

FINAL AMENDMENT TO THE 2009 FINAL RESTORATION PLAN AND ENVIRONMENTAL ASSESSMENT FOR THE NOVEMBER 26, 2004, M/T ATHOS I OIL SPILL ON THE DELAWARE RIVER



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**National Oceanic and Atmospheric Administration
U.S. Fish and Wildlife Service
New Jersey Department of Environmental Protection
Delaware Department of Natural Resources and Environmental Control
Pennsylvania Department of Environmental Protection**

1. Introduction

1.2 The Athos I Oil Spill

On 26 November 2004, the M/T *Athos I* (*Athos*) struck a large, submerged anchor while preparing to dock at a refinery in Paulsboro, New Jersey. The anchor punctured the vessel's bottom, resulting in the discharge of more than 263,000 gallons of crude oil into the Delaware River and nearby tributaries.

Under the federal Oil Pollution Act (OPA), two federal government agencies—the National Oceanic and Atmospheric Administration (NOAA) and U.S. Fish and Wildlife Service (USFWS)—and the three affected states—New Jersey, Pennsylvania, and Delaware—are responsible for restoring natural resources injured by the *Athos* spill. Under OPA, funding was made available through the Oil Spill Liability Trust Fund (OSLTF) administered by the U.S. Coast Guard (USCG).

Injury assessments conducted by the Trustees and other experts identified the following injuries to natural resources and recreational services from the spill:

- Shoreline – 1,729 acres were very lightly, lightly, moderately, or heavily oiled.
- Tributaries – Six tributaries, with a total area of 1,899 acres, were exposed to very light to moderate oiling.
- Aquatic – 412 acres were exposed to *Athos* oil.
- Birds – 11,869 estimated dead (includes direct and indirect losses, a majority of which were swans and geese).
- Recreational services – An estimated 41,709 trips on the river were affected by the spill, with an estimated lost value of \$1,319,097.

1.3 Natural Resource Trustees

The natural resources trustees for the Athos I Oil Spill include the following: the National Oceanic and Atmospheric Administration; U.S. Fish and Wildlife Service; New Jersey Department of Environmental Protection; Delaware Department of Natural Resources and Environmental Control; and Pennsylvania Department of Conservation and Natural Resources, Department of Environmental Protection, Fish and Boat Commission, and Game Commission.

1.4 Athos I Oil Spill Settlement and Restoration Plan

The Trustees completed a Final Restoration Plan and Environmental Assessment (RP/EA) in September 2009. As part of the restoration plan, the Trustees considered numerous restoration alternatives to compensate the public for spill-related injuries using a tiered ranking approach. Each proposed project was evaluated using criteria in the Oil Pollution Act (OPA)'s Natural Resource Damage Assessment (NRDA) regulations, in addition to site-specific criteria developed by the Trustees for this incident. *See*, 33 U.S.C. §2701 *et. seq.* (1990); 15 C.F.R. §990.30. Once the draft RP/EA was vetted through a public comment process, and comments were addressed, the

Final RP/EA was developed, in accordance with the requirements of the National Environmental Policy Act (NEPA). 42 U.S.C § 4321 *et. seq.* (1970) The restoration projects outlined in the RP/EA were developed with the goal of making the environment and the public whole for injuries resulting from the Oil Spill by implementing restoration actions that restore and compensate for injured natural resources and services.

The RP/EA identified the following preferred restoration projects:

Freshwater tidal wetlands restoration at John Heinz National Wildlife Refuge (Pennsylvania)
Restore 7.0 acres of freshwater tidal wetland to benefit 56 acres within John Heinz National Wildlife Refuge to compensate for tributary losses.

Create oyster reefs (New Jersey, Delaware)
Create roughly 78 acres of oyster reef in the Delaware River to compensate for injuries to aquatic resources, diving birds, and gulls.

Darby Creek dam removal and habitat restoration (Pennsylvania)
Remove three dams and a remnant bridge pier from Darby Creek in southeastern Pennsylvania to open up an additional 2.6 miles of habitat to anadromous fish, and restore about 10 acres of riparian habitat along the creek edges.

Habitat restoration at Mad Horse Creek (New Jersey)
Restore 59.6 acres of degraded wetland and create 35 acres of wet meadow and 100 acres of grassland at state-owned property on Mad Horse Creek.

Shoreline restoration at Lardner's Point (Pennsylvania)
Restore shoreline through the demolition of existing structures, import of fill material, grading of a 0.9-acre site to restore tidal inundation, and creation of intertidal marsh and wet meadow habitat.

Blackbird Reserve Wildlife Area Pond and Pasture Enhancement (Delaware)
Excavate two shallow wetland ponds in former agricultural areas, convert 16 acres of agricultural lands to cool-season grass pasture, and establish approximately 24 acres of food plots by modifying existing agricultural practices.

Improve recreational opportunities (Pennsylvania, New Jersey and Delaware)
Implement three projects to address the estimated 41,709 river trips that were affected by the spill:

- Improve the Stow Creek (New Jersey) boat ramp;
- Construct an additional breakwater/jetty at Augustine Boat Ramp (Delaware) to address ongoing shoaling immediately offshore of the boat ramp; and
- Enhance the recreational trail on Little Tinicum Island (Pennsylvania).

A claim was submitted to the National Pollution Funds Center and funds totaling \$30,435,311 were made available to implement restoration projects and reimburse past assessment costs.

2. Purpose and Need for Action

The purpose of this Final Amendment to the RP/EA for the Athos I Oil Spill is to provide information to the public regarding the implementation of restoration projects and the selection of a replacement project for the Augustine Boat Ramp Project. All of the ecological restoration and lost recreational use projects that Trustees selected in the RP/EA have either been constructed or will be constructed by the Trustees in coming years, with the exception of one lost recreational use project.

The Augustine Boat Ramp Project (Delaware) listed in the RP/EA will not be implemented. After detailed evaluation, the Trustees determined that implementation of this project will not provide significantly increased recreational opportunities for the Delaware River boating community. A preliminary study had concluded the installation of a rock jetty on the north side of the boat ramp would eliminate the shoaling of the associated boat ramp, allowing for increased recreational use. However, the Trustees undertook a subsequent detailed modeling analysis, paid for with the State of Delaware funding, to evaluate the proposed jetty plans. This analysis demonstrated that the proposed jetty will not significantly reduce shoaling in the area of the boat ramp. As such, this project will not likely enhance the utility and safety of the current facility, limiting the goal of increased recreational opportunities for the Delaware River boating community.

Because the Trustees were unable to carry out the Augustine Boat Ramp Project, there remains an outstanding need for public access and utilization of water resources in the vicinity of the Oil Spill. The Trustees were required to consider other options for compensating the public for service losses due to the Oil Spill, including subsequent area closures during the clean-up period. In the Draft Amendment to the RP/EA, the Trustees proposed replacing the Augustine Boat Ramp lost recreational use project with a suitable and comparable alternative project type that will be more effective in providing increased recreational opportunities for the Delaware River boating community. The Trustees therefore are modifying (Amending) the RP/EA to include construction of the 7th Street Boat Ramp Project in Wilmington, Delaware.

3. Public Involvement

The Draft Amendment to the RP/EA provided the public with information on the Trustees' restoration project progress to date, the Trustees' remaining restoration objectives, the restoration alternatives considered, and the preferred restoration alternative (the 7th Street Boat Ramp). A Draft Amendment was released and circulated for public comment by the Trustees, electronically, via email to known interested parties and through a NOAA web-based case page posting (<https://darrp.noaa.gov/oil-spills/mt-athos-i>) for a 30-day comment period from November 25 through December 27, 2020. No comments were received during the public comment period.

4. Administrative Record

This document will be retained in the formal administrative record for the case, which currently resides with the NOAA Restoration Center, at National Oceanic and Atmospheric Administration – National Marine Fisheries Service, 200 Harry S. Truman Parkway, Annapolis, Maryland 21401.

5. Alternatives Considered

5.1 Trustee Criteria for Identifying Additional Potential Recreational Lost-Use Projects

In the RP/EA, the Trustees identified and evaluated a wide range of project alternatives capable of restoring ecological services comparable to those lost due to injury to shoreline, aquatic, birds and wildlife, and recreational resources at or in the vicinity of the discharge. These alternatives were identified by first searching for potential projects within the watershed, including a public request for project proposals solicited via a letter to non-governmental organizations, and local and state stakeholders. All of the potential restoration project alternatives identified by the Trustees were reviewed to narrow the list of potential projects and focus information-gathering efforts on the most likely alternatives to meet the purpose and need for action. In total, the Trustees considered 61 different restoration ideas, ranging from fish blockage removals, land acquisition, wetland restoration, shellfish restoration, and recreational enhancements that are potentially capable of providing compensatory restoration for injuries resulting from the *Athos* oil spill.

Project selection had a two-phase screening process. The initial Tier 1 screening criteria that applied to all proposed projects were: (1) does the project have the potential to result in a quantifiable increase in one or more of the injured resources (i.e., nexus to the injury); and (2) is there sufficient information about the project available to allow evaluation with the OPA and NEPA criteria and enable implementation within 12 months of the finalization of the RP/EA.

Of the 61 project ideas considered by the Trustees, 29 met the initial screening requirements and were brought forward for a closer evaluation, represented as Tier 2 Evaluation. These 29 projects were screened to narrow the list of alternatives and focus information-gathering efforts on the most feasible alternatives. The criteria applied to all proposed projects were: (1) the OPA regulations (15 CFR § 990.54) and (2) “Factors to evaluate proposed restoration alternatives under the Oil Pollution Act, Delaware River/M/T *Athos I* oil spill.” Projects that met these criteria were subject to a closer evaluation by the Trustees.

Table 1 in the RP/EA includes the list of all projects considered using the Tier 2 evaluation criteria. Of the 29 projects listed, 5 projects were lost recreation use projects and the other 24 projects were environmental restoration projects. Of the 5 potential lost recreational use projects, two projects have been implemented as part of the RP/EA including: the Stow Creek Boat Ramp in New Jersey and Tinicum Township Recreational Trail (Little Tinicum Island) in Pennsylvania. The third project proposed for implementation was the Augustine Boat Ramp Project. Since it was selected in the RP/EA, this project was further evaluated and determined it is not likely to increase recreational opportunities for the Delaware River boating community. The remaining

Tier 2 lost-use recreational projects considered, but not initially recommended at the time the RP/EA was developed, were the Christina Boat Ramp (7th Street Boat Ramp) and the Trenton Fishing Warf. Of those two remaining projects that address lost recreational use only the Christina Boat Ramp (7th Street Boat Ramp) is located in the state of Delaware. The Trustees will replace the Augustine Boat Ramp Project with the Christina Boat Ramp Project.

The Christina Boat Ramp Project, herein referred to as the 7th Street Boat Ramp Project, was one of the initial Athos projects evaluated in the RP/EA completed in September 2009 and listed in both the Tier 1 “List of Restoration Ideas and Alternatives Considered by the Trustees” and Tier 2 “List of Narrowed Restoration Projects.” The 7th Street Boat Ramp Project was not selected over the Augustine Boat Ramp Project because of several issues which included site ownership, logistics, and long-term operation and maintenance (O&M) at the time the initial restoration projects were evaluated. The state of Delaware has since worked with the City of Wilmington, the owner of the property, to address the ownership, logistical and long-term O&M issues and a Memorandum of Agreement was signed in August 2019 between the City of Wilmington and the State of Delaware Department of Natural Resources and Environmental Control to address outstanding issues.

5.2 Proposed Alternative Lost-Use Project Location and Details

The 7th Street Boat Ramp Project is located on 7th Street in Wilmington, Delaware, at the confluence of the Christina and Brandywine Rivers (Figure 1). The 7th Street Boat Ramp location lies within the area impacted by the Athos oil spill and its shoreline had to undergo clean-up for a period after the spill. The proposed 7th Street Boat Ramp Project would include replacing the inoperable two-lane ramp and installing wing walls to prevent tidal undermining of the ramp, which was lacking in the previous design (Figure 2). Additionally, the project would install lighting for the ramp and parking facility consisting of approximately 16 lights mounted on 20-foot high poles, using either double or single fixtures depending on the location, with 400-watt metal halide or LED bulbs. Additionally, the parking lot will be expanded, striped, and repaved. The existing skateboard park will remain on site but will not interfere with the boat ramp. Once the project is completed, the City of Wilmington has agreed to cover the cost of the utility bills associated with the lighting, as well the responsibility for undertaking repairs and maintenance of all landside facilities associated with this project, including the parking lot and lighting.

Anticipated costs for the 7th Street Boat Ramp Restoration are approximately \$1.2 million dollars. The Trustees had allocated \$818,687 for the Augustine Boat Ramp Project and the State of Delaware requests this funding be reallocated to the 7th Street Boat Ramp. The anticipated funding shortfall will be addressed by the State of Delaware.

The 7th Street Boat Ramp Project has become much more attractive as a recreational opportunity since it was closed to the public in 2004. This attractiveness has been created by several factors. A large increase in the abundance of trophy-sized striped bass in the upper Delaware River near Wilmington since 2010 has led to a surge in popularity for the spring trophy striped bass recreational fishery. The 7th Street Boat Ramp Project would give anglers much easier access to this fishery. The next closest public boat ramps to this exciting fishery are at Newport, which is

almost four miles upstream on the Christina River from the 7th Street Boat Ramp and requires the transit of several lengthy ‘Slow – No Wake’ sections to reach the Delaware River, and Delaware City, which is over 11 miles south of the 7th Street Boat Ramp and requires a long run in the Delaware River to reach the prime fishing area. Wilmington has also created a vibrant waterfront area over the past decade and this area is very popular with boaters and paddle sports enthusiasts. The 7th Street Boat Ramp will be the closest public boating access to the Wilmington waterfront and will surely be frequently used by boaters and paddlers. Finally, Wilmington will soon be removing the first dam blocking Brandywine Creek. The location of the 7th Street Boat Ramp at the confluence of the Christina River and Brandywine Creek will make this ramp the ideal launch location for paddle sport enthusiasts to paddle the Brandywine.

5.3 No Action/Natural Recovery Alternative

NEPA requires that the Trustees consider a “no action” alternative, and the OPA regulations require a similar consideration of a natural recovery option. These alternative options are equivalent. The no action/natural recovery alternative for Athos restoration planning was fully described and analyzed in the RP/EA. That information has not changed, and is incorporated here by reference and briefly summarized below. Under this alternative, the Trustees would take no direct action to restore injured natural resources or compensate for lost services pending environmental recovery. Instead, the Trustees would rely on natural processes for recovery of the injured natural resources. While natural recovery would occur over varying time scales for the injured resources, the interim losses suffered would not be compensated under the no action alternative. The principal advantages of this approach are the ease of implementation and low cost. This approach relies on the capacity of ecosystems to “self-heal”. OPA, however, clearly establishes Trustee responsibility to seek compensation for interim losses pending recovery of the natural resources. This responsibility cannot be addressed through a no action alternative. While the Trustees have determined that natural recovery is appropriate as primary restoration for injuries resulting from this incident, the no action alternative is rejected for compensatory restoration. Technically feasible, cost-effective alternatives exist to compensate for these losses. The no action/natural recovery alternative would not result in impacts to the physical, biological, and cultural/human use environment since no restoration actions would be undertaken. However, the benefits from public access and utilization of water resources in the vicinity of the Oil Spill would not be fully achieved and the public would not be fully compensated for lost recreational use resulting from the spill.

5.4 Preferred Alternative

After considering multiple alternatives, the Trustees select the 7th Street Boat Ramp as a project to address lost recreational use due to the Athos Oil Spill, and to provide comparable lost recreational use benefits that were ultimately not able to be achieved with the Augustine Boat Ramp Project. Further, the Trustees have determined that the proposed action falls within the general scope of the originally selected Augustine Boat Ramp Project alternative described in the RP/EA. The type of project, geographic vicinity within the spill area and original restoration scoping area, resource benefits, and direct, indirect, and cumulative benefits are all nearly identical between the originally planned project and the proposed replacement boat ramp project. The Trustees have also determined that the proposed boat ramp project meets the

restoration goal of restoring lost recreational uses impacted by the spill, and is consistent with the evaluation criteria in the OPA regulations (15 CFR § 990.54), and “Factors to evaluate proposed restoration alternatives under the Oil Pollution Act, Delaware River/M/T *Athos I* oil spill” which were fully described in the RP/EA (section 5.2 Restoration Evaluation Criteria). There were no other recreational use alternatives identified by the Trustees that met the restoration goals and objectives or that met the Trustees’ selection criteria for identifying additional potential recreational lost-use projects for this Amendment. The Trustees, therefore, propose to modify the RP/EA with this Amendment to the RP/EA, to include the construction of the 7th Street Boat Ramp as the preferred restoration alternative.

6. Compliance with the National Environmental Policy Act

6.1 NEPA Approach

Actions undertaken by the Trustees to restore natural resources or services under OPA and other federal laws are subject to the National Environmental Policy Act, (NEPA), 42 U.S.C. § 4321 *et seq.*, and the regulations guiding its implementation (40 C.F.R. 1500 *et seq.*). The RP/EA outlined the Trustees’ compliance with NEPA requirements for selection of the various restoration projects and concluded with a Finding of No Significant Impact (FONSI) under NEPA.

To address NEPA compliance for the proposed 7th Street Boat Ramp Project, the Trustees are proposing to use the existing NEPA analyses from similar recreational use boat ramp improvement projects (Augustine Boat Ramp and Stow Creek Boat Ramp) selected in the RP/EA. Section 5.A (“Guidance for Analyzing Adequacy of Existing NOAA NEPA Documents for a New Proposed Action”) of the *Companion Manual to NOAA Administrative Order 216-6A – Policy and Procedures for Compliance with NEPA and Related Authorities* (Companion Manual), provides guidance for using existing environmental analyses to analyze the effects associated with a new proposed action.

Using the guidance in section 5.A of NOAA’s Companion Manual, the Trustees have concluded the following: the new proposed action is similar to alternatives analyzed in the existing NEPA document (i.e., Athos RP/EA); the proposed project is within the same geographic area and has similar resource conditions to those analyzed in the existing NEPA document; the range of alternatives analyzed in the existing NEPA document is appropriate with respect to the new proposed action, given the environmental concerns, interests, and resource values relevant to the proposed action; the existing analysis remains valid in light of any new information or circumstances; and the direct, indirect, and cumulative effects that would result from implementation of the new proposed action are similar to those analyzed for comparable projects in the existing NEPA document. Accordingly, the Trustees have determined that the existing NEPA document and analyses in the RP/EA is sufficient to cover the new proposed action described in this Amendment (7th Street Boat Ramp Project), and no additional NEPA compliance is needed. A summary of the expected environmental consequences is provided below.

6.2 Affected Environment

The proposed project area is in close proximity to the other recreational use boat ramp projects (Stow Creek and Augustine Boat Ramp Projects) that were analyzed and selected in the RP/EA. The affected physical, biological, and cultural environment remains similar to that described in the RP/EA (section 3.0 – Affected Environment), and that information is incorporated by reference and briefly summarized here. There are no new resources that were not described and evaluated in the RP/EA.

The Delaware River extends approximately 330 miles from Hancock, New York, to the mouth of the Delaware Bay, and includes 216 tributaries. In the vicinity of the spill, the Delaware River separates Pennsylvania and New Jersey in the north and Delaware and New Jersey in the south. The physical environment of the Delaware River and its environs is impacted greatly by human development, including draining and filling of wetlands. A total of approximately 280 miles of shoreline were exposed to oil during the *Athos* spill, which extended from the Tacony-Palmyra Bridge in northern Philadelphia to the Smyrna River in Delaware, north of Dover. Natural areas affected included: Little Tinicum Island, Supawna Meadows National Wildlife Refuge, Fort Delaware State Park (Pea Patch Island), Fort DuPont State Park, and the Augustine and Cedar Swamp Wildlife Areas in Delaware.

6.3 Environmental Consequences

7th Street Boat Ramp Project (Preferred Alternative)

The potential impacts to natural resources or services from this type of recreational use restoration activity (i.e., boat ramp construction) were fully evaluated in the RP/EA (section 5.4.3.5 Identification and Environmental Consequences of the Restoration Alternatives; section 5.4.3.5 – Stow Creek and Augustine Boat Ramps), and are incorporated here by reference and summarized below.

No significant project-specific adverse environmental, social or economic impacts are expected. Any adverse impacts from project construction would be temporary, localized, and generally minor, and would be minimized via the use of best management practices (BMPs). These temporary impacts are anticipated to have a minor short-term impact to recreation, public access to, and public use of the site; and localized use of the nearshore area and habitats by fish, birds, and other wildlife. Minor increases in noise during boat ramp construction and related construction activities may disturb humans and wildlife; however, these impacts are expected to be temporary. There may be temporary visual impacts during project implementation; however, once construction is completed, the visual impacts will cease and beneficial aesthetic impacts will then extend to the users of the project. No adverse social or economic impacts on neighborhoods or communities are anticipated. Impacts to water quality may result from temporary increases in sedimentation and turbidity during project construction; however, these impacts would be minor and localized, and would be minimized through the use of BMPs along with other avoidance and mitigation measures.

The Trustees know of no direct or indirect impacts of the proposed restoration action on threatened or endangered species, or their designated critical habitats. The general locale where the restoration actions would be implemented is not critical habitat for any listed species. A shortnose sturgeon was recently documented (May 2017) near the project site, but there is no evidence to suggest that habitat use in this system is frequent or prolonged by this species. There is no Critical Habitat currently designated or proposed for shortnose sturgeon in the Christina River. No unique or rare habitat would be destroyed due to project construction; however, in-stream construction of the boat ramp will not occur between March 15 and June 30 to avoid potential impacts to anadromous fish using the area.

The proposed project will not adversely affect any known archaeological sites or sites of cultural significance. Once implemented, the project is expected to provide indirect and direct benefits to recreational opportunities in the area.

Since the Trustees designed the project to achieve recovery of injured natural resources and services, the cumulative environmental consequences will be largely beneficial. Cumulative impacts will not be significant or occur at a regional scale.

The proposed action can be implemented in compliance with all applicable federal, state and local permits and approvals, and associated state water quality certification. All required permits and related environmental compliance would be obtained and satisfied prior to project implementation. For additional information, see: Compliance with other Laws and Regulations in section 7 below.

As summarized in the RP/EA, the Trustees determined the selected recreational use restoration projects would not cause significant adverse impacts to natural resources or the services they provide. Further, the Trustees did not believe the proposed projects would affect the quality of the human environment in ways deemed “significant.” That determination remains unchanged for the 7th Street Boat Ramp Project selected in this Amendment to the RP/EA. Based on the review documented above, the Trustees conclude that the proposed action and associated environmental impacts are fully covered in the RP/EA NEPA analysis.

No Action/Natural Recovery Alternative (Non-preferred Alternative)

As discussed in section 5 above, the no action/natural recovery alternative would not result in impacts to the physical, biological, and cultural/human use environment since no restoration actions would be undertaken. However, the benefits from public access and utilization of water resources in the vicinity of the Oil Spill would not be fully achieved and the public would not be fully compensated for lost recreational use resulting from the spill.

6.4 Conclusion

The Trustees are confident that the lost-use project, 7th Street Boat Ramp, provides comparable benefits to the originally selected recreational use project that could not be implemented (Augustine Boat Ramp Project). The Trustees have determined the scope of the proposed restoration action (and the no-action alternative) and all its potential impacts are similar to those

described and evaluated for comparable recreational use projects (Stow Creek and Augustine Boat Ramp Projects) selected in the RP/EA, and there are no geographic or site-specific conditions, sensitivities, new information, or additional environmental impacts expected to occur within the project area beyond those covered in the RP/EA that might warrant additional NEPA analysis or preparation of a new NEPA document (such as a new environmental assessment).

7. Compliance with other Laws and Regulations

The U.S. Army Corps of Engineers will need to issue a permit for the proposed boat ramp project, under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, which will address and resolve any issues and concerns regarding the following consistencies and consultations: the Coastal Zone Management Act, the Endangered Species Act, the Fish and Wildlife Conservation Act, the Fish and Wildlife Coordination Act, the Magnuson-Stevens Fishery Conservation and Management Act, as amended and reauthorized by the Sustainable Fisheries Act, the Marine Mammal Protection Act, Executive Order 11990 - Protection of Wetlands, Executive Order 12898 Environmental Justice, and National Historic Preservation Act (NHPA).

8. Request for Information

Requests for further information about this Amendment may be directed to Mary Andrews, National Oceanic and Atmospheric Administration – National Marine Fisheries Service, 200 Harry S. Truman Parkway, Annapolis, Maryland 21401 or mary.andrews@noaa.gov.



Figure 1. 7th Street Boat Ramp location in the Christina River.



Figure 2. Current condition of the existing boat ramp.