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# Should Penguins Really Have to Wear Sweaters?

Julia B. Wyman\*

*When written in Chinese, the word “crisis” is composed of two characters – one represents danger and one represents opportunity.<sup>1</sup>*

– John F. Kennedy

On October 5, 2011, the 236-meter-long, Liberian- flagged container ship *Rena* ran aground on the Astrolabe reef, approximately twelve nautical miles off Tauranga, New Zealand.<sup>2</sup> Onboard the vessel were almost 2000 metric tons of oil.<sup>3</sup> As of mid-October 2011, approximately 350 metric tons of oil had spilled from the *Rena* into the Bay of Plenty.<sup>4</sup> Throughout the month of October, crews worked to pump the remaining fuel off of the

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1. Senator John F. Kennedy, Remarks at the Convocation of the United Negro College Fund (Apr. 12, 1959), *available at* <http://www.jfklibrary.org/Research/Ready-Reference/JFK-Speeches/Remarks-at-the-Convocation-of-the-United-Negro-College-Fund-Indianapolis-Indiana-April-12-1959.aspx>.

2. Anne Barrowclough, *Oil Spill Threatening NZ coast*, AUSTRALIAN, October 8, 2011, at 12, *available at* <http://www.theaustralian.com.au/news/world/oil-spill-threatening-nz-coast/story-e6frg6so-1226161572365>; *New Zealand oil spill ‘worst maritime disaster’*, THE INDEPENDENT (LONDON) (Oct. 11, 2011), *available at* <http://www.independent.co.uk/news/world/australasia/new-zealand-oil-spill-worst-maritime-disaster-2368989.html>.

3. *New Zealand Oil Ship Leak ‘raises questions’*, BBC NEWS (Oct. 9, 2011, 5:27 ET), <http://www.bbc.co.uk/news/world-asia-pacific-15230941>.

4. Paul Harper, et al., *Rena: Race to Pump Oil from ‘dying ship’*, NZ HERALD (Oct. 17, 2011, 2:17 PM), *available at* [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10759676](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10759676).

fractured vessel onto relief ships, racing against the *Rena* falling off the reef and spilling the remaining oil into the sea.<sup>5</sup> Even with efforts to remove the remaining oil, the grounding of *Rena* was one of the worst environmental disasters that New Zealand faced in decades.<sup>6</sup> Similarly, about a year and a half before the *Rena* ran aground, the Gulf coast of the United States faced a tragic environmental disaster of its own when the offshore oil-drilling rig *Deepwater Horizon* had an explosion that caused an estimated 4.9 million barrels of oil to spill into the Gulf of Mexico.<sup>7</sup> Both events were environmental tragedies, yet both received relatively little publicity considering the seriousness of their environmental impacts. What *are* some of the impacts a nation is faced with during such an environmental catastrophe? How can a nation easily forget an event that is deemed a “most significant . . . environmental disaster,” and why should countries take these disasters and turn them into opportunities?<sup>8</sup>

First, there are immediate environmental and societal consequences to these events. Often, these immediate consequences are publicized. In New Zealand, clumps of heavy oil started to wash up on the beaches of Mt. Maunganui and Papamoa within a week of the *Rena* grounding.<sup>9</sup> The Tauranga port and beaches in Maketu south of the spill were expected to see oil onshore soon after.<sup>10</sup> During a time of year where one of the country’s top tourist destinations is usually getting ready for an onslaught of visitors, the beaches were instead closed completely or prohibited swimming.<sup>11</sup> Residents of coastal towns were

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5. *Id.*

6. *Oil Spill Disaster New Zealand’s ‘worst in decades’*, BBC NEWS (Oct. 11, 2011, 7:12 ET), <http://www.bbc.co.uk/news/world-asia-pacific-15251319>. Prior to the *Rena* grounding, New Zealand faced a 400-ton oil spill in 1998 when a Korean fishing boat ran aground in Stewart Island. Lucy Craymer & Rebecca Howard, *High Waves Off New Zealand Hamper Oil Cleanup*, WALL ST. J. (Oct. 12, 2011), <http://online.wsj.com/article/SB10001424052970203499704576623932273893932.html>.

7. See John M. Broder, *Obama Marks Anniversary of BP Disaster*, N.Y. TIMES (Apr. 20, 2011, 1:27 PM), <http://green.blogs.nytimes.com/2011/04/20/obama-marks-anniversary-of-bp-disaster/>.

8. *Oil Spill Disaster New Zealand’s ‘worst in decades’*, *supra* note 6.

9. *Id.*

10. *Id.*

11. See *New Zealand Oil Ship Leak ‘raises questions’*, *supra* note 3.

warmed not to touch dead wildlife that washed ashore.<sup>12</sup> Coastal communities were also told not to collect or eat shellfish from the region.<sup>13</sup> Health officials warned that the thick, gooey substance that was washing onshore could cause skin rashes and respiratory issues from breathing in the fumes.<sup>14</sup> While officials warned people to stay off the beaches, the wildlife did not have the option to avoid the harmful oil.

As of November 4, 2011, Maritime New Zealand, the country's official organization in charge of developing and monitoring maritime safety rules and marine protection,<sup>15</sup> reported 407 sick and injured wildlife from the *Rena* grounding under the care of a local wildlife center. Of that wildlife, 336 were cleaned little blue penguins.<sup>16</sup> Additionally, of the 1500 rare New Zealand dotterels in existence, 100 of which reside in the Bay of Plenty area, the Wildlife Centre preemptively caught and held sixty.<sup>17</sup> As of November 6, 2011, Maritime New Zealand reported 1844 dead oiled birds recovered after the oil spill.<sup>18</sup>

Immediately following the *Rena* grounding, 140 National Oiled Wildlife Response Team (NOWRT) personnel, "including veterinarians, expert responders and ornithologists with experience in the capture and treatment of oiled birds," began cleaning and rehabilitating the captured wildlife in specialized

12. Harper, et al., *supra* note 4.

13. *Id.*

14. Paul Harper, et al., *Rena Spill: 'Tomorrow much worse'*, NZ HERALD (Oct. 11, 2011, 7:50 PM), [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10758195](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10758195).

15. Maritime New Zealand was originally titled the Maritime Safety Authority. Maritime New Zealand is governed by an independent Board appointed by the Governor General on the recommendation of the Minister of Transport. The five-member Authority directs the overall Maritime New Zealand strategy and appoints the Director of Maritime New Zealand. The Director manages the organization and has independent statutory powers under the Maritime Transport Act 1994. See *About Maritime New Zealand*, MARITIME N.Z., <http://www.maritimenz.govt.nz/About-us/About-Maritime-New-Zealand.asp> (last visited Dec. 13, 2011).

16. *Tauranga Incident Page*, MARITIME N.Z., <http://www.maritimenz.govt.nz/Incident/wildlife.asp> (last updated Nov. 6, 2011). The remaining wildlife were: five oiled little blue penguins, one clean fluttering shearwater, and three pied shags. *Id.*

17. See *id.* The New Zealand dotterels are endangered shorebirds and are usually found on sandy beaches and sandspits or feeding on tidal estuaries.

18. *Id.*

cleaning centers.<sup>19</sup> In the cleaning centers, NOWRT personnel washed each bird for approximately forty minutes to remove the oil.<sup>20</sup> The wildlife was then transported to the wildlife center, where it remains until its habitats are safe enough for its return.<sup>21</sup> During the immediate aftermath of the oil spill, a local yarn store “put out a request for knitters” to knit “penguin jumpers” to place on the penguins that had yet to be cleaned to keep them warm and to stop them from ingesting the oil coating their bodies.<sup>22</sup> While the quick response of the NOWRT was crucial in saving much of the wildlife, what is happening to the world when penguins have to wear sweaters to survive?

Second, there are financial consequences to these environmental disasters, including the costs of cleaning up all of the oil on the beach, cleaning up the wildlife, lost tourism, lost income from seafood sales, and more. As of mid-October, the estimated costs of cleaning up the *Rena* spill were at \$4 million and were expected to exceed the \$12.1 million liability covered under the Maritime Transport Act.<sup>23</sup> And those are just quantifiable costs. Who ultimately pays for those costs?

Third, there are legal consequences to these events. As of mid-October *Rena*’s captain and second officer in charge of the navigational watch were charged with “operating a vessel in a manner causing unnecessary danger or risk”<sup>24</sup> and discharging harmful substances from the ship.<sup>25</sup> Additionally, the owners of the *Rena* could face charges within the next six months.<sup>26</sup> These

19. *Id.* The cleaning centers “are housed in . . . standard shipping container[s], [and] can be transported by road, rail or sea to deal with wildlife during an oil spill. *Id.*

20. *Id.*

21. *Id.*

22. *Penguins Get Sweaters to Protect Them from New Zealand Oil Spill*, HUFFINGTON POST (Oct. 21, 2011, 3:00 PM), [http://www.huffingtonpost.com/2011/10/21/new-zealand-penguins-oil-sweaters\\_n\\_1022661.html](http://www.huffingtonpost.com/2011/10/21/new-zealand-penguins-oil-sweaters_n_1022661.html). The Wildlife Centre in Tauranga received plenty of penguin sweaters and stopped seeking donations. *Id.*

23. Harper, et al., *supra* note 4.

24. Jaime Morton, *Rena’s Owners Court Face Charges*, NZ HERALD (Nov. 2, 2011, 11:25 AM), [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10763267](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10763267). The skipper and second officer were charged under section 65 of the Maritime Transport Act. *Id.*

25. *Id.* These charges were brought under the Resource Management Act. *Id.*

26. *See id.* According to recent reports, prosecutors are investigating

legal consequences are also often publicized. It is an opportunity for officials and the public to place blame. It is an opportunity to make the guilty actors pay for the quantifiable costs associated with these actions. After the Deepwater Horizon catastrophe, President Obama created a national commission to investigate the “relevant facts and circumstances concerning the root causes of the Deepwater Horizon oil disaster.”<sup>27</sup> To learn from events, officials must understand what caused those events and learn how to cope with them in the future to minimize impact, or better yet, to avoid them in the future. But what happens when the lessons are not learned?

Fourth, there are long-term consequences to these events. It is these long-term consequences that often are not publicized. They are often the unquantifiable costs. What happens next year when tar balls are still washing up on the beaches in Maketu? What happens when the tourists that could not vacation in Papamoa this year do not go next year because they have found another vacation spot? What happens when baby seals start washing up dead on the beaches? Long-term consequences require long-term solutions. As the uses of our oceans expand, so too do the risks we place on one of our most valuable resources. Calamities such as the Deepwater Horizon catastrophe and the *Rena* grounding should force countries to take a step back and re-evaluate the environmental protections that are currently in place and change those that are no longer effective. Indeed, environmental disasters have often generated new protective laws in this country.<sup>28</sup> With these tragedies should come great opportunities.

But are opportunities being seized? There is a great

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whether to charge the owners for not only the deaths of over 1400 birds, but the pollution of tens of kilometers of beaches, and “[i]n fact, it would be remiss given that it is New Zealand’s worst maritime environmental disaster if there was not a prosecution under [the Resource Management Act].” *Id.*

27. NAT’L COMM’N ON THE BP DEEPWATER HORIZON OIL SPILL & OFFSHORE DRILLING, CHIEF COUNSEL’S REPORT, ix (2011), *available at* [http://www.oilspillcommission.gov/sites/default/files/documents/C21462-408\\_CCR\\_for\\_web\\_0.pdf](http://www.oilspillcommission.gov/sites/default/files/documents/C21462-408_CCR_for_web_0.pdf).

28. For example, the Oil Pollution Act was signed into law in 1990 following public concern following the Exxon Valdez oil spill. *Oil Pollution Act Overview*, U.S. ENVTL. PROTECTION AGENCY, <http://www.epa.gov/oem/content/lawsregs/opaover.htm> (last visited Dec. 12, 2011).

opportunity for the public not to forget. To remind public officials that the people care about what is happening to our oceans and coasts. To remind public officials that the even when the *Rena* has been successfully removed from the Astrolabe reef, the impacts of its oil release will still be felt. Likewise, there is opportunity for residents of the United States to remind public officials that the nation's livelihood is derived from the oceans and coasts, and incidents like the Deepwater Horizon threaten not only the environment, but also the economy and social structure of the United States.<sup>29</sup> The opportunity does not end with the public. The governments have the opportunity to strengthen existing laws and create new ones that protect our most vital resources—our environmental resources. We likely cannot change that decades from now the last two years will be remembered as a time of great danger for our oceans and coasts; however, we have the opportunity to make the next few years be remembered as a time of great commitment to our oceans and coasts.

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29. See, e.g., KRISTEN M. CROSSETT ET AL., NAT'L OCEANIC AND ATMOSPHERIC ADMINISTRATION, POPULATION TRENDS ALONG THE COASTAL UNITED STATES: 1980-2008, available at [http://oceanservice.noaa.gov/programs/mb/pdfs/coastal\\_pop\\_trends\\_complete.pdf](http://oceanservice.noaa.gov/programs/mb/pdfs/coastal_pop_trends_complete.pdf) (last visited Dec. 12, 2011).