



# Department of Justice



## STATE OF ALASKA DEPARTMENT OF LAW

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### **FACT SHEET:** **EXXON VALDEZ OIL SPILL REOPENER PROVISION**

#### *Joint Federal and State Restoration Plan Under the Reopener for Unknown Injury Provision of the Exxon Valdez Oil Spill Settlement Agreement*

The United States and the State of Alaska today submitted to ExxonMobil Corporation a detailed plan for a proposed restoration project intended to restore habitat in the area affected by the 1989 *Exxon Valdez* oil spill. Today's restoration plan was submitted in accord with the requirements of a set of provisions known as the "Reopener for Unknown Injury" in the consent decree which settled the governments' civil claims against Exxon Corporation (now ExxonMobil), the Exxon Shipping Company and the Exxon Pipeline Company arising from the spill. The project focuses on removing much of the oil that remains in the environment in a form that is potentially harmful to natural resources and disruptive of human activities. The federal and state trustees have been committed to exercising the Reopener provision if the current science supports the requirements of the Reopener. This action is the culmination of an extensive assessment by the governments of the scientific and legal bases for potential claims under the Reopener.

#### **The Reopener Provision:**

- At the time of the settlement, Exxon agreed to pay the governments \$900 million in installments for costs and for natural resource damages known or reasonably anticipated at the time of the settlement. The settlement also included a unique provision allowing the federal and state trustees to seek up to \$100 million in additional monies for damages satisfying the following criteria:
  - A substantial loss or decline in one or more populations, habitats, or species in the area of the spill;
  - Resulting from the spill;
  - Where the loss or decline was unknown and could not reasonably have been anticipated by the governments;
  - One or more projects that would help restore the injured population, habitat or species; and
  - Whose costs are not grossly disproportionate to its (or their) benefits.

- Any demand under the Reopener must be asserted no later than September 1, 2006, and the governments must provide detailed plans for any requested restoration project to Exxon at least 90 days before submitting the demand—by June 2, 2006.

### **The Proposed Plan:**

- The proposed project has two major objectives: (1) to determine the locations, approximate amounts, and chemical states of all significant residual deposits of oil from the spill in the spill area; (2) to accelerate the natural processes of degradation and dispersal of the lingering oil, or otherwise restore the oiled sites, to the greatest extent scientifically appropriate taking into account such factors as the size and distribution of lingering oil patches, conditions at the oiled sites, affected natural resources or human uses, and the relative benefits and costs (including potential adverse effects) of active remediation. The plan expressly calls for public participation and outreach at key stages of the process.
- The ultimate cost of the project depends upon such factors as how many oiled sites require remediation and the remediation approach selected. It is currently estimated to cost approximately \$92 million.

### **Background on the Exxon Valdez Oil Spill:**

- The *Exxon Valdez* oil tanker ran aground on Bligh Reef in Prince William Sound, Alaska in the early morning hours of March 24, 1989. An estimated eleven million gallons of crude oil were spilled and ultimately oiled approximately 1,750 kilometers of shoreline within the Gulf of Alaska. The oil had devastating effects on marine wildlife and other natural resources in the spill area and disrupted the lives of residents of the spill area for many years.
- The harm caused by the spill was extensive. According to government scientist estimates, approximately 250,000 marine birds died from direct exposure to the oil, along with approximately 2,800 sea otters and numerous harbor seals. Shellfish such as clams and mussels and the other animals and plants that make up intertidal communities suffered heavily both from the spill and from some of the cleanup measures. Two pods of killer whales had extraordinarily high losses in the two years after the Spill, with oil exposure a strongly suspect factor. Studies regarding the effects of the spill on many of these species have been and continue to be conducted under the original agreement.

### **The Government Settlements:**

- On Oct. 8, 1991, the U.S. District Court in Anchorage accepted guilty pleas by Exxon Corporation and Exxon Shipping Company to federal environmental crimes and also approved a civil settlement resolving claims for past cleanup costs and natural resources

damages with the federal government and Alaska. The criminal plea agreement called for a \$150 million fine, of which \$125 million was remitted, and the payment of \$100 million in restitution, divided equally between the United States and the State. The civil settlement required Exxon to pay \$900 million to both governments over ten years. That money has been and continues to be used for both short-term and long-term restoration projects in Prince William Sound and the Gulf of Alaska, as well as extensive research on the resources. The purpose of those monies is to rehabilitate and restore the resources known at the time of the settlements to have been injured.

- The Trustee Council (formed by the Departments of the Interior, Agriculture, the National Oceanic and Atmospheric Administration and the state of Alaska) adopted a formal Restoration Plan for the civil settlement proceeds in 1994, after an extensive public process. As of 2004, the Trustee Council has remaining \$145 million after expenditures for a wide variety of restoration activities, research and monitoring of injured resources, and acquisition and protection of habitat, and damage assessment activities.
- Today's submission of a plan to ExxonMobil is the first step in exercising the Reopener provision of the consent decree.

**Next Steps:**

- The Reopener allows ExxonMobil 90 days after submission of the proposed restoration plan before it is required to pay or respond. This provision ensures a period for negotiations to settle a Reopener claim without litigation.

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