIN FISHER: Okay. To me,
22 that brings up the question of national

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 security threat. Because clearly here is a
2 foreign corporation in sovereign U.S. waters
3 operating for its own profit that has been
4 deceiving us since day one on the amount of
5 oil, the techniques for stopping it, the
6 Corexit that they are using that the EPA
7 actually in the second week told them to cease
8 and desist.

9 And clearly now in our environment
10 with Homeland Security, the definition of
11 national security threat doesn't -- this
12 doesn't fit that mold. The prior Homeland
13 Security, if you go back a few years, it comes
14 close to the definition of what a national
15 security threat is.

16 And I'm just wondering, Eric, why
17 our Administration hasn't been a little bit
18 more hard-lined. Randy says there is -- I
19 mean, I know now NOAA has ships on-site, but
20 for weeks, we had no idea what was happening
21 subsurface and we still don't know what is
22 going on with sub-sea plumes, subsurface

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 plumes.

2 And it seems to me that we are
3 being -- our nation is being held, you know,
4 with the important parts of our anatomy up
5 against the fire with no recourse. And it
6 really disturbs me.

7 You know, one if by land, two by
8 PB -- BP.

9 MR. SCHWAAB: So actually, I'm
10 must looking at -- I just Googled EPA Corexit,
11 and I'm looking at EPA's list of the
12 components of Corexit 9500 and 9527, and it's
13 on the EPA website. So to your -- a comment
14 or two about sort of a couple elements of
15 your, I guess, you know, sort of collective
16 assumptions, Martin.

17 I don't know whether BP
18 purposefully tried to low-ball the amount of
19 oil being released from the site. I do know
20 that there has been an evolution of
21 understanding of what has been transpiring
22 there with respect to the volume of the leak,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 which appears on surface, to me, to be, I
2 mean, not on surface of the ocean, just on
3 surface -- to be logical and not necessarily
4 deceitful.

5 You know, when the rig first
6 exploded, there was, I think, a belief all
7 around that the blowout preventer valve
8 worked.

9 MR. MARTIN FISHER: Right.

10 MR. SCHWAAB: And that whatever
11 oil was appearing on the surface was, you
12 know, remnant of, you know, the explosion.
13 Then it became apparent that there was some
14 leakage going on. BP came out with that
15 thousand barrel number. And then it was
16 actually NOAA, based upon observations of, you
17 know, collections of oil at the surface in
18 those early days that sort of pushed that
19 number up to 5,000 barrels.

20 Nobody had yet, at that point,
21 had, you know, the visual of what was going on
22 at the bottom, unless perhaps BP did in some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fashion and that didn't come immediately
2 clear. But it was only, you know, after the
3 video, the sub-surface video came out that you
4 began to get some different numbers. And, you
5 know, I think it's interesting that even as
6 those higher numbers became -- you know, began
7 to sort of circulate based upon the visual of
8 the pipe and, you know, some rough
9 calculations, that you had this independent
10 science, these two independent scientific
11 analyses that were still in numbers that would
12 -- I don't remember exactly, but were in the,
13 you know, 10 to 25,000 barrel range.

14 MR. MARTIN FISHER: Right.

15 MR. SCHWAAB: 10 to 29, right? So
16 all of that, now that was an independent group
17 of scientists that were looking at this video.
18 And it wasn't until the collection devices
19 began --

20 MS. RICKER: Reducing that amount.

21 MR. SCHWAAB: Right. That we
22 began to get, presumably, accurate measures of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what was actually being recovered in
2 comparison to what the video was still showing
3 was happening, you know, at the leak site,
4 that the number jumped up into that 60,000
5 barrel range.

6 I don't think an independent group
7 of scientists would come out with a
8 purposefully deceitful low-ball number. So I
9 think that to suggest that, you know, there
10 was some, you know, purposeful obfuscation of
11 what was actually happening there is maybe a
12 little bit of a leap of, you know --

13 MR. MARTIN FISHER: Conspiracy
14 theory.

15 MR. SCHWAAB: -- conspiracy theory
16 or paranoia. Now, you know, it could be that
17 BP knew way more than what they let on from
18 the outset. I'm not sitting here saying that
19 wasn't the case. But I think what I saw
20 transpire over a period of, you know, four to,
21 what, now eight plus weeks suggested just a
22 logical sort of increasing understanding of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what was going on there.

2 And, you know, to what degree the
3 blowout preventer worked or didn't work, to
4 what degree the bent over pipe was
5 constraining flow, to what degree what was
6 going on inside the blowout preventer was
7 constraining flow, et cetera, et cetera. You
8 know, all sort of seems very sort of to be a
9 logical unfolding of understanding to me.

10 MR. MARTIN FISHER: In week two or
11 three, the EPA actually came out publicly and
12 told BP to cease and desist with the Corexit.

13 MR. SCHWAAB: Yes. So, right, and
14 then there was some pushback from BP and there
15 have been some ongoing. What BP said was
16 find a better chemical. Right? They didn't
17 say cease and desist Corexit. They said find
18 a better chemical. And then BP came back and
19 said this is the best chemical we have,
20 effectively.

21 So again, you know, I just think
22 that, you know, there has been this evolving

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 understanding of what has been going on.
2 There is legitimate tradeoffs. Obviously, BP
3 has its, you know, fiscal, you know, best
4 interests in the calculation, but my
5 observation of what has transpired from the
6 federal government's response maybe has not
7 been as weak or as, you know, ill-informed as
8 some might suppose.

9 CHAIR BILLY: Yes, we really need
10 to move on. I mean, we're going to shift to
11 the Subcommittee meeting and there is the same
12 people are going to be here, so we can talk or
13 ask questions as we formulate a strategy of
14 what this Committee wants to do.

15 If anyone has a last burning
16 question, we will do it, but then I would like
17 to move on.

18 MR. CATES: This seems like a very
19 important subject.

20 CHAIR BILLY: It is.

21 MR. CATES: I mean, I don't know
22 what is on your agenda, but maybe we need to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 pick and choose what we are going to do.

2 CHAIR BILLY: Maybe a day is --

3 MR. JONER: I don't have a direct
4 question. I just -- are we going to hear more
5 or anything about the sand berms that
6 Louisiana wanted? I found that very
7 interesting, and I don't know if I heard the
8 straight story, you know, depending on which
9 news source you listened to. But is there
10 anybody here that would have a chance to talk
11 us about that?

12 I'm not asking for it right now.

13 MR. SCHWAAB: So, you want me to--
14 you know, I think there was -- NOAA was
15 providing comment on that, but it was, by my
16 recollection, Fish and Wildlife Service that
17 was really driving sort of the primary feed
18 about the sort of the cost benefit analysis
19 from an environmental perspective into that
20 decision making process.

21 I think there were, you know, a
22 whole series of legitimate questions about,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you know, the downsides of those berms, about
2 the cost effectiveness of spending, you know,
3 a significant amount of money on those berms.

4 You know, so there was, I would just say that
5 there was, again, I think, a pretty
6 legitimate, and at least open within the
7 federal commenting perspective, analysis of,
8 you know, what the cost benefits of going down
9 that road was going to be.

10 And I still think that there is,
11 you know, the end result was more of an, you
12 know, experimental, you know, implementation
13 than it was just a wholesale, you know, we're
14 going to build a bunch of sand berms that may
15 or may not stop oil and may or may not have
16 backside down, you know, impacts immediately
17 or, you know, when the hurricane hits or, you
18 know, et cetera, et cetera.

19 I mean, there was a lot of
20 analysis that was, I think, appropriate to
21 that proposal.

22 MR. JONER: Yes, I would like to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 talk more about it, but not now. I know you
2 are --

3 CHAIR BILLY: Okay. Randy?

4 MR. CATES: It seems to me we have
5 a real plain agenda with us. This Committee
6 has a real opportunity and we have Eric
7 sitting here, we've got the right people in
8 the room.

9 One of the things that I keep
10 thinking of, to me, it doesn't really matter
11 what people think is the wrong way. It
12 doesn't matter how much oil is coming out at
13 this time. The whole country knows it is a
14 lot and it's a real problem.

15 What matters the most, to me, is
16 how is NOAA and NMFS going to handle this from
17 this point forward? Especially how it's going
18 to impact the fisheries. I mean, as you talk
19 about the process that is going to have to
20 take place, there is things that may happen
21 that will negatively impact fisheries.

22 Some of the examples relayed today

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that all of the samples taken are pretty much
2 showing that seafood is still safe. Yet, the
3 consumer is not getting that information. And
4 the media dialogue is going on.

5 There is things that, I think,
6 should be discussed to help that region. And
7 if the information coming out is going to be
8 all for legal purposes, painting the worst
9 possible picture, well, that might negatively
10 impact that fishery for years to come. And we
11 should get their correct data out.

12 CHAIR BILLY: Yes. That's why I
13 wanted to move it now into the constructive
14 mode of identifying what those future actions
15 ought to be beyond what is now being done.
16 What would help now in the fisheries, both
17 commercial and recreational fisheries, with
18 the communities, the how do we better prepare
19 for the future, all those things.

20 MR. CATES: One last thing, Eric,
21 as you move into that. How would you
22 characterize the relationship between NMFS,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 NOAA and the other agencies? I mean, are you
2 getting cooperation from the management? I
3 mean, where do you think things are?

4 MR. SCHWAAB: Yes. I think that
5 from -- so there are several different
6 components of this. And I think it is
7 important to look at this in the context of
8 those different components. So there is a
9 whole track that is associated with the
10 current economics, the seafood safety aspect
11 of this.

12 And, obviously, the data that is
13 being collected for the purposes of seafood
14 safety is going to be important not only in
15 the short-term for communications and decision
16 making around seafood safety, but it is going
17 to be important for long-term damage
18 assessment, both on the private side and on
19 the public side.

20 Then you have got sort of this
21 whole set of issues relating to what is going
22 on from a -- understanding what is happening

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from a science perspective, right? Where is
2 the oil moving? How is it moving? You know,
3 surface, subsurface. What are the potential
4 implications of that oil for individual
5 species, for the function of the ecosystem,
6 you know, inter -- multi-species in a
7 relationship, those kind of things?

8 And then how do we use that
9 information in the short-term to sort of
10 prioritize mitigation strategies? But also,
11 that information will feed into some of these
12 long-term damage assessment components.

13 So you have to, I think, and I
14 think probably Mr. Chairman, it's important
15 for the Committee to sort of segment that way
16 if you start thinking about well, what should
17 or shouldn't we be doing that we are more of
18 or less of or better, you know. And there are
19 lots of things that, you know, can't --
20 hindsight is 20/20.

21 I mean, if we were sitting a month
22 earlier knowing what we know today, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 probably would do some things a little
2 differently. But to answer, Randy, your
3 question, I think that NOAA has been
4 particularly engaged and looked for, you know,
5 expertise in many facets of this response.

6 And one of the things that, you
7 know, if you have been paying, you know,
8 attention to the news, you know, you have seen
9 Dr. Lubchenco very prominently position
10 physically in relation to, for example, Thad
11 Allen. I mean, you know, there was a period
12 where, you know, you saw Secretary Salazar all
13 over the news.

14 There was a period where you saw
15 Lisa Jackson all over the news. But there has
16 also been more recently prominent engagement
17 and visibility for Dr. Lubchenco and I think
18 that reflects sort of the respect that has
19 been afforded to science and some of the other
20 capabilities that NOAA has brought into the
21 response to this event. And it's very real.

22 I mean, the Vice President went to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 New Orleans today and was going on to
2 Pensacola. And he had with him Thad Allen and
3 Jane Lubchenco. That's I think a recognition.

4 So that's sort of a visible representation of
5 what we have been feeling, which, as you know,
6 Steve Murawski, I said earlier, has been
7 really driving big chunks of, you know, the
8 science response way beyond fisheries.

9 It's beyond -- it's into
10 understanding the deployment of ships, to
11 understand, you know, subsurface movement of
12 oil to effectively, you know, measure and
13 characterize that. You know, a lot of this
14 species data, I mean, we -- forgive me just
15 one more thing.

16 But, you know, we talk about sort
17 of species impacts. Well, I think, you know,
18 Jim is right, we didn't have the kind of
19 understanding of marine mammal and turtle
20 distribution over time in the Gulf.

21 But one of the things we -- but
22 for some other species like bluefin tuna, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have 20 years worth of data that shows
2 distribution of adults, distribution of larvae
3 that is going to be incredibly important, both
4 in understanding the kinds of, you know,
5 impacts that we saw, you know, investigated in
6 Prince William Sound and sort of using that
7 over time.

8 And all those things exist. There
9 is a lot more data out there, than I think
10 maybe is being acknowledged right now. It's
11 all going to be. And again, not to say that
12 hindsight we wouldn't say wow, it would have
13 been great to have this or this or this.

14 So I think part, Mr. Chairman,
15 what we ought to be thinking about is what
16 have we learned here, you know, in the same
17 way that we looked back to Exxon Valdez and
18 said what did we learn then that helped us
19 now?

20 Well, what did we learn now 60
21 days into this thing, 70 days into this thing
22 that we should be utilizing, you know, into

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the future, both, you know, in our ability to
2 respond immediately to an event like this?
3 But also there is going to be a huge amount of
4 money on the public trust side of this that is
5 going to be available to do wholesale, you
6 know, restoration, habitat, you know, related
7 activities down there.

8 And I think what the big challenge
9 that is in front of us is ensuring that the
10 trustees spend that most effectively for that
11 ecosystem down there. And that we don't lose
12 the opportunity that that is going to create
13 for us.

14 MS. FOY: Okay. Eric, to lead
15 into the next part of the discussion then, my
16 question to you is how can MAFAC help you?

17 MR. SCHWAAB: So from an --

18 MS. FOY: Well, we can suggest
19 things. You are not allowed to.

20 MR. SCHWAAB: So from an ecosystem
21 perspective, one of the things that I have
22 been thinking about, two things that I have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 been thinking about.

2 One which was already -- I sort of
3 alluded to in my opening comment and then I
4 think Tony picked up on it, which is -- or,
5 maybe Keith, I can't remember. But you look
6 at the -- you know, the Gulf was here and
7 overnight it is here.

8 MS. FOY: Right.

9 MR. SCHWAAB: Right. You have
10 some other systems, you know, pick your
11 estuary, you know, Chesapeake Bay, Galveston
12 Bay, you know, San Francisco Bay, Puget Sound
13 that over a period of 30 years went from here
14 to here. Not overnight, but it's quite
15 possible that they have started some place and
16 ended up in a comparable place.

17 And we have this huge amount of
18 attention that is going to be focused on that
19 gap, that sudden decline that, I think,
20 presents a real educational opportunity.

21 Well, gee, you know, just because
22 it took 20 years to get from here to here for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 some of these other systems, doesn't mean that
2 the attention, you know, that the impact
3 wasn't equally, you know, substantial.

4 So there is that. But I also
5 think you could go back to some of those other
6 systems where they have been working for, you
7 know, 20 years and you could say okay, now, if
8 you had \$20 million or \$20 billion or whatever
9 the NRDA number is going to be as a starting
10 point, how would you spend it to fix that
11 system?

12 And there are a lot of lessons of,
13 you know, things that haven't worked and ways
14 that we have, you know, I don't want to be too
15 pejorative here, but, frittered away money to
16 respond to, you know, somebody's pet project
17 or some political pressure here or there.

18 And I think there is not only an
19 opportunity, but we should be compelled right
20 now to be thinking ahead to saying all right,
21 if we are going to have, you know, \$10
22 billion, \$20 billion, whatever the number is,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to fix the Gulf ecosystem, well, how can we
2 best use that money? And what are the lessons
3 that we can learn from other, you know,
4 systems to do that most effectively?

5 And not just respond to well, I
6 have always wanted to get this project done or
7 that project done or this jurisdiction
8 deserves this much money and that jurisdiction
9 deserves that much money. There is an
10 opportunity here that, you know, for better or
11 for worse, we ought to be really thinking
12 holistically about now, so that when that
13 money comes, we can utilize it most
14 effectively.

15 MS. FOY: Well, Jeep, you made a
16 point. We're going to have a problem with the
17 83 or 85 different politicians down there that
18 are going to --

19 MR. SCHWAAB: Right. And then
20 everybody is -- you know, there is going to
21 be, excuse the term, a feeding at the trough
22 mentality when that check gets written. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 if we allow that to happen, it's going to be
2 very sad.

3 MS. FOY: To make a recommendation
4 then, MAFAC would recommend, I mean, I'm not--
5 this is not a formal recommendation, but I
6 think it would be helpful if we made a
7 recommendation that you establish the funding
8 priority based on past systems that have gone
9 through similar decline or whatever, but that
10 needs to be an initial focus for the National
11 Marine Fisheries Service response to the Gulf
12 Coast.

13 Somebody reword that for me.

14 MR. CATES: I think what I would
15 characterize as is a better process to handle
16 it.

17 MS. FOY: Yes, okay.

18 MR. SCHWAAB: Yes. I don't have--

19 MR. CATES: I mean, we all know
20 that disasters come and just handling that
21 kind of money.

22 MS. FOY: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: You want to start
2 your Subcommittee meeting?

3 MS. FOY: Oh, no, not necessarily,
4 Tom, but I'm just saying things like --

5 CHAIR BILLY: Well, I think you
6 should.

7 MS. FOY: -- a natural segue, any
8 good.

9 CHAIR BILLY: Yes.

10 MS. FOY: But that is really
11 something I would like the Committee to focus
12 on for the next little bit in the Subcommittee
13 and it's what can we do to help the National
14 Marine Fisheries Service get ahead of the
15 curve? And we can make recommendations that
16 they are not allowed to. We can suggest
17 things that are -- you know, that many staff
18 would get fired for suggesting.

19 And so really, if you could have
20 what you wanted from us, how can we be of
21 service?

22 MR. SCHWAAB: Well, you know, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think you have already essentially captured
2 the essence of it. You know, we have to take
3 whatever steps we can take to learn the right
4 lessons historically, so that the -- you know,
5 I think what will likely be an unprecedented
6 amount of money to be invested in that system
7 is, you know, invested based upon the, you
8 know, underlying needs of that system.

9 MS. FOY: Yes.

10 MR. SCHWAAB: So just for example,
11 and this is just sort of a supposition, you
12 know, that system was challenged way before
13 this oil event, right? A lot of those
14 challenges came from way up the Mississippi
15 River.

16 What would happen if somebody said
17 what we really should do is take a couple
18 billion dollars or whatever of this money and
19 go up the Mississippi River and spend it to
20 retrofit, you know, farms or, you know, other,
21 you know, elements of the plumbing up there.

22 Well, there is going to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 potentially a lot of pushback --

2 MS. FOY: Yes.

3 MR. SCHWAAB: -- in the Gulf from
4 that kind of a decision. But it might be in
5 the best interest of the Gulf long-term to
6 make that decision. And that's just a for
7 instance.

8 MS. FOY: Then you got even more
9 politicians.

10 (Laughter.)

11 MR. SCHWAAB: Yes. Well, they are
12 always happy to get money though.

13 MR. CLAMPITT: Isn't it true that
14 we were unprepared for this spill? I mean,
15 you know, your point is well-taken about, you
16 know, I mean, Puget Sound has been degraded by
17 a million cuts. I know exactly what you are
18 talking about. And I could point to some of
19 them.

20 And that is really a good place to
21 put the money, absolutely, Chesapeake Bay, you
22 know, Mississippi Delta in the sun. But

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 really if we're talking about the spill, I
2 mean, weren't we completely unprepared? I
3 mean, from what I understand, the technology
4 for fighting a spill like this haven't changed
5 at all. We're still using the same things.

6 There hasn't been any resources
7 or, correct me if I'm wrong, any new resources
8 devoted to clean up something like this. And
9 unless we assume that this is never going to
10 happen again, which is impossible, it will
11 happen again, the resources have to be -- I
12 mean, NOAA has to put more resources into
13 figuring out how to clean up a mess like this.
14 And how to prevent it from happening.

15 MS. FOY: Hang on a minute, Paul.

16 MR. SCHWAAB: So first of all,
17 just to clarify --

18 MR. CLAMPITT: I'm just saying,
19 number one --

20 MR. SCHWAAB: If I can, Mr.
21 Chairman, just to clarify. I wasn't
22 suggesting that money from this settlement be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 spent on Puget Sound or Chesapeake Bay.

2 MR. CLAMPITT: No, I understand
3 that.

4 MR. SCHWAAB: Okay.

5 MR. CLAMPITT: But I got what you
6 were saying there.

7 MR. SCHWAAB: Fair enough.

8 MS. FOY: Come on.

9 CHAIR BILLY: We've got it on
10 record.

11 MR. SCHWAAB: I expect to be down
12 in the Gulf a couple more times before this is
13 over.

14 MS. FOY: Yes.

15 MR. CLAMPITT: I'm just kind of --
16 you're getting the cart before the horse, I
17 mean.

18 MR. SCHWAAB: So your question is
19 really a different one, which is a completely
20 separate track of inquiry which was: was the
21 country prepared to respond to this event?
22 Did we have sort of the regulatory framework

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in place? Did we have, you know, the
2 redundancy in the systems to, you know,
3 address sort of the acute event?

4 And I mean, you know, I think the
5 apparent answer seems to be no. And the fact
6 that there will need to be as a result of
7 that, I think, a fairly comprehensive look at
8 some of those questions, everything from the
9 way that we calculate risk of a spill to the
10 way that we, you know, assume the costs of an
11 event like that and our ability, collectively,
12 to, you know, basically shut it off, are all
13 going to be analyzed, you know, to great
14 extent at levels that go way beyond NOAA.

15 In fact, you know, I mean, you
16 know, we have important roles to play in the
17 way that we provide input to some of the, you
18 know, sort of the potential cost side of that
19 equation. And we, you know, had some -- we
20 didn't have, for example, and I think Jim
21 spoke to this a little bit, sort of
22 independent assessment of the likelihood of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 spill.

2 Right? We depend on, you know,
3 the experts. Is there a need for some
4 additional redundancy in the system? I don't
5 know. There is going to be plenty of, I
6 think, very high level sort of analysis of
7 that kind of stuff.

8 And how useful it will be to -- I
9 think it's most useful for NOAA and Commerce
10 to think about the way that we, you know,
11 contribute to an understanding of the risk
12 calculations from, you know, a fisheries
13 perspective from an aquatic habitat
14 perspective from, you know, protective
15 resources perspectives and the like.

16 And for us to sort of step out
17 there and say no, we have all the answers to
18 the way that the country ought to analyze, you
19 know, the risk/reward of, you know, offshore
20 oil drilling, you know, is, I don't know,
21 maybe not going to be as useful.

22 CHAIR BILLY: Mark?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. HOLLIDAY: So I've been sort
2 of listening to the discussions throughout
3 this morning and this afternoon. And we tried
4 to organize the agenda along some of these
5 principles to set up findings and
6 recommendations from the Committees coming
7 back.

8 And so if you look at the agenda,
9 we started out talking about sort of our
10 science preparedness, you know, where are we
11 on the science? What have we done? What are
12 we trying to do in the Gulf? And so I would
13 suggest that if the Subcommittees want to
14 tackle this, you kind of break it down into,
15 you know, chewable parts.

16 You know, so science preparedness,
17 what changes in capacity, what changes in
18 focus or priorities come about as a result of
19 what we talked about so far?

20 A second major chunk of this was
21 sort of regulatory reform. You know, we have
22 heard different discussions about how well we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 were prepared to deal with this, the role of
2 NOAA, changing the roles and responsibilities,
3 are there any legislative impacts, risk
4 management, so they form under this kind of
5 bundle of regulatory reform and process.

6 This third area, sort of disaster
7 preparedness as a nation, you know, how well
8 were we prepared at the federal, state and
9 local levels, international levels? Are there
10 process improvements for the future to be
11 working on that NOAA has a prominent role to
12 play, whether it is technology, collaboration,
13 both here, domestically and internationally
14 dealing with these events in the future?

15 And then lastly, it's sort of the
16 bread and butter of, you know, fishery
17 services. The ecosystem fishery management
18 impacts. What are we talking about with
19 respect to habitat restoration? The
20 mitigation on these ecosystem services that
21 are compromised, you know, how do we move
22 forward on that?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 What are some recommendations
2 dealing with the community side of things?
3 The economic mitigation disaster declaration,
4 so it follows generally the order of what we
5 put together on the agenda. We all have
6 hundreds of ideas. It's trying to separate
7 them out in the next couple of hours and how
8 do you turn that into some actions?

9 And so maybe breaking it out into
10 this science, regulatory reform, disaster
11 preparedness and ecosystem and fishery
12 management function and impact would be a way
13 to tackle it, you know, in an efficient way.

14 MS. FOY: Good.

15 CHAIR BILLY: Sounds good.

16 MS. FOY: I have to leave.

17 CHAIR BILLY: You have to leave.

18 MS. FOY: Yes.

19 (Whereupon the above-entitled
20 matter went off the record at 3:19 p.m. and
21 resumed at 3:21 p.m.)

22 MR. HOLLIDAY: So from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Subcommittee standpoint, we're going to move
2 into the Subcommittees and we have asked,
3 because of Chairperson's commitments, that
4 Keith and Bill help us facilitate that.

5 CHAIR BILLY: I think Cathy is
6 here, too.

7 MR. HOLLIDAY: Well, Cathy was
8 going to ask to cut out earlier.

9 MS. FOY: I'm going to be excusing
10 myself --

11 MR. HOLLIDAY: Right.

12 MS. FOY: -- at some point.

13 CHAIR BILLY: Okay.

14 MS. FOY: I will be here.

15 MR. HOLLIDAY: So I was just
16 saying, we have additional talent to help
17 marshal the ideas and reduce them to findings
18 and recommendations to get something out from
19 the Subcommittees.

20 So again, we are going to move
21 into the Subcommittee. The Subcommittee will
22 make these, will write them out, they will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have a chance to look them over over the next
2 day or so and then the report out from the
3 Subcommittee is on the last day, the morning
4 of Thursday, report out Ecosystem and
5 Protected Resources Subcommittee on Thursday
6 morning.

7 So that's the game plan of how we
8 are trying to organize our time.

9 CHAIR BILLY: Yes, sir.

10 MR. MARTIN FISHER: Mr. Chairman?

11 CHAIR BILLY: Yes?

12 MR. MARTIN FISHER: Could I just
13 ask you, Eric, you asked the question of us if
14 we had any ideas that NOAA could utilize to
15 improve what is going on, I've got some
16 primetime things that are happening that need
17 some help. When would it be appropriate to
18 share that? Would that be a Subcommittee
19 thing?

20 Because it would be nice to have
21 other people's ideas on how to solve the
22 problem.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: That's up to the
2 rest of the Subcommittee.

3 MR. MARTIN FISHER: Great.

4 CHAIR BILLY: Yes.

5 MR. MARTIN FISHER: Okay.

6 CHAIR BILLY: Is he going to be
7 there?

8 MR. HOLLIDAY: So the Subcommittee
9 is going to report out, right?

10 CHAIR BILLY: He's going to
11 report. Yes, he's going to be here to hear
12 the report. It's now. And like you always
13 do.

14 MR. MARTIN FISHER: Okay.

15 MR. HOLLIDAY: So are we losing
16 quorum here for a break or something?

17 CHAIR BILLY: Yes. We're going to
18 take about a 10 minute break while the
19 Subcommittee gets organized.

20 (Whereupon the above-entitled
21 matter went off the record at 3:23 p.m. and
22 resumed at 3:44 p.m.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. FOY: I'm going to call the
2 meeting back to order. I'm not going to be
3 present for very long as the Protected
4 Resources Subcommittee head and Tom Raftican
5 is gone. So we have Keith and Bill filling in
6 right now. And I'm going to hand the meeting
7 over to them.

8 MR. DEWEY: And Keith and I talked
9 about this and thought it didn't make a lot of
10 sense for having two people actually chair the
11 meeting, since we're going to do a joint
12 meeting together for the rest of the
13 afternoon's subjects.

14 So Keith has agreed that he would
15 facilitate. And while he has essentially
16 tried to put a straw man together to get us
17 started, to get up on the screen here, I don't
18 know if we're going to be able to read it or
19 not. Heidi, you couldn't get us to a big
20 enough box or something.

21 MS. LOVETT: I'm sorry.

22 MR. RIZZARDI: So during the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 course of our discussion, I was taking some
2 notes on what people said. And I have taken
3 the four categories of our discussion that
4 Mark laid out. And some of the things that I
5 had noted fell right into that. And then
6 there was some other things that we need to do
7 some follow-up on.

8 So again, this is just my effort
9 to throw something out there for us to discuss
10 and to give us a starting point or whatever it
11 is you all feel like modifying or further
12 elaborating on. I think it's, you know,
13 totally appropriate.

14 But I'll walk through each of the
15 categories. The first one was science
16 preparedness that Mark tossed out there. And
17 that was a big part of the discussion. You
18 know, I immediately commented about an MOA
19 with Ocean Energy use as a good path and a
20 good tool for achieving that.

21 And some of the comments that came
22 out were that we needed a better process for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 making sure that NOAA's recommendations and
2 scientific observations would follow. And
3 there was a good discussion about the need for
4 better science on baseline data, on species
5 data and how do we come about with getting
6 that explanation and paying for that
7 information in particular.

8 So what you see here under the
9 science preparedness proposal reflects
10 encouragement. I'll make that a part that
11 NOAA develop an MOA, that the MOA should
12 ensure that the Bureau of Ocean Energy better
13 implements NOAA's science recommendations and
14 include a funding process for implementation
15 of the NOAA science.

16 I would love to hear any
17 discussions that folks have on that suggestion
18 based on the conversation we have already had
19 today. Randy, did I capture some of your
20 concerns?

21 MR. CATES: Yes. I'm just
22 wondering are you, basically, saying to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Mineral Management to listen to us?

2 MR. RIZZARDI: To a degree, yes.
3 I think that NOAA's documents often reflect
4 the need for that.

5 MR. CATES: I'm going to comment
6 on that. On one hand I totally agree. I
7 think there needs to be some oversight within
8 NOAA on the process though having gone through
9 it several times where you go to the Agency.
10 You go through a Section 7 or through the Army
11 Corps permit process.

12 A lot of times it can be very
13 unreasonable and a lot of -- I mean, I'll just
14 share a personal example.

15 Section --

16 MS. FOY: Wait a minute. Before
17 you get going, Randy, we are talking
18 specifically about Section 7 consultations
19 with Minerals Management Service. Not on
20 general Section 7 consultations or biological
21 opinions or the general public.

22 This is only a Memorandum of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Understanding between the two agencies. So
2 did that change it or does that still --

3 MR. CATES: No. What I was saying
4 is if you are going to get Minerals Management
5 to pay more attention to Section 7, there is
6 also responsibility on NOAA that its opinion
7 is reasonable. And my personal experience has
8 been not such a good one sometimes.

9 And the example I was going to
10 share was when I went through a Section 7 in
11 building a fish hatchery that was totally
12 land-based. No connection to the ocean. We
13 drill a well, bring up water, utilize it, put
14 it back in the well.

15 We had to go up through Section 7
16 and was delayed an entire year due to impacts
17 to whales, dolphins and turtles. And I
18 couldn't understand how that could be.

19 So there are abuses and there
20 maybe should be an oversight within NOAA on
21 Section 7 consultations, making sure it's
22 reasonable. Especially with Minerals

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Management, because I would imagine they are a
2 little bit more politically powerful than
3 NOAA.

4 MR. CHATWIN: And so, you know, I
5 think that sounds fine, but it is more about
6 what we want another agency to do. So I think
7 we should also consider within NOAA what the
8 Agency should be doing better. I mean, your
9 comment about reasonable, that, to me, I don't
10 know what that means, reasonable.

11 I think it means something
12 different to different people. But along
13 those lines, I think more clarity and more
14 definition on what bar that NOAA should be
15 setting, I think would be --

16 MS. FOY: Okay. So here is a
17 suggestion. Point A, process to ensure better
18 implementation of scientific recommendations
19 in the future. It doesn't have to necessarily
20 be NOAA's scientific recommendations, although
21 that's what we are talking about.

22 But the Memorandum of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Understanding between NOAA and the Bureau of
2 Ocean Energy, my understanding is that NOAA is
3 not the only one who makes recommendations in
4 the EIS. So while we can only make
5 recommendations to NOAA, I think we are
6 suggesting a Memorandum of Understanding, then
7 I said where do we go with that? What would
8 you suggest?

9 Do we want NOAA to have oversight
10 in some way? Monitoring capabilities?

11 MR. CHATWIN: Well, I'm thinking
12 things like Essential Fish Habitat. This is
13 one of the things that triggers a
14 consultation. Yet, the level of detail on
15 what constitutes Essential Fish Habitat varies
16 from Essential Fish Habitat to Essential Fish
17 Habitat, some places it is presence/absence.
18 Some places you have density dependant
19 information.

20 And the more information you have,
21 the, I think, better position NOAA is to make
22 scientific recommendations that cannot be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ignored. And that's something that can happen
2 within the Agency that can raise the bar of
3 their recommendations and improve.

4 MS. FOY: So what you are saying
5 is separate and distinct from the first
6 recommendation, encouraging a Memorandum of
7 Understanding, is that NOAA needs to -- we
8 encourage NOAA to continue to pursue basic
9 ecological understanding of Essential Fish
10 Habitat.

11 MR. CHATWIN: Well, I would say if
12 it's Essential Fish Habitat, I would say
13 that --

14 MS. FOY: I mean as being separate
15 and distinct from the oil and gas issue.

16 MR. CHATWIN: Yes. For that
17 particular thing, I would say that NOAA should
18 have Essential Fish Habitat depend on Level 4
19 information, which relates -- well, which has
20 -- it's not information that exists now
21 everywhere. In fact, it doesn't exist in most
22 places, but it is in the EFH technical

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 guidance.

2 MS. FOY: Right.

3 MS. LOVETT: It's in the
4 regulations. And it does not disregard that.

5 MR. CHATWIN: Yes. But that's an
6 example. So what that Level 4 means is that
7 you have an identified type of habitat and you
8 know what that does to production levels of a
9 given species.

10 MS. FOY: So would you say that
11 MAFAC encourages NOAA to pursue a Memorandum
12 of Understanding?

13 MR. CHATWIN: Yes, something along
14 those lines. I think so.

15 MS. FOY: Would you craft a
16 sentence?

17 MR. CHATWIN: Sure.

18 MS. FOY: On that, please?

19 MR. CHATWIN: Sure.

20 MS. FOY: Sorry.

21 MR. RIZZARDI: No, that's okay. I
22 think we're into the hard things and we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to have today's discussions with the two
2 Subcommittees combined into this big group.
3 We're not having the informal, you know,
4 smaller conversations that we usually have in
5 our Subcommittee context. So we've got a big
6 group here that is working on this task.
7 Randy?

8 MR. CATES: Who is the ultimate
9 judge on these things? Who is ultimately in
10 charge? If NOAA makes -- if Mineral
11 Management is going to issue a lease and NOAA
12 says we want these steps to be in place, what
13 Agency or who is ultimately in charge that
14 says you've got to listen to NOAA or don't?

15 MR. RIZZARDI: I guess in some
16 instances, depending on the statute, CEQ might
17 be.

18 MR. CHATWIN: Okay.

19 MR. RIZZARDI: Council of
20 Environmental Quality. But I think the point
21 here is it's for NOAA and Bureau of Ocean
22 Energy to work out between them. And all we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are trying to do is encourage that dialogue to
2 take place in a better framework and now we
3 have got a new Agency with a new mission and,
4 you know, that's trying to reinvent themselves
5 a little bit.

6 So from my perspective, I see a
7 window for NOAA to come in and say we want to
8 work with you guys. And obviously, the way
9 things have worked in the past hasn't gone all
10 that well. So how can we come up with an
11 agreement between us that says here is what we
12 can do in the future?

13 And then I think it's up to the
14 two federal agencies to figure out that
15 relationship. But it's at least an
16 opportunity to change the past dynamic, which
17 is what I, as a MAFAC Member, would like to
18 encourage.

19 MR. LECKY: May I interject? So
20 all of these statutes at some point have some
21 of this practicability element.

22 MR. RIZZARDI: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LECKY: We normally make the
2 recommendations based on a pretty conservative
3 view of some relatively uncertain information.

4 And MMS may just say that's too shaky. We're
5 not going to make the decision that is going
6 to cost millions of dollars based on that
7 shaky information. It's that practicability
8 test.

9 MR. CATES: Absolutely.

10 MR. LECKY: So at least under the
11 current regulatory frame work, it is MMS' call
12 to decide what they are going to do.

13 MR. RIZZARDI: Okay.

14 MR. LECKY: If NOAA feels really
15 strongly about something that MMS is doing, it
16 agrees, then there are elevation processes
17 where you can take it to CEQ. CEQ is
18 ultimately the arbitrator of the agencies when
19 they get into a dispute on environmental
20 issues.

21 MR. RIZZARDI: You answered the
22 question.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. CHATWIN: Can I ask a
2 question? Does NOAA have or did it have MOAs
3 with MMS? And is an MOA really necessary?
4 Because I know it's not legally -- it's not
5 more legally binding than --

6 MR. LECKY: Well, we have lots of
7 MOAs.

8 MR. CHATWIN: Yes.

9 MR. LECKY: And typically they say
10 we are going to do what our squads tell us to
11 do. It always comes down to resources at the
12 end of the day. In the early stages of a new
13 relationship, like we're building here, an MOA
14 might be informative. It certainly could
15 cause a dialogue.

16 MR. CATES: Can I ask a question
17 on that? Where does Fish and Wildlife fit in
18 this? Are they separate or are they part of--

19 MR. LECKY: No, they are separate.
20 They make separate and independent
21 recommendations to MMS. I think NOAA might be
22 -- well, so the resources that they are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concerned about are migratory birds, sea
2 otters, walrus, polar bears, let's see what
3 else, manatees in the Gulf, things like that.

4 They have -- we share
5 jurisdictional sea turtles with them. Yes,
6 they make recommendations. They are probably
7 not as free to speak as we are, because they
8 are in the Department of Interior. They
9 coordinate a lot on some issues.

10 MR. CATES: They also have
11 jurisdiction over corals, correct?

12 MR. LECKY: No. I don't think so.

13 MR. CATES: Well, they certainly
14 are in Hawaii.

15 MR. LECKY: Well, so there are a
16 couple of areas where they keep trying to
17 reach out into the marine environment and get
18 in some disputes about various things. And
19 over to the monument, so where they
20 established monuments, then that's the
21 Interior's. Interior leads the monuments,
22 because that's the way the particular Act is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 written.

2 MR. CATES: Keith, one other
3 question. Does new entity that they are due
4 to establish is it the same players from
5 Minerals Management? I mean, is this just a
6 name change?

7 MR. RIZZARDI: Yes. It's a name
8 change and there have been leadership change
9 as well. And there is some effort within DOI
10 to recast the division. So there is an
11 opportunity to have the discussion. You know,
12 and I think Jim's answer was right. I mean,
13 you know, it could be timely. It could be a
14 chance. There is a lot of MOAs between
15 federal agencies.

16 And again, in the end, this is a
17 MAFAC recommendation to NOAA to get the
18 agencies to have that dialogue. And if they
19 decided to do something different, you know,
20 that's their judgment. You know, all we can
21 do is offer up a recommendation.

22 MR. CATES: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. LOVETT: Can I say a couple
2 words?

3 MR. RIZZARDI: Heidi, Vince.

4 MS. LOVETT: You mentioned you did
5 look through all the materials that we were
6 supposed to. There was a lot of it. In the
7 case of -- for the habitat-related, there was
8 request for consultation. There was a
9 consultation. I mean, there was a response
10 with recommendations. And then the response
11 from MMS is on our website.

12 And I reviewed that response and
13 I'm not sure I saw anything in it where MMS
14 did not accept the recommendations of NOAA
15 that are habitat-related, obviously. I mean,
16 did you see something where MMS disagreed or
17 was disinclined to agree to the conditions?

18 MR. RIZZARDI: The thing that
19 struck me the most was in the dialogue that
20 went back and forth between NOAA and MMS.
21 NOAA sends a letter saying we don't have
22 enough information. And thinks that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 segmentation approach had a problem.

2 And I can find that letter. It's
3 a September 2009 letter.

4 MS. LOVETT: Okay. So that was on
5 a new five year lease plan that MMS was --
6 they were stepping up their process and they
7 shifted the five year calendar?

8 MR. RIZZARDI: Yes.

9 MS. LOVETT: And they have dropped
10 that particular action. Just so you know, you
11 should be clear about that. There was a 2007
12 to 2012 lease.

13 MR. RIZZARDI: Right.

14 MS. LOVETT: And now they have
15 gone back to a 2012/2017 horizon that they are
16 starting the process on. They stepped it up
17 to a 210 to 215 or whatever the numbers were.

18 But that has been dropped and you are right,
19 there was a very strongly worded letter from
20 Dr. Lubchenco.

21 MR. RIZZARDI: Yes.

22 MS. LOVETT: And that was in the,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 just so you know, early stages of an EIS, like
2 early -- the formal EIS had not been written
3 yet, but it was -- I forget the official term
4 and I can't look it up right now, but it's a
5 preconsultation kind of issue. It was in the
6 early stages when they were suggesting it.

7 So but for some of the habitat-
8 related, where MMS must respond in writing
9 with -- related to EFH, there are three
10 documents. And MMS did accept all the
11 conditions that our Habitat Office had
12 recommended for those particular actions.

13 MR. RIZZARDI: Well, on the
14 Essential Fish Habitat, this is getting into a
15 different issue, but the Essential Fish
16 Habitat consultation also had the
17 recommendation about drilling two wells. That
18 wasn't followed.

19 MS. LOVETT: Okay.

20 MR. RIZZARDI: So that's another
21 example where NOAA's scientific
22 recommendations had been followed by MMS,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 then --

2 MS. LOVETT: So but did you
3 consider that a scientific recommendation, not
4 a management-related recommendation?

5 MR. RIZZARDI: I think that's a
6 fair question.

7 MS. LOVETT: I was just --

8 MR. RIZZARDI: Very.

9 MS. LOVETT: Yes.

10 MR. ALEXANDER: That's where I
11 worry about because, you know, working with
12 NOAA all the time at the Council level --

13 MR. RIZZARDI: Yes.

14 MR. ALEXANDER: -- sometimes they
15 had a lot of things in there that are totally
16 unnecessary. So I mean, I don't think we can
17 expect them to follow -- the company to follow
18 their recommendations. I mean, how much more
19 would it cost to drill for oil if you had to
20 drill two wells in every spot?

21 I think it would, you know, add
22 onto the cost and everything. If somebody

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 uses 100,000 gallons of fuel a year, you know,
2 I mean, that would certainly cost them
3 \$250,000 a year or \$400, \$450,000 a year and
4 then it becomes a point where you can't
5 economically justify that for something that
6 happens once every ten years.

7 But, you know, so --

8 MR. CHATWIN: Do you know what the
9 profit was in one quarter of one of these oil
10 companies?

11 MR. ALEXANDER: It's about 7 or 8
12 percent.

13 MR. CHATWIN: What?

14 MR. ALEXANDER: 7 or 8 percent of
15 the gross. From the gross, it's a lot of
16 money.

17 MR. CHATWIN: It's a lot more than
18 probably --

19 MR. ALEXANDER: Take any private
20 company in America and look -- any public
21 company in America, if they are operating at
22 the 7 to 10 percent level, that is a normal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 profit. They just gross a lot of money.

2 MS. LOVETT: Yes, there is.

3 MR. ALEXANDER: So, you know,
4 Exxon Mobile \$95 billion this quarter. Well,
5 yes, they did \$95 trillion worth of business
6 to get the \$95 billion. You know, what I
7 mean? I just don't think we can regulate
8 profit. And in the end, and I know that you
9 guys probably disagree with that, but --

10 MR. JONER: I buy gas, so I agree.

11 MR. CHATWIN: I agree.

12 MR. ALEXANDER: I don't think it
13 is -- I don't think they make an unusual
14 amount of money.

15 MR. JONER: For what they invest.

16 MR. ALEXANDER: For what they
17 invest. I don't think 7 to 10 percent --

18 MR. MARTIN FISHER: And the
19 liability they have with that.

20 MR. ALEXANDER: Right. I don't
21 think 7 to 10 percent is a whole -- is being a
22 greedy hog. I really don't.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MARTIN FISHER: BP might be
2 bankrupt after this.

3 MR. ALEXANDER: Yes.

4 MR. CHATWIN: I'm sorry, but I'm
5 kind of shocked. You know, we're talking
6 about one of the biggest environmental
7 disasters that could have been, if there was
8 drilling where you fish, your livelihood gone,
9 and when it comes to an --

10 MR. ALEXANDER: Yes.

11 MR. CHATWIN: -- issue that would
12 have enabled to minimize this impact, you're
13 saying well, you know, actually, it's not
14 really worth it.

15 MR. ALEXANDER: I didn't say it
16 wasn't worth it.

17 MR. CHATWIN: That's what you --

18 MR. ALEXANDER: I said -- no.

19 MR. RIZZARDI: No, that's not what
20 he said.

21 MR. CHATWIN: What did you say?

22 MR. ALEXANDER: I said that I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 don't think that the country could withstand
2 \$4.50 fuel or \$5 a gallon of fuel.

3 MS. LOVETT: Of gas.

4 MR. ALEXANDER: Even -- you know,
5 I just don't think they can withstand it.

6 MR. CATES: I think the point I'm
7 trying to make is --

8 MS. LOVETT: Okay. Wait, wait.
9 Whoa, whoa.

10 MR. CATES: -- that you can always
11 Monday morning quarterback, but you will never
12 be 100 percent cover all your bases. Now,
13 you've got to look at this thing in a bigger
14 context. How many wells are out there? How
15 long are the history? How many events really
16 happened? Things went wrong and the entire
17 industry, I mean, I look at more of a process
18 that is in place that went wrong of the
19 violations that this one company had.

20 But to say that we are going to
21 impose all these heavy new regulations on an
22 industry, I would be very cautious about that,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because it's going to turn around and hurt us,
2 every one of us in this room, it will hurt us.

3 Can we do things better?
4 Absolutely. But it shouldn't be where we have
5 a free-for-all and start imposing regulations
6 on that.

7 MR. CHATWIN: Well, that's fine.
8 I think it is fair to have a diverse opinion.

9 But I think this does show that we will come
10 up with a recommendation about having an MOA
11 and getting a MOA and nothing is going to
12 change.

13 I mean, that's what I hear. It's
14 like oh, you know, we're trying to find ways
15 that we could improve the system so that we
16 are not in the same position 10 years from
17 now.

18 MR. RIZZARDI: Dave?

19 MR. WALLACE: Obviously, I don't
20 know all there is to know about the Deepwater
21 Horizon. And there is probably no one group,
22 except for a relatively small group or amount

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of people, who work for Exxon and for the
2 owner who actually understand all that
3 actually went on.

4 However, if what I have read and
5 seen in the news is correct, and the driller
6 at the orders of BP have violated their own
7 operating procedures and the Federal Operating
8 Guidelines on these problem wells and chose to
9 ignore all the safety regulations which caused
10 a catastrophic explosion on that ship, which
11 then having a faulty preventer, which they
12 knew was faulty when they put it down, is just
13 outrageous.

14 To some extent, the fault is MMS.
15 Their oversight was just simply awful. They
16 approved things that just did not make any
17 sense whatsoever. It violated all the rules
18 and they approved it. So the federal
19 government is culpable in this in that they
20 did not force BP and the drill ship operator
21 to run the operation the way the law and
22 regulations mandate.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Now, you know, I don't have no
2 great love for BP and it's too bad that the
3 guy who made those orders, gave the order to
4 not put the rings down, not put the concrete
5 down and then pull the drill mud out of the
6 well, which then allowed the gas to run away,
7 too bad he wasn't on the bridge when it blew
8 up, because 11 other people lost their lives
9 because he made a decision to save like a half
10 a million dollars for BP.

11 And so I think that what we need
12 to do is to make a very strong statement to
13 the Department of Interior that they must
14 maintain more oversight. They must separate
15 themselves from the oil industry and not have
16 this really cozy relationship and they need to
17 make sure that they have to comply with all of
18 the rules and regulations.

19 The rules and regulations may not
20 be strong enough now, but if the rules and
21 regulations had been followed, apparently, in
22 this catastrophe, it wouldn't have happened.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So how much more do we need to do
2 except make everybody do their job?

3 MS. FOY: Bill?

4 MR. DEWEY: Yes. So I appreciate
5 your comments, Dave. I don't necessarily
6 disagree, but we need to stay focused on our
7 recommendations to NOAA and the Commerce
8 Secretary not to DOI.

9 MR. WALLACE: Well, but we -- my
10 suggestion is that to the Secretary, you know,
11 the comment is this is a catastrophe that
12 could have been avoided. And maybe you just
13 ran to the President, you know, the new agency
14 for MMS has to do the job.

15 MR. RIZZARDI: And I think that is
16 echoing your point. That's why what we were
17 proposing here was the relationship between
18 NOAA and BOE be addressed.

19 MR. WALLACE: Yes.

20 MR. RIZZARDI: Because it's NOAA
21 having a conversation with BOE, who in turn,
22 had that conversation with the regulated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 entity. So your point is get the regulated
2 entity to do their job and there is a degree
3 of separation here between NOAA and us versus
4 the Bureau of Energy -- of Ocean Energy, and
5 the regulated entity. But I mean, I think
6 your prospectus is entirely valid.

7 It's just what do we do as MAFAC
8 in terms of what we communicate to NOAA?
9 Vince?

10 MR. O'SHEA: Well, you know, one
11 of the values of an MOA is it empowers
12 stakeholders in the process. Even if the MOA
13 says they are just going to follow the law,
14 the two agencies, but it does provide a forum
15 for stakeholders to go to both of those
16 agencies and hold them accountable for going
17 through the steps outlined in the MOA, even if
18 it is 501.

19 MR. RIZZARDI: Right. Randy?

20 MR. CATES: My opinion is that we
21 should encourage NOAA to be involved and give
22 its advice through either Section 7 or the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 process. But equally, MAFAC should address
2 how NOAA does that.

3 And I think in the past there are
4 evidence of problems with that. I think it
5 should be done, but how that process works
6 equally needs to be looked at. We have a
7 responsibility. You can't just tell Minerals
8 Management, you know, have everything in place
9 for every possible thing that could go wrong.

10 And I bring up the fact that there
11 is Tom's -- some of us who have gone through
12 that, there is problems with the process. And
13 NOAA needs to look at them. Regional problems
14 and there should be regional input and then it
15 goes up to a national level and national
16 input.

17 Because believe me, politics gets
18 involved in that and it kills business and
19 industry. So we should encourage input, but a
20 review on how that input is given.

21 MR. RIZZARDI: But not -- am I
22 hearing the rest of your statement to be not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 including an MOA?

2 MR. CATES: No, including.

3 MR. RIZZARDI: Okay.

4 MR. CATES: I think we should do
5 that, but we shouldn't just -- MAFAC shouldn't
6 be giving you advice on NOAA. We should have
7 an MOA and we should have input. And that's
8 it. You see? NOAA should review how it does
9 that.

10 Because from personal experience,
11 I'm telling you, there's problems with that.
12 That there's a responsibility if you're going
13 to have your say in things, then you do it
14 more responsibly.

15 MR. RIZZARDI: Mark?

16 MR. HOLLIDAY: Just in terms of
17 framing your recommendations, I don't think it
18 would -- it's a bad idea if you wanted to go
19 on a continuum. You know, so if you think an
20 MOA is maybe the first step and that's the
21 consideration for NOAA to look at, but if you
22 wanted to make -- if NOAA wanted to go further

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 than that and you felt an MOA in the past
2 wasn't acceptable and you wanted to change the
3 process of how disagreements were elevated to
4 CEQ, you know, or made these more publicly
5 transparent and someone could call for a
6 higher level of review, you could have a
7 second level of recommendation.

8 So you give NOAA, actually, an
9 option of at a minimum you want to do an MOA
10 and hope for the best in this new
11 organization. However, if NOAA felt that was
12 an adequate response, we would consider what's
13 gone wrong in the past with previous MOAs and
14 we would have a toothier recommendation.

15 So I don't think there's anything
16 wrong with having more than one recommendation
17 if you wanted to give some scope to what NOAA
18 could hear from the group. So if you have
19 competing ideas, I guess, around the table,
20 you don't necessarily have to pick one over
21 the other if you wanted to frame them in sort
22 of this continuum of ideas.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And let either the full Committee
2 take, you know, a vote on it at the end or
3 pass them forward as here is a range of things
4 with increasing levels of change or reform or
5 responsibility that could be considered. So
6 just a process observation there.

7 MR. RIZZARDI: Yes. So, for
8 example, the letter B there is reflecting
9 Cathy's idea during our discussion about
10 trying to have a funding mechanism that would
11 be addressed in the MOA. And if folks had
12 additional criteria or things that they would
13 like to see NOAA and BOE consider in an MOA,
14 we could add them to the list as to
15 subparagraph C, subparagraph B, subparagraph
16 E. So that would be a way to implement what
17 Mark is suggesting to Tony.

18 For example, you have had some
19 concerns that perhaps we would work into what
20 our recommendation is that NOAA and the Bureau
21 of Ocean Energy consider and MOA that has the
22 following backers.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Randy, if some of your concerns
2 could be reflected that way, that would be
3 great. And then we would be able to achieve a
4 consensus in the room that you know MAFAC
5 recommends that two federal agencies work on
6 an MOA and consider the following factors.

7 Well, let me turn to B and see
8 what folks have as far as feedback.

9 MR. JONER: I just think it's
10 really important to develop this baseline that
11 we talked about earlier that you know you
12 can't do an assessment if you don't know
13 what's there. And I really, I guess, don't
14 see a company that's drilling for oil paying
15 to have this done on a nationwide basis.

16 I mean, they are going to find
17 something in the area where they are drilling.

18 So I wouldn't -- I would like to see that
19 expanded, maybe pull -- leave it there but
20 also then pull that idea out and make it a
21 separate recommendation, begin this nationwide
22 because there's no drilling off of Washington

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 or Oregon, yet there's shipping.

2 MS. FOY: Shipping.

3 MR. JONER: And there are
4 something like in the neighborhood of 6 or 800
5 tanker trips a year inside the Strait of Juan
6 de Fuca going to Washington and B.C. And
7 those are all Exxon Valdez size tanks and so I
8 don't know whether that's two or three a day
9 go both ways.

10 MS. FOY: I speak to that seat to
11 be having some kind of a fund that is set
12 aside or established.

13 MR. JONER: They would pay into it
14 but this would not be the primary source.

15 MS. FOY: Right.

16 MR. JONER: You know we could.

17 MS. FOY: Okay.

18 MR. CATES: Maybe get Devil's
19 advocate on that a little bit. Where do you
20 stop with that? What if you're building a
21 marina somewhere and they got to get a Corps
22 permit? Should they have to fund a study?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And I bring that up because that's an actual
2 ongoing thing right now in Hawaii that the
3 agencies use that as a funding source, a way
4 to get projects done.

5 In my business, I have been asked
6 of three projects: Turtle observations,
7 spinner whale observations, and humpback whale
8 observations. Do I have to go up, create a
9 plan and pay for a third-party to go do that?

10 That was a proposal. We have a marina right
11 now pretty close to where they want them to do
12 coral monitoring. So on one hand I think it's
13 a good idea, but where does it end?

14 MR. JONER: I think you know this
15 is not open ended. You have to do it in areas
16 of high risk or critical areas where, for
17 example, the Strait of Juan de Fuca you have
18 ships coming from the north and the south and
19 they -- and the west converging in that small
20 bottleneck there. And a lot of traffic, you
21 know, about a ship an hour is going around the
22 clock. That would be one spot where you would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 want to do it.

2 MR. CATES: Is there a way to word
3 it where it -

4 MR. JONER: And then the Gulf,
5 obviously, because of all the drilling and
6 there may be places on the east coast where
7 they are more of a high risk area, where they
8 are more --

9 MR. CATES: Is there a way to word
10 it where it would have an economic level? I
11 mean if your tribe was trying to build a 15
12 slip pier for your tribe and suppose it came
13 back it was going to cost you half a million
14 dollars to do some study, it wouldn't make
15 economic sense.

16 MR. RIZZARDI: Let me see if I can
17 finesse both of these points. I hear you
18 saying you don't want the regulated entity to
19 be expected to simply pay all the time to --
20 for a project.

21 I hear you saying that you don't
22 want this to be the only source of funding for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 these necessary programs.

2 So looking at the language that's
3 on the screen, if we simply changed to pay for
4 to be contribute towards, yes, I think it
5 achieves both of your points.

6 MR. JONER: And just to answer
7 Randy, I don't think anybody who does anything
8 in the ocean should have pay to this fund.
9 You know, it has got to be focused at sources
10 of potential, you know, real disaster like
11 that. You know, somebody's putting in a
12 marina, you know, there's not much risk
13 there.

14 MR. NARDI: Yes, I think they
15 could be starting a discussion where there are
16 some thresholds for them to exceed, sort of
17 millions of dollars not a small businessman
18 that has got a project where something like
19 this takes sinking.

20 MR. JONER: Well, it would be good
21 to get it worded that way.

22 MR. RIZZARDI: Staying focused on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what we're talking about here this is in the
2 context of an MOA between NOAA and BOE. And
3 this is one of the issues that need
4 addressing. But, I think, the bigger picture
5 that was also being raised there is, you know,
6 we would like to see these projects be funded
7 even outside that mechanism, but at least here
8 there's a way we can get some of the funding
9 for these types of projects.

10 MR. DEWEY: I wonder if to further
11 address this concern, if we would want to add
12 just a few words at the end of B saying in
13 areas of higher risk for oil spills, just to
14 clarify you're not necessarily doing it in
15 every area trying to establish this priority
16 discussion like Steve was trying to raise.

17 MR. RIZZARDI: So at the end of B?

18 MR. DEWEY: At the end of B.

19 MR. RIZZARDI: For high volume oil
20 spills?

21 MR. DEWEY: For areas at higher
22 risk for spills or something along that line.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RIZZARDI: Okay.

2 PARTICIPANT: High risk of large
3 or disastrous spills?

4 MR. DEWEY: Whatever. You know,
5 something along that line that captures
6 Steve's concern --

7 (Simultaneous speaking.)

8 COURT REPORTER: One person at a
9 time, please.

10 MR. RIZZARDI: Damage from Ocean
11 Energy development.

12 MR. JONER: I have a question on
13 that --

14 MR. RIZZARDI: That works.

15 MR. JONER: -- term before we say
16 that. This BOE, is that just oil or would
17 that include things now like wave energy?

18 MR. RIZZARDI: Under what their
19 mission is charged to be, yes, natural gas
20 developments and oceanic deposits.

21 MR. RANDY FISHER: Didn't Mineral
22 Management just sign an agreement, which we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have all been concerned about, because they
2 want to actually speed up the permitting
3 process that they now have. For energy, it's
4 similar to how they did it for oil and gas, a
5 cloned system.

6 MR. RIZZARDI: Thank you.
7 Captain.

8 MR. DEWEY: So, Keith? I just
9 wanted to do a time check here. The agenda
10 calls for a 4:30 adjournment. Technically
11 we're right there, we're not making a lot of
12 progress here.

13 MR. RIZZARDI: Nope, we're not.

14 MR. DEWEY: I don't know if people
15 are willing to stay. You know, I think
16 Heather anticipated us needing a little extra
17 time, so I would suggest, if people are
18 comfortable with it, we stay at least until
19 5:00 to see what we can get accomplished here,
20 if people are willing.

21 Now in the Science discussion I
22 just wanted to throw out some other ideas.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Now, I don't know if it falls necessarily
2 under Science preparedness, but we had -- we
3 didn't discuss today, but we had in our
4 packets of information here, these proposals
5 for economic and social science studies,
6 related to the Deepwater Horizon spill, which,
7 as I understand it, aren't funded.

8 They are NOAA proposals and
9 reading through them, I mean, they make total
10 sense to me. And I think it might behoove us
11 to have a MAFAC recommendation in support of
12 those proposals.

13 MR. RIZZARDI: Do we have them in
14 a matter that can be listed for the group to
15 look at?

16 MR. DEWEY: Well, they are
17 amongst our -- you know, if you go to the
18 annotated agenda, you can bring them up. They
19 are all there. So that's something I would
20 like to propose for a recommendation.

21 There was additional, I think,
22 research needs, at least from my standpoint,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and I think George shared a similar concern
2 around research on the effects of oil and
3 dispersants on fish and shellfish
4 reproduction. That seemed to be a gap in
5 knowledge from what I was hearing and not
6 getting any reassurance that there was
7 currently any research in that area.

8 MR. RIZZARDI: I think it's a
9 really good one. Heidi is taking a crack at
10 it on the screen.

11 MS. LOVETT: I was just trying to
12 catch what you just said, but I didn't hear
13 it.

14 MR. DEWEY: So research on the
15 effects of oil and dispersants on fish and
16 shellfish reproduction. I raised this
17 question about the oyster larvae effects on
18 oyster larvae and George raised the same
19 concerns over fish larvae and reproduction as
20 well.

21 I also raised a question earlier
22 about human health defects, as are related to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 potential impacts on *Vibrio vulnificus*, marine
2 bacteria, with very serious public health
3 implications that, at least I have seen, some
4 indication is expected to increase in the
5 presence of the oil.

6 And Steve didn't have any response
7 to that. Now, whether that's a valid concern
8 or not, it has definitely been out in the
9 media. In fact, Center for Science in the
10 Public Interest is using those reports to try
11 to spur --

12 MR. RIZZARDI: Scare?

13 MR. DEWEY: -- scare consumers
14 away from oysters.

15 MR. RIZZARDI: Heidi, so C
16 couldn't you just add to the end of that and
17 potential effects on human health?

18 That would capture the whole
19 category.

20 I wanted to note also that just
21 yesterday in our local paper there was a
22 discussion about the lack of research and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 development on oil spill cleanup technologies.

2 And it struck me as another potential area
3 for NOAA and BOE to work together to try to
4 come up with an appropriate R&D program.

5 You know, not much has changed
6 since 1989 and Exxon Valdez. We're still using
7 booms. We're still using, you know, the same
8 technologies, so maybe the Agency should be
9 looking at that. And again, here's another --
10 contributing to the concept of a list of
11 factors for the agencies to consider in an MOA
12 between them. That seems like an appropriate
13 topic.

14 MR. DEWEY: And that was a comment
15 that Paul raised earlier in a question to
16 Eric. So I would agree with that. My only
17 question here is whether doing it, as we are
18 trying to characterize what should be included
19 in the MOA is appropriate or if these should
20 be separate and stand-alone recommendations
21 for research that needs to get done.

22 MR. RIZZARDI: I think it's a fair

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 question. It's -- and that's a question to
2 MAFAC is to how strong do you want to be in
3 issuing your statement? Do you want to
4 encourage NOAA to think about these things
5 jointly with BOE or do you want to give a
6 stronger statement to NOAA that says we really
7 think you should do X, Y, or Z?

8 MR. DEWEY: Well, I think as it
9 relates to the research gaps. I think they
10 should be recommendations directly to NOAA not
11 for necessarily inclusion in the MOA.

12 MR. RIZZARDI: Yes.

13 MR. DEWEY: Also, this discussion
14 brings to mind, for me, something that Tom
15 Billy raised just in an individual
16 conversation to me as we were breaking for
17 lunch, is that we probably should begin our
18 discussion of this report from this Committee
19 effort with some sort of prelude commending
20 NOAA for all of their efforts to date.

21 You know, they've done a great
22 job. And these are some areas we have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 identified for potential improvement. But at
2 least acknowledge them for their efforts to
3 date would probably be appropriate as well.

4 MR. RIZZARDI: Heidi, I see you --

5 MS. LOVETT: Yes, it is considered
6 a secondary impact, I mean, impacting the
7 bacteria or viruses.

8 MR. RIZZARDI: So just make it
9 potential secondary effects on human health.

10 MS. LOVETT: Okay.

11 MR. RIZZARDI: And then C rather
12 than being under the heading that you have it
13 under there as part of the MOA agreement, it's
14 actually going to be an independent concept.

15 MS. LOVETT: Yes.

16 MR. RIZZARDI: That MAFAC
17 encourages NOAA to develop a program. Just in
18 front of C.

19 MS. LOVETT: In front?

20 MR. RIZZARDI: In front of C. You
21 can delete C. It just becomes a stand-alone
22 item.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And make MAFAC encourages NOAA to
2 develop programs, too. Does that capture,
3 Bill, your thought?

4 Okay. Earlier today, Tony, you
5 raised a series of questions about how to --
6 understanding habitat issues, not just in the
7 Ocean Energy context. And the Chair had
8 suggested we put it off to the Subcommittee.

9 So I wanted to make sure you had
10 an opportunity to address that. I've put it
11 under the umbrella of ecosystem and fishery
12 management impacts. And then Eric raised an
13 important concern about how to avoid having
14 disconnected projects from seeking money
15 through the BP process as we move down the
16 road and, you know, having folks seeking
17 funding for projects upstream in the
18 Mississippi River, for example.

19 So the middle two topics here
20 regulatory reform and disaster preparedness.
21 I have some very specific things that, I
22 think, we should skip over for now. And just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 recognizing our time issues, I'll come back to
2 these and see if we can come up with something
3 later today independently or tomorrow.

4 But this one is the one I'd like
5 to give some time to, if we could. One thing
6 that I threw out there was in the -- this
7 document was provided by NOAA to all of us.
8 It was in backup materials. If folks haven't
9 read it, "This Mission Without a Map," is an
10 exceptional discussion of what happened with
11 Exxon Valdez. How the process worked.

12 And after the disaster in Alaska,
13 the trustees developed a process where they
14 went largely with a land acquisition model as
15 their way of responding to the restoration
16 needs. And I think there is going to be a
17 need to go through a similar type of process
18 to figure out what types of things are going
19 to qualify as restoration projects?

20 And Eric raised that issue of
21 working his way upstream. Tony, I think your
22 point was how do we understand the holistic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ecosystem impacts, so that we know what we
2 should be doing in response or at least that
3 was part of the issue you were raising.

4 So I just tossed something out
5 there on the screen that says we recommend
6 creating a public process, develop, what I
7 call, funding eligibility criteria. What
8 projects are eligible to get funding, once
9 there is a fund to pay for restoration?

10 So we would develop funding
11 eligibility criteria for these projects and I
12 suggested that we put it on as a specific item
13 on our next agenda. We can take whatever
14 approach folks in this room encourage. But I
15 also wanted to allow both Tony to further
16 address his topic and any further discussion
17 on Eric's topic.

18 MR. CHATWIN: Okay. Thank you.
19 So one thing that NFWF is doing right now is
20 we have a long standing program in the Gulf
21 called the Shell Marine Habitat Program and
22 through it we've made a lot of investments on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 habitat and wildlife conservation in the
2 Gulf.

3 And because of that, we've been
4 following this really closely. And we have
5 been approached by a number of donors,
6 including BP, to know what could be done to
7 invest in the populations that are being
8 impacted. And so we have this issue of
9 deciding where to put money, and how to make
10 sure that we get the biggest conservation
11 return on that investment.

12 We are not dealing with any
13 response, anything that falls under the
14 National Resource Damage Assessment purview.
15 We are not doing anything there and nothing to
16 limit BP's liability.

17 But we are trying to invest in
18 bolstering the populations of fish and
19 wildlife that are being impacted by the oil.
20 And we're doing that by investing in known
21 conservation needs of those fish and wildlife
22 species.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 An example is sea turtles. We
2 have been investing in sea turtles in the Gulf
3 for a long time and what I have found is that
4 if you don't know what the population level is
5 that you're trying to work towards, it makes
6 it much harder to decide where it's best to
7 put that conservation dollar.

8 You know, and so it's the same
9 with migratory birds, with shore birds and the
10 hardest ones that we have to think about, and
11 we haven't found projects yet, is with fish
12 species, with oysters. Nobody can tell me
13 what the population of oysters is in the Gulf
14 of Mexico, what it should be.

15 And the best I've heard is that
16 what is there is about 50% of what used to be
17 there to start with. Whereas, in a place like
18 Chesapeake Bay it's about 1 percent or less
19 than 1 percent. Puget Sound is 4 percent, but
20 nobody really knows what's there. So if you
21 don't know what's there or what you would like
22 to be there, it's very hard to be able to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 decide between different types of investments
2 that you can make.

3 And I think that the whole damage
4 assessment process had that same problem.
5 Just the idea of having to go out and
6 establish a baseline once the disaster has
7 happened, is -- you are already sort of
8 playing a losing game there.

9 And so there are a lot of things
10 that NOAA could be doing within NOAA, I think,
11 if it had additional funding and recognizing
12 limitations. But from all the managed fish --
13 from the 532 managed fish stocks, over half
14 are not known, the status. Their over-fished
15 status or over-fishing status is not known.
16 And so if you don't really know how can you
17 tell what the impact of the oil is going to be
18 over those stocks?

19 So I think that if we could be
20 encouraging NOAA to drive money to change that
21 status, knowing what we know, that that would
22 be something that could help in consultation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 recommendations.

2 MR. RIZZARDI: Terry, Martin and
3 then Paul and then Bill.

4 MR. CHATWIN: Okay.

5 MR. RIZZARDI: They all want to
6 comment.

7 MR. CHATWIN: Oh, yes, okay.

8 MR. RIZZARDI: Go ahead. Finish
9 it up, Tony.

10 Mr. CHATWIN: And then the thing
11 about Essential Fish Habitat and trying to
12 work the language, it's the same issue. It's
13 the regulations are there where it recognizes,
14 well, we don't have the adequate information
15 currently and we know what the appropriate
16 information, level of information should be.
17 And there is a continuum and we want to work
18 towards that, but it just doesn't seem to be
19 the drive to move along that continuum.

20 And I think that that's -- again,
21 if we were in a position where we had better
22 information, NOAA's recommendation and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 consultation would be I think -- it would be a
2 higher standard to it and it would be harder
3 to just dismiss it. It's part of a
4 consultation. So that's how I was thinking
5 and I don't have language for you now, but I
6 am happy to work on that once we have a
7 discussion about it.

8 MR. ALEXANDER: I agree 100
9 percent with that. I mean, we have stocks in
10 the northeast that they have actually set
11 allocations on that their own people have told
12 them that they can't believe the science in
13 it, so we need assessments and black bags. So
14 I mean it's -- and we're diverting money away
15 from all that type of stuff now in the budget
16 process.

17 So I don't know if we should get
18 into that here or when we're talking about the
19 budget. When is that? Wednesday, Thursday?
20 Whatever. But they are diverting money away
21 from assessments and stuff so that, you know,
22 I think that we really need to send a message

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to them that the core of the whole thing is
2 assessments and we should be working on that
3 more than anything.

4 MR. RIZZARDI: Martin, Paul?

5 MR. MARTIN FISHER: Thank you, Mr.
6 Chair. I totally agree with you.
7 Unfortunately, that's what this is all about.

8 Everything that we're dealing with, in terms
9 of fisheries management is about lack of data.

10 If we had the data, we'd be able to manage
11 much better than we do. So the key thing is,
12 this disaster isn't going to create the
13 vehicle for us to be able for us to actually
14 do it. Unless there is billions and billions
15 of dollars and then it's a question of how
16 those billions and billions of dollars get
17 appropriated towards stock assessments and
18 mammal research and all that stuff that you
19 are talking about.

20 But right now, the way it has been
21 is the only stocks that get stock assessment
22 are the ones that are most economically

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 valuable to the community. Whether it's
2 commercial or recreational or both. For
3 instance, in the Gulf of Mexico, I don't know,
4 there's 15 species of grouper and there's
5 only 3 that have stock assessments.

6 All right. That's not exactly
7 precise, but it's close to an approximation of
8 what is happening down there. So I'm not sure
9 that just sending an MOA that says we need you
10 to do blah, blah, blah get's it done and
11 maybe we --

12 MR. CHATWIN: I agree.

13 MR. MARTIN FISHER: -- have to
14 take it to the next level. And I'm not
15 pretending to say I know what that level is.
16 But we need to find a way to identify, clearly
17 describe how you get there. How do you get
18 from A to B?

19 MR. CHATWIN: I totally agree.
20 And so when I see suggestions of well, in the
21 MOA we should say we need more money for
22 science. I think that is a recommendation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that doesn't carry much weight.

2 But there is currently a mechanism
3 to capture money from oil and gas revenues.
4 Actually, there are fees paid to the MMS.
5 They are going to the Land and Water
6 Conservation Fund. And I think this body
7 should be saying, you know, part of the money
8 that goes to the Land and Conservation Fund
9 should be dedicated to improving scientific
10 stock assessments of marine fish.

11 Because right -- marine fish and
12 wildlife. Right now that money is used for
13 acquisitions for the national parks and that's
14 not a bad use of it, but some of it should be
15 used for marine purposes.

16 MR. MARTIN FISHER: Okay.

17 MR. RIZZARDI: I think we had some
18 language pretty close to that already in
19 Topic A, the first part of this. So maybe we
20 will go back and review that, enhance it.

21 MR. CHATWIN: Yes, yes, yes.

22 MR. RIZZARDI: But I also want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 make sure because both Bill and Paul have
2 repeatedly put there hands up, I want to give
3 them both an opportunity to talk.

4 MR. CLAMPITT: In your previous
5 discussion you were talking about determining
6 biomass and is sounded to me like you were
7 talking about trying to determine virgin
8 biomass. Is that correct?

9 MR. CHATWIN: No, no. What I said
10 was that currently the best assessment of what
11 the population is, it's like a qualitative
12 assessment relative to what used to be there.

13 So they're saying in the Gulf of Mexico,
14 which is the best body of water as far as
15 oysters are concerned native oysters, it is
16 about 50 -- experts estimate it is 50 percent
17 of what used to be there. And in the
18 Chesapeake it's about less than 1 percent than
19 what used to be there.

20 So I'm not saying that we should
21 go back and try to get back to virgin biomass.

22 I'm just saying that's the best estimate.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And that's not good enough if you're going to
2 try to assess what is the damage of an impact.

3 MR. CLAMPITT: Yes. Well, I have
4 a selfish reason, you know, for wanting them
5 to, you know, determine baseline populations.

6 Anything to get them to spend money on that
7 would be great. I mean, if this is a method
8 of doing it, I'm all for it.

9 MR. RIZZARDI: Bill?

10 MR. DEWEY: So a couple of things.

11 One was it was down with what we were just
12 looking at with your suggestion, I think, in
13 response to Eric's comments. So what I heard
14 Eric saying maybe was a little different in
15 that you want, you were suggesting before we
16 go spending this grand check that is going to
17 come eventually for the Gulf, that we go look
18 at other major restoration projects that
19 happened around the country, whether it be
20 Great Lakes, Chesapeake, Everglades, America's
21 Wetlands and learn from those to make sure we
22 don't repeat mistakes made.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And Puget Sound did something
2 comparable. The Governor appointed a Blue
3 Ribbon Panel to identify the best structure
4 and process to restore the Puget Sound. They
5 brought in GAO to guide them on that and bring
6 forward the mistakes made in these other
7 projects.

8 And a couple of the key things and
9 I guess as we look to the next MAFAC meeting,
10 if that's the place to do this, in my opinion,
11 it's not so much eligibility criteria as it is
12 overall process.

13 But one of the things that came
14 out from that GOA input of Puget Sound was
15 accountability and performance measures. So
16 not so much selecting the projects, but once
17 they are being implemented, having ways to
18 evaluate them and make sure they are
19 successful.

20 But I'm just wondering if we don't
21 want to try to incorporate that concept of
22 evaluation into a recommendation as well. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 then just I would be remiss if I didn't raise
2 the one thing Tom Raftican asked that we raise
3 this afternoon in his absence and that was the
4 discussion of the establishment of an Ocean
5 Trust Fund.

6 And, unfortunately, it was a
7 pretty cryptic email from Tom and it didn't
8 get into a lot of the detail about what he was
9 suggesting with that but it, basically, was
10 establishing a creation of an Ocean Trust Fund
11 to structurally and financially facilitate
12 tools for the future.

13 And I don't quite understand what
14 was different and what he's recommending there
15 from the existing oil spill liability trust
16 fund.

17 I don't know if Tom is informed on
18 that and so on. But I wanted to put it out
19 there just because Tom asked me to.

20 MR. RIZZARDI: Well I also think
21 that the conversation we're having about the
22 funding mechanism from the lease revenues is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 consistent with his basic vision of trying to
2 get some money dedicated to serving purpose.

3 On this latter point, I also want
4 to point out Heidi put up on the screen the
5 statutory criteria that exists in, I guess, it
6 is NRDA, right, that says you do your
7 alternatives analysis and evaluate which
8 project should be getting money out of the --
9 or for the restoration efforts.

10 And the issue that we would need
11 to undertake to get to Eric's question is to
12 do that next level of detail on performance
13 accountability measures and success criteria.
14 And I don't think there is any way we can
15 tackle that today. I mean, it's impossible
16 and we don't have the information and we are
17 probably not the body to do it.

18 We would need all sorts of
19 guidance and help. But, you know, I think
20 that dialogue needs to begin somewhere. And
21 that's why I was suggesting, you know, today
22 maybe we're not ready, but months from now we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 could be. And it could be a topic for us to
2 put on the plate for the next meeting.

3 And that was -- and this kind of
4 goes to Randy's point about, you know, what's
5 MAFAC's role? What are we doing? If we're
6 going to participate in this process, it is an
7 opportunity for us to step up.

8 Heidi, could you go to that, the
9 statutory criteria? When NOAA tries to
10 determine which projects should be picked for
11 restoration this is their process. And if we
12 can help and if staff says we can help, and
13 then help us find a role in the process it
14 does seem a good opportunity for us. But Mark
15 maybe you can address that?

16 MS. LOVETT: I would just like to
17 review. This was -- there was a different
18 speaker originally scheduled and he's in the
19 Gulf. And that's why Robert Wolotira came and
20 he modified that presentation, but I had gone
21 through it and was familiar with it and I just
22 remembered this and I thought he didn't really

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 talk about that.

2 So I just wanted to bring it to
3 your attention that there is a pretty, you
4 know -- well, it covers a lot of issues, so
5 there is a detailed process that our Agency
6 does go through when they are trying to
7 determine which projects have the best
8 liability and will meet the needs of the --
9 you know, that particular restoration effort
10 for what was damaged. And, obviously, I just
11 wanted to bring that to your attention.

12 MR. CATES: MAFAC's role is to
13 advise the Secretary of Commerce. Since I've
14 been on the MAFAC we've been lacking the
15 ability to do that, but I think now more than
16 ever, we have a duty to do that and yet we
17 don't do that.

18 In my opinion, I mean it says in
19 the bylaws shall advise the Secretary of
20 Commerce. On Day one, we have been -- how do
21 we do that?

22 MR. RIZZARDI: Martin?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MARTIN FISHER: I know how we
2 do that. If the Committee so wishes we make a
3 resolution that the Chairman make an
4 appointment with the Secretary of Commerce.
5 And the Chair of MAFAC goes and advises the
6 Secretary of Commerce.

7 MR. CATES: We have done that.

8 MR. MARTIN FISHER: When? Not
9 since I've been on the Committee.

10 MR. CATES: We have Tom Billy who
11 is supposed to request a meeting to meet with
12 him and I bring it up every -- has that
13 happened? Well, no it hasn't happened. So
14 there is a huge discussion before many of the
15 Members that are on here and, I think, Mark
16 maybe can correct me. I think a vote was
17 taken that we would send a letter requesting a
18 meeting fully aware that maybe he would turn
19 it down, but the point was let him turn it
20 down.

21 MS. DANA: And you're right on the
22 nose that let him turn it down. I would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 imagine the Secretary -- if from this body a
2 request for a meeting was asked --

3 MR. MARTIN FISHER: I don't know
4 that that has happened.

5 MS. DANA: Have any of you been
6 invited to meetings with the Secretary? I
7 mean, because I'm a Member of MAFAC and the
8 Secretary was coming to work with Florida to
9 Pensacola when the Gulf spill first hit and I
10 was invited to that and I thought, you know,
11 somebody was doing their job and making sure
12 that folks were included.

13 But I have no reason to believe
14 that the Secretary would not entertain a
15 meeting with this key group if he had an
16 invitation.

17 MR. CATES: Well, there's Tom, we
18 can ask him. Hey, Tom, you came back just at
19 the right time. Your seat is already hot.

20 MR. RIZZARDI: Please, I think
21 it's unfair to put Tom on the spot here. But
22 I'm not sure where this line is going. What

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is it that you want to tell the Secretary? I
2 think that's -- you have to get your story in
3 terms of your findings and recommendations.
4 And so whether you have a meeting with him or
5 not, if -- what's the information that we're
6 trying to convey, is the real hard work.

7 MR. CATES: Well, wait a minute.
8 Lets go back in time for a minute. We've had
9 plenty of recommendations to give the
10 Secretary of Commerce, starting with Vision
11 20/20.

12 Way back when we had a discussion
13 on who would deliver those recommendations
14 and, at the time, the Chairperson was the head
15 of NOAA who never attended any of the
16 meetings. And so a vote was taken and we had
17 to decide whether it was in the bylaws,
18 permissible for MAFAC to appoint a
19 Chairperson. We did that. And that was from
20 the St. Pete meeting that I attended when the
21 discussion was that we are not fulfilling our
22 duty as written.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So now, we've got a Chairperson.
2 And then my understanding is that MAFAC voted
3 to request a meeting that would be once a year
4 for the Chairperson to sit with the Secretary
5 of Commerce and take the recommendations, not
6 related to BP, but all MAFAC recommendations
7 and just have a face to face meeting.

8 So as we're asking a question of
9 what's our role, I think that that's relevant
10 to find out where are we at with that. How's
11 that? Request taken place if not is it going
12 to take place? And then the group could
13 decide what recommendations would be pressing
14 issues. Am I right in this, Tom?

15 MR. JONER: Specifically, we made
16 a recommendation last November at Silver
17 Spring to meet with him to talk about getting
18 with the Secretary of Agriculture and making
19 sure seafood got a fair shake in the --

20 MR. CATES: Pyramid.

21 MR. JONER: Yes, pyramid. I would
22 say triangle, yes. And I think they did that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RIZZARDI: All right.

2 MR. JONER: We didn't have a
3 meeting, NOAA, but I mean right we forwarded
4 the request through NOAA --

5 MR. CATES: Yes.

6 MR. JONER: -- and the Secretary
7 has declined to schedule a meeting.

8 MR. CATES: Yes.

9 MR. JONER: And so --

10 MS. DANA: But given the focus now
11 so much on fisheries, do you think that the
12 Secretary's position may have changed?

13 MR. HOLLIDAY: I have no
14 information to speculate whether it's better
15 or worse.

16 MS. DANA: Yes.

17 MR. HOLLIDAY: I think the -- I
18 understand how important it is to people to,
19 you know, have a dialogue with Secretary
20 Locke. I think the energy is best spent on
21 advising Dr. Lubchenco and she regularly
22 confers with the Secretary and I think that is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 our immediate forum for getting information up
2 the chain of command.

3 Notwithstanding what the charter
4 says, I think the notion has been that
5 Secretary Locke has designated Dr. Lubchenco
6 to be or the Secretary's position as
7 designated or delegated to the Deputy
8 Undersecretary of Commerce to be the
9 representative that deals and liaises with
10 MAFAC. That's --

11 MR. MARTIN FISHER: Well, then
12 that it's simple. We just ask for the
13 Chairman of MAFAC to make an appointment with
14 Dr. Lubchenco.

15 MR. HOLLIDAY: Yes.

16 MR. MARTIN FISHER: To present our
17 recommendation.

18 CHAIR BILLY: I think we have.
19 It's pending.

20 MR. MARTIN FISHER: Well, when?

21 MR. CATES: So to be clear, I --

22 CHAIR BILLY: After the last

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 meeting. I don't know exactly when.

2 MR. CATES: So to be clear then, I
3 think, Mark, if I'm understanding, you guys
4 have done what we asked, which was, basically,
5 request a meeting and it has been denied.
6 You know, that says a lot.

7 MR. MARTIN FISHER: Was it denied
8 formally? Was it actually a letter or fax
9 that said --

10 MR. HOLLIDAY: I think we copied
11 at least the Executive Committee and Tom
12 signed the letter, took to your house, you
13 physically signed it and you gave us a stamp.
14 You know, so I mean, we formally transmitted
15 it to NOAA, requesting as we talked about it
16 at the Hawaii meeting. Wasn't it Hawaii?

17 CHAIR BILLY: Yes.

18 MR. HOLLIDAY: Yes, okay. I'm
19 sorry?

20 MR. NARDI: We were copied on it.

21 CHAIR BILLY: Yes.

22 MR. NARDI: I think Tom sent it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 over.

2 CHAIR BILLY: Yes.

3 MR. DEWEY: So I'm thinking that
4 that's a broader MAFAC discussion that is
5 specific to this afternoon's work here. And
6 we're short on time. I mean, I'm not
7 disagreeing on the importance of it, Randy,
8 but I'm wondering if we can't revisit it as a
9 broader recommendation.

10 MR. CATES: Well, I think it's
11 totally relevant. If the recommendations
12 don't --

13 MR. DEWEY: But we're going to
14 have recommendations from -- on more than just
15 the Deepwater Horizon, at the end of the
16 meeting and how those get transmitted, I
17 presume a lot of them we want to get them as
18 high in the food chain as we can. And so it's
19 a broader discussion is what I'm suggesting.
20 And that we may want to try to get through
21 these categories.

22 MR. RIZZARDI: Right. And the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 other point I would make is there are more
2 ways to advise a person than an in-person
3 meeting. You know, sometimes you can generate
4 a good quality written document that submits
5 your statements and the Secretary of
6 Agriculture and the Secretary of Commerce can
7 read them and understand them and, you know,
8 embrace them and move on. Or not, right. So,
9 Mark?

10 MR. HOLLIDAY: I just -- for point
11 of information, I don't know if everybody
12 realizes this, but after every meeting we
13 create a summary of the findings and
14 recommendations. And the proceedings of the
15 meeting are then transmitted from Fisheries
16 Service to NOAA and to Exec Sec for the
17 Department of Commerce.

18 And so it's not as if there is a
19 broken line of communication. Whether they
20 choose to acknowledge it, use it, abide by our
21 recommendations or ignore your
22 recommendations, I think that's not -- that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 maybe is the issue. It's not that the
2 information is not flowing to them.

3 We have talked to NOAA. I think
4 we are trying to ensure for the October
5 meeting that the political leadership of NOAA
6 is there. And this is one of the issues that
7 we would be discussing about improving their
8 interactions with the Committee.

9 So I think a face-to-face meeting
10 at the October meeting is one of the things we
11 have on the schedule.

12 CHAIR BILLY: So the one success
13 we had --

14 MR. HOLLIDAY: Was 20/20.

15 CHAIR BILLY: -- was the 20/20.
16 Well, before that even, it was the
17 aquaculture.

18 MR. HOLLIDAY: Oh, sure.

19 CHAIR BILLY: And, in fact, Eric
20 accompanied me to meet with the Admiral, who
21 had not participated in any of the
22 discussions, and we had, as I recall, like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 four recommendations on aquaculture including
2 the strategic play-on, but also, the Summit on
3 Aquaculture.

4 And while we sat with the Admiral,
5 there were two representatives of the
6 Secretary's Office that participated in the
7 meeting. And they got so enamored with the
8 idea of the Summit, they carried that idea to
9 the Secretary and within two or three weeks we
10 were informed the Secretary wanted to hold the
11 Summit, like we suggested, in the time frame
12 that we suggested, rather than what the
13 Admiral was suggesting as putting it off for a
14 year, because there was too much else on the
15 agenda.

16 So my point of that is we did have
17 some success in that instance. We also took
18 the 20/20 document to the Acting
19 Undersecretary.

20 Mark is right on that, but Eric
21 might be the key. He might be able to push
22 open the door now. And so I suggest that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have a discussion while -- when he is here in
2 the next couple days about what he would
3 advise as to the best way to address this
4 area.

5 I mean he is into it, he has got
6 it.

7 MR. CATES: I can --

8 CHAIR BILLY: He probably faces
9 the same battles getting time with the
10 Undersecretary, let alone the Secretary, so
11 it's not unique here. It's hard.

12 MR. CATES: I would like to speak
13 from personal experience. If you get to the
14 Secretary of Commerce, things happen. The
15 aquaculture was a perfect example on that. He
16 and Admiral Lautenbacher flew to Hawaii and
17 met with us. We went out on the ocean,
18 touched, saw, felt what it was about and then
19 had their support.

20 CHAIR BILLY: Yes.

21 MR. CATES: It's the same thing
22 with MAFAC. We're -- the only way that we are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to -- if that's our role, it's stated
2 that way, if our role is to advise the
3 Secretary -- NOAA, then it should say that.
4 I'm fine with that.

5 MR. RIZZARDI: Mr. Chairman, could
6 I suggest that this is a topic for you to take
7 back up in a full Committee meeting later?

8 CHAIR BILLY: Okay. Sure. We
9 will. Under new business.

10 MR. RIZZARDI: And what I would
11 like to see if we could do is take the point
12 that has gotten some discussion here about the
13 need for quality information, stock
14 assessments and future restoration targets and
15 add that into the first part of what is on the
16 screen here.

17 You had NOAA up at the top.

18 MS. LOVETT: Oh, okay.

19 MR. RIZZARDI: That's right. We
20 had the discussion of funding mechanisms and
21 maybe one way to do this is to add some
22 specificity to that. And again, you know,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this may be something that eventually we can
2 add onto the list of things that we want to
3 discuss, with Jane Lubchenco or the Secretary
4 of Commerce, and if that's the case, then, you
5 know, MAFAC can make that recommendation.

6 But I think it's important for us
7 to as a group try to achieve some sense of
8 what exactly it is. Don't we like to have
9 that conversation about? So going to the
10 specific language, I mean, what can we say,
11 shape, add? You know, tell me you had, you
12 know, very specific thoughts on the need for
13 quality information and stock assessments and
14 how we get to that future restoration target.

15 So can we enhance this somehow to reflect
16 your concerns?

17 MR. CHATWIN: Yes.

18 MR. RIZZARDI: Is that something
19 that you and I should work on on point?

20 MR. CATES: Yes, let's work on
21 that.

22 MR. RIZZARDI: And then --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. CATES: Because it is hard to
2 follow.

3 MR. RIZZARDI: Okay.

4 MR. HOLLIDAY: Okay. Were you
5 talking about as a bullet underneath the MOA
6 recommendation or is it a separate
7 recommendation undersigned?

8 MR. RIZZARDI: I think I'm hearing
9 it's a separate recommendation.

10 MR. HOLLIDAY: Separate. Okay.

11 MR. RIZZARDI: Yes. It's along
12 the line of encouraging NOAA to develop
13 programs on research and oil. I think we're
14 also talking about baseline data collection
15 that is missing.

16 MR. HOLLIDAY: Baseline data
17 collection.

18 MR. RIZZARDI: That went to stock
19 assessment, went to the habitat.

20 MR. HOLLIDAY: Right.

21 MR. RIZZARDI: Bill mentioned the
22 comment about social and economic data and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 community stuff. And you were reinforcing the
2 stock assessment. So I think there is a list
3 of baseline information --

4 MR. HOLLIDAY: Right.

5 MR. RIZZARDI: -- and preparing
6 for making decisions.

7 MR. HOLLIDAY: Yes.

8 MR. RIZZARDI: Not the least of
9 which is under catastrophic, you know,
10 environmental events.

11 MR. HOLLIDAY: Right.

12 MR. CHATWIN: Absolutely. NOAA
13 needs it to fulfill its mission.

14 MR. HOLLIDAY: And this goes back
15 to discussions we have had in the past about
16 integrated ecosystem assessments, IEAs. We
17 have heard from Murawski talking about that in
18 the past.

19 MR. RIZZARDI: Yes.

20 MR. HOLLIDAY: This Committee has
21 talked repeatedly about improving economic
22 analyses and making management decisions,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 collecting social and economic data.

2 MR. RIZZARDI: Yes, yes.

3 MR. HOLLIDAY: And I think Cathy,
4 before she left, pointed out, you know, this
5 is one of the things that is in 20/20. And we
6 talked about that it's important getting --
7 improving the capacity of NOAA to respond to
8 policy and management decisions was this basis
9 of information some of which we are lacking.

10 MR. RIZZARDI: And so --

11 MR. HOLLIDAY: And it's a proven
12 case in point here in the Deepwater Horizon
13 circumstance when we're not able to properly
14 reference a baseline or what the situation was
15 beforehand, we do a -- we're doing a great job
16 of trying to backfill that. But how much
17 better of a job could we have done if we had a
18 more routine understanding of the resources
19 and the people that we're trying to manage?

20 MR. CHATWIN: And a dedicated line
21 of funding for it.

22 MR. JONER: I think it's important

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to note that this is not a response to this
2 Gulf oil spill. That this Gulf oil spill
3 shows what we needed. It emphasizes it.

4 MR. RIZZARDI: Right.

5 MR. JONER: But it can't be just
6 tied to this, because when the spill goes
7 away, you know, that goes away, too.

8 MR. RIZZARDI: Right.

9 MR. FRANKE: Ken, I just had a
10 real quick comment on what we were previously
11 discussing, just from recent experience.

12 I was going to cover it later, but
13 with regard to our recommendations getting
14 pipelined up the chain of command, the
15 recreational working group, as well as our
16 Subcommittee participating in the Summit
17 recently, and Dr. Lubchenco and one of the
18 President's advisors, in addition to Russell
19 and all the upper management from MAFAC, they
20 sat there for days with this.

21 Dr. Lubchenco, herself, sat there
22 for hours getting specific feedback, writing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 down everything and one thing that I got very
2 clear in my head was she is acutely aware of
3 this group and our recommendations.

4 So I appreciate what Randy was
5 saying, sometimes we need some supporting
6 comments from the other end of the road. But
7 it was evident the discussions, I mean, they
8 were candid. They were very candid some of
9 the comments from the people.

10 And anyway, I just wanted you to
11 know that after spending that much time with
12 them, they know all about what this group is
13 about and information is guaranteed getting to
14 the end of the road and being considered.
15 Thank you.

16 MR. RIZZARDI: Heidi?

17 MS. LOVETT: Do you want your
18 statement encourage slow to develop programs
19 to research something a bit broader? And then
20 the first bullet to be effects of oil
21 dispersants, secondary effects would be
22 withheld, the social and economics, the things

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that you have all been mentioning, do you want
2 those as sub-bullets on here?

3 MR. RIZZARDI: I have taken some
4 notes. I think I'll work on --

5 MS. LOVETT: Oh, okay.

6 MR. RIZZARDI: -- trying to shape
7 some language with Tony and try to bring
8 something to the MAFAC as a body that reflects
9 the totality of the discussion we had.

10 MR. CHATWIN: Right. We have more
11 Subcommittee meetings tonight.

12 MR. RIZZARDI: Yes, there is
13 another Subcommittee meeting tomorrow, right?

14 MR. CHATWIN: Yes.

15 MS. LOVETT: Well, there are
16 several other Subcommittees not specifically
17 on this topic, but --

18 MR. RIZZARDI: Well, we are
19 reaching beyond with this particular point.
20 We are reaching well beyond Deepwater Horizon.

21 MS. LOVETT: Okay.

22 MR. RIZZARDI: You know, so I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think it's a bigger picture issue anyway.

2 MS. LOVETT: Yes.

3 MR. RIZZARDI: But still
4 appropriate for the Subcommittee to address.

5 (Whereupon, the went off the
6 record at 5:05 p.m. and resumed at 5:08 p.m.)

7 CHAIR BILLY: Keith, are we off
8 the record now? We are adjourned for the day?

9 MR. RIZZARDI: Well, actually that
10 was what I was going to follow-up with is is
11 everybody okay with us simply continuing with
12 the discussion we have had and carrying it
13 over to the next Protected Resource Assessment
14 Committee meeting?

15 CHAIR BILLY: Yes.

16 MR. RIZZARDI: I think that's the
17 way to handle it.

18 CHAIR BILLY: Yes.

19 MR. RIZZARDI: Then I guess we are
20 adjourned for the day. Thank you everybody.

21 CHAIR BILLY: Thank you. Don't
22 leave any valuables in the room.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (Whereupon, at 5:08 p.m. the was
2 adjourned to reconvene the next day.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com