

## COMMENTS OF THE RESPONSIBLE PARTY TO THE MARCH 9, 2006

### ATHOS I/DELAWARE RIVER LOST USE VALUATION REPORT

*Dated April 7, 2006*

The following comments are submitted on behalf of the statutory Responsible Party (the "RP") to the Athos/Delaware River Lost Use Valuation Report *circulated as a draft* by Eric English (NOAA) under cover e-mail dated March 9, 2006. The RP appreciates the opportunity to participate in this cooperative Natural Resource Damage Assessment (NRDA) process and the participatory role it has played in the Lost Use Technical Work Group (TWG).

To the extent the March 9, 2006 DRAFT Report does not embody the final findings, interpretations and conclusions of the Lost Use-TWG or the federal and state Trustees, we offer these comments in the spirit of cooperation, in the hope that they will assist the TWG and, ultimately, the Trustees, in developing a Final Report that reflects the reasonable views and interpretations of all participating parties. If the March 9, 2006 DRAFT reflects the final findings, interpretations and/or conclusions of the TWG or Trustees with respect to the Lost Use component of the NRDA process, we offer these comments in formal supplement of the Administrative Record and respectfully request that they be added to, and made a part of the NRDA record for the Athos I spill event.

Should you decide for any reason not to include this submission as part of the Administrative Record for this NRDA, we respectfully request that we be notified of that decision and the basis for it. Thank you.

The above stated, we offer the following general comments, which are not intended as a criticism of the views of any Trustee or its advocacy of any particular interpretation of data as reflected in the Draft Report:

1. The fishing, crabbing, and boating surveys were composed of two "sections". The RP is concerned that there may be a source of bias in the second section of the survey, which specifically mentioned the spill event prior to eliciting whether it ("the" spill) had an effect on a surveyed person's use of the river. The RP made known its view and concern at the time each survey was undertaken that including a specific reference to "the spill" could lead to a biased sample result, since those surveyed are more likely to "accept" an adjusted river use when offered specific information regarding the Athos I incident. Not surprisingly, a higher proportion of respondents to the second survey did accept a spill effect, a result which corroborates the occurrence of bias in the responses during the second section of the surveys. Compounding this problem, only the second section was relied on in development of the estimate of damages. Because we believe the second section reflects inherent bias and no effort was made to "adjust" these findings for potential bias, this method of determining lost use damages likely overestimates damages for these activities. We believe the TWG should be asked to further evaluate the potential for bias in this method of damage assessment, adjust the damage assessment value to account for data collected in the first section of the survey, and modify the damage estimate accordingly. If such adjustments are not made, the damage assessment will overestimate the lost use and, correspondingly, overstate the actual damage suffered and for which NRD reimbursement will be sought.

2. New Castle County, Delaware (NCC) accounts for a substantial proportion of the fishing damages (68%). This occurs partly because roughly half of NCC was assigned to the moderate spill effects group and half to the low spill effects group. It is notable, however, that the Wave 1 fishing survey indicates relatively small effects in Delaware, with few or no lost trips. This data on actual trip losses does not support the conclusion reached in the Draft Report on fishing damages in NCC. Indeed, based on the survey data, it is apparent that the damages have been overestimated and should be adjusted downward to account for actual survey data. If such adjustments are not made, the damage assessment will inflate the lost use figures and, correspondingly, overstate the actual damage suffered and for which NRD reimbursement will be sought.

3. Regarding fishing damages, the spill effects (proportions of trips affected) estimated for the third time period (August 7 through October 31) were assumed to equal those estimated for the second time period (June 13 through August 6). The Draft Report estimates that the proportion lost in the second period decreased 50% compared to the first period (April 1 through June 12). Since there is evidence that spill effects were decreasing over time, applying the proportion for the second period to the third period likely results in an overestimate of fishing damages. Any such overestimate could be significant, as Period 3

comprises 29% of the total baseline fishing trips. Some effort should be made to coordinate the estimated damage numbers between the three time periods, which should logically result in a reduction in the damage estimates. If such adjustments are not made, the damage assessment will inflate the damage figure associated with this component of the NRD and, correspondingly, overstate the actual damage suffered and for which NRD reimbursement will be sought.

As noted above, the RP welcomes the opportunity to discuss these issues in greater detail at a meeting with the TWG or JAT. Thank you.