COMMENTS OF

WITH RESPECT TO
THE GULF COAST CLAIMS FACILITY'S DRAFT PROPOSAL GOVERNING PAYMENT OPTIONS, ELIGIBILITY AND SUBSTANTIATION CRITERIA, AND FINAL PAYMENT METHODOLOGY

February 16, 2011

INTRODUCTION AND SUMMARY

On February 2, 2011, the Gulf Coast Claims Facility ("GCCF") issued for public review and comment a draft proposal governing eligibility, substantiation criteria and payment methodologies for Final and Interim Claims (the "Proposed GCCF Methodology").

respectfully submits comments on the Proposed GCCF Methodology.[1]

Pursuant to an agreement with the Obama Administration, the GCCF was established under the direction of a third-party administrator, Kenneth R. Feinberg, to perform this function.[2] The GCCF is one of the largest claims facilities ever. To date, almost 500,000 claimants have submitted claims. Evaluating so many different claims is not an easy task. The GCCF has achieved much in a very short amount of time, and has offered claimants a process that goes well beyond what is required by the law.

For example, between late August and late November 2010, the GCCF offered an emergency advance payment claims process that provided payments, including payments of potential prospective loss, in excess of $2.5 billion to more than 168,000 claimants.[3] The GCCF emergency claims process required only limited supporting evidence of loss to be submitted by claimants. This process provided benefits well beyond what is required under OPA, which

---

[1] comments focus on certain significant aspects of the Proposed GCCF Methodology. These comments are not an exhaustive analysis of all aspects of the Proposed GCCF Methodology. The fact that does not comment on a particular aspect of the Proposed GCCF Methodology does not mean that concurs with that aspect. specifically reserves, and does not waive, its right to assert any and all factual or legal defenses that may be applicable in any litigation arising out of or related to the Deepwater Horizon oil spill.

[2] GCCF Website, Frequently Asked Questions, <http://www.gulfcoastclaimsfacility.com/faq#Q1> (last visited 2/13/11).

[3] Prior to the transition of claims handling to the GCCF, made claims payments in excess of $395 million.

requires claimants to substantiate their claims and, further, does not contemplate compensation for loss before it occurs. *See* Testimony of Craig Bennett, Director, National Pollution Funds Center, U.S. Coast Guard, before the United States Senate Committee on Homeland Security and Governmental Affairs, Ad Hoc Subcommittee on Disaster Recovery (Jan. 27, 2011) at 51 (stating that the GCCF has been "more inclusive than OPA requires" in paying for prospective losses).

Following the sunset of the emergency claims process, the GCCF implemented a flexible, multi-option interim and final claims settlement process that permits claimants to select one of three different options for pursuing claims. *First*, claimants who do not want to fully and finally resolve their claims at present may file Interim Payment Claims and recover for substantiated past loss on a quarterly basis. Interim claims do not require the signing of a release or waiver of liability. *Second*, claimants who qualified for an emergency payment, or who receive an Interim Payment, may file for a Quick Pay and receive a fixed amount ($5,000 for individuals and $25,000 for businesses) on an expedited basis with no further substantiation. Quick Pay is designed for those claimants who believe that their emergency payment (and/or Interim Payment) together with the Quick Pay amount fully and fairly resolves their claim. *Third*, every claimant has the right to file for a Full Final Review Payment Claim and have the GCCF perform an analysis of their claim and develop an offer of a payment in respect of actual documented loss and projected future loss.[4]

[4] Claimants dissatisfied with the GCCF's offer on a Full Final Review Payment Claim, which is valid for 90 days, also have several options. Claimants whose total payment offer exceeds $250,000 or whose claim the GCCF has deemed of precedential significance may, within 14 days of the offer, appeal to a three-judge panel. Claimants dissatisfied with the three-judge panel decision, or other claimants, may pursue their claims with the U.S. Coast Guard or the courts. *See* GCCF Website, Summary of Options for Submission of Final and Interim Payment Claims, <http://www.gulfcoastclaimsfacility.com/summary_options.pdf.> (last visited 2/14/11).

comments focus on the methodology for the Full Final Review Payment. In many respects, the Proposed GCCF Methodology is sound in its attempt to apply the law and reach a fair resolution. For example, with regard to 2010 loss, the GCCF correctly sets out to calculate actual, substantiated loss caused by the spill.

However, believes that the draft methodology's key assumptions regarding risk of future loss are not supported by actual data or by the analysis of the GCCF's own consultants. There is simply no factual basis to assume, as the GCCF proposes, that, Gulf-wide, claimants will experience losses in 2011 equaling 70% of their 2010 losses and losses in 2012 equaling 30% of 2010 losses, so that final payments should be twice the amount of actual substantiated loss. The GCCF itself has found that "[t]here is evidence of a strong recovery underway"[5] – and for good reason. According to data published by the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service, December 2010 was the best shrimping season in the last five years. Both landings and prices were high.[6] As the GCCF's experts have found, fall 2010 tourism indicators likewise were comparable to or above 2009 levels.[7]

There is, therefore, no credible support for adopting an artificially high future loss factor based purely on the inherent degree of uncertainty in predicting the future and on the mere possibility that future harm might occur. That is particularly true where, as here, the Proposed GCCF Methodology provides claimants with choices that permit claimants to protect themselves against any such risk. Every claimant has the unilateral option to choose between a final offer and an interim offer. Accordingly, any claimants who believe their future losses are likely to be

[5] *See* Proposed GCCF Methodology at 4.

[6] See below pp. 12-13, 17.

[7] See below pp. 14-15.

greater than those predicted by the GCCF's future loss factor can choose to decline a final payment offer at this time and, instead, to receive interim payments as provided by OPA. Moreover, the proposed future loss factor is subject to revision if that is warranted by new data. The GCCF plans to review the future loss factor every four months in light of new data and to revise it if necessary.

recognizes that predicting the future is an inherently difficult and uncertain task, and that no one can say – with respect to the oil spill or any other event – that there is absolutely no risk of future harm. also recognizes the benefits to all parties of a settlement process that will enable them to avoid the burden, expense, uncertainty and delay of litigation. Therefore, notwithstanding the current data regarding recovery, should the GCCF conclude that a future factor is appropriate for purposes of claims resolution, believes that, solely for purposes of the GCCF settlement process, it would be appropriate for the GCCF to use a future factor in the range of 0.25 – 0.50 (or 25% - 50%) of a claimant's actual 2010 substantiated loss.

The Proposed GCCF Methodology also should be clarified with respect to claims of alleged damage to oyster beds. The methodology proposes to use an enhanced future loss multiplier for oyster beds that have been damaged by MC252 oil or by the fresh water diversion implemented by the State of Louisiana. does not oppose the use of a higher multiplier for those oyster beds, if any, that a claimant establishes have been oiled with MC252 oil and will require reseeding. However, alleged damage to oyster beds caused by the State of Louisiana's fresh water diversion, which may have reduced water salinity, is not compensable under OPA because it was not caused by the oil spill. *See* 33 U.S.C. §§ 2702(a), (b). Moreover, it is important to note that some senior Gulf state regulatory officials are reporting that damage to oyster beds in 2010 was not caused by the spill or the fresh water diversion; rather, it was caused by increased water temperature and lower levels of dissolved oxygen. believes that the

Proposed GCCF's Methodology should be revised to provide that the GCCF will award compensation for damage to oyster beds only where the damage was caused by MC252 oil.

also submits that the $500,000 threshold for applying an individualized evaluation of the proper future factor is too high. The threshold should be set at $100,000. understands the administrative desire to increase efficiencies in the GCCF claims settlement process where possible, including addressing the risk of potential future losses by applying a single multiplier to many claims. It must be recognized, however, that not all claimants will face the same – or indeed, any – risk of future loss. A lower threshold providing for individualized review in more cases will help assure that any payment in respect of the risk of future loss is properly calibrated to the actual risk, if any.

In short, respectfully recommends that the Proposed GCCF Methodology be revised in accordance with the comments set forth below.

SPECIFIC COMMENTS

I. THE IMPORTANCE OF SUBSTANTIATION.

As the Proposed GCCF Methodology correctly recognizes, substantiation is a core principle of OPA's compensation system. *See* Proposed GCCF Methodology at 2-3. OPA authorizes lost income and lost profits compensation only for losses that are due to injury, destruction, or loss of real property, personal property, or natural resources that resulted from the oil spill. 33 U.S.C. §§ 2702(a), (b). The Coast Guard regulations governing claims to the federal Oil Spill Liability Trust Fund provide that "[t]he claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC to support the claim." 33 C.F.R. § 136.105(a).

Under the Coast Guard regulations, a claimant seeking lost income or lost profits must prove the following:

> (a) That real or personal property or natural resources have been injured, destroyed, or lost.
>
> (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
>
> (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
>
> (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Id. § 136.233.

The Coast Guard regulations further provide:

> The amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for—
>
> (a) All income resulting from the incident;
>
> (b) All income from alternative employment or business undertaken;
>
> (c) Potential income from alternative employment or business not undertaken, but reasonably available;
>
> (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
>
> (e) State, local, and Federal taxes.

Id. § 136.235.

understands that, for purposes of the emergency payment program, the GCCF did not require robust substantiation. *See* Proposed GCCF Methodology at 2. That was a reasonable decision given the goals of the emergency program. However, it also means that some claimants

whose alleged losses were not caused by the spill may have received emergency payments and/or that claimants received payments that exceeded their actual losses in total or as of the date of payment. Still further, claimants received emergency payments for six months of loss, notwithstanding that many claimants in fact did not incur six months of loss.

The Proposed GCCF Methodology correctly provides that, when evaluating interim and final claims, the GCCF cannot rely on presumptions made during the emergency claims process:

> The GCCF will not presume that a given loss was or was not caused by the Oil Spill, regardless of whether or not the claimant received an Emergency Advance Payment. Each claim stands on its own merits, and the GCCF will evaluate each submission to determine whether a loss was caused by the Oil Spill. In all cases, there must be an identifiable link between an actual loss and the Oil Spill. Evidence establishing this connection is required.

Proposed GCCF Methodology at 2-3. This statement makes two important points, both of which agrees with.

First, agrees that the GCCF must determine, based on the evidence submitted, whether the loss claimed actually was caused by injury to property or a natural resource resulting from the spill, and must also determine the amount of actual loss. If it was not, but was instead caused by some other separate factor – such as, for example, alleged adverse public perceptions – then the claim is not covered by OPA and no payment is warranted.

Second, assuming a claimant can substantiate a covered loss, if the amount paid during the emergency program is greater than the actual substantiated loss, the GCCF must use the actual substantiated loss for purposes of applying the future factor. Failure to do so would be inconsistent with the theory underlying the future factor, would result in a payment for losses not shown to be likely to occur, and would result in inconsistent treatment of claimants.

Comments posted on the GCCF website concerning the Proposed GCCF Methodology suggest that there is some confusion regarding the GCCF's proposal to substantiate the amount

of actual loss by comparing the claimant's actual net income from April 20 – December 31, 2010 to the claimant's actual net income during the same period in prior years. Proposed GCCF Methodology at 5. believes that the GCCF's proposed approach is logical, consistent with applicable law and administratively manageable.[8] The Coast Guard, when adjudicating claims filed with the Oil Spill Liability Trust Fund, looks to the claimant's earnings in prior years to calculate actual loss. 33 U.S.C. § 136.233. This type of methodology is widely accepted by courts. *See, e.g.*, *Lavigne v. J. Hofert Co.*, 431 So. 2d 74, 76 (La. Ct. App. 1983) ("A commonly accepted method of proving lost profits is by calculating profits for similar sales during other periods of time and using such calculations as a basis for estimating lost profits for the period in question."). It is also consistent with the well-established legal principle that lost profits must be shown with "reasonable certainty." *See, e.g.*, *MKR Svcs., L.L.C. v. Dean Hart Constr., L.L.C.*, 16 So. 3d 562 (La. Ct. App. 2009); *Holt v. Bethany Land Co.*, 843 So. 2d 606 (La. Ct. App. 2003).[9] *See also, e.g.*, *S. Port Marine, LLC v. Gulf Oil Ltd. P'ship*, 234 F.3d 58 (1st Cir. 2000) (OPA case applying comparable standard); *In re Seaboats, Inc. v. Alex C Corp.*, Nos. 01-12184-DPW, 01-12186-DPW, 00-12500-DPW, 2003 WL 203078 (D. Mass. Jan. 30, 2003) same). Mere speculation or conjecture will not support an award. *See Miller Indus. v. Caterpillar Tractor Co.*, 733 F.2d 813, 822 (11th Cir. 1984) (applying federal maritime common law); *In re Discount Cigarette, Cigars, Etc., Inc.*, 399 B.R. 605, 617-18 (M.D. La. 2009).

---

[8] The April 20 - December 31 period, rather than an entire year, is appropriate, because only losses resulting from and due to the oil spill, which began on April 20, are compensable. Moreover, to the extent a claimant's income during the period January 1 - April 19, 2010 exceeded their income in the same period in prior years, the proposed methodology does not harm them. In fact, it benefits them: by comparing only the relevant time periods, rather than entire years, it avoids reducing a claimant's demonstrated loss by the amount of their relatively higher income during early 2010.

[9] The law of other Gulf states is in accord with Louisiana law regarding the standards for proof of actual damages. *See, e.g.*, *Levitt-Ansca Towne Park P'ship v. Smith & Co.*, 873 So. 2d 392, 396 (Fla. Dist. Ct. App. 2004); *Sostchin v. Doll Enters., Inc.*, 847 So. 2d 1123, 1128 (Fla. Dist. App. Ct. 2003); *Morris Concrete. v. Warrick*, 868 So. 2d 429, 440 (Ala. App. 2003).

The Proposed GCCF Methodology meets the "reasonable certainty" standard insofar as it relies on objective, past data to determine actual losses. In contrast, using anything other than actual experience for a baseline – such as projected revenues – would risk violating the "reasonable certainty" requirement and significantly complicating the claims review process. Any projection or adjustment of actual data inevitably introduces elements of judgment and subjectivity into the analysis. Courts require that the reliability and reasonableness of such judgments and assumptions must be rigorously scrutinized, typically through an adversarial process that includes examination of such factors as: "(1) whether the technique has been tested, (2) whether the technique has been subjected to peer review and publication, (3) the potential error rate, (4) the existence and maintenance of standards controlling the technique's operation, and (5) whether the technique is generally accepted in the relevant scientific community." *Gallagher & Co. v. Babcock*, No. 08-185, 2011 WL 121889, at *2 (E.D. La. Jan. 10, 2011) (relying on *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999)). The required rigorous analysis would open an administrative Pandora's box, adding needless delay and complexity to claims processing as the GCCF sought to avoid payment of speculative damages by undertaking a thorough and individualized evaluation of the reliability of the data and methodology underlying any projection for each and every claimant. Moreover, undertaking such a complex, uncertain process would inevitably create the risk of inconsistent standards or treatment of claimants.

For these reasons, the GCCF's proposed general approach for most claimants of comparing 2010 income for the period from April 20, 2010 through December 31, 2010 to income for the same period in prior years is appropriate. To the extent the GCCF may be willing to permit claimants to present evidence establishing that a comparison to similar periods in prior years does not substantiate their actual losses with "reasonable certainty," and that an alternative

methodology does so, the GCCF would have to review rigorously the alternative methodology and apply it only if the GCCF concludes that the methodology estimates compensable losses with "reasonable certainty."

II. THE GCCF'S PROPOSAL TO PAY MOST CLAIMANTS AN ADDITIONAL AMOUNT OF 100 PERCENT OF ACTUAL DEMONSTRATED 2010 LOSSES, IN ORDER TO TAKE ACCOUNT OF POTENTIAL FUTURE LOSSES, IS NOT SUPPORTED BY PUBLICLY AVAILABLE ECONOMIC DATA AND SHOULD BE REDUCED.

A. Relevant Legal Standards Require That Any Final Payment Including Compensation For Expected Future Losses Must Be Based On A Reliable Methodology That Is Well-Supported By Data And Not Speculative.

OPA § 2702 provides for recovery of actual "loss," not speculative future losses. As the Coast Guard's regulations make clear, compensation under OPA "is limited to the *actual* net reduction or loss of earnings or profits suffered." 33 C.F.R. § 136.235 (emphasis added). Future losses, like past losses, must be proven with reasonable certainty. *See, e.g.*, *White Haute, LLC v. Mayo*, 38 So. 3d 944, 953 (5th Cir. 2010).[10] To achieve such reasonable certainty, any methodology for projecting likely future losses, including the future losses factor, must be solidly grounded in the relevant data to produce a "sufficiently reliable" projection. *See, e.g.*, *Paz v. Brush Engineered Materials, Inc.*, 555 F.3d 383, 388 (5th Cir. 2009); *Vekic v. Wood Energy Corp.*, No. 03-1906, 2004 WL 2367732, at *3-4 (E.D. La. Oct. 20, 2004) (finding future loss evidence on oyster leases unreliable because it was not based on sufficient facts or data or reliable principles and methods); *see also, e.g.*, *R & R Int'l, Inc. v. Manzen, LLC*, No. 09-60545, 2010 WL 3605234, at *8, *11 (S.D. Fla. Sept. 12, 2010) (holding that under the *Daubert* standard, proffered expert's analysis of future lost profits was unreliable); *Young v. Brand Scaffold Svcs., LLC*, No. 1:07-CV-917, 2009 WL 4674053, at *4-5 (E.D. Tex. Mar. 16, 2009).

[10] *See also Whitby LLC v. Infinity Radio Inc.*, 951 So. 2d 890, 899-900 (Fla. Ct. App. 2007) (reversing award of lost future profits where five-year time horizon was selected arbitrarily).

B. The Sources Relied Upon By The GCCF And Other Available Reliable Data Do Not Support The Proposed Factor Presuming A Two- To Three-Year Recovery.

The GCCF's Proposed Methodology adopts a future loss factor for most claims of 1.0 times actual demonstrated 2010 losses, assuming future losses in 2011 equal to 70% of actual demonstrated 2010 losses and future losses in 2012 equal to 30% of actual demonstrated 2010 losses. Thus, the proposed methodology assumes both (1) that full economic recovery will not occur until the end of 2012, and (2) that the GCCF's proposed future loss factor is a reasonable measure of the likely future loss to claimants.

But the available economic data do not support either of these assumptions. To the contrary, as explained below, both data cited in the report of the GCCF's own expert, ARPC, and other publicly available data indicate a strong recovery.[11] There is, therefore, no factual support for the GCCF's proposed future loss factor.

1. Currently Available Data Evidence A Strong Recovery In The Gulf Region.

The recovery period projected by the GCCF is at odds with its own finding that a "[t]here is evidence of a strong recovery underway" and the currently available data concerning economic performance in the Gulf.[12] Much of the current data are acknowledged and set forth in the appendices to the Proposed GCCF Methodology but is not actually reflected in the methodology itself.

---

[11] references to the ARPC Report below are not intended as, and do not reflect, an endorsement of all of its findings. point simply is that the GCCF's proposed future loss factor is not supported by the data and analysis provided by the GCCF's own experts.

[12] Proposed GCCF Methodology at 4. None of the comments submitted to the GCCF and posted to the GCCF's website as of February 14 cited any analytical data calling into question the GCCF's finding of "evidence of a strong recovery underway."

With regard to fishing, approximately 99.6% of previously closed federal fishing grounds have been reopened.[13] All state waters are reopened except for 1.5% in Louisiana.[14] The federal government has concluded that Gulf seafood is safe. For example, when NOAA reopened certain fishing grounds in November 2010, it reported:

> NOAA sampled this area between August 31 and November 1 for finfish and shrimp, including tuna, swordfish, escolar, and royal red shrimp. Sensory analyses of 286 finfish samples and 55 shrimp samples and chemical analyses of 207 finfish samples in 33 composites and 50 shrimp samples in nine composites followed the methodology and procedures in the reopening protocol, with sensory analysis finding no detectable oil or dispersant odors or flavors, and results of chemical analysis for oil-related compounds and dispersants well below the levels of concern.[15]

According to data published by NOAA's National Marine Fisheries Service, December 2010 was the most successful December in the last five years in terms of the volume of Gulf shrimp harvested:

Shrimp Landings (All Species, Headless, Thousands of Pounds)

	FL (W.C.)	AL	MS	LA	TX	Total
December 2010	519.3	888.0	354.8	5,175.2	3,776.8	10,714.2
December 2009	371.3	771.0	424.6	1,707.5	3,487.7	6,762.0
December 2008	721.1	776.0	236.9	2,584.5	2,620.2	6,938.7
December 2007	477.5	792.0	251.1	3,160.1	3,592.1	8,272.8
December 2006	485.0	696.0	218.0	3,236.0	3,916.0	8,551.0

Not only were shrimp landings at historic levels, prices were also high, showing that there is a demand for Gulf seafood. December 2010 prices for shrimp were as follows relative to December prices in the previous four years:

---

[13] For shrimping, the figure is approximately 98.3%.

[14] *See* ARPC Report (Att. C to Proposed GCCF Methodology) at 3, 5.

[15] Press Release, NOAA Reopens More Than 8,000 Square Miles in the Gulf of Mexico to Fishing (Nov. 15, 2010), *available at* http://www.noaanews.noaa.gov/stories2010/20101115_reopening.html (last accessed Feb. 7, 2011).

Shrimp Ex-Vessel Price (Average Dollars Per Pound, Headless)[16]

	Eastern Gulf (Florida West Coast Ports)				
	December 2006	**December 2007**	**December 2008**	**December 2009**	**December 2010**
UN/15	7.00	6.55	7.00	6.75	7.80
15/20	5.80	5.60	6.70	5.10	6.85
21/25	4.45	4.10	4.00	3.80	5.05
26/30	3.80	3.40	3.10	2.85	4.30
31/35	3.15	2.80	2.45	2.50	3.50
36/40	2.60	2.00	2.00	2.40	3.10
41/50	2.00	1.45	1.45	2.00	2.30

	Northern Gulf (Alabama, Louisiana, and Mississippi)				
	December 2006	**December 2007**	**December 2008**	**December 2009**	**December 2010**
UN/15	4.30	5.65	5.65	3.85	6.35
15/20	3.30	4.40	4.05	3.30	5.60
21/25	3.10	3.75	3.00	2.75	4.40
26/30	2.85	3.10	2.60	2.20	3.80
31/35	2.30	2.35	2.40	1.85	3.00
36/40	2.10	2.15	2.30	1.70	2.50
41/50	2.00	2.00	2.20	1.45	2.10

	Western Gulf (Texas Ports)				
	December 2006	**December 2007**	**December 2008**	**December 2009**	**December 2010**
UN/15	4.45	5.70	5.25	5.70	7.45
15/20	3.20	4.95	3.90	2.95	5.85
21/25	2.85	4.10	3.30	2.40	5.00
26/30	2.70	3.45	2.80	2.35	4.30
31/35	2.25	2.65	2.65	1.85	3.35
36/40	1.85	2.35	2.50	1.45	2.35
41/50	1.50	2.10	2.25	1.35	2.15

[16] *See* NOAA Fisheries Service December 2010 Shrimp Statistics, http://www.st.nmfs.noaa.gov/st1/market_news/doc45.txt (last accessed Feb. 7, 2011).

And, still further, imports of foreign shrimp to the United States are in the same range as in past years, thereby dispelling speculation that Gulf shrimpers might lose market share to their foreign competitors as result of the oil spill:

U.S. Shrimp Imports by Type of Preparation (Thousands of Pounds)[17]

	January - November 2006	January - November 2007	January - November 2008	January - November 2009	January - November 2010
Shell-On, Headless	515,058.5	477,567.1	500,197.3	450,102.2	454,282.1
Peeled	560,550.4	564,853.8	555,471.0	574,207.9	575,349.9
Canned	3,941.8	3,392.9	2,544.1	3,137.1	3,024.7
Breaded	98,040.8	73,148.6	77,015.5	74,288.4	82,945.9
Total	1,177,591.5	1,118,962.4	1,135,227.9	1,101,735.6	1,115,602.6

In short, these data support the conclusion that shrimpers are not as a general matter incurring continuing losses as a result of the spill.

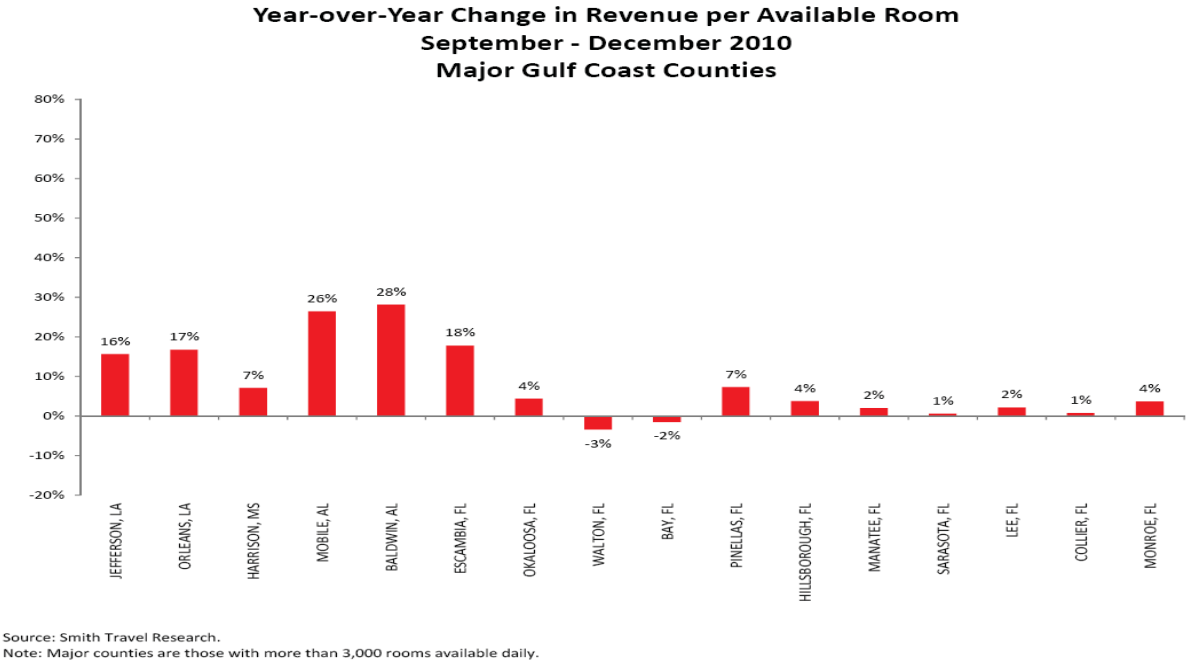
The actual economic data regarding tourism likewise supports the conclusion of a significant recovery in those areas that were impacted in the first instance. ARPC, the GCCF's consultant, concluded that, where spill-related impact had occurred, during the fall of 2010 there was a "significant recovery" for both lodging and tourism. ARPC Report at 9 (Att C to Proposed GCCF Methodology). For example, ARPC ordered Smith Travel Data for all Smith Travel-reporting hotels within one mile of the Gulf, which ARPC defined as "beachfront." ARPC concluded that, during the September - October 2010 period, reporting hotels within a mile of the Gulf experienced an increase in revenues across the Gulf as compared to September - October 2009.

[17] *See* NOAA Fisheries Service December 2010 Shrimp Statistics, http://www.st.nmfs.noaa.gov/st1/market_news/doc45.txt (last accessed Feb. 7, 2011).

Percentage Change In Revenue
For Smith Reporting Beachfront Hotels in September-October 2010
As Compared to September-October 2009[18]

Region	Revenue Growth Rate
Florida Panhandle	1.0%
Florida West Coast	8.9%
Alabama	15.1%
Mississippi	8.1%

A review of Smith Travel Research hotel data reporting the standard revenue-per available room (RevPAR) metric on a county-by-county basis similarly shows recovery. The following chart shows, for hotels reporting to Smith Travel, the percentage change in revenue per available hotel room for September – December 2009 compared to the same period in 2010.



Source: Smith Travel Research.
Note: Major counties are those with more than 3,000 rooms available daily.

Other data further illustrate that the Gulf tourist economy remains strong. For example, sales tax receipts in Gulf coastal counties during the fall 2010 months for which data are available[19] are generally at the same level or higher than the same period in 2009:

[18] ARPC Report at 10 (Att. C to Proposed GCCF Methodology).

[19] As reflected in the charts, the fall months for which data are available differ by state.

Florida Sales Tax Percentage Change Between 2009 and 2010[20]

	January-April 2010	May-August 2010	Sep.-Nov. 2010
Panhandle Coast Counties	1.4%	-3.7%	7.4%
West Coast Counties	-0.3%	1.6%	4.0%
East Coast Counties	1.2%	1.6%	5.3%

Alabama Sales Tax Percentage Change Between 2009 and 2010[21]

	Jan.-April 2010	May-Aug. 2010	Sep. 2010
Coastal Counties	4.7%	2.2%	9.9%

Mississippi Sales Tax Percentage Change Between 2009 and 2010[22]

	Jan.-April 2010	May-Aug. 2010	Sep.-Oct. 2010
Coastal Counties	-6.6%[23]	-1.4%	-2.5%

Louisiana Sales Tax Percentage Change Between 2009 and 2010[24]

	Jan.-April 2010	May-Aug. 2010	Sep.-Oct. 2010
Coastal Parishes (Counties)	-9.66%	1.40%	8.23%

The economic performance of Gulf coast counties in recent months evidences a strong recovery that can be expected to continue. For example, the Mobile, Alabama *Press-Register* has reported that Gulf Shores, Alabama officials believe that their strong "snowbird" winter

[20] Source: Florida Department of Revenue (http://dor.myflorida.com/dor/taxes/colls_from_7_2003.html). Months refer to dates when taxable sales took place.

[21] Source: Alabama Department of Revenue (Sales Tax Statistics). Months refer to dates when taxable sales took place.

[22] Source: Mississippi Department of Revenue (http://www.dor.ms.gov/info/stats/salestaxcol.html). Months refer to dates when taxable sales took place.

[23] The decline in tax revenues for Mississippi coastal counties for the period January - April 2010 all is attributable to declines in the first quarter of 2010, before the oil spill starting on April 20, 2010, and therefore is not attributable to the spill.

[24] Source: Louisiana Department of Revenue. Months refer to dates when taxable sales took place.

season will result in healthy tourism later in 2011, as snowbirds return north and report on favorable beach conditions.[25]

The data also show that some areas of the Gulf actually experienced increased economic performance following the oil spill by comparison to prior years, a fact that is at odds with presuming ongoing spill-related loss. For example, a recent article in the New Orleans *Times-Picayune* states:

> The city of New Orleans and neighboring parishes are experiencing an economic boom in the wake of last spring's oil spill. Hotel occupancy and sales tax revenues are way up in the New Orleans area, and local leaders have been placed in the awkward position of acknowledging that they have BP to thank for increasing tourism profits.[26]

This economic uptick in New Orleans is borne out by the data. Hotel revenues per available room in Orleans Parish for the fourth quarter 2010 were 17% higher than for the same period in 2009. *See supra* p. 15. Likewise, the *Times-Picayune* article reports that tourism sales tax receipts for Orleans Parish during the fall of 2010 were over 30 percent higher than in 2009.[27]

ARPC also found that Mississippi coastal counties experienced increased economic performance following the spill. During the period June-August 2010, hotel, restaurant, and bar gross sales were for the most part higher than for similar periods in 2009.[28] ARPC Report at 13 (Att. C to Proposed GCCF Methodology). Similarly, according to ARPC, sales tax generation in the Mississippi Coast Counties increased in the months following the spill. *Id.* at 8.

---

[25] David Ferrara, "Counting on Snowbirds: Winter Visitors Key test at Gulf," *Mobile Press-Register* (Dec. 31, 2010).

[26] David Hammer, "Oil Spill Delivers Mini-Boom for N.O. Economy," *The Times-Picayune* (Jan. 16, 2011).

[27] Hammer, *supra* n. 26. The same article reports that nearby Plaquemines Parish also experienced a sizeable increase in sales tax revenue.

[28] In the one instance where there was a decrease – Jackson County bars – a similar decrease occurred during the pre-spill period of 2010.

A recent report released by the federal government's Operational Science Advisory Team ("OSAT") reported favorably regarding water quality in the Gulf. It found that:

- There were no exceedances of EPA Human Health Benchmark in water samples (>5000 samples);
- There were no exceedances of dispersant benchmarks in water samples (>4500 samples; very few detects);
- There were no exceedances of PAHs post 3 August in water/sediment that were consistent with MC252 oil (>5000/>1000 samples); and
- No deposits of liquid-phase MC252 oil were identified in sediments beyond the shoreline.[29]

2. The Report Of The GCCF's Fisheries Expert Supports The Conclusion Of A Prompt Recovery.

The report of the GCCF's fisheries expert, Dr. John W. Tunnell, Jr. of Texas A&M University, while recognizing the inherent difficulty of predicting the future and potential unknown risks, is consistent with the conclusion of recovery of Gulf fisheries in 2011, with the limited exception of certain oyster beds destroyed by oil or fresh water.

- The Tunnell Report states that scientists recorded "an increase in abundance of four times for shrimp" after the Oil Spill and that "shrimp are not only present but very abundant during fall 2010." Tunnell Report (Att. D to Proposed GCCF Methodology) at 25. It concludes that "if potential impact scenarios stated above have not significantly impact[ed] 2010 shrimp populations, it is believed that shrimp catches for the brown, white, and pink shrimp in the northern Gulf of

[29] Operational Science Advisory Team, *Summary Report for Sub-Sea and Sub-Surface Oil and Dispersant Detection: Sampling and Monitoring* (Dec. 17, 2010).

Mexico will likely continue along the same harvest trends in recent years by 2011, and even more likely by 2012." *Id.* at 25-26.

- The Tunnell Report states that "blue crab populations do not appear to have been significantly impacted by the [Deepwater Horizon] oil spill, and because they are a highly reproductive species with widespread distribution throughout the region, it is believed that their population levels will likely continue along the same harvest trends in recent years in 2011." *Id.* at 28.[30]
- The Tunnell Report concludes that "oysters in most areas of the northern Gulf will likely continue along the same harvest trends in recent years in 2011." *Id.* at 38. Only reefs affected by freshwater diversion and flooding, or oiling, are likely to experience a longer recovery period. *Id.*
- The Tunnell Report concludes that "commercial finfish are not believed to have been significantly impacted by the [Deepwater Horizon] oil spill, except with the possibility of those in the floating fish egg stage. . . . If recruitment classes were normal in 2010 [i.e., if eggs were not negatively affected for some species], then, the fishery will likely continue along the same harvest trends in recent years during 2011." *Id.* at 38.

3. The Oxford Economics Report Does Not Provide A Credible Basis For The GCCF's Proposed Future Losses Factor.

The report of the GCCF's consultant, ARPC, makes clear that it relies heavily on an analysis of purported recovery patterns for other major disasters prepared by Oxford Economics

[30] With respect to both crabs and shrimp, the Tunnell Report notes the possibility that some local populations may be reduced temporarily to the extent nursery ground coastal marshes were affected by oil or dispersants; but it does not conclude either that this is likely or that these local impacts will affect the overall population trends. *Id.* at 26, 28.

for the U.S. Travel Association. *See* ARPC Report at 31 (Att. C to Proposed GCCF Methodology). However, the Oxford Report does not provide a reliable basis for predicting economic recovery in the Gulf region.

Moreover, there are many other reasons why the Oxford Report does not provide a reliable basis for predicting how long economic recovery in the Gulf region has required and will require. The most significant among these are that:

- The undated Oxford Report, which was likely prepared in July 2010, prior to the end of the oil spill, relies on incomplete and outdated information and speculation about the scope of the spill that has proven incorrect.

- The Oxford Report does not identify the data sources upon which it relies, nor explain its methodology.

- To the extent the Oxford Report cites to sources purporting to support its assertions, their reliability is questionable. For example, the Report relies in part upon page view counts for TripAdvisor, a website containing traveler reviews of dining, lodging, and tourist attractions, to support the assertion that "travel intentions are down significantly for the Gulf." *Id*. at 6. But TripAdvisor is not considered a reliable source within the hospitality industry because it is not a reliable indicator of *actual* travel.

- The Oxford Report relies on selective, unsuitable comparisons to predict a recovery period for the Gulf.

    - <u>Inappropriate and selective oil spill comparisons.</u> Oxford states that the average recovery period for tourism revenues to reach prior visitor spending peaks after prior spills was <u>18 months, with a range of 12-28 months</u>. Thus, even if one credited the accuracy of the Oxford analysis (and we do not), and even if one assumes that the spending "peak," rather than average spending, is the proper benchmark, it does not support a three-year recovery period. Moreover, the Ixtoc and *Exxon Valdez* oil spills cited in the Report are not comparable. Ixtoc occurred more than 30 years ago, when spill handling technology was far less advanced, and continued unabated for 10 months. It covered a far larger area of the Gulf

than the Deepwater Horizon and oiled more than three times as many linear miles of shoreline.[31] *Exxon Valdez*, unlike the Deepwater Horizon spill, involved heavy crude and a cold-water remote location that hindered clean-up -- and, even then, the purported recovery period was two, not three years. Not only have there been numerous technological advances since those spills occurred, but today's consumers have access to the internet and other media, allowing them instant and regular updates on local conditions. The Oxford Report also ignores other oil spills, including the 1993 Tampa Bay spill and the 2000 Port Sulfur, LA spill that did not result in significant long-term impacts on tourism or recreation.

- Other comparisons. Hurricane Katrina is an inapposite comparison because it involved extreme damage to infrastructure, such as roads and buildings, that is absent here. The Oxford Report indicates that all of the other hurricanes cited by Oxford had much shorter recovery periods. *Id.* at 12. Terrorism and the SARS pandemic flu outbreak similarly are unsuitable comparisons, as they involve ongoing concerns about personal safety that do not exist months after the Oil Spill. Moreover, even if they were comparable, the Oxford Report reflects average impact duration of 10 months, with a range of 9-12 months.

These flaws, taken together, undermine the Oxford Report's projected recovery period of 15 to 36 months set forth on page 14.

C. If The GCCF Adopts A Future Losses Factor, It Should Be Lower.

A fair reading of the publicly available data and the GCCF's own expert reports supports the GCCF's finding that "[t]here is evidence of a strong recovery underway." It does not support the GCCF's view that the risk of potential future loss is great enough to support a future loss factor of 1.0. Currently available data suggest that most claimants will not continue to incur spill-related loss. For example, nearly all fishing grounds are open, and December 2010 shrimping data show a successful industry with high landings and high prices. Dr. Tunnell's report supports likely recovery for most fisheries during 2011. Similarly, hotel data show that, on both a beachfront and county-wide basis, the Gulf hospitality industry is strong. Some whole

[31] *See* Tunnell Report at 19-20.

regions, such as the City of New Orleans, appear to have experienced a net economic gain following the spill.

The mere possibility that – contrary to current indications – recovery from the Oil Spill's impact may proceed more slowly than expected cannot justify adoption of an artificially inflated future loss factor. The Proposed GCCF Methodology incorporates mechanisms that protect claimants against any such risk. It provides that the GCCF will review newly available data every four months and adjust the proposed future losses factor as necessary. Proposed GCCF Methodology at 4, 7. It further provides that the GCCF will apply any such revised factor to final claims submitted from the date the new factors are announced and also to any pending, fully documented but not yet evaluated final claim if the new future losses factor is higher than the factor applicable at the time the claim was submitted and fully documented. *Id.* Moreover, since the Proposed GCCF Methodology permits claimants to seek Interim Payments rather than Final Payments, claimants who believe that the future losses factor is low may pursue the Interim Payment option.[32] Thus, for example, if fishing industry claimants believe that the possibility of harm to certain fish spawning grounds identified by Dr. Tunnell creates a likely, significant risk to fishing stocks and revenues – a conclusion he does not reach – they may protect against this risk by electing to seek Interim Payments. Taken together, these mechanisms amply protect claimants against any risk that the future losses factor may ultimately turn out to have underestimated the time to full recovery.

recognizes that predicting the future is an inherently difficult and uncertain task, and that no one can say – with respect to the oil spill or any other event – that there is absolutely no risk of future harm. also recognizes the benefits to all parties of a settlement process that will

[32] Claimants dissatisfied with the GCCF's final claims offer also retain the options to appeal, file a claim with the Coast Guard, and/or pursue litigation. *See* note 4 above.

enable them to avoid the burden, expense, uncertainty and delay of litigation. Therefore, notwithstanding the current data regarding recovery, should the GCCF conclude that a future factor is appropriate for purposes of claims resolution, believes that, solely for purposes of the GCCF settlement process, it would be appropriate for the GCCF to use a future factor in the range of 0.25 – 0.50 (or 25% -50%) of a claimant's actual 2010 substantiated loss.

D. The Proposed Factor For Certain Oyster Harvesters Improperly Assumes That Is Responsible For Alleged Impacts to Oyster Beds.

The Proposed GCCF Methodology states that

> The experts anticipate that individuals and businesses engaged in harvesting oysters destroyed as a result of the Oil Spill, or due to the diversion of fresh water into the Gulf in reaction to the Oil Spill, will likely require a longer recovery period than that experienced by other claimants . . .. Accordingly, the Final Payment Offer for those claimants will be equal to an amount four times the actual documented losses in 2010.[33]

does not oppose the use of an enhanced multiplier if it is established that a given oyster bed was oiled with MC252 oil and as a result must be reseeded. However, alleged damage to oyster beds caused by the State of Louisiana's diversion of fresh water from the Mississippi River into the Gulf is not compensable under OPA because it was not caused by the oil spill. *See* 33 U.S.C. §§ 2702(a), (b). Such damage was not caused by MC252 oil, and thus is not compensable by the GCCF.[34]

Importantly, some senior Gulf state environmental officials have determined that oyster bed damage in certain areas of the Gulf was caused by unusually high water temperatures, not by MC252 oil or by the fresh water diversion. Specifically, Dr. Bill Walker, the Executive Director

[33] Proposed GCCF Methodology at 6 (underlining in original).

[34] Even if damage caused by the fresh water diversion were compensable, it is important to note that the diversion had a limited zone of impact. Thus, no claimant in Florida or Alabama could qualify for the enhanced multiplier. And any other claimant in Louisiana and Mississippi would have to establish that the reef in question was destroyed by the fresh water diversion.

of the Mississippi Department of Environment, testified before the National Oil Spill Commission: "Oysters in Mississippi have suffered above normal mortalities, we think primarily due to extended periods of very hot water and depressed dissolved oxygen levels. We have no scientific evidence to support oyster mortalities due to the presence of oil material." Testimony of Dr. Bill Walker, National Oil Spill Commission at 152 (Sept. 28, 2010).

The fact that there are multiple potential causes of damages to oyster beds highlights the need for careful assessment of the issue of causation for each and every claim.

III. THE $500,000 THRESHOLD FOR INDIVIDUALIZED EVALUATION OF FUTURE LOSS RISK IS TOO HIGH.

also submits that the $500,000 threshold for applying an individualized evaluation of the proper future factor is too high. The threshold should be set at $100,000. understands the administrative desire to increase efficiencies in the GCCF claims settlement process where possible, including addressing the risk of potential future losses by applying a single multiplier to many claims. It must be recognized, however, that not all claimants will face the same – or indeed, any – risk of future loss. A lower threshold providing for individualized review in more cases will assure that any payment in respect of the risk of future loss is properly calibrated to the actual risk, if any.

CONCLUSION

For all of these reasons, respectfully requests that the GCCF revise the Proposed GCCF Methodology consistent with the comments set forth above.

February 16, 2011

Mr. Kenneth Feinberg
Gulf Coast Claims Facility

Dear Mr. Feinberg:

Thank you for the opportunity to provide comments to the draft proposal of Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology, dated February 2, 2011 (the "Proposed Rules"). Though my office requested an advance copy of the Proposed Rules to review, your office did not provide one.

As you and I have discussed previously, the Gulf Coast Claims Facility ("GCCF") process must be transparent and responsive to the needs of those individuals and businesses harmed as a result of the Deepwater Horizon Oil Spill (the "Oil Spill"). After reviewing the Proposed Rules, I have several concerns to bring to your attention:

1. ***Causation Standard****:* The Proposed Rules do not use the Oil Pollution Act ("OPA") standard of causation for the determination of damages. Despite numerous face-to-face discussions with you and your staff regarding this issue, the Proposed Rules continue to require claimants to prove a "direct" link between the oil spill and the claimed losses. Under OPA, BP is required to compensate for damages that arise "as a result of" the Oil Spill—a point recently reiterated to you by the United States Department of Justice. Yet, the GCCF's standard for causation seems to be constantly evolving—yet never explicitly defined. More importantly, your interpretation of "direct" causation has never matched what is required of BP under OPA in form and substance. The Proposed Rules should adhere to the OPA terminology, and the evaluation of claims by the CGGF must use the OPA "as a result of" standard, not a more stringent direct causation standard.

Let me stress the importance of this issue. The causation standard for evaluating damage claims has been the number one topic of GCCF complaints directed to my office. We have heard instance after instance of claims being denied because the GCCF found no "direct" link between the Oil Spill and the damages incurred. Even entire industries, such as the title company industry, had claims denied outright based on the GCCF's use of a much too narrow causation standard—again, a standard the Justice Department has eschewed. The final rules adopted by the GCCF must address this problem by following the mandates set forth in OPA and working to compensate for damages instead of summarily denying claims.

2. ***Transparency***: The Proposed Rules do not include provisions that ensure that the GCCF process is transparent and responsive to the individuals and businesses who file claims. The Proposed Rules should clearly state what information and documentation the GCCF requires from a claimant at the time a claim is filed. If required documentation is missing from a submitted claim, the GCCF should contact the claimant and request such missing items. Should the GCCF deny an Interim or Final Claim, the claimant must be provided detailed reasons for the denial. Denial of claims without providing a reason and without providing a claimant the opportunity to provide additional documentation needed to assess a claim is unacceptable.

3. ***Releases***: I once again renew my objection to your requirement that claimants sign a waiver before receiving a Final Claim payment. As we discussed when you visited my office several weeks ago, the GCCF release form is overly broad, and you are under no obligation to require a release before paying a claim.

Finally, I would again urge you to work with, and be responsive to, the staffs of Congressman Bonner and Senators Shelby and Sessions. The caseworkers in those offices are on the front lines of the oil spill disaster and deal directly with the claimants. Our office has met with you and representatives from your office on several occasions to no avail, and the congressional staffs report similar results. Your promises of responsiveness and consideration are not matching the actions of you and your staff.

My concerns outlined above will be more fully discussed in Alabama's filing this week with Judge Barbier, a filing that will include anecdotal examples illustrating the deficiencies of the current GCCF process. I would appreciate your careful consideration of my concerns and look forward to seeing their incorporation into the final guidelines forthcoming from the GCCF.

Sincerely,

Individual

February 16, 2011

Mr. Kenneth Feinberg
Administrator
Gulf Coast Claims Facility
P.O. Box 9658
Dublin, OH 43017-4958

Dear Mr. Ken:

After hearing from individuals and businesses in my district and throughout Southeast Louisiana, I have many concerns remaining about the Gulf Coast Claims Facility (GCCF) payment process. Please give strong consideration to the following concerns as you review public comments and revise the interim and final payment draft methodology.

Firstly, your draft methodology does not go far enough to reveal the formula used to calculate payments, specifically with regard to how GCCF determines whether losses are directly attributable to the oil spill. Your draft methodology announcement states that "GCCF will evaluate each submission to determine whether a loss was caused by the Oil Spill," but you do not mention how GCCF performs that evaluation. This is particularly concerning considering the recent criticism you received from the Justice Department for using strict industry categories to determine eligible and ineligible payments. I again urge you in the strongest terms possible to publicly state any and all criteria GCCF is using when calculating payments.

Next, any predictions on possible economic recovery of the Gulf Coast used by the GCCF must be subjected to a rigorous peer-review process in order to ensure that those who continue to suffer economic loss in the months and years to come are given proper compensation for all current and future damages. Analysis on predicted recovery should be a constant, on-going process, and I urge you to ensure that you are reviewing predictions of future loss continuously, not every four months as you specify in your methodology.

As part of your repeated promises for continued transparency, I also request that you ensure claimants will receive specific information on why their claim was denied or underpaid when they are notified of their interim or final payment offer. During the emergency six-month payment phase, claimants would, often after weeks or months of waiting, receive notification of payment or denial with absolutely no specifics on how that payment amount was calculated. I urge you to ensure that every notification of payment or denial includes clear, specific information on how the GCCF arrived at their payment decision and amount.

Additionally, I am concerned about the GCCF appeals process. While you repeatedly say that anyone can go to the Coast Guard if they feel that they have been wronged by the GCCF process, the Coast Guard had not overturned a single appeal in over 500 claims as of February 2, 2011. You have established an additional appeal process for those who have been awarded over $250,000 in damages. Yet, those receiving over $250,000 account for less than .02% of individual claimants, and less than 4.34% of business claimants. All claimants deserve a fair chance at a full GCCF appeals process, especially in light of the fact that GCCF has not provided explanations for why claimants are denied or underpaid when claimants are finally notified of their claims status.

I also repeat my request for additional statistics on all submitted and paid claims. You have repeatedly promised complete transparency, yet we still do not have enough information on submitted claims broken down by industry and geography. I again urge you to reveal metrics on both paid and denied claims, broken down by city, state, industry, and job classification, so that the public can be assured that the money is going to the individuals and businesses that have been most directly affected by the spill.

Lastly, I remind you that maintaining a GCCF presence in the Gulf Coast is absolutely essential to ensuring that Gulf Coast residents can speak to someone who can answer straightforward questions about their claim. I urge you to place evaluators in the communities that were most directly affected by the spill. You claimed that you have eliminated over 150 jobs in the Gulf Coast because "it is time to begin to downsize the massive infrastructure which has been part of the payment program." At a time when GCCF is preparing the enormous undertaking of evaluating interim and final payments, this job-shifting out of the Gulf Coast is unjustified. I urge you to ensure that any adjustments in GCCF staffing preserves the essential need for keeping evaluators located in the Gulf region, where communities have been most directly hurt by this disaster.

To conclude, I urge you to remember that the GCCF exists to ensure that victims of this oil spill can be made whole. I repeat my calls for you to move forward in an accountable and transparent way that ensures the Gulf Coast can recover in the quickest manner possible. I appreciate your attention to these concerns.

Sincerely,

Individual

February 16, 2011

Mr. Kenneth Feinberg
Administrator
Gulf Coast Claims Facility

Dear Mr. Feinberg:

Thank you for this opportunity to comment on the proposed Eligibility and Substantiation Criteria and Final Payment Methodology. Incorporating public comments and stakeholder recommendations into the formula before it is finalized is an important component of any public policy, and I appreciate your sincere efforts to develop a fair process. However, it is imperative that the comments are adjudicated in a transparent and expeditious manner that will allow long anticipated interim and final claims to be issued in the coming weeks.

After repeated requests for improved communications with claimants and the network of 12 community-based nonprofits providing technical assistance in Louisiana, I commend you for progress on both fronts. It is my understanding that all interim and final payments will include a detailed breakdown of the award calculation formula, a projected final settlement amount, acknowledgement of documents received, and a single point of contact for the recipient to call with questions or concerns.

While I continue my efforts to secure additional funding for the technical assistance network through BP, I appreciate your recent substantive engagement of this group and designation of GCCF personnel to work with them going forward. The 12 nonprofits providing this technical assistance have a wealth of experience in disaster recovery that will improve and enhance the overall efficiency and effectiveness of the Gulf Coast Claims Facility. I also appreciate your recent outreach efforts and public comments relating to compensation of subsistence claims in communities that have experienced significant losses.

The GCCF's proposed methodology concerns me on two specific fronts: the lack of a formalized, individual assessment of losses for all claims, including those below $500,000; and insufficient accommodation of the inherent uncertainties associated with a recovery of this magnitude. As we have previously discussed, I also believe the appeal threshold of $250,000 for an individual and $500,000 for a business to be unreasonably high.

It is my hope that the methodology will serve as a starting point and that each claim will receive an individually tailored review regardless of size. For example, the methodology proposes

using 2008-2009 numbers to establish historical earnings. With two hurricanes, Gustav and Ike, making landfall in Louisiana in 2008 and shrimp prices falling to unprecedented levels in 2009 in the midst of the recession, these years may not provide an accurate basis for future earnings projections. I urge flexibility in working with claimants to determine a realistic, normalized year. In addition, the sales-based formula for measuring economic impacts fails to quantify immediate impacts on inventories and other assets that are not itemized on a profit and loss statement. Again, it is imperative that this methodology is applied in a responsive and dynamic manner that can accurately address the real losses of various businesses and business models.

Perhaps the single biggest challenge you face is providing a credible and reliable estimate of how long it will take for the Gulf and its dependent industries to return to normal. Dr. Tunnel's opinion represents one perspective, but it should not be construed nor presented as the definitive projection of recovery timelines. Going forward, I recommend establishing a peer review process for any scientific studies used in the award calculation methodology and actively engaging the scientific community in a public, transparent manner. This will foster the kind of substantive dialogue we will need to understand the ramifications of an ecological event of this magnitude.

It is also problematic to rely upon studies that lack economic analysis. Ecosystem recovery doesn't necessarily result in simultaneous market recovery, because consumer perceptions and demand may take longer than the marine environment to rebound. In a study recently commissioned by the Louisiana Seafood Promotion and Marketing Board, 71% of those surveyed in December indicated lingering concerns about the safety of Gulf seafood as a result of the oil spill. The level of concern fell only four percentage points from October 2010 through December 2010, indicating the pervasive damage this spill has done to the Gulf brand. I encourage you to factor brand and market recovery projections into the methodology, in addition to the environmental and ecological data.

Even with the best and brightest scientific minds though, we will never be able to predict with perfect accuracy what will happen in the future, and I believe including some protection against an unpredicted and unforeseen fishery collapse would significantly increase the credibility of the GCCF.

It is my hope that you will find these comments constructive and that they will help you and your team continue to improve the GCCF and its ability to meet the evolving needs of Gulf Coast residents still recovering from the oil spill. I commend you for the important progress already made, but realize, as you do, that much important work lies ahead.

With kind regards, I am

Sincerely,

Business

Gulf Coast Claims Facility
Kenneth R. Feinberg, Administrator
PO Box 9658
Dublin, OH 43017

Via:

Dear Mr. Feinberg,

In response to the Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology posted on February 2, 2011, the would like to submit the following comments:

First, there is no calculation provided for 2010 actual losses, and no formula or specific detail as to how financial loss will be calculated. Full disclosure should be available as to why past claims were denied or why payments were less than expected as this process moves forward. The Alabama Gulf Coast was the economic epicenter of the Deepwater Horizon Oil Spill and our region saw at least one million fewer visitors in 2010 than in 2009. Our businesses deserve to be treated fairly and with respect.

Second, no one knows how long the effects of the oil spill will be felt in regards to the condition, and or the perception, of the beach, water, air and seafood. To arbitrarily assign a two-year projection for a final claim payment fails to provide for a worst case scenario. As additional studies become available, or if tar mats wash ashore leading up to our tourist season or during our tourist season, tourist confidence could continue to disrupt the industry for years to come.

Third, the final claims process fails to provide for documented growth anticipated for 2010 and for the next two to three years. Compensation for upward trending should be included in "true- ups", interim and final claim payments. Also, the Loss of Income (LOI) percentage estimate used in the example calculation should not be used in actual claim calculations where full documentation of actual revenue and expense is provided. (LOI) should be addressed on an individual basis. There is currently no provision for reimbursement of expenses incurred by businesses for documentation and preparation of claims.

Fourth, interim claim payments must be paid in a timely fashion. If an interim claim must be filed documenting 90 days of prior loss, and GCCF has 90 days to pay the claim after receipt, the time span could close a business. Fourteen days should be sufficient to pay a documented claim.

Based on conversations with , we understand that there will be teams of accountants and adjusters here locally that have been empowered to make decisions and authorize payments who will be available to work with individual claimants. We also understand that the new GCCG response will include an assigned adjuster within an industry-specific team of adjusters, who will be the contact from beginning to end for a specific claim; contact information will be provided. Finally, there will be a broader scope of eligibility than in the past, as adjusters look closer at individual situations and are able to better understand our Alabama Gulf Coast businesses and their relationship to the tourism industry.

Sincerely,

Business

February 16, 2011

Gulf Coast Claims Facility
Kenneth R. Feinberg, Administrator
P.O. Box 9658
Dublin, OH 43017-4958

Dear Mr. Feinberg,

After reading the proposed Eligibility and Substantiation Criteria and Final Payment Methodology on the Gulf Coast Claims Facility website and after multiple meetings on February 10, 2011 with GCCF Attorney and GCCF Representative on this topic, the would like to confirm what we think we heard during these meetings relative to the proposed final payment methodology:

1. "**SWAT Teams**," or small teams of accountants and adjusters, will be set up and operational in Alabama by early March of 2011. These teams will work with individual businesses to understand how each business was affected by the oil spill and how this will translate into interim and final claim offers.
2. The name, phone number and email address of **an assigned adjuster** within an industry-specific team of adjusters will be listed on every interim or final claim response for the purpose of claimants being able to contact the adjuster to ask questions or for an explanation of the claim payment.
3. **One size does not fit all.** While broad generalities like a 2x multiplier may work for certain claimants, it will not work for all. For example, businesses in a highly tourism dependant local economy need to be individually considered based on how each loss is related to the oil spill. Examples:
    a. A veterinarian whose income comes in large part from boarding pets from tourists is different from one whose business is based on treating only local pets.
    b. A near-beachfront shopping center owner who loses an ice cream store tenant because the store did not have enough tourist business to sustain it should be eligible for the lost rent.

c. A title company with 70% of its business tied to tourists purchasing real estate ought to eligible.

d. A doctor or emergency room whose business depends on emergency treatment of tourists should be eligible.

4. The **GCCF must 'True-up' 2010 emergency/BP claims** with the final claim or first interim payment to reflect the "true" loss in 2010. This includes getting the business back on the trend line as if the spill never happened.

    a. Currently, the final claims process fails to provide for the documented growth anticipated for 2010 and for missed growth opportunity for the next 2-3 years. For example, in the ARPC study commissioned by the GCCF, Beachfront Hotel revenues increased by 15% in revenue over spring and fall of 2009. Compensation for this trend should be included in the first interim or final claim payments.

    b. The Loss of Income (LOI) percentage estimate used in the example calculation should not be used in actual claim calculations where full documentation of actual revenue and expense is available. LOI % is individual and negotiable.

    c. The claims process needs to provide for the significant expenses incurred by businesses in preparation, filing and documenting claims.

5. **It is essential that the interim claims process be recognized as a critical part of the program.** It is expected to be transparent, fair and consistent, with interim claims being submitted every one to three months and payments made within 14 days of submission. As discussed below, no one knows how long it will be before the area has fully recovered. Any business which is uncertain about the future should have confidence that the interim claim process will work every time.

6. We believe that **the recovery pace in our area will depend on the degree of consumer confidence that the beaches/water/seafood will be safe** when they arrive for their vacation.

    a. The fixed x2 final claim multiplier fails to recognize that beach tourism is just as reliant on a clean environment as seafood harvesting. The rationale which assumes that all will be well in two more years uses a best case scenario, when businesses should be provided with recovery resources from the worst case scenario. For example, the threat of a large tar mat washing ashore during tourist season could destroy tourist confidence and disrupt the industry for additional years to come.

b. The literature referenced in the GCCF methodology discussion fails to include input from noted tourism experts like and others. Most disasters referenced are not related to “beach tourism.”

7. Every claim payment will come from the same pot of money. There is no longer a separate fund set aside for any specific industries, such as Real Estate.

8. As Alabama State Mental Health Director, Dr. Richard Powers, explained, the claims process is responsible for more stress in individuals than the oil spill itself. The GCCF’s constant public discussion on fraud without more than a handful of examples of prosecution further stigmatizes and demoralizes our already frustrated and stressed population. Quit using the word ‘fraud’.

Sincerely,

TO: **Mr. Ken Feinberg and the Gulf Coast Claims Facility**

FROM:

RE: **Response to posted methodologies governing future claims**

DATE: **February 16, 2011**

On behalf of the people of South Mobile County, and for all those whose livelihoods and ways of life were adversely affected by the disaster which claimed 11 lives and effectively shut down the economies of the entire Gulf Coast region, we would like to encourage BP, through the Gulf Coast Claims Facility (GCCF), to continue working to improve the claims process and move closer to fulfilling its promise to once again make our region whole. Numerous things must happen in order for our communities to fully recover and overhauling the claims process is a vital piece of the equation. The newly announced methodologies are a positive step forward but should be improved before being made permanent.

Before delving too far into the specific issue at hand, it is important to note that due to the nature of the economies in South Mobile County, as well as in other areas along the Gulf Coast, most of our industries are interconnected and heavily dependent upon one another. This fact appears to have been neglected by BP and Mr. Feinberg during the Emergency Advance Payment process, as numerous industries, such as religious institutions, doctors' offices, and daycares, to name a few, have been systematically and arbitrarily listed as ineligible to receive just compensation for lost revenues. This approach is wrong and should be corrected going forward. The oil spill had widespread negative affects on nearly every industry in South Mobile County, and each should be given just consideration by BP, through the GCCF.

It is also important to note several other areas of concern as it relates to the effectiveness of the Emergency Advance Payment process.

First, despite what the public has been told by the GCCF - that the claims process has had some hiccups, but that for the most part it has been effective at distributing approximately $3.5 billion to those in need – the reality on the ground does not appear so rosy. According to the GCCF's Overall Status Report as of February 12, 2011 Alabamians have received $560,097,338.94, or 16.4% of the total amount distributed between the affected states (Facility, 2011). Meanwhile, a recent study by the University of Alabama predicts that the oil spill will have cost the Alabama economy between $1 billion and $3.3 billion in 2010 alone (Amy, 2010).

Additionally, the same report indicates that Gulf-wide roughly two thirds of all individuals who sought relief during the Emergency Advance Payment process were denied. When evaluating business claimants, approx 44% of prospective business claims were denied. Overall, a startling 65.51% of all claimants have been denied or are waiting for BP, through the GCCF, to process their respective claims (Facility, 2011). In most situations, notification of denied claims have been delivered with no justification or explanation as to why the claims were denied, nor how the decisions were made.

For the fortunate claimants who received compensation, clear guidelines were not in place to guarantee that the amount paid equaled the amount owed. To be certain, according to the very same report, the GCCF's own numbers indicate that for a six month claim the average amount given to individuals and businesses equaled $8,574 and $33,727, respectively. On a monthly average, this means that individuals received a mere $1,429 per month, while businesses were awarded $5,621 per month (Facility, 2011).

With the aforementioned concerns in mind, the new methodologies for determining future Quick, Interim and Final payments appear to be a positive and constructive step forward. However, the following points should be considered.

First, transparency is key.

Moving forward, the claims methodologies for all payment options should be published and made available to the public. Furthermore, considering the degree to which the new methodologies will impact the lives of thousands throughout the Gulf Coast region and beyond, the names of the "scientific and economic experts" retained by BP, through the GCCF, and their respective affiliations, if any, with BP and other responsible parties for the oil spill, should be published and made available along with the methodologies.

Second, lingering issues must be addressed.

As previously stated, just resolutions should be sought to many of the outstanding questions raised about the Emergency Advance Payment process. Given the flawed nature of how claims were awarded in the past, this is especially important when

considering that according to the new methodologies, future Quick Payment options will only be available to those who received payment under the Emergency Advance Payment period. Furthermore, the Quick Payment option is to be awarded based on a percentage of the past amounts received, rather than the actual damages owed.

Additional consideration on this point is deserved when one calls into question the methodology by which Interim Payments will be addressed. If past problems, which plagued the Emergency Advance Payment methodology are not addressed, what assurances do claimants have that the Interim Payment methodology will not be equally as flawed?

Third, BP, through the GCCF, should continue implementing a more hands on approach to reviewing future claims.

To the GCCF's credit, significant improvements have been made in this field. However, many reports indicate that BP's retained experts have not been able to adequately address the real life situations and needs encountered on a daily basis in South Mobile County. For example, during a recent meeting held in Bayou La Batre with attorneys from Mr. Feinberg's Washington, DC office, members of the GCCF field office and representatives from the Bayou La Batre commercial fishing industry, the statement was made that the experts retained by the GCCF – the same individuals responsible for influencing the methodologies for the ongoing claims process – have had difficulties establishing a method to fairly evaluate the various business models and respective claims of the seafood and related industries, and that this is why so many seemingly obvious and simple claims have been denied.

This is inexcusable. The seafood industry, in ways unlike any other, has been directly and adversely affected by the oil spill. These losses are tangible and can be well documented.

Following this constructive exchange, , the GCCF's lead contact in Alabama, stated that a "SWAT Team" of Mr. Feinberg's key decision makers would visit South Mobile County during the first week of March to evaluate the GCCF's processes and determine why there have been so many problems addressing the needs of such an important industry. Again, to the GCCF's credit, this is a sign of improvement. The industry is hopeful for this opportunity and as has been stated from day one, will warmly welcome anyone who is serious about working to address their needs.

Fourth, the expected time of recovery should be re-evaluated.

Although certain *experts* (emphasis added) predict that a full economic recovery is likely (but not certain) within two to three years from the date of the oil spill, numerous individuals and business owners have publicly stated disagreement with this assessment. These disagreements are based on a number of merits, such as the following:

1) Although the Gulf Coast region is unique and resilient, there are many unknown factors at work in this post spill environment that can and will shape the short and long term economic, environmental and social recovery time frame.

2) In addition to the physical impacts of the spill, public perception and the gulf "brand" has also been damaged for some time to come. This will have a lasting effect on tourism and the gulf seafood industry as a whole.

3) Given the interdependent nature of the economies throughout South Mobile County and along the Gulf Coast, when one industry lags behind in the recovery process, others do as well. Subsequently, as industries are banned from participation in the ongoing claims process, either arbitrarily, or due to an unresolved problem relating to the Emergency Advance Payment process, the region's overall growth and recovery is again slowed.

Fifth, future methodologies should include interest.

Questions have been raised by numerous individuals concerning the fact that past and present methodologies do not take into consideration interest that accrues while victims wait patiently for their respective claims to be processed – a process that often takes up to six months.

According to Attorney General Hood of Mississippi, this is in clear violation of the OPA, which states *the responsible party (BP) is also liable to a claimant for interest on the amount paid in satisfaction of a claim.* In other words, if it takes six months to process and pay a claim, the responsible party (BP) is supposed to also pay interest on "the amount paid" in order to satisfy said claim (Hood, 2011).

In real terms, many businesses operate on a certain amount of credit, and with credit comes interest. Similarly, the longer the $20 billion recovery fund sits in a bank, or investment account, the more interest it will generate. Under these same guidelines, interest should be factored into the claims methodology. Barring this action BP, through the GCCF, will have little incentive to expedite paying future Interim claims. In short, a six month waiting period is unacceptable!

Sixth, there are serious questions surrounding the Final Payment methodology.

On December 16 2010, the Attorneys General from Alabama, Mississippi, Louisiana and Florida issued a joint letter expressing their concern that claimants choosing to accept a final or quick payment are being required to sign an extensive release that

would "bar them from any future recovery for damages caused by the Deepwater Horizon Oil Spill." (General, 2010)

Mississippi's Attorney General, Jim Hood, has taken this concern a step further and released information stating that by implementing this policy BP, through the GCCF, is acting in violation of the Oil Protection Act of 1990 (OPA).

The relevant portions of OPA read as follows:

> § 2715. Subrogation
> (a) In general
> Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other law.
> (b) Interim damages
> (1) In general
> If a responsible party, a guarantor, or the Fund has made payment to a claimant for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, subrogation under subsection (a) of this section shall apply only with respect to the portion of the claim reflected in the paid interim claim.
> (2) Final damages
> *Payment of such a claim shall not foreclose a claimant's right to recovery of all damages to which the claimant otherwise is entitled under this Act or under any other law* (emphasis added) (Hood, 2011).

Due to the speculative nature of estimating a final claim value and the breadth of the GCCF release, the Attorneys General from Alabama, Mississippi, Louisiana and Florida strongly recommended that all claimants thoroughly review their particular circumstances and or consult legal advice before accepting a Final or Quick Payment and waiving any and all legal rights going forward.

In closing, it has been written, *"no man can serve two masters. For either he will hate the one and love the other, or he will be devoted to one and despise the other."*

Given the recent New Orleans court ruling by Judge Carl Barbier which found that Mr. Feinberg is not an independent mediator as has been claimed, but that he has numerous obligations to consult and provide information to BP while administering the company's $20 billion recovery fund, this verse appears to bear new merit. Nevertheless, we believe Mr. Feinberg and his people *can* do better, and we expect that they will.

We further believe the Federal Government has a significant role to play in the ongoing recovery and call on President Obama and the appropriate parties to expedite the process of assessing fines and distributing those funds throughout the gulf coast region in order to restore and rehabilitate the environment and local

economies in a timely fashion. We expect a full recovery, and look forward to working with BP, through the GCCF, as well as state and federal agencies in order to implement an expedited, transparent and fair claims process.

Thank you for the opportunity to publicly voice our concerns. We hope the information shared will be taken into consideration as Mr. Feinberg and his team make the necessary changes to the drafted methodologies for future payments.

February 16, 2011

Gulf Coast Claims Facility
Kenneth F. Feinberg, Administrator
5151 Blazer Pkwy.
Suite A
Dublin, OH 43017

VIA EMAIL: MethodologyComments@gccf-claims.com

RE: Public Comments on Gulf Coast Claims Facility Payment Methodology

Dear Mr. Feinberg:

The purpose of this letter is to submit comments on the proposed Gulf Coast Claims Facility (GCCF) Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology, published on February 2, 2011. The BP Deepwater Horizon explosion on April 20, 2010 claimed 11 lives, and resulted in the largest accidental marine oil spill in history, in one of the most ecologically and economically important bodies of water in the world.[1] The unprecedented 87-day spill pumped over 200 million gallons of oil into the Gulf of Mexico, and in response, some 1.84 million gallons of chemical dispersants were deployed, potentially compounding the impact of the BP Oil Spill to the Gulf. The damage that individuals and businesses in the region have suffered as a result of the BP Oil Spill is undeniably an urgent concern. Thus, I request that you consider and address these comments in your efforts to develop a credible and fair payment program.

Comment Period Should Be Extended to 30 Days

The comment period for the payment methodology is remarkably brief, from February 2, 2011 through February 16, 2011. A two-week comment period for this matter, which will likely involve billions of dollars being paid to thousands of individuals and businesses throughout the Gulf region, is abbreviated, to say the least. In addition to evaluating a complex methodology for estimating past and future damages, stakeholders must also review and consider two expert reports involving biological and economic projections that form the basis of the methodology. Standard comment periods for items published the Federal Register range from 30 to 90 days. While I appreciate that expediting the claims payment process is a priority, I do believe that a public comment period should

[1] John W. Tunnell, Jr., "An Expert Opinion of When the Gulf of Mexico Will Return to Pre-Spill Harvest Status Following the BP Deepwater Horizon MC 252 Oil Spill," January 31, 2011 ("The Tunnell Report").

Accommodations for individuals with disabilities, including assistive listening systems, interpreters, and materials in alternate formats, may be arranged by contacting the Committee in advance of the scheduled event (4 business days notice is requested) at voice (202) 226-2616; TTY 202-225-1904; fax (202) 226-4499; or H2-176 Ford House Office Building (HOB), Washington, D.C. 20515-6480.

be extended to at least 30 days to prevent stakeholders from being denied a meaningful opportunity to provide their input on GCCF's payment methodology.

Greater Transparency Regarding the Basis for GCCF Future Loss Calculations Is Needed, or Alternatively, GCCF Should Permit Claimants to Present Individualized Future Loss Projections

The reliability and basis for the proposed calculation of future loss is unclear. At a minimum, the underlying expert reports and GCCF methodology should be supplemented to demonstrate a clear, scientific basis for each aspect of the loss projections. Further, the expert reports should be accompanied by disclosures that provide complete details regarding the financial relationships that exist between BP and the experts. If GCCF does not provide this supplemental information, it should not require claimants to rely on its payment methodology, and all claimants seeking Interim or Final Payments should be permitted to submit their own individualized future loss projections.

The proposed methodology states "[i]t is anticipated that, for all businesses other than oyster harvesting, recovery will continue in 2011 with full recovery expected in 2012." However, this estimate does not directly appear in the attached expert reports that purportedly form the basis for this conclusion. Further, GCCF states that it expects that losses in 2011 will be 70% of losses in 2010, and that in 2012, these losses will be 30% of 2010 losses. Based on this, GCCF has determined that for most claimants, future losses will be paid at a rate of two times actual losses. Again, expert reports do not clearly explain or support this formulation.

The two expert reports that GCCF relies on for its payment methodology each cover separate topics. One assesses biological impacts, and the other focuses on tourism impacts of the BP Oil Spill. However, neither report considers the findings of the other. Further, the GCCF does not provide an explanation for how these reports, either taken together, or viewed independently, justify the proposed payment calculation methodology.

The report on negative biological effects of the BP Oil Spill, conducted by John W. Tunnell, Jr. ("The Tunnell Report"), makes no economic recovery projections.[2] Instead, it identifies biological recovery trends that are likely to continue for shrimp, crabs, finfish, and oysters reefs. According to Tunnell, oyster reefs may not recover for up to 10 years. Although the report assesses recovery trends of 2010, and predicts that they will continue, it does not state that full recovery is expected by a date certain, nor does it identify a specific percentage of anticipated rates of recovery for 2011 or 2012, as the GCCF payment methodology does. Furthermore, the report states that an accurate estimate regarding biological recovery may not be known for years, and that its conclusions are merely "the best informed estimate that can be given at this time." This disclaimer is significant, since the report was developed over the course of only two weeks.[3]

The second supporting document provided in connection with the payment methodology is a PowerPoint issued by consulting firm, Analysis Research Planning Corporation, on January 24, 2011 ("APRC Report").[4] The report consists of bare-bones slides, which include statistics from preexisting sources without supporting explanation or analysis.

---

[2] The Tunnell Report.

[3] John Schwartz and Mark Schrope, "On Gulf Oil Spill's Effects, Doing Science With a Deadline," The New York Times, February 2, 2011.

[4] Analysis Research Planning Corporation, "Measures of the Effects of the Gulf Oil Spill on Individuals and Businesses and Proposed Compensation Schema," January 24, 2011.

Since the APRC Report does not include data associated with specific commercial fisheries or marine resources, it is unclear how any conclusion can be made based on this report about economic losses for specific resources, such as oysters, which receive separate treatment in the GCCF payment methodology.

The APRC Report highlights an Oxford Economics study on the expected impact of the BP Oil Spill, which estimates that the tourism industry will not recover from the spill until early 2013. APRC appears to concur with this finding, since the report concludes that full economic recovery is likely within two to three years. Like the Tunnell Report, the APRC Report does not appear to project a rate of anticipated economic loss for 2011 or 2012, leaving basis for GCCF's loss projections in this regard unclear.

In sum, neither of these expert reports offers adequate detail to connect their findings and conclusions to the calculations presented in the GCCF methodology. Therefore, these reports and the GCCF methodology should be supplemented to clearly explain the basis for the GCCF payment methodology. The experts should also disclose all financial connections they have with BP. If GCCF chooses not to publish this clarifying information, then all claimants seeking Interim or Final Payments should be entitled to present their own individualized damages calculations rather than being required to rely on the GCCF methodology.

Oyster Multiplier Justification Should Be Provided

For claimants with losses associated with oyster harvest, no explanation of the future loss calculation is provided. For non-oyster-related losses, GCCF states that it predicts a loss of 70% of the 2010 loss in 2011, and 30% in 2012, and that this is the basis for selecting a final payment offer of two times the 2010 actual damages. However, for the non-oyster-related loss calculation, no such justification is provided. GCCF simply states that it will offer these claimants four times actual 2010 damages. All claimants should receive payments based on a principled damages calculation. Therefore, GCCF should provide an explanation of the basis for the multiplier being applied to oyster-related claims that is at least as detailed as the explanation provided for other claimants.

Experts Assessing Individualized Payment Calculations for Losses of $500,000 or More Should Certify Their Independence and Qualifications

GCCF will rely on experts to analyze payments to claimants with $500,000 or more in losses. This analysis is likely to be given great deference in the claims review process, and could be determinative of the payment amount that these high-damages claimants are awarded. Therefore, GCCF experts reviewing these claims should be required to demonstrate and certify that they are independent and objective, and are qualified to make determinations related to future loss calculations for oil spill related damages.

Offsets Should Be Clearly Defined

The payment methodology and attached sample calculations reference "other offsets" and "BP payments" separately from the "GCCF" payment reductions, which reduce the final payment made to claimants. However, nowhere in the methodology are these categories of offsets explained. While a payment BP makes to compensate claimants for their losses would be appropriate to offset, it would be problematic for BP to be permitted to offset payments or benefits claimants receive that are not

related to the BP Oil Spill. Thus, eligible offsets should be clearly delineated to permit claimants to fully understand applicable payment parameters.

Start-up Payment Methodology Should Be Explained

The payment methodology states that start-up companies will be treated differently than other businesses, but no further information on the start-up methodology is provided. The final payment methodology should set forth in detail the calculation to be applied to these businesses so potential claimants with losses related to start-ups will know what to expect from the process.

I look forward to reviewing the final payment methodology. If you should have any questions, please contact

Sincerely,

February 16, 2011

Gulf Coast Claims Facility
Methodology Comments
P.O. Box 9658
Dublin, Ohio 43017-4958

Dear Mr. Feinberg,

I am pleased that the Gulf Coast Claims Facility (GCCF) has released their proposed methodology for interim and final claims. All Mississippians and Gulf Coast residents affected by the Deepwater Horizon spill deserve a clear and transparent process to compensate their losses.

My constituents have shared several concerns with me related to GCCF's methodology for final claims:

1. The public perception of Gulf seafood must be considered when estimating future losses resulting from the oil spill. Many Americans continue to believe Gulf seafood is unsafe to eat – a perception I know is incorrect. It is unclear how long this perception will persist and impact key sectors of the Gulf economy.

2. A one-size-fits-all approach to claims determinations may not be appropriate. While the need for consistency within a given industry is important, the broad impact of the spill on various industries, businesses, and individuals requires a case-by-case assessment for proper compensation.

3. With respect to claims determinations, I support flexible methodologies that adjust to unexpected impacts in the future. There remains a significant amount of uncertainty in forecasting future impacts of the Deepwater Horizon spill. Therefore, it is important that predictions of economic and environmental recovery be based on more than one expert opinion.

I appreciate the GCCF's two week comment period, but I am not convinced this time frame is adequate for the thousands of Mississippi claimants to submit their concerns. I believe it is imperative to expedite the claims process. However, thoughtful responses may require an extended closing date.

Thank you for the opportunity to submit these comments on behalf of Mississippians. Please do not hesitate to contact me to discuss ways to improve the ongoing claims process.

With best wishes, I am

Sincerely yours,

February 16, 2011

VIA U.S. MAIL AND E-MAIL

Kenneth R. Feinberg, Esq.
Feinberg Rozen, LLP
The Willard Office Building
1455 Pennsylvania Avenue, NW
Suite 390
Washington, DC 20004-1008

Re: Gulf Coast Claims Facility ("GCCF")

Dear Mr. Feinberg:

As the State of Florida's chief legal officer, I have made improving the GCCF claims process a top priority. While traveling around Florida, I have heard firsthand the frustrations of Florida citizens and businesses regarding the unexpected delays, denials, lack of information, and inconsistencies in payments they have experienced when dealing with the GCCF. These frustrations have only increased due to the GCCF's refusal to process, much less pay, the more than fifty thousand (50,000) pending interim or final claims from Florida.

You have indicated that these claims were held in limbo in order to finalize a long-delayed payment methodology. I would urge you to promptly pay the tens of thousands of interim claims, not only due to the desperate financial situation faced by many Floridians but because such action is required by the Oil Pollution Act of 1990 ("OPA"). Paying these interim claims would also lessen the importance of an immediate implementation of a final payment methodology.

The purpose of this letter is to offer my comments on the "methodology" provided to my office (and the public) on February 2, 2011.[1] In summary, I find that the

[1] We will discuss my numerous other concerns with the GCCF, including those raised in my previous letter to you, in our meeting on Friday. I also plan to meet with BP in the near future on these issues, as it is ultimately responsible for providing a claims process that complies with OPA.

draft document does not provide answers to the important issues surrounding the claims process – including the continuing lack of transparency. Moreover, the multiplier lacks scientific support, especially as the basis for resolving final claims that would require the execution of a broad release. Finally, the proposed burden of proof for claimants is unduly restrictive.

While I had hoped that any methodology would deliver some much-needed transparency, the draft document provides almost no useful information for claimants. I am particularly disappointed that Floridians still don't know if their claim will be paid, in what amount or by what time. The draft document, which you apparently intend to implement shortly, is a methodology only in name.

The three-year (100%-70%-30%) timetable set forth in the draft document is based on exceedingly optimistic assumptions about unknown environmental and economic conditions and doesn't match the longer experiences with the Exxon Valdez and other major oil spills. There has been (and apparently will be) no independent peer review of these assumptions, the standard operating procedure in the scientific community. In essence, the so-called methodology involves a fixed formula for determining a final payment offer, assuming the correctness of the initial payment for 2010 and the applicability of the timetables.

While you have made numerous public comments about consulting various "experts," the attachments to the draft document include information from only two sources, the Analysis.Research.Planning Corporation and Dr. John W. "Wes" Tunnell, Jr. of Texas A&M University - Corpus Christi. The ARPC website indicates that the company is a consulting firm with a focus on providing expert testimony and settlement administration services for corporate defendants in toxic tort matters. *See* http://www.arpc.com/AboutARPC/tabid/54/Default.aspx ("Our clients include nearly every major asbestos defendant and asbestos trust"). Moreover, Dr. Tunnell's report was specifically commissioned by you; it appears that he only had two weeks (over the holiday break) to prepare the "expert" report.

The Tunnell Report appears to be based largely on inconclusive research from prior oil spill cases and environmental studies, some of which are several decades old. The report is an opinion rather than a scientific study, as it does not propose any methodology by which its assumptions and predictions can be tested. This "report" is one professor's hastily drawn opinion on when four fishery categories from the Gulf (crabs, oysters, fin-fish, and shrimp) may return to pre-spill harvest status. The report is replete with limitations, including:

- "[E]stablishing a recovery date and time is more difficult than determining the impact from the spill itself. In fact, establishing an exact recovery time is essentially impossible."[2]
- "The Ixtoc I oil spill of 1979-80 was the world's largest accidental marine oil spill until the DWH spill, and it released 140 million gallons of oil into

[2] Tunnell Report, p. iii.

the Gulf over almost 10 months of time.[3] Although small remnants of Ixtoc tar mats can still be found today at a few remote Mexican localities, the majority of Gulf species and habitats seem to have recovered. Unfortunately, there were no long-term comprehensive studies done to confirm recovery, so we cannot be certain. In addition, it is unclear today whether the Gulf of Mexico is as resilient as it was 30 years ago, due to the many and continuing environmental impacts."[4]

- "Changes in feeding behavior or reproductive behavior could affect populations for years from re-oiling of submerged or hidden oil that was not removed. The unprecedented and unexpected crash in the herring fishery five years after the Exxon Valdez oil spill is a classic example of the unknown that can surprisingly appear years later."[5]

- "In addition to the obvious and direct death of biota or habitats that can occur during an oil spill, there are many possible sublethal effects which can occur, and they can be quite insidious and are very difficult to detect or measure. These effects might include reduced reproductive capacity, or sizes of individual organisms might be smaller as a result of exposure to oil components, or a result of reduced amounts of food or habitat. The effects of oil on plankton (food for larvae of fish and invertebrates) are currently unknown, and may never be known. ... Unfortunately, there are few published field studies on the impact of an oil spill on Gulf shrimp."[6]

- "In areas where oysters died as a result of freshwater diversion and flooding, oyster reefs should be recolonized by young oysters in 2011 (assuming there are no large scale flooding events in 2011), but they will not likely be of harvestable size until late 2012 or 2013. In areas where oyster reefs were heavily oiled, oyster reefs may not recover for 6-8, or even 10 years."[7]

- "Realistically, the true loss to the ecosystem and fisheries may not be accurately known for years, or even decades ... In conclusion, making an exact call for the time of recovery of any fishery group after a major oil spill is impossible."[8]

The Tunnell Report does nothing to predict the short-term or long-term impact of the Deepwater Horizon oil spill on the tourism industry or on the demand for any Gulf seafood products, including the four fishery categories. Further, the GCCF has offered no justification for attempting to extrapolate these timetables or multipliers to non-fishing

---

[3] The report states that the Deepwater Horizon oil spill released "over 200 million gallons of oil into the Gulf of Mexico from 20 April to 15 July 2010, a period of 87 days." *Id.*, p. 1.

[4] *Id.*, pp. 7-8.

[5] *Id.*, p. 15.

[6] *Id.*, pp. 22, 24.

[7] *Id.*, pp. 32-33.

[8] *Id.*, pp. 37-38.

industries, like tourism.

It is particularly inappropriate to use the Tunnell Report to make crucial decisions for final claims (where the GCCF has insisted upon the execution of a broad release form, including for unknown claims) given the existence of other, more scientific processes. As set forth in 33 U.S.C. § 2706(e), OPA mandates a thorough and scientifically-based natural resource damages assessment involving all interested parties, including the responsible parties. The goal of OPA is to make the environment and public whole for natural resource injuries resulting from an oil spill, either through restoration or compensation. That process is already well under way. BP has also set aside $500 million to establish a Gulf of Mexico Research Initiative to conduct a 10-year study of the effects of the Deepwater Horizon incident and the potential associated impacts on the environment and public health, acknowledging the need for scientifically-based, and peer-reviewed analysis of sampling results, impact modeling, and studies. Thus, even BP believes that a long-term analysis is necessary in light of the uncertainty over the impacts from the Deepwater Horizon oil spill.

The fact of the matter is that the environmental impacts to the Gulf Coast cannot be neatly packaged into a one-size-fits-all model that fails to take into account the unique situation that each individual or business claimant may face. The criteria established in the methodology may be beneficial to some claimants, but not to others. Each claim should be evaluated to determine the most accurate recovery period, which may vary from case-to-case. A recovery period of five years or longer may be appropriate in some situations.

Moreover, I am troubled that the calculation of any final payment offer would be based upon only the eight months of losses incurred in 2010 after the Deepwater Horizon blowout. At the very least, any calculation of a final payment offer should be annualized, especially since some businesses depend on the early part of the year for much of their profits. It is also misleading to say that a final payment offer represents two times the actual documented losses in 2010. The payment for 2011 and 2012 is approximately equal to the payment for 2010, although 2010 is only a partial year. The calculation of a final payment offer should also consider changes in future earning capacity and be sufficiently generous to encompass the level of uncertainty faced by that claimant.

I am also very concerned about the heavy burden of proof ("direct connection") that the GCCF is seeking to impose on claimants through this methodology. For example, how would you suggest a business effectively document and quantify the lost business from tourists that never showed up? It appears that each time a claimant files a claim, even if his claims have been paid in the past, he will be required to prove once again that the damages were the result of the oil spill, but with an increasing level of scrutiny. This suggests a process that imposes an unreasonable burden and cost on claimants, especially where the nature of a claim is recurring in nature (*e.g.*, a seafood processor whose plant has laid off workers due to a lack of demand for Gulf seafood). At the very least, the GCCF could assume that the business would have had at least the same level of income as the prior year.

The economic impact of this environmental disaster will be felt for many years to come by Florida's businesses and its people if the GCCF claims process is not made both fair and efficient, including through the payment of interim claims. I look forward to continuing our discussions in person on Friday.

Sincerely,

cc:

Gulf Coast Claims Facility
Kenneth R. Feinberg, Administrator
PO Box 9658
Dublin, OH 43017

Via:

Dear Mr. Feinberg,

In response to the Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology posted on February 2, 2011, the would like to submit the following comments:

First, there is no calculation provided for 2010 actual losses, and no formula or specific detail as to how financial loss will be calculated. Full disclosure should be available as to why past claims were denied or why payments were less than expected as this process moves forward. The Alabama Gulf Coast was the economic epicenter of the Deepwater Horizon Oil Spill and our region saw at least one million fewer visitors in 2010 than in 2009. Our businesses deserve to be treated fairly and with respect.

Second, no one knows how long the effects of the oil spill will be felt in regards to the condition, and or the perception, of the beach, water, air and seafood. To arbitrarily assign a two-year projection for a final claim payment fails to provide for a worst case scenario. As additional studies become available, or if tar mats wash ashore leading up to our tourist season or during our tourist season, tourist confidence could continue to disrupt the industry for years to come.

Third, the final claims process fails to provide for documented growth anticipated for 2010 and for the next two to three years. Compensation for upward trending should be included in "true- ups", interim and final claim payments. Also, the Loss of Income (LOI) percentage estimate used in the example calculation should not be used in actual claim calculations where full documentation of actual revenue and expense is provided. (LOI) should be addressed on an individual basis. There is currently no provision for reimbursement of expenses incurred by businesses for documentation and preparation of claims.

Fourth, interim claim payments must be paid in a timely fashion. If an interim claim must be filed documenting 90 days of prior loss, and GCCF has 90 days to pay the claim after receipt, the time span could close a business. Fourteen days should be sufficient to pay a documented claim.

Based on conversations with , we understand that there will be teams of accountants and adjusters here locally that have been empowered to make decisions and authorize payments who will be available to work with individual claimants. We also understand that the new GCCG response will include an assigned adjuster within an industry-specific team of adjusters, who will be the contact from beginning to end for a specific claim; contact information will be provided. Finally, there will be a broader scope of eligibility than in the past, as adjusters look closer at individual situations and are able to better understand our Alabama Gulf Coast businesses and their relationship to the tourism industry.

Sincerely,

February 16, 2011

Mr. Kenneth Feinberg
Administrator
Gulf Coast Claims Facility

Dear Mr. Feinberg:

Thank you for this opportunity to comment on the proposed Eligibility and Substantiation Criteria and Final Payment Methodology. Incorporating public comments and stakeholder recommendations into the formula before it is finalized is an important component of any public policy, and I appreciate your sincere efforts to develop a fair process. However, it is imperative that the comments are adjudicated in a transparent and expeditious manner that will allow long anticipated interim and final claims to be issued in the coming weeks.

After repeated requests for improved communications with claimants and the network of 12 community-based nonprofits providing technical assistance in Louisiana, I commend you for progress on both fronts. It is my understanding that all interim and final payments will include a detailed breakdown of the award calculation formula, a projected final settlement amount, acknowledgement of documents received, and a single point of contact for the recipient to call with questions or concerns.

While I continue my efforts to secure additional funding for the technical assistance network through BP, I appreciate your recent substantive engagement of this group and designation of GCCF personnel to work with them going forward. The 12 nonprofits providing this technical assistance have a wealth of experience in disaster recovery that will improve and enhance the overall efficiency and effectiveness of the Gulf Coast Claims Facility. I also appreciate your recent outreach efforts and public comments relating to compensation of subsistence claims in communities that have experienced significant losses.

The GCCF's proposed methodology concerns me on two specific fronts: the lack of a formalized, individual assessment of losses for all claims, including those below $500,000; and insufficient accommodation of the inherent uncertainties associated with a recovery of this magnitude. As we have previously discussed, I also believe the appeal threshold of $250,000 for an individual and $500,000 for a business to be unreasonably high.

It is my hope that the methodology will serve as a starting point and that each claim will receive an individually tailored review regardless of size. For example, the methodology proposes

using 2008-2009 numbers to establish historical earnings. With two hurricanes, Gustav and Ike, making landfall in Louisiana in 2008 and shrimp prices falling to unprecedented levels in 2009 in the midst of the recession, these years may not provide an accurate basis for future earnings projections. I urge flexibility in working with claimants to determine a realistic, normalized year. In addition, the sales-based formula for measuring economic impacts fails to quantify immediate impacts on inventories and other assets that are not itemized on a profit and loss statement. Again, it is imperative that this methodology is applied in a responsive and dynamic manner that can accurately address the real losses of various businesses and business models.

Perhaps the single biggest challenge you face is providing a credible and reliable estimate of how long it will take for the Gulf and its dependent industries to return to normal. Dr. Tunnel's opinion represents one perspective, but it should not be construed nor presented as the definitive projection of recovery timelines. Going forward, I recommend establishing a peer review process for any scientific studies used in the award calculation methodology and actively engaging the scientific community in a public, transparent manner. This will foster the kind of substantive dialogue we will need to understand the ramifications of an ecological event of this magnitude.

It is also problematic to rely upon studies that lack economic analysis. Ecosystem recovery doesn't necessarily result in simultaneous market recovery, because consumer perceptions and demand may take longer than the marine environment to rebound. In a study recently commissioned by the Louisiana Seafood Promotion and Marketing Board, 71% of those surveyed in December indicated lingering concerns about the safety of Gulf seafood as a result of the oil spill. The level of concern fell only four percentage points from October 2010 through December 2010, indicating the pervasive damage this spill has done to the Gulf brand. I encourage you to factor brand and market recovery projections into the methodology, in addition to the environmental and ecological data.

Even with the best and brightest scientific minds though, we will never be able to predict with perfect accuracy what will happen in the future, and I believe including some protection against an unpredicted and unforeseen fishery collapse would significantly increase the credibility of the GCCF.

It is my hope that you will find these comments constructive and that they will help you and your team continue to improve the GCCF and its ability to meet the evolving needs of Gulf Coast residents still recovering from the oil spill. I commend you for the important progress already made, but realize, as you do, that much important work lies ahead.

With kind regards, I am

Sincerely,

Gulf Coast Claims Facility
Kenneth R. Feinberg, Administrator
5151 Blazer Pkwy., Suite A
Dublin, OH 43017

February 16, 2011

Dear Mr. Feinberg,

We are writing on behalf of our four million members and supporters residing in the Gulf Coast and across the country in response to your request for comments related to the recently released compensation methodology.

The Gulf of Mexico is one of the most ecologically diverse and productive water bodies in the world and of great economic and environmental importance to the nation. Given its multifaceted values and the fact that scientific assessments of oil spill impacts have only just begun, we are greatly concerned that a single scientific opinion would be used as the basis for determining compensatory damages at this time to those dependent on the Gulf's natural resources.

In the opinion referenced above, Dr. Tunnell points to "the difficulty in assessing damages from a spill and the near impossibility in accurately predicting the environmental impact or time of recovery." We do not take issue with the opinion itself or Dr. Tunnell's credentials, but rather with your proposed reliance on a single report and opinion to predict the timeframe for the recovery of Gulf fisheries and the ecosystems that sustain them.

As a nonprofit conservation institution that has advocated for sound science-based environmental and conservation policy for 75 years, we direct your attention to three specific areas of uncertainty articulated in the report:

1) Dissimilarities between the Deepwater Horizon oil Spill and the Ixtoc I spill, that is used for comparative purposes;

2) A lack of data and information collected and analyzed before or after the Deepwater Horizon explosion that would provide some scientific measures for projecting populations of the four fisheries specified for assessment; and

3) Multiple scenarios and uncertainties identified in the report that do not support the conclusion of a quick recovery for the Gulf.

Comparisons to Ixtoc I Spill

The report points to the Ixtoc I spill as "the most appropriate major spill" from which to draw lessons for the Gulf of Mexico. Ixtoc I released about 140 million gallons of oil over a period of 10 months from June 1979 to March 1980. Dr. Tunnell uses this spill for comparative purposes and to underscore the resilience of the Gulf. However, he specifically notes the following: "there were no long-term ecosystem studies to monitor the effect of the spill in either Texas or Mexico"; " no long-term comprehensive studies to confirm recovery, so we cannot be certain"; "it is unclear today whether the Gulf of Mexico is as resilient as it was 30 years ago, due to the many and continuing environmental impacts"; and "in any given spill, the effects and the recovery time of the contaminated area will be influenced by many

variables and that the dose of petroleum hydrocarbons into a particular habitat or on a particular species is the key element..."

Tunnell does identify important differences between the two spills that would affect the nature and extent of ecological impacts. These differences include: 200 million gallons over 91 days for DWH compared to 140 million gallons over 306 days for Ixtoc; oil release at a depth of 5000 ft for DWH compared to 170 ft for Ixtoc; 1.84 million gallons of dispersant used for DWH with 40% at wellhead depth, compared to limited dispersant use at the surface for Ixtoc; and oiling of a smaller area of the Gulf for DWH than Ixtoc. Although the coastal area affected by the DWH spill was smaller, the area, including the highly productive coastal wetlands and marshes of the Mississippi Delta, rate among the most ecologically sensitive and difficult to clean, with an Environmental Sensitivity Index (ESI) of 10 on the ESI scale of 1 to 10. Dr. Tunnell's report states that a portion of the area affected by the DWH spill includes some of the most highly productive coastal waters in the world and that "95% of all commercially and recreationally important Gulf species depend upon these estuarine and coastal habitats at some stage in their life cycle." In contrast, Ixtoc I oiled 1,400 linear miles of sand beaches (ESI 3) along the western and southern Gulf, which are not so sensitive and recover more quickly.

Absence of Gulf Data and Analysis

There are unprecedented scientific efforts on-going to assess the effects of the oil on every aspect of Gulf ecosystems and environmental parameters. Dr. Tunnell refers to "the monthly activity report posted by the National Oceanic and Atmospheric Administration (NOAA) on December 1, 2010 listing 29,599 environmental samples collected for analysis, 37,183 laboratory analyses conducted," and other evaluations as an illustration of the comprehensive scientific assessment that has been initiated in accordance with the provisions of the Oil Pollution Act of 1990. However, the results of these on-going studies were not available as a basis for the opinion report. Furthermore, a monitoring network has been established because as Tunnell points out, "in the absence of on-going local or regional monitoring, it is very difficult to quantify the effects from an oil spill, or to establish when recovery from such a pollution event is complete."

We submit that to obtain the most accurate ecological recovery scenarios of the four fisheries, the knowledge and expertise that is being gathered by this extensive scientific effort must be incorporated to the maximum extent possible. Consulting multiple experts and scientists regarding ecological characterization and recovery of the Gulf could assist with public acknowledgement of what is known and unknown at this time and avoid any appearance that damages to the Gulf's resources and the residents who rely upon them are being trivialized.

The unprecedented and unexpected crash in the herring fishery four years after the Exxon Valdez spill is a classic example of the unknown that can surprisingly appear years later. It is much too soon to draw any firm conclusions regarding the recovery of Gulf fisheries. Further, this premature opinion on these particular fisheries is being incorrectly portrayed by media and others as a credible statement that the overall environmental health of the Gulf will be quickly back to pre-spill conditions. This is neither what the report actually states, nor what is warranted by scientific information and assessments currently available.

Multiple Scenarios and Caveats

Appropriately, Dr. Tunnell repeatedly points out the unknowns and uncertainties underlying his opinion. The preceding discussion has highlighted many of the uncertainties that Tunnell has identified in the oil spill overview. He has provided additional scenarios and caveats with respect to each of the four fisheries that indicate the uncertainties of recovery times due to the absence of on-going scientific impact assessments or pertinent historical studies of these species.

In view of all of the limitations and uncertainties of this single expert opinion and the far-reaching importance of its use, we suggest the appointment of a panel of scientists from academia and research institutions, who are currently studying various aspects of Gulf impacts, to produce a collective opinion of possible recovery based on actual analysis of data regarding fisheries populations before, during, and after the spill. It is of utmost importance for the Gulf and its residents that estimated fisheries recovery periods be science-based, specific to the areas of the Gulf affected by the spill, and available for peer review, and that a reasonable public comment period be provided.

We believe all of those dedicated to the restoration, clean-up, and future well-being of the Gulf Coast would take much solace should Dr. Tunnell's opinions and predictions prove accurate. However, the magnitude of the contamination, the assessment of the damages, and the extent of the adverse consequences caused by this unprecedented oil spill disaster, cannot yet be determined with any degree of reasonable certainty.

We respectfully submit that further data needs to be gathered and analyzed, exploration activities completed, and biological sampling, testing and evaluations undertaken before any opinion, like that of Dr. Tunnell or any other individual expert, can or should be advanced. There is still much work to do by many Gulf scientists to reach any informed conclusions regarding ecosystem impacts and recovery. We trust that you, in the position as a mediator and evaluator of certain of those damages, would be of a similar mind, so that fair and reasonable compensation is afforded to those with whom you are negotiating resolution of economic damages.

Thank you for your consideration of our comments and for your public commitment to provide fair and impartial restitution to the many thousands of Gulf residents who have suffered economic losses from this environmental disaster. We anticipate that you will achieve a successful outcome that inspires public trust if more scientifically rigorous and thorough methods are employed in this complex process.

Sincerely,

February 15, 2011

Thank you for hosting the informational meeting last Friday at your office in Gulfport. You will recall concern regarding what we consider to be an extremely abbreviated public comment period for the proposed final payment methodology. It also seems the February 16 deadline is arbitrary. Several of my colleagues join me in this concern; some have signed this letter to express their concerns as well.

On background, state agencies in Mississippi ordinarily follow federal requirements that give 30-60 days for public notice of administrative hearings. This is to allow concerned citizens – including legislators – to provide input into a public process using public money. We understand that BP may be the source of revenue for settlement of claims, but it is intended to reimburse for damages to the public. Thus, the same notice periods should apply here.

We question how our impacted citizens and businesses could have complied with the arbitrary February 16 deadline for comment. As participants in 2011 Regular Legislative Session, we have been in Jackson – our Capitol city – and were not informed of the deadline until last week. Surely it is not Mr. Feinberg's intent to deny input into the process of developing the proposed methodology? Neither is it our intent to accept this arbitrary deadline as appropriate or acceptable on behalf of our constituents within the State of Mississippi.

Furthermore, it is unreasonable to expect our citizens to be satisfied with only the "expert opinion" of Dr. John W. Tunnell Jr. of the Harte Research Institute, or for that matter any other lone scientific study. Any "expert opinion" that full recovery of any portion of our seafood industry should be expected by 2012 is highly suspect. We urge more time for careful scrutiny and scientific review to properly anticipate lingering impacts to all affected industries operating in the Gulf Coast area.

Of course, we appreciate the effort to reimburse people who have been struggling for almost a year now. It seems that some sort of weighted criteria might allow interim payment for those claimants with urgent problems. While no one is happy with the time-frame we have experienced, another six weeks would allow time for a number of scientific experts to participate. Transparency sometimes takes a little more time, but is necessary for legitimacy.

Thank you for your consideration in this matter.

Thank you both for your time last Friday, February 11th in Biloxi. I enjoyed talking with you both. I look forward to the outcome of all the efforts being put into the GCCF Final and Interim protocols. As requested, I have included my comments and suggestions below. If you have any questions, please call me at my office, , or my cell . I sincerely appreciate your time and consideration.

COMMENT AND SUGGESTIONS FOR GCCF/FEINBERG-ROZEN FIRM REGARDING FINAL AND INTERIM PROTOCOL/METHODOLOGY		
Statement of Position	has been assisting businesses and real estate claimants in the Gulf Coast region with assessing damages, as well as preparing and submitting fully documented and supported claims to GCCF. is in all ways an advocate for the process and supports its claimants as well as GCCF and BP; as the goal of all involved is the same. has experience assisting claimants successfully since August, 2010 when GCCF took over the claims process from BP. had been working with BP and its adjusters, Worley Co., prior to that time. had a very good relationship with BP, with BP being pleased that was assisting claimants with an aim at the goal of submitting properly quantified, documented and justified claims. , BP Mississippi External Advisor was the initial contact at that time.	☐
GCCF COMMUNICATIONS TO BUSINESS REPRESENTATIVE		
Written Correspondence	It would be of great importance to begin copying the Business Rep on all written communications. GCCF may be, at times, asking for a timely response for information that must come from or through the Business Rep. requests that written communications come through the Business Representative to its address. has direct access to the claimant and can expedite any requests or messages for GCCF in a timely manner. The claimant has given GCCF full authority to communicate with as evidenced by the "Approval Agreement" submitted with all claims.	☐

Verbal Communication	requests that verbal communications come through the Business Representative as well. We have direct access to the claimant and can expedite any requests or messages for GCCF in a timely manner. Again, the claimant has given GCCF full authority to communicate with as evidenced by the "Approval Agreement" submitted with all claims.	□
SUGGESTIONS FOR GCCF ACCOUNTANTS AND ADJUSTERS		
Need for Business Representative Accountant to speak with GCCF Accountant	It would be very helpful to allow communication between the GCCF Price Waterhouse accountant and the Claimant's accountant/business representative from the time the claim is filed until it is resolved. Accountant's speak the same language and can communicate important information about the financial statements and financial condition of the business claimants.	□

Information and Document Gathering Helpful to Understanding and Quantifying Business Claims	Business Owners go into business because they are "good" at what their business does to generate profits. It is not always true that they are also "good" at the financial aspects of their business and therefore have great difficulty understanding what is required to properly quantify and present their losses, then file and prove their claim to GCCF. In turn, GCCF is presented with additional difficulty in adjudicating the claims submitted to them. uses a Claimant Interview which includes gathering the "Story" which has greatly assisted in the proper assessment of damages, those apparent in the Profit and Loss statements and those not apparent. The "story" includes the "What, Where, Who and How" elements important to understanding a business' true damages that are usually not be reflected in Profit & Loss Statements from May to December, 2010. 1. **What?** – What does the business do to generate income? Have there been any sales price increases or decreases since May 2010? Has there been any increase or decrease in the Cost of Goods Sold or Cost of Sales since May 2010? 2. **Where?** – What areas does the business serve? Local, regional, state or multi-state? 3. **Who?** – Who are the business' clients? We aren't looking for names of clients. We are looking for the clients' industries in order to pinpoint any connection between the business claimants' losses and the oil spill. 4. **How?** – How is the business paid for its products and/or services? (Examples are price per unit/hourly fees/contracted percentages/wholesale/retail, etc.) What are the direct costs associated with generating the income (Cost of Goods Sold) Unit Cost and Pricing are very important to be aware of as they are not known when looking at Profit and Loss Statements but can influence changes therein.	□ □

5. The Claimant Interview specifically asks questions in the following important areas:

   (a) **Additional Lost "Gross Profit" not reflected in Profit & Loss Statements** – Losses are generally found in "Potential vs. Actual" which is information not found in a Profit and Loss Statement as this report only reports what actually occurred. (Gross Profit would include both areas of Gross Sales and Gross Cost of Goods Sold which are both important to consider when quantifying losses) - cancelled contracts, proposals, work that didn't move forward, planned price increases not implemented, decreased prices implemented to sustain Gross Revenue/Sales, increased Cost of Goods Sold; plans for expansion that did not occur due to loss of profits, etc.

      (1) Lost Income from Cancelled Contracts/Work – can be supported through letters from clients

      (2) Lost Income from "Transient" business – cannot be supported with letters from clients but can be supported with claimant's prior performance and/or using locally obtained information and predictors which can be found with sources such as the Gulf Coast Business Council or the Convention Visitors Bureau.

   (b) **Expenses Incurred to Minimize Losses** – any expense incurred to increase profits, lower overhead expenses, obtain capital to pay continuing expenses, increased costs to move operations, price decreases to keep sales active, increased Cost of Goods Sold without sales price increases to offset loss to gross income, etc.

   (c) **Expenses Incurred to Assess Damages** – any expense incurred to assess damages, including costs relating to accounting, document gathering, etc. for the goal of determining losses.

Need for Business Representative Accountant to speak with GCCF Accountant	It would be very helpful to allow communication between the GCCF Price Waterhouse accountant and the Claimant's accountant/business representative from the time the claim is filed until it is resolved. Accountant's speak the same language and can communicate important information about the financial statements and financial condition of the business claimants thereby expediting the process of resolving claims.	☐
SUGGESTIONS/COMMENTS REGARDING FINAL CLAIM METHODOLOGY:		

Comments and Concerns regarding the Expert Report from ARPC	There are substantial inaccuracies found in the report from ARPC, which include using data relied upon from airport arrivals, hotels, gaming revenues, sales and/or sales tax revenues, restaurants and bars. This data, gathered for the months of May through December, 2010, include false positive indicators brought about directly from the oil spill. For example, the ARPC report indicates there was no apparent effect on airport arrivals, no apparent effect on gaming revenues, no apparent effect, in fact an increase, on sales tax revenues. ❖ The report does not indicate whether or not the numbers of oil spill response travelers (i.e.; oil spill response workers, contractors, media, government entities, private interest groups, etc.) were excluded from the data. It appears the numbers were not excluded for purposes of predicting future impact. ❖ Additionally, BP money was distributed to support and uplift tourism which provided false-positive data for the selected sectors. It appears this data was relied upon in the expert's study. ❖ This "non-recurring additional/exceptional" data is important to exclude in order to get a reliable basis and understanding of the true future impact to the region when determining future recovery. These exceptional travelers and the additional money infused into the local economy by BP in 2010 created a "false-positive" economy for this period in the regions impacted. To exclude it results in a false reliance upon skewed numbers for future measures of recovery. These numbers will not be seen in the months and years ahead yet are being relied upon to predict future recovery rates. While the oil spill itself was good for the local economy on some levels, it is not proper to rely on any of the components used by ARPC to support May to December 2010 as a reliable predictor for future recovery. To do so would be relying on "false-positive" data.	□

	As a result of relying on the data used by ARPC, it appears there is "no apparent effect" to the region and that a recovery is imminent or is currently taking place when a deeper analysis into the true numbers shows this is not the case.	
		□

Suggestion for Expert Reports	Regional universities from each impacted State have been doing in-depth studies into the economic impacts of the oil spill on Revenues, Employment and Tax Revenues with grants given by BP. It is essential these local reports be utilized for future recovery predictions.	

February 16, 2011

Mr. Kenneth Feinberg
Gulf Coast Claims Facility
MethodologyComments@gccf-claims.com

Re: Comments on Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology for Damages from BP Oil Spill

Dear Mr. Feinberg:

We appreciate your efforts to establish objective eligibility and substantiation criteria and final payment methodology for damages due to the BP Oil Spill ("Oil Spill") under the Gulf Coast Claims Facility ("GCCF") Process. Thank you for encouraging our comments, and we thank you in advance for revising the methodology and procedures to include more realistic and feasible solutions to the following concerns:

1) Still need information on how Emergency Claim was Determined. When we spoke at the FRLA Meeting in Tampa, you agreed to provide information on how the computations were arrived at for the Emergency Payments so that we could have a better understanding of what components of our Emergency Claim were paid, and what were rejected. **We would still appreciate the opportunity to have access to this information so that our remaining claims are most effectively and efficiently presented to your staff.**

2) Still need detailed guidance on what GCCF requires to establish actual financial loss and connection between the loss and the Oil Spill. Under Section "II. Eligibility and Substantiation Criteria", subsection 3, you state that the documents required under Interim and Final Payments are more rigorous and exacting than with Emergency Payments. However, no details are provided so that even if we wanted to file an interim or final claim today, we would have little guidance about what you consider acceptable. I would think that the fact that properties on the beach threatened by the Oil Spill that had improving revenues in 2010 from the economic recession in 2008 and 2009 and then significantly decreased revenues following the Oil Spill, would be strong proof of the actual financial loss and connection between the loss and the Oil Spill. Please understand that under our reservation systems, including systems with franchisors and third party supplier agents, a guest with a reservation can cancel with no monetary penalty over the telephone or internet without providing a reason. So while many condominiums could require a written explanation of why they were cancelling in order to refund deposits, hotels did not have that benefit. Also, attractions such as golf courses simply lost business because guests that normally visited Panama City Beach did not come due to the Oil Spill. So our hotels and golf course revenues were down due to the Oil Spill even though we do not have letters from customers about why they didn't visit us and play golf in Panama City Beach. **We would respectfully suggest that for businesses in close proximity to the beaches threatened by the BP Oil Spill, the correlation between a drop in revenues and the occurrence of the BP Oil Spill should be strong evidence of damages and the connection between the losses and the Oil Spill.**

3) Assumption of 2010 Revenues pre-BP Oil Spill being an average of 2008 and 2009 is unrealistically low – 2010 revenues pre-BP Oil Spill were tracking a significant gain from 2007 (not 2008-09) revenues and additional investments and international airport opening laid foundation for record revenues in Northwest Florida for 2010. The proposal of 2010 revenues post-BP Oil Spill being an average of revenues for 2008 and 2009 is unrealistically low for Bay County, Florida. Statistics show a trend of revenues for 2010 pre-BP Oil Spill being significantly above 2008 and 2009, and 2010 budgets were tracking increases from 2007 – not recessionary 2008 and 2009 numbers.

Moreover, some of us had invested significant capital expenditures for new improvements to our properties offering a further basis to expect increased revenues in 2010 significantly in excess of depressed 2008 and 2009 revenues (but for the Oil Spill). Finally Bay County and other Northwest Florida Beaches had incurred a major investment in developing an international airport that opened the month following the BP Oil Spill. Historically record publicity had been established due to the airport opening prior to the Oil Spill, and following news of the Oil Spill, this PR momentum was broken and diverted by news of the Oil Spill and marketing by Northwest Florida businesses and TDCs/CVBs to control and mitigate damages of the Oil Spill news. To ignore the benefits that would have accrued from these additional investments and fail to consider the loss of the once in a lifetime opportunities to showcase Northwest Florida with the opening of the international airport severely discounts the real damages of the BP Oil Spill. Also, to exclude 2007 revenues from the average also significantly shortchanges those damaged by the Oil Spill. **We respectfully request that 2007 revenues, and 2010 budgets based on increases from 2007 revenues and supported by 2010 figures pre-Oil Spill, be used in computing expected revenues "but for" the Oil Spill. Additionally we ask that consideration be made for additional revenue potential for 2010 and subsequent years from additional investments to improve properties. Finally the GCCF would be gravely remiss if it ignored the major loss of the economic benefits of the historical opportunity to showcase Northwest Florida beaches with the opening of the international airport. But for the BP Oil Spill, the revenue and appreciation opportunities of Northwest Florida Beaches properties was unprecedented.**

4) 2 Year reimbursement is embarrassingly insufficient for settlement in Bay County. Pervading comments throughout the Panama City Beach community (and at our Bay County FRLA Chapter meeting yesterday) on the proposed payment methodology have been that the payment of 2 times the revenue losses for 2010 are so outrageously low that many people are thinking that litigation will be the better opportunity for a realistic recovery of their damages.

When asked at the FRLA Meeting in Panama City Beach yesterday how many had filed claims through GCCF, almost everyone raised their hand. When then asked how many believe they received a fair settlement, only 1 person raised his hand. He said that given he had a new business, he was satisfied with his GCCF payment.

For businesses in Bay County, given the extreme seasonality with much more significant reliance on the summer high season than other parts of Florida, the effect of the BP Oil Spill was much more devastating than in other areas. Furthermore, the loss of high summer season business in Panama City Beach and other Northwest Florida tourist destinations to competing tourist markets has more seriously impacted us for the long term than other damaged areas. Also, for Florida Panhandle businesses in close physical proximity to the Oil Spill, the risk of BP Oil washing ashore in the future is much greater than other areas of Florida damaged by the Oil Spill. I understand that our neighbor hoteliers in New Orleans, who had experienced record revenues compared to their competitive sets pre-Katrina, still 5 years later, remain behind their competitive set.

Hopefully the 2 year reimbursement is an initial negotiation posturing rather than a seriously proposed multiple for settlement. If not, I imagine the GCCF will have a very low settlement rate with businesses damaged by the BP Oil Spill. We would respectfully request that this unreasonably low multiple be reconsidered because it will drive more claimants to use law firms to either attempt a reasonable settlement and/or litigate. Also, we ask that the greater risks and losses experienced in such areas as Bay County be considered rather than painting all those damaged with a broad brush and using one multiple for all despite the different level of damages, greater challenges in recovering and greater risks of future oil washing ashore and causing even greater devastation.

5) Reimbursement of extra marketing expenses to mitigate damages of Oil Spill. While encouraged to spend additional marketing dollars to mitigate the damages of the BP Oil, no reimbursement for these expenses was proposed in the payment methodology. Furthermore, we had to forgo exceptional plans of a marketing program that should have insured record revenues in 2010. **We ask that reimbursement be made by GCCCF of additional expenses that "but for" the BP Oil Spill would not have been incurred.**

6) Losses over $500,000 – still no guidance. Since the proposed settlement criteria apparently applies to those claims under $500,000, we do not know what will be considered by GCCF staff for claims over $500,000. **If you intend to settle claims over $500,00, we request that the GCCF provide Final Payment Methodology applying to these claims.**

Thanks very kindly for considering our concerns and revising the criteria for final payment of claims to realistically address these issues. I assure you that realistic, rather than drastically low, offers will in the end benefit BP and the GCCF as well as those suffering damages from the BP Oil Spill.

Very truly yours,

February 16, 2011

RE: Response to GCCF Proposed Methodology

Dear Mr. Kenneth Feinberg,

Thank you for considering input regarding the GCCF methodology. Our respectfully requests your immediate action on the following proposed resolutions to address our three priority areas of concern.

1. **Reasonable Conditions for Settlement with BP through GCCF**
   a. Include a re-opener clause in the Waiver and Release Form to address possible collapse of the fisheries soon after 2013 that is attributable to the BP Oil Spill in the Gulf of Mexico;
   b. Include ONLY British Petroleum (BP) in the waiver and release form – thereby removing all other suggested liable parties (i.e. Halliburton, Transocean, etc.) from the Waiver & Release Form; and
   c. Include ONLY liabilities that are specifically settled through GCCF in the Waiver and Release Form – thereby removing all other liabilities (i.e. health, punitive damages, etc.) from the Waiver & Release Form signed with GCCF;

2. **Timely Resolution to Stymie Further Deterioration of Fisheries Economy**
   a. Remove the requirement of a $250,000 total claim payment to be eligible for an appeal with a GCCF panel that includes a fishing industry expert;
   b. Compensate Loss of Subsistence Use with the methodology developed by Louisiana TACs and defended in "Loss of Subsistence Use Claim Framework & Template", rather than with the current proof of purchase methodology; and
   c. Staff GCCF offices with local experts that are empowered to make decisions and provide straight answers about the status of a claim.

3. **Fair and Consistent Compensation**
   a. Compute loss of income for fisheries based on a four year average of 2006-2009, rather than the GCCF proposed two year average of 2008 and 2009;
   b. Develop a peer review process to ensure that the GCCF adjustment model accurately addresses the business realities of the fisheries industry;
   c. Compensate for at least three years of loss as previously promised, rather than two years as recommended by an isolated expert opinion; and
   d. Compute loss profits by ONLY deducting operating expenses (fuel, ice, groceries, crew shares, etc.) and NOT deducting reinvestment or maintenance conducted in response to catastrophic hurricane seasons.

Sincerely,

RECOMMENDATIONS TO GCCF FISHERMEN PAYMENT METHODOLOGY

On behalf of the members of the
we respectfully submit the following recommendations to make the interim and final claims protocol more applicable to the surviving commercial fishing industry.

1. Hire a local consultant familiar with the workings and history of the local commercial fishing industry to assist in evaluating claims as well as assisting in fact finding and decision making with live personal from GCCF with decision making capabilities in the local offices.

2. Use a 10- year window i.e. 2000-2010 that the fishermen can use to represent their claims. Any years post Hurricane Katrina would not be representative of the production capabilities of all facets of the commercial fishing industry as we were still in a state of recovery. The fishing industry should be allowed too go back pre Katrina, if records are available to show actual production capabilities in a time frame of normal high and lows.

3. Eliminate the 250,000 minimum payment requirement to have the right to appeal; we believe everyone should have the right to appeal if they feel their particular situation is not being justly considered.

4. Subsistence Use claims should be incorporated into each individual claim as per the amount of individual and family consumption. Furthermore many fishermen donate vast amount of seafood to numerous charities that would not be accounted for if not for la subsistence claim.

5. Utilizing Dr. Tunnell's expectations paying oyster harvesters for only 4 years of losses when an average of 8 years is what the good doctor expects, so pay the oyster fishermen for at least 8 years. Keep in mind that the oyster population never did recover since the Ixtoc-1 spill over 30 years ago.

6. Remove the waiver from all the other companies. Settling with one of the perpetrators should not absolve all the other guilty parties.

7. The interim claims process if accomplished in a timely and equitable manner would serve the needs of the industry's need to be able to let a few cycles run for several years to get a better picture of what we may be facing both biologically and economically. Our major fear here is that the sheer volume and complexity of claims will prohibit expedient interim claims payments that will be so vitally needed to keep this industry afloat until both the resource and the market recover. With that problem looming over the program it may be best to establish a clause whereby if we experience a total collapse of any of our fisheries the claims; process would reopen until we in fact have a recovery or it is established that a species recovery is not likely.

If you have any questions concerning any of our recommendations please feel free to call me anytime day or night as I am presently unemployed. My only job at this time is to make you understand the complexity of the multiple problems we are experiencing at this time and will for quite a long time as well as what we need to preserve the commercial fishing industry.

Sincerely yours,

Comments Regarding the GCCF's Draft for Payment Options, Eligibility and Substantiation Criteria and Final Payment Methodology February, 2011

As a resident of Gulf Shores, AL since August, 1979, a Councilmember of the City of Gulf Shores since 2001 and a member of the Coastal Resiliency Coalition (CRC) since it's inception in June, 2010, my remarks are predominately reflective of the experiences of the businesses in Gulf Shores, Orange Beach, and Foley AL, (Coastal Baldwin County) but could certainly apply to other affected areas of the Gulf Coast. These are my personal comments and do not reflect any opinions of the two entities mentioned above.

Gulf Shores, AL

Eligibility: Coastal Baldwin County, Alabama has only one "economic industry" and it is **Tourism** and the **beaches, waterways and fishing industries** are the heart of this economic engine. Our businesses are also predominately small, family owned businesses, many owned and operated by the same families for generations, and **all** are connected to local tourism for their livelihood. It is because of this dependence upon tourism, that ANY and ALL of our businesses that can prove a loss of revenue and be able to document that the loss resulted from the decrease in tourism in 2010, which was directly caused by the BP Deepwater Horizon Incident (Oil Spill), should be ELIGIBLE for payment. NO business should be denied the ability to file a claim and receive payment for proven revenue losses, simply because of the type of business that they are or where they are located.

If BP had paid our business owners for their lost gross revenue in the beginning and then let the business owners pay their taxes, vendors, salaries, etc. and have money left over to spend with other types of businesses in the area, such as attorneys, doctors, dentist, accountants, financial advisors, landscapers, etc., then the "tourist dollar", which seems to be what GCCF is concentrating on defining as their guide for payment, would have stopped with the business owner. By BP deciding that our business owners were not reputable, honest, ethical or moral enough to continue their businesses and pass the money thru the normal revenue cycle, then BP is responsible for seeing that all of our businesses that have been impacted by this loss of "community revenue from the tourist dollar" are adequately and appropriately compensated. BP is the one who chose to pay the employees and leave the business owners out of the loop and Mr Feinberg chose to have GCCF continue this absurd, dysfunctional, illogical process, so if it cost BP more money to "make **us** whole" (BP's original words), then that is just the price they have to pay for setting up an inappropriate system in the beginning.

Calculations: 2010 lost revenue numbers for each individual or business must be "trued up", as BP said in the beginning that they would do by the end of 2010, and paid

before a baseline for future calculations for interim or final payments can be established. This "true up" number must include a growth factor for 2010, reflecting the growth trend that the business had seen for the first quarter of 2010 properly projected thru the end of 2010. Future calculations should also include a growth factor for 2011 over 2010, 2012 over 2011, etc. Some businesses may not be able to produce documentation from their particular business regarding a growth trend, because their growth would have been dependent on the number of tourist that came to the area, which they might not have had records to document at the time of the spill, but they should be able to use the growth trend of the accommodation businesses or the City and use a factor of that growth trend as it relates to the connection of their business to tourism. The amount of the loss for the 8 months in 2010 must also be annualized to cover 12 months for 2011, 2012, 2013, etc.

Criteria: The exact criteria, the documentation required and the reason why, for individuals and each type of business, should be clearly posted on the GCCF's website. The GCCF should also have accountants in each of the GCCF's offices, who are trained and qualified to understand each of the various types of businesses that we have in our communities and the seasonality of our tourism business and how that affects the revenue flow of the various types of businesses. These accountants should meet with each business owner individually and go over their records and understand their business and develop, along with the business owner and/or his accountant, an agreed upon methodology and documentation that the business owner will need to follow and provide for receiving interim payments or a final payment in the future. Taking the time to establish this process for the business owner in the beginning will take longer, of course, but will greatly lessen the amount of work required for review and shorten the time frame for payment of the interim or final payment requests.

It is critical that the GCCF's claims review and payment process be developed and streamlined to such an extent that the business owner can fully rely on it and have total confidence that his payment requests will be processed fairly, consistently and in a very timely manner in the future. Our businesses have been thru several "lean" years due to hurricanes and the national economic recession and we have lost some of our businesses over those years, but those still in existence in the spring of 2010 had been strong enough to survive those hard years and were planning on recovering in 2010, based on the growth being seen in tourism prior to April 20, 2010. Due to the BP Deepwater Horizon oil spill and the biased and ineffective compensation process put in place by BP and continued by the GCCF, we have lost some other businesses and have many others just barely able to continue at this time.

Our businesses that have been able to "hold on' through all of this and are still in business need immediate financial assistance by getting their claims paid quickly and completely. None of our businesses want anything, but what is owned to them by BP. The devastating oil spill that occurred on April 20, 2010 caused not only the loss of 11 lives that day, but has caused the loss of life since then and is on the verge of causing the lost of more businesses, if their claims are not paid quickly and sufficiently.

Transparency: Claimants need to get immediate and direct feed-back regarding any questions the GCCF may have regarding their claims. If more information is needed the claimant should be contacted by GCCF and told exactly what is needed and why and given the expected time frame for the completion of the review once the information is provided by the claimant. Any payment received by the claimant should include the time frame the payment covers and exactly what is covered in the payment and if it is different from the initial claim, it should state why and what might be done for appeal if it is for less that the claim.

When a claim is submitted by a businesses' certified accountant, there should be little reason for questioning the claim. If GCCF feels it necessary, they should go thru a review process with accounting firms and establish an "approved" list of accountants that they would then consider as knowledgeable of the process and view as "trust worthy" and therefore require much less scrutiny by the GCCF accountants of claims submitted by those "approved" accountants.

The GCCF's website should also provide more complete and accurate payment data. Everything should be disclosed, such as not only the number of claims made, number paid and % of number paid, but the amount of claims made, amount paid and the % of amount paid, with a separate tally of the claims not fully paid and % of their claim paid or not paid.

Consistency: The same type of criteria should be applied to every individual and business. There should be no difference in the documentation required or the criteria or process for review for a business with a claim over $500,000 than for one under $500,000 when they are the same type of business. There may be different types of documentation required for different types of businesses, but each business within a particular category should be treated the same. Like-kind businesses should be able to compare their process and results with other businesses of the same type and be assured they were each compensated on their documented lost revenue and the same documentation and review process was utilized by the GCCF for each one of them.

Loss of Income (LOI): The Profit & Loss Statement (P&L) of a business should be the source used for any possible calculations for a reduction in the compensation due a business for lost revenue due to any additional reduction in expenses that the business may have had as a result of the loss of tourism related business. No "standard" LOI should be used unless a business can not produce a P & L. If a new start up business or existing business can not produce a P&L, the GCCF, along with the business and or its' accountant, should be able to develop a LOI specifically for that particular business.

Time Frame for Payments: Since Dr Tunnell's report, posted on the GCCF's website, states that it is impossible to determine when the Gulf and fisheries will be back to normal and our tourism business is so connected to those items, as well as the expected continuous influx of tar balls due to the existence of the known tar mats just off shore, our businesses and our individuals should not be intimidated/coerced into taking a Final Payment, as the process is now designed to do. There were also no studies included from

economists regarding the affect of the continuous damage from tar balls, with possible perceived health concerns of the public, to beach areas and how that might affect public opinion and their willingness to bring their family to a resort beach area.

The Interim Claims process should be set up to be very define as to what is required, as discussed above, and therefore, Interim claims should be able to be processed in a very short time frame to the financial benefit of the business owner or individual. A business owner or individual should be able to sit down with a GCCF accountant and discuss their particular business and establish and agree upon the criteria and documentation that will be needed each quarter (or whatever time frame is best for that particular business owner) for them to receive payment for their losses for that quarter and then know that once that documentation is submitted each quarter, they will receive a payment within 14 -21 days and it will be for the amount they have documented that they have lost.

If a business owner decides that it may be in their best interest to take a Final Payment, it should be calculated for at least 4 years, just like the oysterman, because we can not be back to normal until they are. The business owner should also be advised of all the possibilities, both negative and positive, that may affect the future of tourism along the Gulf Coast, so that they are fully informed of the consequences of them taking a Final payment before they are assured of a full recovery of the tourism industry along the Baldwin County Gulf Coast.

Process for Different Areas: The process does not have to be "one size fits all". The damage was not the same everywhere and the process for determining loss or the length of time for expected negative consequences from the oil spill is not the same everywhere. The Alabama Gulf Coast is the only area that is solely dependant upon tourism and we are the only one to have oil cover our entire beach and last for weeks and we are the only one who still has to worry about tar balls or oil coming back up on our beaches for a good while into the future, which will certainly affect tourism in a very negative manner every time it does occur, causing us another set back in tourism to have to deal with.

Louisiana's coastal area was certainly the epicenter for environmental damage, even though Alabama's coastal area had their fair share of environmental damage and Alabama was certainly the epicenter for the economic damage, even though the other areas has their fair share too. Every area along the Gulf coast should be analyzed by lost lodging and sales tax revenue, along with any other economic indicator for that particular area of the Gulf coast, to determine that particular areas' projected length of time for total economic and environmental recovery and that is the time frame that individuals and businesses should be able to recoup lost revenue from the decrease in tourism, fisheries, etc. For some areas, it may only be one year and for others it may possibly be for more than 5 or 6 years. Compensation and the length of time for compensation should be totally reflective of the amount of damage and the length of time the damage will exist.

Interest & Waiving Liability: The Oil Pollution act states that, *"The responsible party or the responsible party's guarantor is liable to a claimant for interest on the*

amount paid in satisfaction of a claim under this Act for the period described in subsection (b). The responsible party shall establish a procedure for the payment or settlement of claims for interim, short-term damages. Payment or settlement of a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim." I have not seen or heard of any discussion regarding interest being paid on any unpaid or delayed payment of claims and wonder why. Is there a process to eventually pay interest due the individuals or businesses for delayed, under paid or unpaid claims? Also, where in the OPA does it state that an individual or business owner has to sign away their rights for further documented loss by taking compensation for present loss?

Recovery: Any "recovery" seen during the last quarter of 2010 was as a direct result of the extra marketing dollars supplied by BP for the two concerts in October and does not reflect any long term, sustainable recovery of any appreciable size. The lack of BP's willingness to provide further marketing dollars in any significant amount for 2011, 2012 and 2013 has lessen the change of a quicker recovery, necessitating even more the need for an efficient, effective claims process. All we have ever asked from the beginning and all we ask now is for BP to help us help ourselves by replacing all of the tourism dollars they cost us and the entire value that tourist dollar made throughout our entire community.

Mental Health: BP is responsible for all of the financial, physical, emotional and mental health damage that has been inflicted upon the Gulf Coast through their negligent management and operations of the Macondo 252 well and their inability to appropriately and quickly stop the flow, contain the spill and/or clean up the damage. They, along with Ken Feinberg and his GCCF process have even further exacerbated the situation and have caused extreme mental anguish for the citizens of the Gulf Coast through their ineffective and biased, in favor of BP, claims process, which has been implemented to apparently intimidate and harass the citizens along the Gulf Coast. Through no fault of their own, individuals and business owners along the Gulf Coast have been made to feel like criminals, needing to prove their innocence, instead of being treated like the victims they are and being compensated for every penny of legitimate loss that they have experienced.

Mr Feinberg's constant use of the word *fraud* is a continuation of harassment of our citizens. I'm sure there has been some fraud committed, some of which was caused by BP's and the GCCF's claims process of paying some smaller individual claims without any documentation and/or knowingly over paying some claims, which encouraged a few more unethical individuals to file fraudulent claims. Any fraud should be discovered and prosecuted to the fullest extent of the law, but the large majority of the claims that have been submitted, first to BP and then the GCCF, are legitimate claims and need to be paid NOW and the use of the word fraud needs to stop now. We are not the criminals – we are the victims and we should be treated with respect, compassion and fairness.

February 15, 2011

VIA E-MAIL
MethodologyComments@gccf-claims.com

GCCF
P. O. BOX 9658
Dublin, OH 43017-4958

Re: BP Claim

Dear Sir/Madam:

I am one of the owners of , LLC, and I am an individual Oyster Farmer who has filed a claim as a result of the BP Oil Spill. I am a Oyster Farmer who has been bedding and harvesting oysters my entire adult live covering over forty years, as generations before me have. In connection therewith I would like to state the following:

1. Oyster Fishermen are actually Oyster Farmers who cultivate their oyster beds on an annual basis. Oyster Farmers normally take barren waterbottoms and create a base on the waterbottoms through the placement of shells and/or rocks to support oysters for cultivation and propagation. The oysters are harvested on an annual basis and replanted and harvested year after year. It takes an Oyster Farmer years to develop his business into a thriving renewal resource. Oyster Farming is a unique business that would require a knowledgeable individual with the GCCF who understands the inner-workings of an Oyster Farmer's business in order to determine proper compensation for losses from the BP Oil Spill. Since the oyster industry is a multi-million dollar business for the State of Louisiana and the Gulf Coast, I am requesting and recommending that GCCF retain individuals experienced with the oyster industry to act as adjusters to value the losses of Oyster Farmers. A good source of experienced individuals would be representatives of the Louisiana Department of Wildlife & Fisheries experienced with the Louisiana Oyster Farmers' operations, in conjunction with representatives of GCCF.

2. Presently Oyster Farmers are experiencing no market for their oysters as a result of negative press relating to the oil spill. It has been documented that it will take several years before the market for oysters returns to its pre-spill capacity. In the meantime, oysters in place on oyster beds will not be harvested. Approximately eighty (80%) percent of an oyster crop is

harvested on an annual basis. Each annual crop of oysters not harvested will become subject to the uncertainty of mother nature. Various diseases, organisms, and predators will destroy the oysters in place if they are not harvested during the short window of harvest opportunity. Oysters planted and/or grown in 2010 are ready for harvest in 2011. If these oysters are not harvested once they reach market size, more likely than not, these oysters will not survive. There will be no sustainable market for oysters for at least three years or until 2014. Present market size oysters (existing crop) will not survive to be harvested for sale and eighty (80%) percent of the existing crop will be loss. Oyster Farmers should therefore receive compensation for at least eighty (80%) percent of the market crop for a minimum of two harvest years, while efforts are underway to re-invigorate and restore the market for oysters.

Sincerely,

RE: Draft Methodology of February 2, 2011

Please review these suggested changes to the methodologies for determining the values of lost profits and lost property values on private oyster leases in Louisiana. Thank you in advance for your thoughtful consideration of these suggested changes.

With regard to the statements shown on page four of Section III "Calculation of Awards for Final and Interim Payments," please note the following as they apply to oysters only:

- ***"There is evidence of a strong recovery underway..."***

Nothing could be further from the truth with regard to oysters and the oyster industry along the Gulf Coast region that has been adversely affected by the BP oil spill and its aftermath including, but not limited to aerial spraying of oil dispersants and freshwater flushing of oyster growing areas adjacent to the Mississippi River. No significant recovery is underway and there is no evidence to support that statement. No significant sets of young-of-the-year oyster spat [<1-inch length] have materialized east of the Mississippi River as evidenced by spat monitoring conducted by the Louisiana Department of Wildlife and Fisheries. Freshwater flooding killed spawning stocks throughout the areas along both sides of the river. In the absence of the required critical masses of spawning stocks significant spat sets cannot and will not occur until the salinity regimes are re-established and the few oysters that have settled grow to maturity and spawn later in 2011 or beyond.

The fouling of the exposed oyster shells and other cultch materials (*e.g.*, limestone and concrete aggregates) by sediments from the Mississippi River and the settlement of encrusting sponges and other biofouling organisms will prevent significant spat sets in the near-term. Oyster growers and harvesters will be required to plant additional cultch materials to catch the 2011 spat sets, if they materialize. Interim funding from the GCCF will be required to facilitate that process. The recovery period for the Gulf Oyster Industry cannot begin until sufficient stocks of exposed cultch materials are available on

the bedding leases and a significant spat set occurs in 2011 AND survives into the future.

- ***"Prediction is not an exact science ..."***

In the case of the Gulf Oyster Industry, prediction can be aided by science. Spat-plate monitoring and oyster-lease assessment will reveal the successful start of the recovery period. Until and unless future oyster spat sets materialize and survive, the recovery calendar cannot begin and final losses and damages cannot be calculated.
When a successful spat set occurs and the resulting oyster populations reach the pre-oil-spill levels throughout the affected coastal waters of the Gulf of Mexico, then and only then can the recovery calendar begin. Oyster populations on any given public or private oyster grounds consist primarily of three groups of oysters: (1) young-of-the-year spat that are less than 1 inch in total length; (2) seed oysters of more than 1 inch and less than 3 inches in length; and (3) sack oysters over 3 inches in length that are approved for harvesting. The growth of newly settled spat through the seed-oyster stage to the harvesting sack size requires from 1.5 to 3 years depending on tidal flow characteristics in the area and food availability. Spat must be allowed to grow to seed size before being transplanted to private leases and seed oysters must be allowed to grow to sack size before final harvesting and marketing. In the optimal oyster growing zones of Louisiana healthy oyster populations all three size classes will be present and the oyster grower and harvester removes about one-third of his or her oyster "crop" each year and allows the spat and seed oysters to continue growing. In essence, the oyster "crop" is harvested on a 3-year rotation.

When the BP oil spill and the freshwater flooding and dispersant application destroyed the public and private oyster populations, the 3-year crop rotation was terminated. Therefore, the recovery of healthy oyster populations in those affected areas will take a minimum of 3 years once the first widespread and successful spat sets occur.

"Prediction" can, therefore be an exact science in the case of oyster populations and their recovery in the northern Gulf of Mexico, notwithstanding the GCCF statement (above) to the contrary. But that prediction must be based on the arrival and settlement of the first widespread spat sets that survive to produce a three-stage crop rotation.

- ***"The GCCF's conclusions are based on currently available data..."***

If Dr. Wes Tunnell had been given the opportunity to assess the current status of oyster populations that were wiped out by the BP oil spill and its aftermath, he would have correctly concluded that the recovery has not, in fact, begun for the oyster industry in areas east and west of the Mississippi River in coastal parishes of Louisiana. Since he was afforded neither the time nor the funds to gather such assessment data, the mere fact of its absence cannot and should not be grounds for dismissing data gathered by state biologists and those biologists who assist the private oyster lessees. Oyster assessment data must be accepted by the GCCF in determining the actual onset of the recovery of oyster culture in the case of claimants who present their cases to that entity.

The claim that the GCCF will evaluate ***"available*** [oyster] ***data every four months"*** presupposes that qualified oyster biologists have been or will be retained to gather and analyze those assessment data over the wide coastal zone of impact. Is there any evidence that such personnel have been identified and retained to perform those assessments other than NRDA teams who are not qualified to make such assessments in Louisiana under guidelines promulgated by the Oyster Lease Damage Evaluation Board. In the meantime, the oyster growers, harvesters, and processors will require interim payments to continue their existence and preparations for future operations.

- ***"Any claimant who disagrees with the GCCF's approach regarding future payment calculations or is not ready to accept it, is free to opt for Interim Payments based upon documented past damage, while awaiting further evidence of Gulf Region economic recovery."***

The oyster industry asked representatives of the GCCF in December 2010 to consider interim payments based on an oyster grower's leased acreage so that cultch materials could be purchased and stock-piled so as to be planted when the Department of Wildlife and Fisheries and/or private oyster biologists confirmed that an oyster spat set is imminent. The oyster industry and the private oyster growers and harvesters are at a crossroad – they are ready to begin their private recovery processes, but with insufficient financial resources to accomplish those tasks. Any "good-faith" interim compensation by the GCCF would be a welcome sign to the oyster industry that BP and the GCCF intend to keep their words in "making it right."

Item #1 in section III ("***Actual Documented Losses***"):

Oyster industry claimants who present their cases to the GCCF have been informed that their 8-months of lost profits from April through December 2010 will form the basis of their payment calculations and that a "multiplier factor" of four will be used to account for future losses while the industry recovers. This approach, in my humble opinion, is seriously flawed for several reasons.

1. The 8-month basis period fails to take into account the fact that many oyster growers were just recovering from the impacts of Hurricane Katrina in 2005, and from the affects of the current financial recession. It also fails to account for the waiting period inherent in the 3-year crop rotation process (***i.e.,*** the recovering oysters had not yet reached harvest or sack size). Therefore, many oyster growers were just beginning to recover when the BP oil spill occurred.

2. The lost-profit calculations should be based on the average annual profits over the previous five (5) years rather than the eight (8) months between April and December 2010. As I understand it, a 5-year average is permitted in back-calculating earnings and losses in other federal applications. Why not permit the same calculations in the case of oyster claimants?

3. If the 8-month calculation is required and the multiplier factor of four (4) is utilized to determine appropriate compensation values, then the oyster industry will be short changed. Under the proposed methodology, the 8-month loss of profits when multiplied by four (4) will amount to a 2.67-year compensation and/or recovery period rather than the 4 to 6 years suggested by Dr. Tunnell: [8 months x 4 = 32 months/12 months/year = 2.67 years]. If the GCCF is serious about helping the Gulf Oyster Industry it should compensate the growers and fishermen for a full four (4) years once the a ***bone fide*** recovery begins.

4. Since the oyster industry loss is still continuing and the recovery has not yet begun, a 12-month average profit (loss) for the previous 5-year period is more appropriate and fairer than the simplistic 8-month April-to-December (2010) period. In this case the "multiplier factor" of four (4) will provide for a 4-year recovery period. If the oyster industry does not fully recover in that 4-year period, then additional compensation through interim payments must be provided until such time as the recovery succeeds.

5. The calculation of compensation values based solely on lost profits fails to account for the lost property values and investments made by the oyster growers to bring their private leases into production and to maintain that production year-after-year as required by state statutes. Under Louisiana statutes, oyster lessees are required to bring 10 percent of their unproductive lease acreage into production each year. To accomplish this requirement, oyster growers plant cultch materials (*e.g.,* processed oyster shells and crushed limestone and concrete aggregate) and transplant seed oysters from public reef areas. The value of those cultch-planting and seed-bedding investments is very significant and can represent thousands of dollars per acre per year with the expectation of increased harvest in the years to come. The advent of the BP oil spill and its aftermath destroyed those investments as well as the future earnings from the bedded oysters. The GCCF methodology must account for those lost investments where and when documented, given the fact that those investments have been destroyed by BP's oil spill and the freshwater flooding that followed.

6. And finally, the expense of oyster lease assessment should be factored into the calculation of the final compensation values if the GCCF expects and/or requires a thorough, scientific evaluation of the oyster grower's losses. The oyster growers and harvesters were not responsible for the losses caused by BP, its agents and employees and contractors, or for the losses caused by the freshwater diversions designed by the State of Louisiana to force BP's oil out of the oyster-growing areas. Those evaluation expenses, therefore, should be borne by BP and the GCCF. Any attempts to force those expenses on the oyster industry are patently unfair and well as arbitrary and capricious.

Item #2 in section III (***"Calculation of Future Losses"***):

If the damages to oyster populations along the Yucatan Peninsula following the Ixtox-1 oil spill in 1979 have taught us anything, it is that recovery to **pre-spill population levels** for these immobile, benthic, bivalve mollusks will be a long time in coming. Populations of mangrove oysters in coastal waters in the Bay of Campeche have still not returned as of 2010. Dr. Wes Tunnell has reported that evidence in pervious reports cited in the news media. Please ask Dr. Tunnell, if you doubt this fact.

Therefore, any attempt to place a limit on the time for recovery of the American oyster in the BP oil-spill zone will be arbitrary and capricious and without serious scientific merit, notwithstanding Dr. Wes Tunnell's unsupported suggestion that recovery will occur in as few as 4 to 6 years. The fact that ***"[T]he Final Payment Offer for those*** [oyster] ***claimants will be equal to an amount four times the actual documented losses in 2010,"*** is appreciated by the oyster industry, but that compensation concept will be meaningless (as addressed above) if it does not factor in the actual onset of a verified and ***bone fide*** oyster-recovery date. Any methodology that does not account for continuing interim payments until such time as the actual oyster recovery begins must be revised and applied to the oyster growers and harvesters of all Gulf Coast States affected by the BP oil spill and its aftermath.

The statement in this section that ***"For claimants with actual losses in 2010 of $500,000 or more, the GCCF will not automatically apply the future losses factor to the claimant's total losses"*** is also arbitrary and capricious. Many of the oyster growers will have net losses of $500,000 or more if they are allowed to include their property losses. The arbitrarily dismissal of the ***"future loss factor"*** should be reconsidered. If the methodology is good for the small oyster growers and harvesters, it must be good enough for the larger growers and harvesters, and to do otherwise will invite legal action -- something that GCCF was intended to prevent.

ADDITIONAL COMMENTS:

Under Item III, "CALCULATION OF AWARDS FOR FINAL AND INTERIM PAYMENTS," the draft methodology states, ***"The GCCF has retained scientific and economic experts to comprehensively research and review studies pertaining to the impact of the [BP] Oil Spill on Gulf Resources."***

I find insufficient evidence in the draft methodology document or elsewhere that any certified or experienced oyster biologist provided "expert advice" to the GCCF. It is obvious that Dr. Wes Tunnell is not an "expert" on Louisiana-style oyster culture practices or an oyster biologist, per se, and in my humble opinion, his advice cannot

and should not be accepted by either the GCCF or the Gulf Oyster Industry with regards to when or if oyster "recovery" actually begins. Until and unless the GCCF retains an actual oyster biology "expert," the process of reviewing, understanding, and judging the claims of Gulf Coast oyster growers, harvesters, and processors for lost profits and oyster-lease damages will be contentious, problematic, and without serious scientific merit.

Thank you for the opportunity to comment on the proposed methodology. These comments are...

Respectfully submitted,

February 16, 2011

Dear Mr. Feinberg:

The) is hereby submitting comments with regard to the Gulf Coast Claims Facility ("GCCF") Announcement of Payment Options Eligibility and Substantiation Criteria and Final Payment Methodology released on February 2, 2011.

The is a non-profit alliance of members of the shrimp industry in eight states committed to preventing the continued deterioration of America's domestic shrimp industry and to ensuring the industry's future viability. is comprised of members of the U.S. warmwater wild shrimp fishery from eight states: Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The association represents the U.S. shrimp industry in a wide range of issues including trade, fisheries management, and industry enhancement efforts.

has previously submitted to the GCCF a Proposed GCCF Payment Methodology for the shrimp industry. We continue to believe that the payment methodology described in that proposal would best address the harm to the domestic shrimp industry resulting from the massive oil spill arising from the April 2010 explosion of the Deepwater Horizon.

The GCCF's final determination regarding a payment methodology for members of the shrimp industry is vitally important to everyone involved in the industry – not just those that stand to directly receive payments from the fund. As currently proposed, the methodology

assumes that there is likely to be only minimal adverse impacts on the shrimp fishery going forward. Based on this assumption, the methodology offers members of the industry payment options that would result in limited funds to hedge against future risks caused by the oil spill. While some in the industry may accept these terms and move on with their working lives, we believe, based on what we have heard throughout the region since the release of the draft final payment methodology, that there are many more in the industry who will not accept the terms of the proposed methodology.

Many in the industry have reacted negatively to the GCCF's proposed methodology because it results in only limited payments as protection against unknown future risks. Thus, the number of those that will decline to participate in the GCCF likely will be significant. The lack of broad, nearly universal participation in the GCCF would threaten the industry as a whole, as some of the parties seeking more compensation than offered by the methodology will be compelled to publicize any and all concerns regarding the impact of the oil spill on the industry. These concerns undoubtedly will include criticism of the safety of Gulf shrimp and, by extension, the health and safety of consumers. As such, unsupported views regarding the safety and wholesomeness of Gulf shrimp will be amplified and the industry will continue to suffer from the oil spill – even if the optimistic projections apparently adopted by the GCCF come to fruition.

The GCCF has requested comments with regard to the proposed methodology described in its February 2011 Announcement. As such, these submitted comments address that GCCF proposed methodology specifically. These recommendations are intended to apply to boat owners, crew, and others in the industry, to the extent applicable.

The Oil Spill's Impact on the Shrimp Industry

As an initial matter, the GCCF's proposed methodology unjustifiably treats the oyster industry differently than the shrimp industry. In fact, the inference to be drawn from the methodology is that a shrimp fisherman does not bear future risks similar to those of an oyster harvester, but rather, faces the same level of risk as a restaurant owner, a hotel worker, or a cashier at Wal-Mart. This suggestion is illogical and cannot be defended. Shrimp fishermen face far more uncertainty and greater future risk than those in other industries who earn a living

on dry land. While a hotel owner, for example, can assess with reasonable certainty what his future risk of losses might be, a shrimp fisherman can't be nearly so sure.

When the Deepwater Horizon exploded, the Gulf shrimp population was in the process of spawning in deep water – at the very depths where oil gushed from the ruptured well, and where unprecedented levels of toxic dispersants were used in an effort to keep the oil from rising to the surface where it could be seen by the human eye. Thus, a significant part of the shrimp population may have been destroyed or otherwise compromised before the shrimp larvae even migrated toward shore. Then the 2011 shrimp crop went through the maturation process in the Gulf's estuaries, which suffered contamination from the oil and dispersants. As a result, many of those shrimp that survived the oil spill's first assault may not have survived its second.

The potential impact on the Gulf shrimp species is severe not only for the 2011 crop, but for future years' crops as well. If fewer shrimp survived the effects of the spill in 2010, there will be fewer that spawn in 2011. This would then have a multiplier effect for future generations of the Gulf shrimp crop. Moreover, exposure to oil and dispersants makes those shrimp that do survive more susceptible to disease and mutations. In addition, the presence of these toxins in the water will have an adverse impact on those species down the food chain that shrimp rely on for a food source, making the chances of survival even more perilous. As a result, it is grossly inappropriate to even suggest that a shrimp fisherman shares the same level of risk of future losses as those who do not rely directly on the Gulf's waters for their livelihood. GCCF officials have publicly stated their desire "to pay claims in a manner that will be equitable and fair," however, compensating shrimp fisherman in the same manner as a hotel worker, and at only half the rate of an oyster harvester, is neither equitable nor fair.

In addition to the serious unanswered questions regarding the long-term ecological impact of the oil spill on the Gulf, consumer concerns about the safety of domestic shrimp remain. Uncertainty about the effects of the largest oil spill in history and the resulting decision to use unprecedented levels of chemical dispersants on future stocks of shrimp in the Gulf means that the shrimping industry may be looking at significant economic losses for years to come.

There are numerous reports and studies analyzing the effects of the oil spill and providing predictions of the rate of recovery, both economically and ecologically, of the Gulf region. The

only consistency in these reports is their inconsistency. The fact is that no one knows how soon the region will recover. While some reports and studies optimistically predict only a limited future impact on the shrimp fishery as the result of the oil spill, these reports and studies – including the opinion of Dr. Tunnell commissioned by the GCCF – are heavy with caveats and qualifications. And yet, individuals and businesses must make decisions soon about whether to accept GCCF final payments now or assume unknown risk going forward.

Compensation for Future Risk

To better take into account the significant risks and considerable uncertainty, recommends that the following changes be made to the GCCF proposed methodology for calculating payments for the shrimp industry for future years. These changes will modestly improve the calculation methodology in a way that will provide more fair and equitable treatment to those in the shrimp industry who have been harmed by the oil spill, and who are being asked to cede their rights to seek other remedies, especially in the event that the future harm is greater than what the GCCF has predicted. These changes also would result in a much greater number of individuals being willing to accept the GCCF's final payment offer in lieu of seeking redress through other means.

1. The GCCF proposal contemplates payments in 2011 and 2012 (70% and 30%, respectively). As previously noted, there is tremendous uncertainty as to how fully and how quickly the Gulf will recover, and there are a broad range of estimates for when the recovery will be complete. Nevertheless, full recovery in only two years is extremely optimistic. In order to accept the GCCF offer, the domestic shrimp industry, which is among the most vulnerable to a slower recovery, would be effectively required to rely on these very optimistic projections. recommends that the future payment period be extended to four years to account for this substantial risk. Thus, we recommend that the future payment structure include projected losses for 2011–2014, at 100% of the annual loss amount, as discussed further in paragraph 4 below.

2. The GCCF proposed methodology for determining future payments is based on amounts that would be paid for 2010. That is, individuals and businesses would receive 70% and 30% of the amount that would be paid under the methodology for 2010 for the years 2011 and 2012 respectively.

2010 was an aberrational year for the shrimp industry in virtually every respect and should not serve as the base year for future payments. Some fishermen received Vessel of Opportunity ("VOO") oil spill cleanup income and income for other efforts directly related to the oil spill crisis, such as turtle relocation, water sampling, beach cleanup, boom cleanup, marsh protection, and test trawling, to name a few. Also, some fishermen were able to return to fishing for longer or shorter periods of time, some were unable to fish, and still others simply chose not to return to fishing for the year. The relative income levels varied widely and are in no way indicative of the economic and ecological issues that members of the industry will confront in future years because of the oil spill.

VOO payments and other similar oil spill recovery income will not be available in future years to offset any losses to shrimp fishing income. They certainly must not be included in the calculation of a base amount that is used to calculate future payments.

Similarly, fishing income in 2010 should not be included in the calculation of amounts to be received in future years. GCCF officials frequently urged individuals and businesses to return to work in 2010. In meetings with representatives, GCCF officials made clear that fishermen and others in the fishing industry had a responsibility to mitigate damages by returning to work. Based on these discussions, encouraged all in the industry to begin fishing and other related shrimping operations to the fullest extent possible. Some were able to return to work on a limited basis, and others were not. Nevertheless, as was widely reported in the press and discussed with GCCF officials, some in the industry refused to return to work, acknowledging that they believed they would be more highly compensated by the GCCF if they had no fishing income in 2010.

By basing future payments on a comparison of 2010 income to prior years' income, the GCCF proposal, perversely and contrary to its public statements, penalizes those who did return to work (at the urging of the GCCF) while rewarding those who elected not to do so (put simply, those who decided not to fish in 2010 would be able to show greater losses and, therefore, would receive more compensation for 2011 and 2012). The alternative of requiring parties to demonstrate their mitigation efforts would be nearly impossible, since some were unable to work while others may have chosen not to work. Determining the particular circumstances of each

party would be administratively impracticable, and would be dependent on an inherently subjective analysis of each claim by the GCCF. It almost certainly would result in inconsistent determinations which, at best, would be perceived as arbitrary and unfair within the industry.

Further, the risks that the industry confronts for future years are the same for both those who fished in 2010 and those who did not. The fact that one person earned fishing income in 2010 is in no way an indicator that the same person will earn fishing income in 2011 or future years. Similarly, the fact that another person did not fish in 2010, either because it was not possible due to closures, or because of the ability of particular boats to fish in shallower or deeper waters, etc., or because of simple personal choice, is no indication that this person's losses will be greater than others' in future years.

To properly take into account the wide variations of disparate sources of income when calculating risk of future income, 2010 data should be ignored in the calculation of future payments. Instead, a calculation based on data from years prior to the oil spill (discussed further below) should be used in determining the base amount for calculating future years' payments.

3. The GCCF proposed methodology compares 2010 income to average income for 2008 and 2009. As discussed above, a more accurate calculation of future risk would be based on prior years' income data without regard to 2010. Further, in the highly volatile fishing industry that has been subject to natural disasters and considerable fluctuations in costs and prices, there is considerable discrepancy in operating results not only from year-to-year but also region-to-region. One region in the Gulf or South Atlantic could be successful in one year while a region not far away geographically could have had a difficult year. The very next year, the situation may be reversed. To better take into account these wide variations, recommends that the base year period be 2005-2009 with the high and low years disregarded. Thus, the base year calculations would be determined according to the average of a three-year period between 2005 and 2009 without regard to the high and low year. This is a standard method used in the insurance industry and is appropriate here.

4. The GCCF payment methodology should establish a uniform expense factor in the shrimp fishing industry. Expenses associated with shrimp fishing can vary greatly from year-to-year, and are heavily impacted by fuel costs, which can fluctuate greatly. recommends

that the base period (2005-2009, as discussed above) calculation be determined according to a party's particular average gross income, reduced by a standard 50% expense ratio. The resulting amount would be the annual loss amount, mentioned in paragraph 1 above.

Compensation for 2010 Injury

For the reasons stated above, fishing income and income related to oil spill recovery efforts (e.g., VOO payments) should not be deducted from any payment for losses incurred in 2010. These oil spill recovery efforts were extraneous to the principal business of those in the fishing industry and are not determinative of the losses that these individuals and businesses incurred in 2010 resulting from the oil spill. Moreover, those who fished in 2010 should not be penalized for going back to work at the urging of the GCCF. Thus, compensation for 2010 injury should equal 100% of the annual loss amount, as discussed in paragraph 4 of the previous section. Total compensation (for 2010 injury and future injury), therefore, would equal five times the annual loss amount.

Easing the Burden on Atlantic Coast Industry Harmed by the Oil Spill

The Atlantic Coast shrimp industry also has been impacted by the oil spill crisis, as demand for all warmwater shrimp landed domestically has suffered. The GCCF proposed methodology suggests that *each* individual claimant would need to demonstrate that he or she has been harmed by the oil spill. It would be extremely difficult, if not impossible, for each member of the Atlantic coast shrimp industry to obtain the necessary documentation from purchasers of their product to demonstrate that injury. Accordingly, the GCCF should seek to work with members of the East Coast industry to develop a workable standard for shrimpers based on the Atlantic Coast to meet in order to demonstrate harm.

COMMENTS ON:
Draft Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology, February 2, 2011

February 16, 2011

TO: Gulf Coast Claims Facility (GCCF)

FROM:

REFERENCE: COMMENTS ON: Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology (2)

Introduction:

The Gulf Coast Claims Facility (GCCF) released on February 2, 2010 the draft of its latest in a series of attempts to capture the best estimate of economic loss suffered by individuals both in the past since the April 20, 2010 Deepwater Horizon Incident (the "Oil Spill") and future until they have completely recovered from the effects of the incident. The comments contained in this document refer to the Final Payment Methodology proposed in that document at pages 5 and 6, numbers 1 through 3. In arriving at these conclusions I have reviewed the GCCF Draft Methodology, the ARPC Report Measures of the Effects of the Gulf Oil Spill on Individuals, and Businesses and Proposed Compensation Schema," dated January 24, 2011, listed on the GCCF website under references, Attachment C (3), and Oxford Economics, "Potential Impact of the Gulf Oil Spill on Tourism," prepared for the US Travel Association, July, 2010 (4), the major economic resource in the ARPC references.

COMMENT1: Measurement of impact from time of event by Oxford Economics.

Oxford Economics summarizes the work of many other researchers in its publication. All of these researchers follow the standard procedure in impact studies of beginning their analysis at the time (date) of the event being modeled. This date is defined on page 3 of the report,

> "The Deepwater Horizon oil spill in the Gulf of Mexico is the largest offshore spill in U.S. history. Hundreds of millions of gallons have spilled since the explosion of the rig on April 20, 2010."

The Oxford Economic report goes on to illustrate ranges for the duration of Tourism Impacts from five past oil spill research studies, seven past hurricane research studies, four past pandemic events research studies, four Tsunami research studies and six Terrorism research studies. In each of the twenty-six studies

reported, the same methodology is followed: Impacts are measured in "Months after initial disruption for visitor spending to return to baseline." Reference the figures in their report at pages 12-13 (4). Oxford Economics then proceeds to derive an estimate of the duration of Horizon Deepwater Oil Spill impacts on tourism revenue. Reference in particular their figure on page 22, "Oil Spill Impacts on Tourism Revenue, US$, mns," (4). Here, too, though implicit in the figure, impacts begin in 2010, which consists of four quarters, as do the years 2011, 2012, and 2013. As the negative impacts from the Oil Spill begin at the start of 2010 it is clear that they are using a fiscal year beginning with the event date, defined by them as April 20, 2010. A fiscal year is any 12-month period that a company uses for accounting purposes. In the case of impact studies the fiscal year is generally accepted to start with date of the event being studied. Thus, when Oxford Economics states on page 14, "the Deepwater Horizon oil spill impact could reasonably extend to three years beyond the initial spill," (4) this means that these effects may be expected to last for thirty-six months from April 20, 2010, until April 19, 2013.

Summary on Comment 1: The methodology employed by Oxford Economics in arriving at their estimates, both high and low, of the Oil Spill impacts on tourism revenue are in agreement with standard procedure in the conduct of impact studies.

COMMENT 2: Measurement of impact from time of event by GCCF in "Draft Report

The GCCF Draft agrees with the event date on page 4, "...following the Oil Spill on April 20, 2010..." (2).

The ARPC PowerPoint presentation, dated January 24, 2011, (3), based on what one can only assume was their written, proprietary report to the GCCF, which was not made available to this reviewer (6) by the GCCF, does not mention a date for the start of the event. However, this 'report' does seem to imply that losses begin during 2010, when they outline their Compensation Approach at page 33, "2010 Actual Documented Losses: Losses incurred during the period between when losses began and December 31, 2010." (3)

This is where the problem begins with the methods chosen by the GCCF for compensation of loss both past and future resulting from the Horizon Deepwater Oil Spill. If, as is standard procedure in impact studies that one defines the beginning of the first impact year as the date of the event, then the end of the first year, as correctly defined by Oxford Economics in developing their estimates of loss, must necessarily be April 19, 2011, not December 31, 2010. This error in definition of the first loss year in the GCCF Draft report has the effect of reducing the baseline year 1 loss - upon which years 2 and 3 are based - to only 256 days.

The net effect of this error is that the total compensation to be offered as final payment to claimants by the GCCF only covers approximately 24 months of loss. Let us examine what this means,

Compensable losses start on the event day, April 20, 2010. There is agreement on this start date.

At page 5, point 2 in the GCCF Draft Year 1 is defined as a part of the calendar year 2010, rather than a whole (fiscal) year (2).

"Calculation of Future Losses - The calculation of future losses will be based upon the actual losses incurred during the period immediately following the Oil Spill on April 20, 2010 through December 31, 2010."

This means that year 1 of the loss has been shortened by 109 days to 256 days. Thus, Year 1of the impact, as defined, captures only 70% of the first Fiscal Year's losses following the incident.

"2. Calculation of Future Losses - The calculation of future losses will be based on the actual documented 2010 losses incurred during the period immediately following the Oil Spill on April 20, 2010 through December 31, 2010. The GCCF will use these actual documented 2010 losses to anticipate the gradual economic recovery expected to conclude within two to three years from the date of the Oil Spill" (2, at page 5).

The three year period for economic impacts to be felt from the incident is in agreement with the Oxford Economics study, which reports on page 14, "the Deepwater Horizon oil spill impact could reasonably extend to reasonably extend to three years beyond the initial spill" (4). However, the GCCF Draft incorrectly chooses to base future loss on an 8 month year, rather than the 12 month fiscal year forecast by Oxford Economics in arriving at its multipliers to be used in estimating future loss. As economic loss in years 2 and 3 of the impact are estimated on the basis of year 1 loss, it is critical that year 1 be properly defined. Shortening the first year to just over 8 months means that the Final Payment offer will only cover 24 months of documented and estimated losses from the time of the Oil Spill, rather than 36 months.

A numeric example may be useful to clarify the gravity of this methodological error. We know that the Deepwater Oil Spill event occurred on April 20, 2010 at about 10 pm CDT. This is defined as day 1 (Note that defining day 1 as the 20th is the most conservative definition, as the event occurred so late in the day). Assume that a claimant begins suffering economic loss due to the Oil Spill on April 21, 2010 (This is day 2 and any other date could be assumed, leading to an adjustment of the loss figures in the table). Further assume that this loss continues at a constant rate of $500 per day throughout the rest of the first fiscal year of loss (days 2 - 365). Oxford Economics, and the other reports referenced by them would then define the year 1 loss for this claimant as:

Year 1: The sum of day 1 loss through day 365 loss = 364 x $500 per day = $182,000.

The assumed multiplier for Year 2 loss is 0.7 of Year 1 loss:
Therefore, Year 2 loss = 0.7 x $182,000 = $127,400.

The assumed multiplier for Year 3 loss is 0.3 of Year 1 loss:
Therefore, Year 3 loss = 0.3 x $182,000 = $ 54,600.

The Final Payment then is the sum of Actual Documented Losses for fiscal year 2010 (April 20, 2010 through April 19, 2011), and Future Losses for the fiscal years 2011 and 2012 ending on April 19, 2013. The multiple (Future Recovery Factor) based on FY 2010 income is 1.0 and the total loss and Final Offer Amount is $364,000.

(see Table 1 below for details of the loss calculation.)

TABLE 1: Corrected Methodology for Calculation of Impact of Deepwater Oil Spill as Described in Oxford Economics Research Report, July, 2010

Event date	April 20, 2010, 10 pm CDT		
Year 1	Days	days 1 - 365	
April 20	1	no loss	
April 21-30	2 – 11	@$500 per day	$5 000
May 1-31	12 – 42	@$500 per day	$15 500
June 1-30	43 – 72	@$500 per day	$15 000
July 1-31	73 – 103	@$500 per day	$15 500
Aug. 1-31	104 – 134	@$500 per day	$15 500
Sept. 1-30	135 – 164	@$500 per day	$15 000
Oct. 1-31	165 – 195	@$500 per day	$15 500
Nov. 1-30	196 – 225	@$500 per day	$15 000
Dec. 1-31	226 – 256	@$500 per day	$15 500
Jan. 1-31	257 – 287	@$500 per day	$15 500
Feb. 1-28	288 – 315	@$500 per day	$14 000
Mar. 1-31	316 – 346	@$500 per day	$15 500
Apr. 1-19	347 – 365	@$500 per day	$9 500
Best Estimate	of Year 1 Loss		$182 000
Year 2 Loss	Multiplier = 0,7 of Year 1 Loss		
Best Estimate	of Year 2 Loss		$127 400
Year 3 Loss	Multiplier = 0,3 of Year 1 Loss		
Best Estimate	of Year 3 Loss		$54 600
Best Estimate	of Total Oil Spill Loss and	Final Payment Offer	$364 000

The loss calculation suggested in the GCCF Draft (2) and based on page 33 of the ARPC PowerPoint presentation dated January 24, 2011 (3) incorrectly defines the period to be covered by the first year of loss as covering only the loss suffered between April 20, 2010 and December 31, 2010. This assumption incorrectly underpays the claimant in our example by 30 percent. Clearly, the definition of year 1 or the impact of the event as April 20, 2010 through December 31, 2010 is not the standard definition of year 1 used in impact studies. By this methodology, the year 1 loss in an impact study would be determined to a great extent by the date on which the event occurred in the year, rather than the severity of the event! Putting numbers to the Draft methodology we find that as in the example above, the Deepwater Oil Spill event occurred on April 20, 2010 at about 11 pm EDT. This is defined as day 1. Assume again that a claimant begins suffering economic loss due to the Oil Spill on April 21, 2010 (day 2). Further assume that

this loss continues at a constant rate of $500 per day throughout the first year of loss. However, that year is now defined as only days 2 - 256, Dec. 31, 2010.

Year 1: The sum of day 1 loss through day 256 (Dec. 31) loss = 255 x $500 per day =$127,500.

The assumed multiplier for Year 2 loss is 0.7 of Year 1 loss:
Therefore, Year 2 loss = 0.7 x $127,500 = $ 89,250.

The assumed multiplier for Year 3 loss is 0.3 of Year 1 loss:
Therefore, Year 3 loss = 0.3 x $127,500 = $ 38,250.

The Final Payment then is the sum of Actual Documented Losses for Calendar year 2010 (April 20, 2010 through December 31, 2010), and Future Losses for the Calendar years 2011 and 2012 ending on December 31, 2012. The multiple (Future Recovery Factor) based on Calendar 2010 loss of income is 1.0 and the total loss is reduced to $255,000.

(see Table 2 below for details of the loss calculation.)

TABLE2: GCCF Methodology for Calculation of Impact of Deepwater Oil Spill as stated in Draft Document dated February 2, 2011

Event date	April 20, 2010, 10 pm CDT		
Year 1	days	days 1 - 365	
April 20	1	no loss	
April 21-30	2 - 11	@$500 per day	$5 000
May 1-31	12 - 42	@$500 per day	$15 500
June 1-30	43 - 72	@$500 per day	$15 000
July 1-31	73 - 103	@$500 per day	$15 500
Aug. 1-31	104 - 134	@$500 per day	$15 500
Sept. 1-30	135 - 164	@$500 per day	$15 000
Oct. 1-31	165 - 195	@$500 per day	$15 500
Nov. 1-30	196 - 225	@$500 per day	$15 000
Dec. 1-31	226 - 256	@$500 per day	$15 500
Jan. 1-31	257 - 287		
Feb. 1-28	288 - 315		
Mar. 1-31	316 - 346		
Apr. 1-19	347 - 365		
Best Estimate	of Year 1 Loss		$127 500
Year 2 Loss	Multiplier = 0.7 of Year 1 Loss		
Best Estimate	of Year 2 Loss		$89 250
Year 3 Loss	Multiplier = 0.3 of Year 1 Loss		
Best Estimate	of Year 3 Loss		$38 250
Best Estimate	of Total Oil Spill Loss and	Final Payment Offer	$255 000

COMMENT 3: Effect of the Methodology error on Claimant Payments:

The methodology currently in the GCCF Draft underestimates claimant losses by approximately 30% of the loss Oxford Economics estimates of economic loss likely to occur as a result of the Deepwater Horizon Oil Spill. This error needs to be corrected to properly reflect the estimates made by Oxford Economics to model impacts of the Oil Spill on tourism.

In the example described in Tables 1 it is shown that according to the methodology developed by Oxford Economics, the correct estimate of loss for the hypothetical claimant over the three years to capture the impact of the Oil Spill, is $364,000. The Table 2 estimate derived using the GCCF Draft method

underestimate the first year of impact, which leads to the claimant's Final Payment Loss being under estimated by $364,000 - $255,000 = $109,000.

COMMENT 4: Suggested Remedy for Calculation of Actual Documented Losses and Future Losses for Final Payment based on the Partial Year Ending December 31, 2010.

It is possible for the GCCF to both limit the period of Actual Documented Losses to end at December 31, 2010 and to compensate claimants for the expected future losses through the entire 36 month period suggested by Oxford Economics to be the expected period of impact from the Oil Spill. In other words a multiplier is needed to extend the documented losses for the period April 20 through December 31, 2010 to capture the expected loss for the entire first Fiscal Year. The suggested multiple is 1.42745 of the documented loss through December 31, 2010. By multiplying the losses found for partial year 1 in table 2, $127,500 by 1.42745 we arrive at the correct economic loss for the assumed claimant in Fiscal Year 1 of $182,000. Applying the multipliers found in the GCCF Draft for years 2 and 3 we arrive at the correct 36 month estimate of loss for Final Payment, as detailed in Table 1and shown below.

Fiscal Year 1 (Documented through 2010 and forecast) =	$182,000
Fiscal Year 2 @ Fiscal Year 1 Loss x 0.7 =	$127,400
Fiscal Year 3 @ Fiscal Year 1 Loss x 0.3 =	$ 54,600
And, Final Payment for the 3 years of loss =	$364,000

This is equal to the Final Payment of the loss shown in Table 1 = $364,000.

Alternately, the GCCF could wait until Documented Losses can be substantiated for the entire Fiscal Year 1 (after April 20, 2011) before considering any claims for final settlement.

COMMENT 5: Change from Methodology used For Calculation of the assumed Income Base (2008 and 2009) introduced in the Draft Final Payment Methodology: Creates a Negative Bias in Loss

The methodology accepted both by BP until turning over the claims processing in July 2010 to the GCCF and continued by the GCCF under the Gulf Coast Claims Facility Protocol for Emergency Advance Payments, August 23, 2010, as interpreted by the GCCF located in Gulf Breeze, Florida (at least for business claims for loss of income/rents in the Pensacola, Fl. Region for Emergency Payments) has been changed in the Draft Methodology. Previously, claimants were allowed to choose the higher of a claimant's income during the corresponding month in 2008 OR 2009 as the base income for calculating loss for 2010. The Draft Methodology requires claimants to use the average of a claimant's income during the corresponding month in 2008 or 2009 as the base income for calculating loss for 2010. This change in the methodology creates a negative bias in estimates of loss as the average of the best and worst years must be used. It appears that under the Draft Methodology claimants will be required to go back and recalculate past losses even if they have already been compensated in filing additional interim or final claims. All claimants will see their losses reduced under the Draft Methodology. See example below using the income numbers found in ATTACHMENT B - SAMPLE CALCULATION FOR A BUSINESS CLAIMANT of the Draft Methodology, dated Feb. 2, 2011 (2). In developing this example I used the most conservative

assumption about income: that it was earned at a constant rate during the eight months of each of the three years considered.

Based on: ATTACHMENT B - SAMPLE CALCULATION FOR A BUSINESS CLAIMANT

The data below includes revenues earned by the claimant during the time period shown below.

May - Dec	2008	2009	Average of 2008-2009	Better of 2008 or 2009	2010	Proposed Methodology Best Estimate	Methodology Used until Proposed
Actual	$747 661	$657 998	$702 830	$747 661	$417 913	$284 917	$329 748
Average monthly							
May	$93 458	$82 250	$87 854	$93 458	$52 239	$35 615	$41 219
June	$93 458	$82 250	$87 854	$93 458	$52 239	$35 615	$41 219
July	$93 458	$82 250	$87 854	$93 458	$52 239	$35 615	$41 219
Aug	$93 458	$82 250	$87 854	$93 458	$52 239	$35 615	$41 219
Sept	$93 458	$82 250	$87 854	$93 458	$52 239	$35 615	$41 219
Oct	$93 458	$82 250	$87 854	$93 458	$52 239	$35 615	$41 219
Nov	$93 458	$82 250	$87 854	$93 458	$52 239	$35 615	$41 219
Dec	$93 458	$82 250	$87 854	$93 458	$52 239	$35 615	$41 219
					TOTAL FOR MAY - DEC. 2010	$284 917	$329 748

	MAY - DECEMBER	
	Average of 2008-2009	Better of 2008 or 2009
2010 Projected Revenues (May-Dec)	**$702 830**	**$747 661**
Less: 2010 Actual Revenues	-$417 913	-$417 913
2010 Lost Revenues (May-Dec)	$284 917	$329 748
Loss of Income % (LOI)	50,70%	50,70%
2010 Business Losses (May-Dec)	$144 453	$167 182

As is clearly shown in the example calculation above, the hypothetical claimant in the GCCF example has a lower 2010 estimate of Business Losses (May – December, 2010), $144,453, using the Draft Methodology than they had under the previously accepted GCCF methodology, $167,182.

There are two suggestions as to ways to reduce this negative bias in the calculation of Business Loss. First would be to continue with the previous GCCF methodology of allowing claimants to choose the better of the monthly income figures for 2008 or 2009 as the best estimate of 2010 income during the specific month for 2010. The second suggested remedy would be to allow claimants to show a growth estimate for

2010 income over the average of 2008 and 2009 income, such as was allowed in the settlement of the Santa Rosa Island Authority, Pensacola Beach, Florida claim, where this public authority was allowed to show an expected growth in tax revenues during 2010 over the average tax revenues collected in 2008 and 2009.

CONCLUSIONS:

First, an error has been pointed out in the definition of Year 1 in the GCCF Draft that, if left uncorrected, leads to an estimated 30% under compensation of claimant's losses, as defined by Oxford Economics, from the Deepwater Horizon Oil Spill. On the positive side, one could say that with the current Draft Methodology it is lucky that the Oil Spill did not occur later in the calendar year. Had this occurred, by the faulty logic used in the GCCF Draft, claimants would see their economic losses reduced even further. At the extreme, under the method chosen in the GCCF Draft, had the Oil Spill occurred on the 31st of December, claims for economic loss under their definition of year 1, starting with the date of the event and ending with December 31 of that year, year 1 impact of the event would equal $0 for virtually all claimants. Applying the multiplier of 0.7 times the Year 1 loss for Year 2 and 0.3 times the Year 1 loss for Year 3, claimants would be found to have $0 loss for the entire three year period, which is clearly not the case in the Oil Spill. This error is caused by the GCCF, following their consultant ARPC's definition of year 1 of the loss as being limited to the period of time from the date of the event until the end of the calendar year 2010.

Second, a change in the Draft Methodology proposed by the GCCF from the method used by the GCCF previously under the Gulf Coast Claims Facility Protocol for Emergency Advance Payments, August 23, 2010 introduces a negative bias to all claims of loss. This applies equally to individual and business claims, except in the unusual situation where monthly income during 2008 and 2009 are exactly equal. This negative bias results from the change in methodology from assuming the best estimate of income during any month in 2010 is the best of the actual income received during 2008 or 2009 to defining the best estimate of 2010 to be the average of 2008 and 2009 income.

The analysis in this report has not commented on the basic methodology used by Oxford Economics in arriving at either its estimate of the length of time that it will take before the effects of the Oil Spill are likely to end, nor on the timing of the incidence of claimant costs during the period of impact, which would affect the multiplier chosen. Analysis has focused exclusively on identifying and suggesting a method of correcting the error in specification of Year 1 in the GCCF Draft, titled "Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology, dated February 2, 2011, and the ARPC PowerPoint presentation, dated January 24, 2011.

Notes and References:

1. The author is a professor , and that he is a claimant in the current case concerning the Deepwater Horizon Incident (the "Oil Spill").

2. Gulf Coast Claims Facility, "Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology," released February 2, 2011 at the GCCF website, http://gulfcoastclaimsfacility.com/methodologylanding.php

3. ARPC Report Measures of the Effects of the Gulf Oil Spill on Individuals, and Businesses and Proposed Compensation Schema," dated January 24, 2011, listed on the GCCF website under references, Attachment C

4. Oxford Economics, "Potential Impact of the Gulf Oil Spill on Tourism," prepared for the US Travel Association, July, 2010, retrieved from the U.S. Travel Association website, on Feb. 3 at 4;30 pm http://www.ustravel.org/sites/default/files/page/2009/11/Gulf_Oil_Spill_Analysis_Oxford_Economics_710.pdf

5. Carl Bonham, Christopher Edmonds, and James Mak The Impact of 9/11 and Other Terrible Global Events on Tourism in the U.S. and Hawaii, East-West Center Working Papers, Economics Series, No. 87, February 22, 2006, retrieved from the East-West website on Feb. 3, 2011 at 4 pm, http://www.ustravel.org/sites/default/files/page/2009/11/Gulf_Oil_Spill_Analysis_Oxford_Economics_710.pdf

6. The author called the GCCF on February 3, 2011 and spoke with the Research Department at approximately 3 pm central standard time, and was informed by an employee identified only as neither she, nor her supervisor, with whom she consulted, was authorized to release any further documents beyond what was on the website. As suggested by the GCCF, the author then emailed a request for the ARPC report to the GCCF at: MethodologyComments@gccf-claims.com No response has been received as of Feb. 7. A follow-up call was made to the claims facility on Feb. 7 when my call was again directed to the Research Department. A supervisor there, who identified herself as (sp.) informed me that my request should be emailed to: info@gccf-claims.com
My request was sent to that address on the 7th of February. No response has been received as of the 16th of February from the GCCF.

Critical issues with the Gulf Coast Claims Facility (GCCF) oil spill claims processing as of February 2011. Submitted by on February 16, 2011.

On April 20, 2010 the Deepwater Horizon oil rig exploded, resulting in the largest oil spill in U.S. history. Quantifying the impact of this spill on coastal communities will take years, but it is clear that the negative effects on both our environment and economy will be significant. Louisiana's marquee seafood products, coastal destinations and related businesses are facing profound threats to their future viability and require innovative assistance that provides immediate support, while ensuring long-term sustainability and growth. Despite the large amount of money paid out through the claims process, claimants and non-profit organizations assisting them have expressed serious concern over some of the processes and the experiences people are having. This summary highlights some key issues.

Compensation for decreased demand

While the ecological impacts of the spilled oil on key seafood species has been studied, Economic Impact Study Part III: Brand Damage (forthcoming) examines the multi-layered damage the spill caused on the seafood industry. National voters are concerned about the safety of Gulf seafood resulting in a dramatic decrease in demand for this product. The resulting low prices could have devastating impacts on coastal communities and businesses which rely on this industry for their livelihoods. We encourage Mr. Feinberg to expand his understanding of "damages" to include lost income due to decrease in dock-side prices for catches, and subsequent impacts on related businesses.

Recommendation: We recommend expanding compensation for individuals and businesses to include losses resulting from "brand damage."

Deposit and Denial Explanations

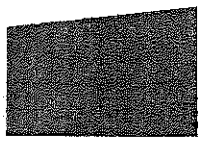
Claimants who have received payments often do so through direct deposit, an appropriate and useful method. However, many of these people do not know how this amount was calculated and have received no statement (written or verbal) accompanying this deposit. Additionally, claimants making interim payments who are denied receive no explanation either, and thus, are unable to appropriately adjust their claims in order to receive compensation when re-filing for an interim payment.

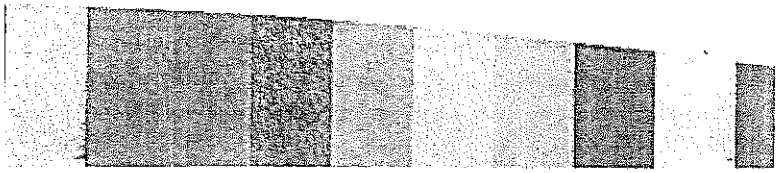
Recommendation: We recommend GCCF mail a paper statement to claimants upon payment that explains why they are receiving said amount of money or why they are being denied. Also, please call claimants when their claim has been approved to notify them of the funds that will be deposited. It would be helpful if claimants knew their compensation was based off net or gross income.

Appeals Process

GCCF has not instigated an appeals process for claimants claiming amounts under $250,000. With final claims decisions being made, this eliminates the option of additional review for a large number of claimants claiming smaller amounts.

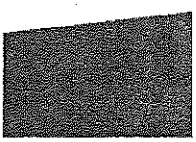
Recommendation: We strongly encourage GCCF to implement and publicize an appeals process for all claims.

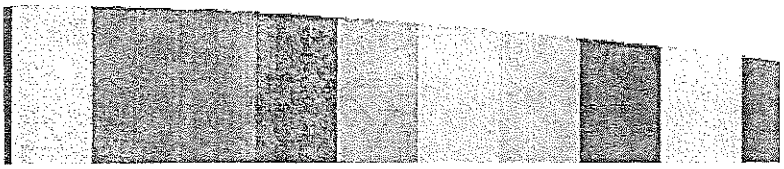




Subsistence Claims
Thousands of claims for Loss of Subsistence: Use of Natural Resources have been submitted to the GCCF which reflect the importance of seafood, wildlife and nature to Gulf Coast communities' livelihoods. Very few of these claims have been paid and many have been denied. While this is a difficult situation to document, GCCF has not put forth creative solutions to ensure reasonable compensation for natural resource users.

Recommendation: We request that GCCF follow the recommendations made in Loss of Subsistence Use: Claim Framework and Template for Louisiana Vietnamese American Fisherfolks and other Louisiana Fisherfolks [attached] submitted to Mr. Kenneth Feinberg on December 16, 2010 by Mary Queen of Vietnam Community Development Corporation, Inc.





February 16, 2011

RESPONSE TO GCCF ANNOUNCEMENT OF PAYMENT OPTIONS, ELIGIBILITY & SUBSTANTIATION CRITERIA, AND FINAL PAYMENT METHODOLOGY ANNOUNCEMENT – FEBRUARY 2, 2011

INTRODUCTION

As one of the nation's most respected Certified Public Accounting firms and the 4th largest in the Southeast with offices located along the Florida Gulf Coast in Ft. Walton, Niceville, Destin, Panama City Beach, and Panama City, we welcome this opportunity to offer our response to the above referenced GCCF announcement.

Since April 20, 2010, our firm has been helping clients navigate the BP/GCCF claims process. Due to the uniqueness and emergency nature of this situation, as well as lack of guidance from GCCF, we have invested a substantial amount of time in developing and perfecting loss calculation models and reporting formats to aid claimants in computing their claims. We have developed our reports using generally accepted accounting methodologies and have tested them in a multitude of claim calculations along various industries and product lines for over a thousand business and individual claims. Our efforts were independent of any GCCF guidance, since there was none published for the period covering the six month emergency claims. Therefore, we appreciate this opportunity to review GCCF's public methodology and offer our informed suggestions as to how this information can be expanded and improved upon with the ultimate goal being an efficient, transparent and fair claims process for all affected businesses and individuals. Our firm's objective of this public comment is to improve the loss claims process.

ELIGIBILITY AND SUBSTANTIATION CRITERIA

Section II(4) states *"In all cases, there must be an identifiable link between an actual loss and the Oil Spill."*

We would propose that GCCF clearly define the criteria necessary to support the *identifiable link* reference. Furthermore, GCCF should acknowledge that businesses located in coastal communities, which may not be directly located on the beach, have also suffered losses. We fear that a narrow definition of *identifiable link* will wrongly exclude businesses not in close proximity to the beach, as well as second and third tier recipients of the tourism monies, who have also suffered tremendous economic losses due to the Oil Spill. We have seen the undeniable evidence that this group of claimants has experienced financial downturn similar to businesses located directly on the beach. All of our coastal communities have suffered due to the tourism dollars not being injected into the beach economies. This link is undeniable.

Section II(4) states *"GCCF will not presume that a claimant's 2010 income or profits would have been greater or less than the claimant's 2009 income or profits."*

While we do not expect GCCF to *presume* any loss component, we do expect GCCF to recognize not all losses of income can be measured in the same way for all businesses. For example, in some cases, there are documented *Growth Trends* that were disrupted by the Oil Spill. In these cases, Gulf Coast businesses were experiencing month-over-month growth in the first quarter of 2010 as compared to 2009 which can be analyzed and documented. Consequently, these businesses can document a downward trend in growth occurring after April 20, 2010 thereby resulting in lost revenue. Accordingly, we believe failure to recognize and compensate claimants for these losses would be unfair. We suggest that GCCF modify this section to recognize that in some cases growth trend disruptions have occurred. We further suggest that GCCF work with CPAs and other experts to establish a consistent methodology for calculating and reporting growth trend losses. If growth trend is ignored and 2009 financial results are used instead, such an approach would unfairly limit losses of affected businesses and individuals.

We have seen instances where GCCF denied claims because 2010 income is higher than 2009. Due to the fact that there is no recognition of the uniqueness of growing businesses, GCCF is using criteria that does not apply to claimants demonstrating growth trends and is failing to compensate them fairly. In some cases, these businesses may need to recompute their 2010 losses with the 2011 results as a benchmark of what their 2010 income should have been. This is just an example of why it would be wrong and unfair to adopt the one-size-fits-all loss methodology, as proposed by GCCF.

CALCULATION OF INTERIM PAYMENTS

Section III(1) states *"In other cases, for example for a "start-up" company which anticipated generating income in 2010, a different methodology will be employed."*

Given the significant number of businesses that started operations in 2009 and 2010, we would like to see GCCF's methodology for processing these claims. Because we have been assisting in the claims process, we have become familiar with and utilized several different approaches for documenting losses for start-up claimants. Due to the fact there was no guidance in this area, this is another example of CPAs and other experts operating in a vacuum. We welcome your guidance in helping us fulfill our responsibilities to our clients and meet GCCF requirements and in turn offer our assistance in compiling guidelines for use in various situations involving start-up businesses.

Section III(2) states *"The calculation of future losses will be based upon the actual losses incurred during the period immediately following the Oil Spill on April 20, 2010 through December 31, 2010."*

The loss period should not be limited to the eight months following the Oil Spill for calculation of future losses. In order to have a true and accurate representation of what has actually transpired, GCCF needs to look at a complete twelve month period. Even annualization of the eight month period may not produce the accurate measurement of the loss that has actually occurred. There are claimants who may have minimal losses during the eight month period who may realize major revenue losses in the January through April 2011 time period. By limiting the time period to eight months, GCCF may artificially lower losses of businesses and individuals. The most accurate period for loss measurement would be the twelve month period, May 2010 through April 2011.

CALCULATION OF FINAL PAYMENTS

Section III(2) states *"This gradual recovery anticipates that losses in 2011 will be approximately 70% of the actual documented losses in 2010. With continuation of the recovery, the GCCF expects claimants will experience losses in 2012, but at an average of approximately 30% of the actual documented losses in 2010. Adding together the effect over 2011 and 2012, the Final Payment offer will be equal to two times the actual documented losses of 2010."*

As stated previously, utilization of the eight month period, as opposed to twelve months, will not produce the fair representation of the losses. No one can reasonably predict what the future holds for the Gulf Coast and the speed of recovery that will follow. Furthermore, the current explanation by GCCF of 70% and 30% factors is confusing and may lead readers to believe that GCCF is intending to limit claimants' losses by 70% in 2011 and 30% in 2012. We believe these percentages are an illustration of how the final payment factor of 2 is derived based of GCCF's expected recovery of the Gulf Coast. Further clarification is needed, however, that these factors are not a reduction of future interim claims.

In discussing claims with clients and other experts, the belief is universal that the final payment multiplier of 2 times actual documented losses of 2010 is certainly not fair to all. The subjective selection of the final payment multipliers (200% for non-oyster harvesters and 400% for oyster harvesters) fails to recognize that a one-size-fits-all approach cannot address the complexities of multiple business models. It is presumptive and wrong to tie the final payment to the recovery factors of 70% in 2011 and 30% in 2012 when the long-term effects of the Oil Spill on the environment and economies of coastal communities cannot be estimated at this time. The arbitrarily picked factor of 2 is very low.

The current GCCF methodology also fails to distinguish and address the final payment for the failed businesses. These former business owners are trying to reestablish themselves and seek

other employment with many being unsuccessful. They now have no livelihood, through no fault of their own, and are being forced to start over. For this group of claimants, the proposed multipliers are inadequate. GCCF should recognize the final payment may need to equal the appraised value of such businesses before the Oil Spill.

Additionally, we are highly concerned with the proposed reduction of the final payment by the previously received emergency and interim payments from BP and GCCF, as well as other offsets. We believe the final payment should not be reduced by any payments previously received. As GCCF requires release of future rights to file subsequent claims with the fund, as well as release of rights to seek damages through the judicial process, the final payment should be regarded as a separate settlement without other offsets. This is especially true in light of the uncertain recovery of the Gulf Coast and possible future negative effects that may arise from the Oil Spill.

Another point to be made is the length of time for paying these claims. Because many are totally dependent upon the payment of the claim to survive or to keep their businesses open, payments should be made within 30 days of claim submission. Some businesses may be inadvertently pushed into filing final claims just to get a quick payment to keep their businesses afloat. We want to believe that this is not the intention of GCCF; however, the current proposed length of payment of quick final claims in 2 weeks and 90 days to pay interim claims certainly gives that appearance to the public.

TRANSPARENCY OF GCCF PAYMENT CALCULATIONS

Some claimants have received payments that differ from their original claim report, and GCCF currently does not provide documentation explaining how the loss payment was calculated. As a result, this missing step leads to confusion and distrust of the GCCF claims process. Accordingly, we suggest that GCCF include a payment calculation with each claim payment. This document would *reconcile* the original claimant request to the GCCF payment and provide transparency which has been repeatedly identified as the paramount objective of GCCF in public appearances by Mr. Feinberg.

MULTI-MARKET & MULTI-PRODUCT BUSINESSES

GCCF needs to recognize that some companies have various geographic markets, as well as various product lines. Many of these businesses saw improvements in the bottom line for their overall results in 2010, but perhaps not in a specific geographic area. Consequently, these businesses have been wrongly denied compensation for losses realized in their Gulf Coast markets simply because the business overall did better in 2010 than in 2009. This is unfair and wrongly denies true losses realized by the Gulf Coast markets of such companies.

CLOSING REMARKS

As a large regional firm serving the Southeast and in particular the Gulf Coast, we have a long-term commitment in helping businesses and individuals with documenting and preparing their claims for submission to the GCCF. Because of our commitment to our clients, we welcome the opportunity to establish an open dialogue with GCCF to assist in ensuring the methodology used is clear and just, not a one-size-fits-all computation, and damages are fairly compensated and explained.

Respectfully submitted by:

February 16, 2011

Re: Analysis of the Proposed Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology (collectively, the "Proposed Plan") Suggested by the Gulf Coast Claims Facility

In accordance with our previous discussions, we have completed our analysis of the Proposed Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology (collectively, the "Proposed Plan") suggested by the Gulf Coast Claims Facility (the "GCCF"). Specifically, we developed our opinion as to the reasonableness of the Proposed Plan with a focus on:

(1) Is the method to calculate economic loss appropriate for the lodging industry?
(2) Is the Loss of Income ("LOI") calculation appropriate given the fixed/variable cost structure of lodging operations?
(3) Given the proposed approach, is adequate consideration being given to the recorded strength of the lodging industry recovery in 2010 and the enhanced outlook for continued growth in 2011 and 2012?
(4) The GCCF estimates that the stigma associated with the oil spill will be fully dissipated within two years. Is this assumption reasonable?
(5) Are there other factors that should be considered?

At this time we have only analyzed the components of the proposed GCCF economic loss calculation methodology. Going forward, after fully vetting the issues addressed in this report, we are prepared to assist you, or the appropriate parties, in the development of alternative formula(s) that estimate the economic loss of lodging facilities caused by the Gulf oil spill.

Our findings and conclusions concerning these issues are provided in the report that follows. We appreciate the opportunity to be of service to

Executive Summary

Question 1: Is the method to calculate economic loss appropriate for the lodging industry?

No. The recovery pattern for lodging differs in terms of timing and the potential for permanent or long-term impairment.

Question 2: Is the Loss of Income ("LOI") calculation appropriate given the fixed/variable cost structure of lodging operations?

No. The approach suggested by the GCCF ignores the fixed/variable cost structure and the seasonality of business patterns that characterize transient lodging operations.

Question 3: Given the proposed approach, is adequate consideration being given to the recorded strength of the lodging industry recovery in 2010 and the enhanced outlook for continued growth in 2011 and 2012?

No. As noted above, 2008 and 2009 were extremely poor years for hotels and condominium rental facilities in the area served by the Transient lodging demand experienced a strong rebound in the vast majority of lodging markets across the nation as well as in resort locations. The year over year decline in essentially all critical industry measures experienced in 2010 in the areas served by the AGCCVB can be comfortably attributed to the BP oil spill.

Question 4: The GCCF estimates that the stigma associated with the oil spill will be fully dissipated within two years. Is this assumption reasonable?

No, this does not appear to be a reasonable assumption; particularly in view of the opinions expressed by experts engaged by the GCCF.

Question 5: Are there other factors that should be considered?

Yes. A notable omission is any consideration for the potential diminution of property values.

Rationale supporting the observations noted above is provided in the following pages.

Question 1: Is the method to calculate economic loss appropriate for the lodging industry?

The Loss Formula

The GCCF derives an economic loss for claimants based on an equation with the following form:

$$L_t = X_{10}+(.7\ X_{10})+(.3\ X_{10}) \quad (1a)$$

where L_t is the total payment to a claimant paid in period t due to economic loss and X10 is actual documented losses of the claimant in 2010. The Facility specifies that the loss in 2011 will be 70 percent of the actual documented loss in 2010 (i.e., 0.7 times X10), and in 2012, 30 percent of the actual documented loss. These percentages appear to come from the GCCF's consultant report (Tunnell, January 31, 2011) whose estimates are based on professional and academic studies of recovery following catastrophic events that include earlier oil spills, terrorist activities, and storms (i.e. Katrina in 2005). The underlying assumptions of the GCCF formula are:

1. The economic impact on businesses in the affected area dissipates to zero beginning in 2013. Hence, there will be no permanent loss (otherwise known as impairment) experienced by claimants.

2. The dissipation rate of losses over the two year period goes from 70 percent to 30 percent.

3. The businesses in the affected area forgo any growth in their incomes during 2011 and 2012 since X10 is unadjusted.

4. Aside from certain fishery businesses, all types of businesses will experience the same recovery pattern.

5. The economic losses of claimants are limited to losses of operating incomes and no loss will be experienced by claimants who own the real estate underlying their businesses (i.e., property value loss).

Hypothetically assuming that X_{10}=\$100, L_t becomes \$200 when calculated using Equation 1a and shown in Equation 1b. As noted in the GCCF announcement (GCCF 2011), claimants' economic recovery is capped at twice X_{10}.

$$200= 100 + 70 +30 \quad (1b)$$

We propose an alternative to the GCCF equation that relax the first three assumptions cited above and adds the reality of claimants' business situations following the spill. The last two assumptions are discussed elsewhere in this report. Our equation has the following form:

$$L_t = X_{10}+\alpha_{11}[X_{10}(1+g_{11})]+\alpha_{12}[X_{10}(1+g_{12})]+\ldots\ \alpha_N[X_{10}(1+g_N)] \quad (2a)$$

where L_t and X_{10} are as before; α_{11}, α_{12} ... α_N are loss dissipation parameters for 2011, 2012, and beyond; and g_{11}, g_{12} ... g_N are the growth rates in business incomes in 2011, 2012, and beyond. This equation recognizes three realistic possibilities that the GCCF equation does *not* consider:

First:

The businesses in the Gulf region may have grown from April 20, 2010 into the future. This growth was partially forgone to business owners due to the spill. Our equation recognizes income growth after 2010. In other words X_{10} is treated as a fixed amount set by GCCF based on loss records.

Second:

The dissipation parameters may differ from those specified in the GCCF equation. Hence, these parameters may vary by year and across types and locations of businesses – even for businesses in the same industry. We recognize that GCCF created their equation structure and loss dissipation parameters to avoid the cost and administrative effort of devising a loss formula for each affected business, but we also recognize that the GCCF equation represents an oversimplification with respect to growth and inflexibility with respect to the length of time for recovery of different fixed-location, service businesses in the Gulf region.

Third:

Periods beyond 2012 are assumed to account for extended recovery in our equation and the equation can be modified slightly to account for impairment.

Putting the hypothetical numbers into Equation 2a for expository purposes begins with the following simplifying assumptions.

- X_{10} = $100.
- Recovery occurs over 4 years.
- α_{11}, α_{12}, α_{13}, α_{14} = .7, .3, .3, and .3.
- g_{11}, g_{12} g_{13}, g_{14} = .03

The result becomes,

$$270.48 = 100+.7[100(1+.03)]+.3[100(1+.03)^2]+ .3[100(1+.03)^3] +.3[100(1+.03)^4] \quad (2b)$$

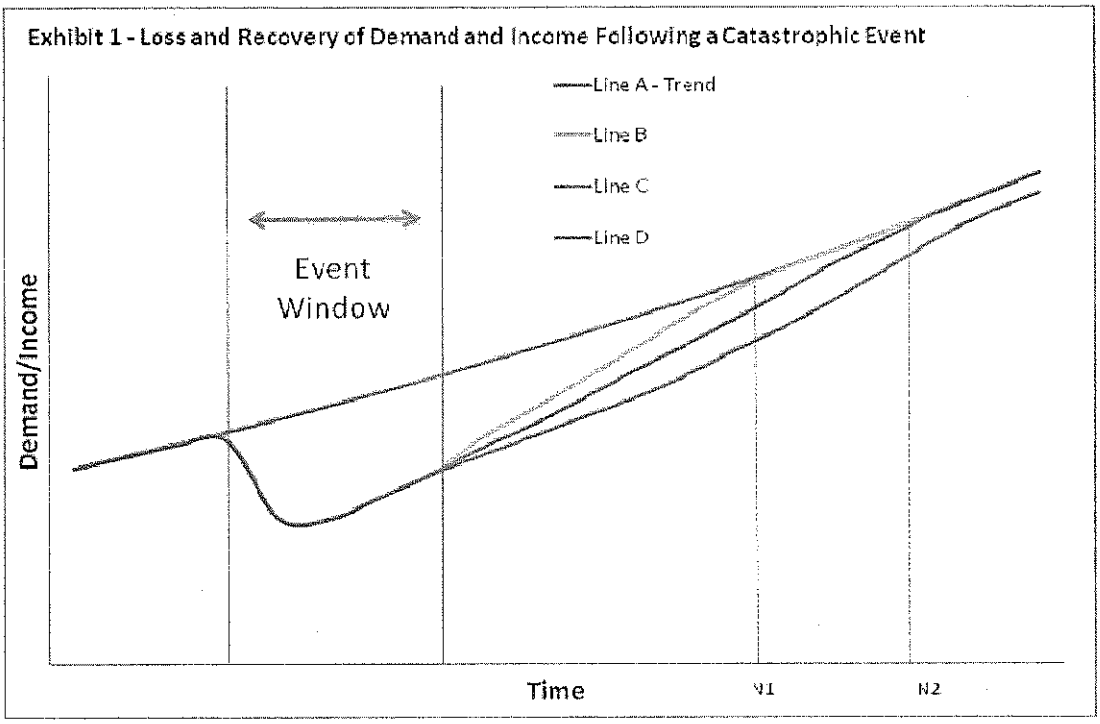
$270.48 in dollars.

This amount, using fairly conservative assumptions for growth and loss dissipation, is approximately 35 percent greater than the amount calculated using the GCCF equation. Growth accounts for roughly four percent of the difference (i.e., $203.93 – $200, using only the first three terms of Equation 2b) and extended dissipation accounts for the balance. If the GCCF equation ultimately missed the length of the recovery and impairment, claimants' loss payments derived from the equation may substantially under-compensate claimants for their losses.

How Long Will Recovery Take and at What Rate?

The discussion in the previous section indicates that loss payments to claimants derive from X_{10} and assumptions about loss dissipation, business income growth, the length of recovery and impairment. From a business loss perspective following catastrophic events, assumptions about the length of recovery and impairment have the greatest potential impact on the calculation.

Exhibit 1 demonstrates the various dimensions of the problem of estimating demand recovery following an event that shocks the market from a catastrophic event. In the absence of catastrophic events, demand, and consequently financial performance in terms of dollar equivalents, may be assumed to follow the long-run trend line shown as Line A. Note that the long-run trend includes a modest, average growth factor. The event causes an immediate decline in demand (and sometimes supply) followed by recovery back to the trend line. The extent of the decline is proportional to the severity of the event and no intervening events, such as economic recession, are assumed.



Source: Colliers PKF Hospitality Research

Recovery paths may be affected by several factors. First, remediation efforts and expenditures shorten recovery periods if remediation is aggressively pursued by officials. These actions may be direct as for clean-up activities and indirect as for positive marketing to the public in the aftermath of the event. For example, the events sponsored by the Alabama Gulf Coast Convention and Visitors Bureau in October 2010 (two widely-attended concerts and other related, and highly promoted activities) stimulated significant demand for area hotels and rental facilities.

Second, demand may not completely return to the trend line by the end of the remediation period because those who demand the affected products and services believe that remediation has not returned the area to (near) its pre-catastrophic state, or they believe follow-up catastrophic events seem likely. We label this effect stigma. Additional discussion of stigma appears on page 11. Third, the availability of substitutes for the affected products and services influences recovery. Recovery is slower when consumers have many good substitutes. The presence of stigma and available substitutes not only delays recovery but raises the probability that demand in the affected area will never return to the trend. *The present value of difference between the monetary equivalent of demand at the end of recovery and the monetary equivalent at the trend line equals the impairment charge.*

Line B of Exhibit 1 shows an initial sharp decline of business demand and income following the first recognition of the event and a gradual and full recovery back to trend by period N_1. An extended and slightly different recovery slope (i.e., dissipation rate) than B is presented as Line C. Line D indicates the case in which recovery is slowed by stigma and never recovers to trend, this suggesting impairment.

The GCCF Assumptions Regarding Recovery Time and Dissipation

The GCCF makes the assumptions that complete recovery of business income will occur over a two-year period – 2011 and 2012 – and the rate will be 30 percent in 2011 then 70 percent in 2012. These estimates do not conform to relevant information contained in reports supplied by GCCF and consultants. Some discrepancies are as follows:

1) The Oxford Economics report provides results from a survey of Gulf Coast area travelers following the spill. This report contains a wealth of information leading to the conclusion that the effects of the spill will linger for five years or longer (p.8), that clean up will take three years (p. 10) and that recovery from larger spills may take three years. Note that the Tunnell report repeatedly refers to this spill as the "largest accidental marine oil spill in history after releasing over 200 million gallons (p.1)." The Oxford report also highlights the widespread availability of truism substitutes to the Gulf area, several of which exist outside the Southeastern U.S. (p.7).

2) The GCCF estimates seem to overweight smaller non- oil spill catastrophic events since several of the studies of disease-related catastrophic events were followed by recovery within two years (ARPC p. 31). The larger events, such as Katrina and 9/11, have documented recovery times of three to five years. One study of 9/11 impacts states that "However, by 2004 tourism in Hawaii had fully recovered from 9/11 and other terrible international events after 2011, but this was not the case for the U.S overall. (Bonham et. al. p.8)"

3) Information regarding how the dissipation estimates were derived is difficult to find in the GCCF supporting documents. It seems only right that claimants be better informed about how the 70/30 percent loss ratio was derived.

Could Losses be Permanent?

Another omission in the GCCF's presentations is a discussion of the possibility that business impairment may result from the spill. The assumption is that Gulf area visitation will completely return to trend. Many businesses today are taking impairment charges following the financial crisis. The analogy of the financial crisis impact on financial services businesses and the spill impact on tourism businesses is possible. The GCCF's formula fails to distinguish among businesses that will and will not fully recover.

Question 2: Is the Loss of Income ("LOI") calculation appropriate given the fixed/variable cost structure of lodging operations?

The GCCF appears to apply a constant, or uniform, Loss of Income ("LOI") factor to the estimated Lost Revenues (the difference between reported revenues for 2010 and the average of Actual Revenues for 2008 and 2009). Research of lodging industry behavior reveals that this approach is inappropriate. In the paragraphs that follow, we discuss several operating conditions for hotels, motels, and vacation rental units that create the need to develop multiple LOIs to apply to the various forms of lodging facilities that operate in the Alabama Gulf Coast region.

Profitability Varies By Property Type

The profitability of lodging operations varies greatly depending on the extent of facilities and services offered. Since 1936, has conducted an annual survey of hotel financial performance entitled . The 2010 urvey incorporates data from 6,500 hotels and motels located all across the nation.

With the data collected from the survey, we are able to calculate the net operating income ("NOI") and profit margin ratios for the wide variety of hotels that operate within the United States. For purposes of this analysis, net operating income is

defined as income before deductions for capital reserves, rent, interest, income taxes, depreciation and amortization. Profit margin is calculated by dividing NOI into total hotel revenue.

In general, the greater the facilities and services offered at a lodging facility, the lower the profit margin, but the higher the dollar value of the NOI. Full-service hotels (properties that operate food and beverage outlets) and resorts (properties that provide recreational facilities) fall into this category. Because of the extra amenities, full-service hotels and resorts typically charge higher rental rates, but have greater operating expenses.

Conversely, limited-service hotels achieve the greatest profit margins, but lower dollar net operating incomes. Because these hotels do not operate restaurants, lounges, or golf courses, they have less of a need for labor and other operating expenses. However, in general, they typically charge lower room rates.

Exhibit 2 summarizes the average profits (measured on a dollar-per-available room basis) and profit margins achieved in 2007 and 2009 by the hotels that participated in the survey (2010 data is currently being collected and processed). These data are presented to demonstrate how hotel profits and profit margins vary by property type during both prosperous (2007) and recessionary (2009) years for the U.S. lodging industry.

Exhibit 2

Hotel Profitability* by Property Type

	2007		2009	
Property Type	Dollars Per Available Room	Profit Margin	Dollars Per Available Room	Profit Margin
Limited Service Hotel	$ 8,403	40.4%	$ 6,025	34.6%
Full Service Hotel	$ 16,814	27.9%	$ 9,580	20.1%
Resort	$ 26,824	26.5%	$ 17,447	20.2%

Note: * Profits are defined as income before deductions for capital reserves, rent, interest, income taxes, depreciation, and amortization.

Profitability Is Influenced By Consistency of RevPAR

The amount of rooms revenue (Revenue per Available Room, or "RevPAR") earned by a lodging facility is driven by the number of rooms rented and the price paid to rent each room. In the lodging industry, the number of rooms rented is measured as a percent of the number of rooms available. This ratio is known as the occupancy rate. The average price paid to rent a guest room is defined as average daily room rate ("ADR"). In summary, the product of multiplying occupancy times ADR equals the room rental revenue (RevPAR) realized by a lodging facility.

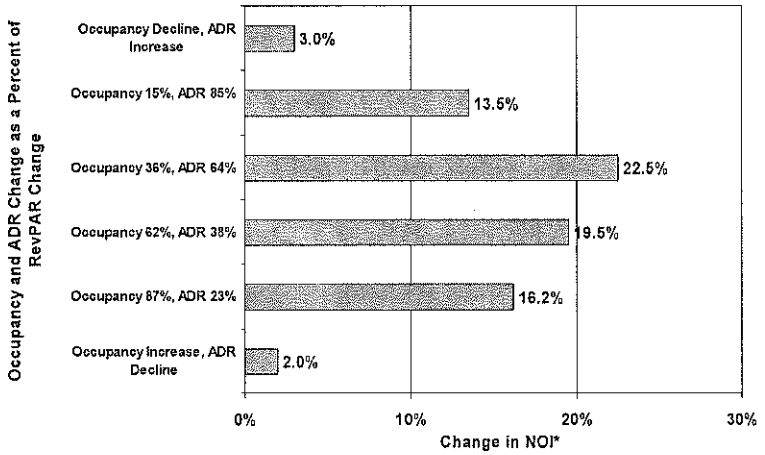
Hotel profitability is influenced by the mix of occupancy and ADR driving RevPAR. In general, when the influence of ADR on RevPAR is greater than the influence of occupancy, hotels are more profitable. This finding was the result of an analysis conducted by on the performance of hotels in our database during the period 1995 to 2009. The following equation summarizes the results of our analysis:

NOI change = -0.02 + 2.07 ADR + 1.38 Occupancy, r^2=.97.

Stated differently, a 1.0 percent increase in ADR will have a roughly 50 percent greater impact on NOI than a 1.0 percent increase in occupancy. The primary reason is the additional variable expenses associated with servicing incremental rooms sold.

For the November 2010 issue of magazine, conducted an analysis of the consistency of RevPAR growth and increases in NOI. The purpose was to provide parameters of profit growth that U.S. hoteliers could expect while recovering from the 2008 – 2009 industry recession. Accordingly, we analyzed changes in hotel performance from 2003 to 2004, a comparable period of recovery from the 2001-2002 industry recession. Exhibit 3 presents the results of our analysis.

Exhibit 3
Impact Of RevPAR Mix
On Hotel Profits*



Note: * Before deduction for capital reserve, rent, interest, income taxes, depreciation, and amortization.

As shown in Exhibit 3, NOI growth was greatest when RevPAR change was predominantly driven by ADR. However, some growth in occupancy did contribute to gains on the bottom-line because of the increased patronage at other revenue generating sources within the hotels (ex. restaurants, lounges, retail and recreation).

Based on data provided by the , the peak season for lodging facilities in the region occurs during the

summer months of June, July, and August. From 1998 to 2009, the ADR of the hotels in the region achieved an ADR premium multiple of approximately 1.31 during these months compared to the annual ADR. For condominium room rentals, the ADR premium ratio was an even greater 1.52.

Since ADR levels are at their highest during the summer months, it can be assumed that the profit margin for lodging facilities in the region are also at their highest during this period. Because the regional hotels and condominium rentals are most "profit efficient" during the summer months, the impact on profitability was most likely greatest during the time period impacted by the oil spill, as opposed to during other months of the year. Accordingly, the impact of lodging profits needs to be analyzed on a seasonal basis, not just one annualized profit margin, or LOI.

Profitability Is Influenced By Fixed / Variable Expense Ratios

Like many industries, expenses at lodging facilities can be divided into three categories:

- Fixed
- Variable
- Semi-variable.

Variable expenses are incurred when there is a change in business volume. At lodging facilities, business volume is mostly dictated by changes in the number of rooms occupied, or guests staying at the property. On occasion, higher operating expenses can also be influenced by increased local patronage and growth in revenue. Examples of variable expenses within a lodging facility include such items as rooms supplies, housekeeping labor, and the cost of food sold. In addition, management and franchise fees are frequently calculated as a percent of revenue, and therefore move in sync with changes in revenue.

Fixed expenses are costs that do not materially change with business volume. Within a lodging facility, examples of fixed expenses include the labor costs for minimum staffing levels, year-round management salaries, property taxes, and insurance.

Most variable expenses have both a fixed component to them, and vary to some degree based on business volume. For example, a lodging facility must provide a minimum level of heating and air conditioning year round to preserve both the building and its contents. However, this expense does increase as more guest rooms are occupied and more patrons are eating in the restaurant.

Like profit margins, the ratio of fixed to variable expenses differs among property types. Exhibit 4 presents estimated fixed / variable ratios for the major cost centers within a lodging facility.

Exhibit 4

Range of Fixed and Variable Expenses In A Hotel

Department	Percent Fixed	Percent Variable	Index Of Variability
Rooms	50 to 70	30 to 50	Occupied Rooms
Food and Beverage	35 to 60	40 to 65	Food and Beverage Revenue
Administrative and General	65 to 85	15 to 35	Total Revenue
Sales and Marketing	65 to 85	15 to 35	Total Revenue
Repairs and Maintenance	55 to 75	25 to 45	Total Revenue
Utilities	80 to 95	5 to 20	Total Revenue
Management Fee	0	100	Total Revenue
Property Taxes	100	0	Total Revenue
Insurance	100	0	Total Revenue

Because of the "24/7" nature of the lodging industry, hotels and rental condominiums have a large fixed expense component to their operations. Whether a lodging facility is operating at an occupancy of 10 percent or 90 percent, management needs to maintain a minimum amount of staffing, heating and/or air conditioning, marketing efforts for the future, and administrative functions, as well as pay property taxes and insurance. Despite the decrease in business volume at lodging facilities in the Alabama Gulf Coast region attributable to the oil spill, these operations continued to incur these minimum cost levels for labor, goods, and services. Some variable expenses were able to be cut, but the fixed and semi-variable expenses were still realized.

Conversely, since the revenue losses attributable to the oil spill occurred during the peak season when occupancy levels are at their greatest, the incremental profitability of the lost revenue is extremely high. From 1999 to 2009, summer occupancy levels averaged 78 percent at hotels and 69 percent for condominium rentals. At these high levels of occupancy, all fixed costs are covered and the only expenses to be deducted from incremental revenue gains are a few minor variable costs. Again, Alabama Gulf Coast lodging facilities are most "profit efficient" during their peak summer months, the time of the greatest impact from the oil spill. The loss of profit relative to the loss of revenue is not the same throughout the year and requires seasonal adjustments to the LOI.

In summary concerning Question 2, the application of one LOI factor does not appropriately account for the multiple operational characteristics of lodging facilities that influence their profitability. The following factors impact lodging profitability:

- Lodging facilities vary by the level of services, facilities, and amenities they offer.
- Lodging facilities are seasonal operations. There are significant differences in pricing and performance metrics throughout the year.

- The Alabama Gulf Coast lodging facilities were impacted the most during their peak season. Because of the high occupancy and ADR levels, this is their most profitable time of the year.

- Despite the declines in visitation and lodging occupancy, lodging owners and operators still expended monies for their fixed and semi-variable expenses in 2010.

, using its proprietary econometric forecasting model and database, is in a unique position to provide a more rigorous determination of the impact of the preceding factors on lost lodging profits.

Question 3: Given the proposed approach, is adequate consideration being given to the recorded strength of the lodging industry recovery in 2010 and the enhanced outlook for continued growth in 2011 and 2012?

U.S. Lodging Industry Performance Overview

After suffering through the all-time worst year of performance in 2009, the domestic lodging industry experienced a definite turnaround in 2010. According to Smith Travel Research ("STR"), the critical measures of demand (+7.7 percent (a record)), occupancy (+5.6 percent) and RevPAR (+5.5 percent) all experienced substantial increases in 2010. Considering the drags on the economy such as the depressed housing market, high unemployment, and Federal deficit worries, the swift pace of recovery in the lodging industry in 2010 was remarkable. Recently released updated forecasts from PKF-HR reveal that a base has been established for very strong gains in both revenue and profits in the years to come.

Exhibit 5 illustrates the performance of the U.S. lodging industry during the period 2008 through 2010.

Exhibit 5

Year	Occupancy	Percent Change	Average Daily Rate	Percent Change	RevPAR	Percent Change
2008	59.8%	-4.8%	$ 107.31	3.0%	$ 64.17	-2.1%
2009	54.5%	-8.9%	$ 98.19	-8.5%	$ 53.51	-16.6%
2010	57.5%	5.6%	$ 98.07	-0.1%	$ 56.39	5.5%
2011F	60.1%	4.5%	$ 102.58	4.6%	$ 61.65	9.3%
2012F	61.7%	2.7%	$ 109.76	7.0%	$ 67.72	9.9%

Source: Smith Travel Research,

The near-term future is expected to be that much brighter given the new tax laws enacted in early January by Congress and the Obama Administration. This outlook is reflected in the forecast data within Exhibit 5 above.

The U.S. lodging industry is highly dependent on the health of the macro economy to sell their products: guestrooms, food and beverage services, and meeting rooms. According to estimates from Moody's Analytics, the new tax plan has the potential to profoundly affect the state of the U.S. economy in 2011. The forecasting models developed by over the past 10 years, which rely on historic and forecast data from Moody's Analytics, are driven by underlying economic movements to predict the performance of hotels. The econometrically based models rely primarily on changes in real personal income and total payroll employment. The parsimonious quality and explanatory power of these variables relative to changes in lodging demand is significant and far superior to other measures.

The new tax plan includes provisions that not only extends the Bush-era tax rates, but also introduced a payroll tax reduction of 2.0 percent of wages, effective January 1, 2011. According to Moody's Analytics, this provision alone could boost consumer spending by upwards of $120 billion. While the continuation of the existing tax rates was largely expected and was incorporated by Moody's in their previous U.S. forecasts, the payroll tax reduction proposal, which effectively would give the vast majority of working Americans a 2.0 percent pay raise, took many macro economists by surprise. According to Moody's Analytics, this additional income would be a boon to consumer spending which in turn would increase overall domestic production, thus stimulating the need for additional employees. Importantly, while the psychological effects of tax policy certainty over the next year could provide a spending bump (albeit a difficult to quantify one), the payroll tax reduction is directly measurable. Moody's estimates that the increase in GDP of 4.0 percent (up from a pre-new law forecast of 2.8 percent) will result in the creation of 2.8 million jobs in 2011 (up from 1.3 million).

The December 2010 to February 2011 edition of (the 'Pre-Tax Law Change scenario') was based on an employment outlook reflective of the pre-tax plan forecast of 1.3 million jobs added in 2011, and a 2.8 percent increase in GDP. The incremental 1.5 million more jobs than originally expected will stimulate greater levels of corporate and leisure lodging demand nationwide.

Exhibit 6 below outlines how lodging performance in 2011 is forecast to be impacted given the potential impact of employment taxes being reduced from 6.2 percent to 4.2 percent on January 1, 2011. The improved economic outlook is now expected to lead to a 5.3 increase in demand, 200 bps greater than the previous forecast. These additional travelers would allow hoteliers to become even more aggressive with their pricing strategies such that the previous average daily room rate forecast increase of 3.9 percent improves to 4.6 percent for 2011.

These higher occupancy and average daily rate levels yields a 280 bps improvement over the already attractive 6.2 percent increase in revenue per available room, in the pre-tax law change scenario. The expected 11.1 percent lift in Net Operating Income

for the typical U.S. hotel expands to 16.0 percent as a result of the new tax laws that became effective January 1, 2011.

Exhibit 6

Updated Forecasts for 2011 Reflecting New Tax Law

	Change in Demand	Occupancy Level	Change in Average Daily Rate	Change in RevPAR	Change in Net Operating Income
Pre-Tax Law Change	3.3%	58.9%	3.9%	6.2%	11.1%
Updated Forecast Reflecting New Tax Law	5.3%	60.1%	4.6%	9.0%	16.0%

Benchmarking the Market Against All U.S. Hotels and All U.S. Resort Locations

To better understand the level of impact on area hotels and rental facilities that has resulted thus far from the oil spill, we have compiled the following occupancy, average daily rate and RevPAR comparisons:

a) All U.S. Hotels
b) All U.S. Resort Locations
c) AGCCVB Area Hotels
d) AGCCVB Area Condominium Rental Facilities

These data, and select observations related thereto, are provided in the Exhibits 7 through 10 and are discussed in the paragraphs that follow.

Occupancy

Exhibits 7 and 8 summarize the annual level, and period to period change, in occupancy levels for the four (4) groupings identified. Perhaps most noteworthy is the change in occupancy for all U.S. hotels and all U.S. hotels in resort locations from 2009 to 2010. During this period, industry-wide occupancy increased 5.7 percent for all hotels, while all hotels in resort locations increased by 4.4 percent. Conversely, occupancy levels for the hotels and rental condominiums declined 3.6 percent and 13.9 percent, respectively. It is reasonable to expect that much, if not all, of the disparate performance level realized at the lodging facilities may be attributable to the Gulf oil spill.

Exhibit 7
Occupancy Comparison

	All U.S. Hotels	Resort Locations	Hotels	Condominium Rentals
2005	63.0%	66.3%	72.5%	53.2%
2006	63.1%	65.9%	61.3%	45.6%
2007	62.8%	65.6%	58.2%	46.6%
2008	59.8%	61.5%	51.8%	44.8%
2009	54.6%	56.9%	49.6%	43.7%
2010	57.6%	59.4%	47.8%	37.6%
L.R.A.	62.0%	65.1%	56.1%	49.8%

L.R.A. = Long Run Average

Exhibit 8
Occupancy Percent Change Comparison

	All U.S. Hotels	Resort Locations	Hotels	Condominium Rentals
2005	2.9%	1.0%	11.6%	-16.9%
2006	0.2%	-0.6%	-15.5%	-14.1%
2007	-0.5%	-0.5%	-5.1%	2.1%
2008	-4.7%	-6.3%	-11.0%	-3.8%
2009	-8.8%	-7.5%	-4.2%	-2.4%
2010	5.7%	4.4%	-3.6%	-13.9%

2008 and 2009 were particularly poor years for the area hotels and rental condominium facilities. The reported occupancy in those years for hotels was 430 Bases Points ("bp") (2008) and 650 bp (2009) below the long run average level. For condominium rentals, the reported occupancies in those years were 500 bp (2008) and 610 bp (2009) below the long run average level. Thus, using these two years as a foundation for estimating losses attributable to the BP oil spill is inappropriate.

Average Daily Rate

The data in Exhibit 9 illustrate a comparison of the year-over-year change in average daily rate achieved for the four (4) groupings identified. The decline in ADR realized in 2009 by all U.S. hotels and all U.S. hotels in resort locations (-8.6 percent for all hotels; -11.6 percent for all hotels in resort locations) was much more severe than that realized at the area facilities. Conversely, while ADR levels essentially remained flat in 2010, ADR levels for the hotels and rental condominiums declined 11.0 percent and 15.2 percent, respectively. It is reasonable to expect that much, if not all, of the disparate performance level realized at the lodging facilities may be attributable to the Gulf oil spill.

Exhibit 9

Average Daily Rate Percent Change Comparison

	All U.S. Hotels	Resort Locations	Hotels	Condominium Rentals
2005	5.6%	6.0%	10.3%	4.4%
2006	7.6%	7.8%	-4.2%	-7.1%
2007	6.4%	5.8%	8.5%	19.7%
2008	2.9%	1.8%	5.4%	-2.8%
2009	-8.6%	-11.6%	-3.5%	-6.3%
2010	-0.1%	0.0%	-11.0%	-15.2%
L.R.A.	2.8%	2.9%	2.4%	4.1%

L.R.A. = Long Run Average

Revenue per Available Room

The data in Exhibit 10 illustrate a comparison of the year-over-year change in RevPAR achieved for the four (4) groupings identified. The decline in RevPAR realized in 2009 by all U.S. hotels and all U.S. hotels in resort locations (-16.7 percent for all hotels; -18.3 percent for all hotels in resort locations) was much more severe than that realized at the facilities. Conversely, while RevPAR levels increased by 5.6 percent

and 4.4 percent, respectively, for all U.S. hotels and all U.S. hotels in resort locations, RevPAR levels for the hotels and rental condominiums declined 14.2 percent and 27.0 percent, respectively. It is reasonable to expect that much, if not all, of the disparate performance level realized at the lodging facilities may be attributable to the Gulf oil spill.

Exhibit 10

Revenue per Available Room Percent Change Comparison

	All U.S. Hotels	Resort Locations	Hotels	Condominium Rentals
2005	8.6%	7.1%	23.1%	-13.3%
2006	7.9%	7.2%	-19.1%	-20.2%
2007	5.9%	5.4%	3.0%	22.2%
2008	-2.0%	-4.6%	-6.2%	-6.5%
2009	-16.7%	-18.3%	-7.5%	-8.6%
2010	5.6%	4.4%	-14.2%	-27.0%
L.R.A.	2.5%	2.5%	-1.3%	2.4%

L.R.A. = Long Run Average

As noted previously, 2008 and 2009 were particularly poor years for the area hotels and rental condominium facilities. The reported RevPAR change in those years for hotels was 490 bp (2008) and 620 bp (2009) below the long run average annual change amount. For condominium rentals, the RevPAR change in those years was 890 bp (2008) and 1100 bp (2009) below the long run average level. Thus, once again, using these two years as a foundation for estimating losses attributable to the BP oil spill is inappropriate.

Applying an Econometric Approach

Here we summarize the initial results of our efforts to objectively quantify the effect of the BP oil spill on the lodging market. In our preliminary analysis, we used hotel and condo supply, demand and revenue data provided to us and compiled by the The data series is reported to the by local hotel and condo operators. For this study, we used quarterly data dating from 2000 through 2010.

Using a sharedown regression approach, reported RevPAR levels (dependent variable) for both condos and hotels were compared against the historical all U.S. resort location data series from Smith Travel Research (independent variable). The use of the all U.S.

resort series acts as an economic proxy, capturing the economic health of resort markets across the U.S. All RevPAR has been adjusted to 2010 dollars (real average daily RevPAR). The use of dummy variables control for external events unexplainable by the macroeconomic conditions captured with the all resort series (independent variables). These dummy control variables are outlined in Exhibit 11:

Exhibit 11

External Event	Impact Quarters
September 11th 2001, anti-air travel stigma helps gulf shores accommodations	01Q3, 01Q4, 02Q1, 02Q2
Hurricane Ivan removes 50% of supply	04Q3, 04Q4, 05Q1, 05Q2
Hurricane Katrina affects demand	05Q3, 05Q4, 06Q1
Oil Spill affects demand	10Q2, 10Q3

Seasonal dummy variables were also introduced to capture quarter to quarter variations.

Preliminary Results

Exhibits 12 and 13 outline the results of the following equation analyzing the oil spill's affect on condo (Exhibit 12) and hotel (Exhibit 13) RevPAR:

$$rCondoRevPAR = f(rResortRevPAR + ExternalEventDummies + SeasonalDummies + e)$$

$$rHotelRevPAR = f(rResortRevPAR + ExternalEventDummies + SeasonalDummies + e)$$

{the remainder of this page is intentionally blank}

Exhibit 12: Condo Real RevPAR Regression Results (00Q1-10Q4):

Regression Statistics	
Multiple R	0.990114
R Square	0.980327
Adjusted R Square	0.948723
Standard Error	12.2647
Observations	44

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	8	269840.7	33730.09	224.2351	1E-27
Residual	36	5415.224	150.4229		
Total	44	275255.9			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 95.0%*	*Upper 95.0%*
Intercept	0							
Real Resort RevPAR	0.228951	0.050889	4.499038	6.87E-05	0.125743	0.332158	0.125743	0.332158
911 Dummy	4.600707	6.461773	0.711988	0.481061	-8.50438	17.70579	-8.50438	17.70579
Ivan Dummy	16.87008	6.542332	2.578604	0.014155	3.601619	30.13855	3.601619	30.13855
Katrina Dummy	-3.78824	7.565723	-0.50071	0.619623	-19.1322	11.55576	-19.1322	11.55576
Oil Spill Dummy	-47.5844	9.160665	-5.19443	8.28E-06	-66.1631	-29.0057	-66.1631	-29.0057
Q1	19.0853	6.079552	3.139262	0.003375	6.755401	31.4152	6.755401	31.4152
Q2	81.9186	5.992823	13.66945	8.05E-16	69.76459	94.0726	69.76459	94.0726
Q3	89.60194	5.82219	15.38973	2.07E-17	77.79399	101.4099	77.79399	101.4099

The high adjusted R square statistic suggests a tight data fit. The oil spill coefficient reads -47.58, suggesting a $47.58 negative impact on real average daily RevPAR levels for the period 10Q2-10Q3. Table 1 that follows displays the actual and estimated scenarios if no oil spill occurred:

Table 1: Oil Spill Affect on AGCCVB Area Condominium Rentals

Period	Actual RevPAR	Estimated RevPAR	Difference $	Difference %
10Q2	$64.87	$112.46	-$47.58	-42.3%
10Q3	$47.57	$95.15	-$47.58	-50.0%

Exhibit 13: Hotel Real RevPAR Regression Results (00Q1-10Q4):

Regression Statistics	
Multiple R	0.991834
R Square	0.983735
Adjusted R Square	0.952794
Standard Error	11.79575
Observations	44

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	8	302950.8	37868.86	272.1641	3.61E-29
Residual	36	5009.033	139.1398		
Total	44	307959.9			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 95.0%*	*Upper 95.0%*
Intercept	0							
Real Resort RevPAR	0.408899	0.048943	8.354595	6E-10	0.309638	0.508161	0.309638	0.508161
911 Dummy	-1.3807	6.214703	-0.22217	0.82544	-13.9847	11.22331	-13.9847	11.22331
Ivan Dummy	14.2055	6.292182	2.257643	0.030129	1.444367	26.96664	1.444367	26.96664
Katrina Dummy	15.50536	7.276444	2.130898	0.039998	0.748049	30.26267	0.748049	30.26267
Oil Spill Dummy	-25.52	8.810402	-2.89658	0.00638	-43.3883	-7.6517	-43.3883	-7.6517
Q1	5.323457	5.847097	0.910444	0.368644	-6.535	17.18192	-6.535	17.18192
Q2	73.07157	5.763684	12.67793	7.69E-15	61.38228	84.76087	61.38228	84.76087
Q3	70.76316	5.599575	12.63724	8.46E-15	59.4067	82.11963	59.4067	82.11963

Again, the high adjusted R square statistic suggests a tight data fit. The oil spill coefficient reads -25.52, suggesting a $25.52 negative impact on real average daily RevPAR levels for the period 10Q2-10Q3. Table 2 displays the actual and estimated scenarios if no oil spill occurred:

Table 2: Oil Spill Affect on AGCCVB Area Hotels

Period	Actual RevPAR	Estimated RevPAR	Difference $	Difference %
10Q2	$84.53	$110.05	-$25.52	-23.2%
10Q3	$72.93	$98.45	-$25.52	-25.9%

Conclusion

Hotels and rental condominiums in the region reported a severe impact to occupancy, ADR and RevPAR during the second and third quarters of 2010. Our analysis shows that while controlling for outside influences to the properties' performance, the oil spill caused direct and measurable damage upon hotel and condo performance. The sharedown approach accounts for growth that was realized in the U.S. resort market and applies the historical relationship to the two data series share to calculate the potential levels of area performance without the spill. If the oil spill had not occurred, we estimate that condo operators would have seen a RevPAR level approximately 100% greater than observed in 10Q2 and 10Q3, and a 30% greater performance would have been achieved by hotels for the same period.

Importantly, the results of this preliminary analysis once again illustrates that using the simple the average of the 2008 and 2009 performance levels as a basis for estimating losses is inappropriate. The use of econometric analyses is a more appropriate approach in terms of developing an historical comparison.

Question 4: The GCCF estimates that the stigma associated with the oil spill will be fully dissipated within two years. Is this assumption reasonable?

Stigma and Lodging Demand

In the context of estimating lodging demand recovery periods following a catastrophic event, stigma means psychological and emotional barriers to travel in the affected area. After the September 11, 2001 terrorist events, stigma was linked to fear of physical harm at worst and inconvenience (i.e., being stranded in airports for extended periods) at best. Following an oil spill, leisure tourists and, to a certain degree business travelers, fear the loss of enjoyment that would have been experienced had the oil spill not occurred. The loss of enjoyment may not be real, but instead perceived by travelers.

An obvious example of lost enjoyment is the possibility of residual oil on beaches limiting beach usage. We have been told that rough surf in the Gulf area continues to dredge up oil balls on the beach. We also have heard stories about beach users following the spill returning to their hotel rooms with the bottoms of their feet stained with oil that becomes tracked on hotel carpets and transferred to hotel towels. Industry pundit Peter Yesawich of the Y Partnership often states in travel industry presentations "Vacations are an American birthright." Households will take their vacations and business will hold their meetings in places where opportunities exist for after work enjoyment. Viable substitutes to the affected Gulf area are available to provide the same level of enjoyment as in this report.

Question 5: Are there other factors that should be considered?

What about Property Value Loss?

A substantial literature has accumulated on the stigma of environmental events as it relates to property values. The classic paper is by Bill Mundy, "Stigma and Value" Appraisal Journal (January 1992), pp 7-13. Some of these papers report a continuing discount the value due to stigma five years following the event which can be construed as impairment. None of the supporting documents from GCCF address the issue of property value impairment. Some business owners in the Gulf area may suffer temporary income losses and permanent property value losses because of an event sponsored by another business.

First thank you again for allowing us as distributors to express our concerns about the GCCF claims process. We have some suggestions that I hope you will find useful in helping your accountants make decisions on how we will be made whole again. These suggestions are in no particular order but perception problems should be a major concern.

1 It took Alaska 5 years after Exxon Valdez to solve its perception problems. Using a two year calculation period should be stretched to 3-5 years. We will work hard to mitigate damages due to perception but it will not be solved in 2 years.

2 In order to better understand the process of how you calculate a claim; Each claimant needs to see in detail how their six month emergency claim was calculated. This is important for us to understand the process.

3 The assigning of one claims representative that is fully educated on the companies claim and not multiple representatives is necessary. We should have to meet face to face and discuss our concerns about how and what was used to determine the claim payment. Each company would be able to meet and explain certain financial numbers or adjustments that should not be effect the claim in a negative way.

4 Using a two year average of 2008-2009 effectively hurts a growth oriented company. That basically moves that company backwards rather than its normal growth. Also 2008 was the year that hurricanes Gustav and Ike hit the entire coast of Louisiana and does not reflect a true business year

5 We understand you have a biological opinion that tells us how long it will take for our fisheries to come back. In Alaska the herring fishery never recovered even though the biologists thought it would. Some calculation that takes into account the possibility of this problem should be used.

6 As the spill progressed the companies that stayed the course in order to mitigate damages used all of their available inventories that were to be used at a later date. Because of closures that inventory could not be rebuilt. When we begin rebuilding inventory if we could, it came directly out of cash flow and leaves us short of needed funds to rebuild receivables and other needed expenses neglected during to spill. Replacement of inventory should be part of you calculation.

7 Because of the inability to maintain an inventory of Gulf products to fill our customers' needs we have lost our place at the table in many areas? A calculation to consider helping us regain our position in the market place is necessary.

8 The loss of contracts that we could have had but because of the spill we lost needs to be considered in any claims negotiation.

9 The fact that our sales may not have dropped substantially is a function of higher commodity prices across the board. A percentage calculation should be included to adjust sales

accordingly. In example Salmon prices went from the low four dollar range to the high six dollar range.

10 If we do not get the perception problem turned around soon, any heavy production will result in prices so low that our fishermen will not be able to afford to go fishing. All other expenses are on the rise and will make it impossible for us to maintain a market from the water to the table. We need to discuss this problem and come to some solution.

11 If dock prices remain low due to perception other consequences are loss of fishermen, lower volume for processors and the inability to find or keep processing employees due to low production. This downward spiral would be inevitable.

12 As chairman of the seafood board I have spent seventy-five per cent of my time since the spill working towards solving our industries problem. In the second three months after the spill we did over 3000 interviews. This was valuable time not being used for my own business. If I had spent the needed time during this crisis at my plant I individually would be in a lot better position. Likewise, my board members and other industry leaders had to handle this same onslaught of reporters and public officials. The stress related to this clearly took our minds away from our personal businesses and this should be considered in your calculations.

Again, thank you for all you are doing. I know this is a difficult process but remember you have the opportunity to strengthen an industry that has been beaten and battered since Hurricane Katrina. Use the Bp funds to bring Louisiana fisheries back to its former glory. A producing nation is a strong nation and Louisiana is a big part of this nation's ability to create jobs and strengthen our economy. I am sure you will do what is necessary to accomplish your goals of making us whole once again.