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**331**

MEMORANDUM OF UNDERSTANDING  
1990 COMMERCIAL FISHERY SEASON  
Alaska Department of Fish and Game

and

Alaska Department of Environmental Conservation

I. PREAMBLE

On March 24, 1989, the oil tanker Exxon Valdez ran aground, spilling more than 10,500,000 gallons of crude oil into the waters of Prince William Sound. The spilled oil spread from Prince William Sound through the western Gulf of Alaska; it polluted and contaminated state waters and shoreline that support productive fisheries which are of immense economic and social value to the State of Alaska and its citizens.

The State of Alaska, through the Alaska Department of Fish and Game (ADF&G) is charged with managing fishery resources. Fisheries management directives and goals include: (1) to protect, maintain, improve and extend fishery resources; (2) to avoid depletion or waste of fishery resources; (3) to conduct fishing in state waters in an orderly fashion which promotes conservation, development, and utilization of fishery resources; and (4) to preserve the economic stability of the state's fishing industry.

The State of Alaska, through the Alaska Department of Environmental Conservation (ADEC) is charged with protecting the environment and the health, safety, and welfare of the public. Public protection directives and goals include: (1) to conserve, improve, and protect natural resources from oil pollution; and (2) to ensure that fish marketed from state waters are pure, safe, wholesome, and unadulterated.

Oil pollution [as defined in AS 46.03.90C(19)] in waters or on shoreline in or adjacent to an area where a fishery is conducted poses a risk of adulterating fisheries resources. Oil contamination also poses a risk of disruption of fisheries, including alteration of traditional

fishing patterns and Board of Fisheries' adopted fisheries management plans, by causing fishermen who are unable to acquire uncontaminated gear or vessels to forego their livelihoods, and by causing waste of fishery resources that have become adulterated by oil pollution in the water or by contact with oil contaminated gear or vessels.

If oil adulterated fish are introduced into fish processing facilities, it could cause disruption of fisheries and waste of fish product because processing activities would have to be suspended while oil contaminated processing equipment was cleaned, maintained, and inspected. Additional waste and adulteration of fish product could occur if uncontaminated fish were exposed to oil contaminated fish or equipment.

Because of the affects of weathering on oil, the time that has passed since the 1989 Exxon Valdez spill, and other factors, it is expected that the location and effect of oil from the Exxon Valdez spill will be substantially different in 1990 compared to 1989. ADF&G and ADEC anticipate that there will not be large floating oil slicks and mousse in fishing areas as existed in 1989. However, some beaches are expected to remain impacted and to continue to leach oil to adjacent waters.

Due to the residual effects of the 1989 oil spill, continued vigilance is necessary in the harvest and inspection of seafood from areas affected by the spill to ensure that no contaminated seafood products enter the marketplace.

Therefore, in order to carry out the management and public protection directives and goals with which the ADF&G and the ADEC are charged, the respective departments agree to conduct the following activities during the 1990 commercial fishing season.

## II. FISHERY MANAGEMENT ACTIVITIES

- A. Prior to the commercial season for each species or species group (e.g., herring, crab, shrimp, salmon), ADF&G will collect fish samples for analysis by ADEC.
- B. ADEC will evaluate these samples

organoleptically, determine bile levels, and send selected samples to the Federal Food and Drug Administration (FDA) or the National Marine Fisheries Service (NMFS) or other approved laboratories for chemical assay.

- C. A potential fishing area will remain closed if samples of fish taken from the area are found by ADEC to be adulterated by oil.
- D. Prior to the initial openings or subsequent fishing periods, ADF&G will survey areas for the presence of oil, and document the results of the surveys.
- E. A fishing area will remain closed if there is an indication of oil in the area or the proximity of the area (including beaches), such that there is an appreciable likelihood that gear will be fouled, fish harvest adulterated, or such that the conduct of an orderly fishery could not take place.
- F. If a fishing area contains some isolated pockets of oil but the oil does not pose an appreciable likelihood of contaminating fishing gear or product throughout the area, ADF&G will close only the specific portion of the area that is contaminated.
- G. ADF&G will be available to inspect areas where oil is reported and assess whether the area should be closed.
- H. After fishing areas are opened for commercial fishing, if ADEC inspection or evaluation indicates repeated oil adulteration of fish from a harvest area, designated representatives of ADEC and ADF&G will consult to determine whether a recurring contamination problem has developed. If so, ADF&G will close fishing in the area where the oil contamination occurred.
- I. ADEC will implement regulations regarding inspections, monitoring, and record-keeping for fishing vessels, tender vessels, and processors. ADEC will establish a vessel inspection system for vessels that work on oil spill related activities.
- J. ADEC will provide training for quality control personnel in processing facilities. ADEC will

daily inspect plants that receive fish from any areas affected in 1989-90 by the oil spill. ADEC will continuously sample and monitor seafood harvests throughout the season.

### III. AGENCY STAFF

Each agency will designate key contact people to implement this Memorandum of Understanding (MOU) and to facilitate the decision-making process during the 1990 commercial fishery season. The following are specific agency representatives for all purposes under this MOU:

ADF&G designates: David Cantillon  
Deputy Director  
Division of Commercial Fisheries  
(907) 465-4210

ADEC designates: Manny Soares  
Supervisor  
Seafood Inspection Program  
Division of Environmental Health  
(907) 563-0318

Because it may be necessary to make emergency closure decisions, in the event that either designated representative is unavailable, the alternative designated persons are:

ADF&G designates:

Prince William Sound  
Region: James Brady  
Area Biologist  
(907) 424-4213

and

Dennis Haanpaa  
Regional Management Biologist  
(907) 267-2104

Cook Inlet Region: John Hilsinger  
Regional Management Biologist  
(907) 267-104

Upper Cook Inlet: Paul Ruesch

Area Biologist  
(907) 262-9369

Lower Cook Inlet: Wesley Bucher  
Area Biologist  
(907) 235-8191

Westward Region: Larry Nicholson  
Regional Supervisor  
(907) 486-4791

and

Pete Probasco  
Regional Management Biologist  
(907) 486-4791

ADEC Region: Bill Krostek  
Field Inspection Supervisor  
(907) 563-0318

Agency staff will, to the maximum extent possible coordinate and channel all respective efforts through the designated staff member.

4.4.90

Date

Don Collinsworth

Don W. Collinsworth, Commissioner  
Alaska Department of Fish and Game

April 4, 1990

Date

Dennis D. Kelso

Dennis D. Kelso, Commissioner  
Alaska Department of Environmental  
Conservation

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 2, 1990

SUBJECT: Draft CSSB 331 (C&RA)

TO: Senator Mike Szymanski, Chair  
Senate Community and Regional Affairs  
Committee  
ATTN: Paula Ferril

FROM: Jack Chenoweth   
Legislative Counsel

You advised me not to spend a lot of time on this draft, and I took your good advice.

Despite this legislation's brevity, please note that --

(1) This measure carries a horrendous fiscal impact. Save only for the FY 91 operating and capital budgets, the measure probably sets the record this session for probable general fund appropriation required by a single bill. The committee either needs to develop a fiscal note indicating the \$50,000,000 estimate of money required to pay claims or develop and offer a companion appropriation to provide the money for deposit to the claims fund.

(2) For reasons we have discussed, the significant element of this measure almost certainly violates article IX, section 6 of the state constitution's stricture against withdrawal of funds from the state treasury "except for a public purpose." I am hard pressed to understand what "public purpose" attaches to the state's payment of claims based on loss of income, loss of means of producing income, or loss of economic benefit. The company is presumably strictly liable for these damages under AS 46.03.822 and 46.03.824. The court system is available to individuals having claims not satisfied by Exxon's interim payment practices and decisions.

(3) The combining of the claims provision (section 1) and the 10¢-per-barrel surcharge (section 2) may well be found

Senator Mike Szymanski

Page 2

April 2, 1990

to violate the "single subject" rule of article II, section 13. Unlike last year's nickel-per-barrel increment that "wedded" the incremental tax levy to state initiative to improve containment and clean-up preparedness, this measure does not so closely link the tax incidence and the claims payments. In this measure, claims are paid from existing money (the state general fund appropriation) while the revenue, receipt of which is forthcoming, replenishes the general fund. The two are not made to relate to one another.

\*

As a drafting matter, I intentionally did not give the provision an immediate effective date in order to give the commissioner of commerce and economic development time to develop necessary regulations. As offered, the measure would provide the claimants roughly one full fiscal year, or until June 30, 1991, to present claims. The claims provision is revoked July 1, 1991. The 10¢-per-barrel severance tax increment runs until the close of the calendar quarter following the quarter in which the tax yields at least \$50,000,000.

JBC:pl  
WKP4/007

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### DIVISION OF COMMERCIAL FISHERIES

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4210

## OILSPILL IMPACTS

This report lists commercial and subsistence fisheries impacted through April 5, 1990.

While thought to be comprehensive, it is not intended to represent a complete or final listing of all adjustments to commercial fisheries to date.

There have been several closures, cancellations, and postponements to commercial and subsistence fisheries in Alaska as a result of oil spilled from the "Exxon Valdez" on March 24, 1989. These include:

### COMMERCIAL

#### *Prince William Sound*

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Herring. The gillnet and purse seine sac roe and pound and wild roe-on-kelp fisheries were canceled April 3, 1989 prior to opening. The food and bait fishery began November 1, 1989 in the General Herring District. The harvest quota for this fishery was revised to conform with the 1990 spawning biomass estimate and was set at 1,760 short tons. However, because of existing market conditions, only 646.1 tons were harvested and the fishery was closed on November 12, 1989.

Pot Shrimp. This fishery was closed while in progress because of the high potential for direct contact of gear and catch with oil on noon, April 3, 1989. This closure was anticipated to run until the fishery was scheduled to reopen by regulation, August 15, 1989. However, aerial surveys from August 3 through 8 indicated the presence of oil in waters of the Traditional Harvest Area. The fishery remained closed until March 15, 1990 when the season opened by regulation. However, a small portion of the Traditional Harvest Area was closed on March 15 because of the presence of oil. The area includes waters near Knight, Eleanor, and Smith Islands.

Trawl Shrimp. Closed 12:00 noon, April 9, 1989. This fishery was scheduled to reopen August 15, but aerial surveys indicated the presence of oil in the areas where the fishery was scheduled to occur. The Port Wells area reopened March 1, 1990 and the remainder of the Sound will probably remain closed until weather improves in the spring and aerial surveys are possible.

Sablefish (black cod). Did not open as scheduled April 1, 1989

because of the oil spill. This fishery reopened in inside waters only, in conjunction with the halibut opening at noon on June 12. This fishery closed on December 31, 1989. Sablefish was not reopened during the remainder of 1989 in outside waters because the Gulf of Alaska sablefish quota had been filled. The 1990 season did open as scheduled April 1.

Northern Area Dungeness crab. Was closed April 30, 12:00 noon. It reopened on January 1, 1990.

#### King crab

The entire Prince William Sound Registration Area was closed to the commercial harvest of all species of king crab during the 1989-1990 fishing season on October 1, 1989. Aerial surveys located oil in Knight Island Passage and adjacent bays. Knight Island Passage is the primary harvest area for brown king crab in the Sound. The brown king crab fishery, like other crab fisheries, depends upon the capture by pots and subsequent live holding of legal size males before they are sold to processors. The live holding of male crabs requires a fresh supply of sea water to be supplied to the crabs until the fishing vessel reaches port. Due to the fact that winter storms can move oil into the fishing areas, monitoring the area on a timely basis is impractical. Due to oil, which persists in the area of known fishing for brown king crab, there is an appreciable likelihood that the adulteration of crab or fouling of gear and vessels will occur. The red and blue king crab fisheries will not occur due to low abundance.

Groundfish. This fishery was closed at noon on April 30, 1989. It reopened with the June 12 halibut opener. Incidental catches indicated no contamination, and this fishery remains open (except for bottom trawl gear) at this time.

Miscellaneous shellfish. On April 24, 1989, it was announced that no miscellaneous shellfish permits would be issued to harvest these species in Prince William Sound until the danger of oil contamination had passed. To date no requests have been received for permits to harvest miscellaneous shellfish in the Sound, and none are expected to be issued prior to mid-April 1990.

#### Salmon

Eshamy District commercial drift and set net salmon fishery (100,000 chum surplus to hatchery needs, plus harvests of other species) did not open for the 1989 season, as was announced May 19. This District did not open for the 1989 season.

Most waters of the Northern District surrounding Naked and Perry Islands remained closed due to beach oiling.

Most waters of the Culross Island Subdistrict (224-30 & 40) remained closed to salmon fishing during the 1989 season because of exposure to frequent oil sheen.

The Southwestern District did not open for the 1989 season due to oil.

The Montague District (227) remained closed for the 1989 season. This area includes the inside shoreline of the Montague District, 227-10 and 227-20.

All of the commercial salmon fisheries in the Prince William Sound Management Area closed at noon, September 30, 1989.

*Upper Cook Inlet*

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Salmon

With the exception of a very minor opening of a small portion of the Central District, the commercial drift gillnet season was cancelled because of oil. In addition, the Department closed setnets in that portion of the Upper Subdistrict south of the Kasilof River for the 12-hour regular fishing period on Friday July 7, 1989, because of presence of oil on the beaches. All other setnet fisheries and fishing periods were managed according to run strength.

The commercial salmon fisheries in Upper Cook Inlet closed in early September 1989.

*Lower Cook Inlet*

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Pot shrimp (Outer District). This fishery was closed at noon April 30 because of the presence of oil. It reopened at noon on July 7, 1989.

Miscellaneous shellfish. On April 24, 1989, it was announced that no miscellaneous shellfish permits would be issued to harvest these species in the Outer and Eastern Districts until the danger of oil contamination had passed. To date no requests have been received for permits to harvest miscellaneous shellfish from these two districts. All shellfish fisheries in the remaining districts of Cook Inlet are managed according to abundance, effort, and existing regulations.

Groundfish (Outer and Eastern Districts). This fishery was closed at noon on April 30, 1989 because of oil. It reopened to all species except sablefish, June 12 in conjunction with the 24-hour halibut period. Sablefish was not reopened in 1989 because the Gulf of Alaska sablefish quota had been filled.

Smelt Smelt was closed along with groundfish in the Outer and Eastern Districts at noon on April 30, 1989. When groundfish reopened, smelt fishing remained closed.

Herring Sac Roe (Outer and Eastern Districts). These fisheries did not open for the 1989 season because of the presence of oil. This was announced April 15, 1989, prior to the anticipated opening date of April 20.

Salmon. Kamishak District commercial salmon fishery. This seine fishery opened by regulation June 1, 1989 and was closed by emergency order on June 9 because of oil. Portions of the Kamishak District north of Contact Point were opened after July 20 based on run strength. The Tutka Bay Subdistrict north of the HEA powerlines was closed to seining at 6 a.m., July 10. It was reopened at noon the same day after further assessment showed the commercial fishery would not be impacted. The commercial salmon season in Lower Cook Inlet closed August 26, 1989.

#### Kodiak

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Herring Sac Roe. Approximately 34 of 56 management units closed during the duration of the fishing season, because of oil impacts. The 1989 Kodiak sac roe GHL was approximately 2,415 short tons.

Salmon. The commercial season was scheduled to get underway June 9, 1989. The fisheries were postponed until June 19, when only the setnet fishery in the Alitak District opened; there were approximately 114 days fished in this setnet fishery by 87 fishermen. The only other commercial opening to occur during the 1989 salmon season was a two day seine opening in Karluk Lagoon, on the west side of Kodiak Island, in mid-September. About five seiners took part in that fishery, netting fewer than 5,000 salmon. The entire Kodiak Management Area closed to commercial salmon fishing at the conclusion of the Lagoon fishery.

#### Chignik

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Salmon The Chignik fishery opened on Monday June 12, 1989 at 11:00 a.m. However, portions of the Eastern District were closed due to the presence or close proximity of oil in the Kilokak Rocks area, and in Imuya and Wide Bays. The Department announced a 24-hour fishing period beginning at 9:00 a.m. June 26 for a portion of the Chignik Bay District. The area was limited to a small portion of this district due to the presence of oil in surrounding areas. The documented presence of mousse and sheen in Chignik Bay near Anguvik Island, coupled with a minimal monitoring effort, justified the closure of the commercial salmon fishery effective 10:00 p.m., Monday, June 26 for the remainder of the announced period. Because of the presence of oil contaminants within Chignik Lagoon in sufficient quantities to pose a risk of contaminating gear and/or product, the commercial salmon fishing periods scheduled for Thursday, July 27 and Sunday, August 5 were cancelled. Commercial fishing opportunities remained restricted to Chignik Lagoon of the Chignik Bay District. Fisheries were held when sockeye escapements into the system justified them.

## **SUBSISTENCE/PERSONAL USE**

### *Prince William Sound*

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Much of the Southwestern District and the western shoreline of Green Island was closed to subsistence fishing June 6, 1989. The only areas remaining open to subsistence fishing for those residents domiciled in the Southwest District are Eshamy Lagoon, Jackpot Bay, and inside Sawmill and Crab Bays.

### *Cook Inlet, Kodiak, and Chignik*

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There have been no closures to subsistence fisheries because of oil. Subsistence fishermen have been cautioned to select fishing areas that show no signs of oil impact.



# Alaska State Legislature

## SENATE

Official Business

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

### SPONSOR STATEMENT

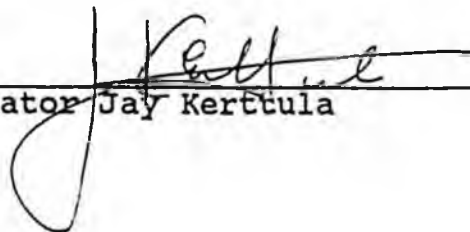
#### SENATE BILL 331 -- LOAN REFINANCING

#### FOR VICTIMS OF THE OIL SPILL

Senate Bill 331 authorizes loan refinancing for the victims of the Exxon Valdez oil spill disaster. The need for this bill is crucial this year. Last year, the residents of Prince William Sound received cash in claims against Exxon as well as employment cleaning up the spill. Initially, people suffered hardship but not economic devastation. Some money was coming in. This year, area residents are facing much harder economic times: there is no more cleanup and no more cash settlements.

In the context of nationwide media attention and lawsuits involving massive amounts of money, it is too easy to overlook people's day-to-day economic needs. Defaulting on loans because of temporary hard-times has long-reaching economic consequences. Economic development in Prince William Sound needs to be carefully nurtured -- the sporadic nature of the region's economy mirrors Alaska's boom and bust economy. The people of Prince William Sound need this bill.

I urge your support of Senate Bill 331.

  
\_\_\_\_\_  
Senator Jay Kerttula

6-1416H  
Chenoweth  
4/2/90

Original sponsor(s): SEN. KERTTULA, Szymanski, Binkley

1 IN THE SENATE

BY THE C&RA COMMITTEE

2 CS FOR SENATE BILL NO. 331 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing an emergency economic mainte-  
7 nance grant program for the benefit of certain per-  
8 sons and municipalities affected by the Exxon Valdez  
9 oil spill disaster; and imposing a surcharge to the  
10 oil and gas production tax to provide money for those  
11 grants."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 \* Section 1. EMERGENCY ECONOMIC MAINTENANCE FUND ESTABLISHED. (a)

14 There is established in the Department of Commerce and Economic Development  
15 an emergency economic maintenance fund. The commissioner of commerce and  
16 economic development shall administer the fund.

17 (b) From appropriations made to the fund for the purpose, the commis-  
18 sioner shall pay claims, including interest on them, of

19 (1) persons who engage in commercial fishing and who are unable  
20 to fish commercially because traditional fishing areas have been closed by  
21 the Department of Fish and Game due to the oil spill caused by the  
22 March 24, 1989, grounding of the Exxon Valdez;

23 (2) municipalities whose receipt of fisheries business tax  
24 refunds under AS 43.75 are reduced because traditional fishing areas have  
25 been closed by the Department of Fish and Game due to the oil spill caused  
26 by the March 24, 1989, grounding of the Exxon Valdez.

27 (c) The commissioner shall adopt regulations applicable to receipt,  
28 review, evaluation, and payment of claims under this section. The regula-  
29 tions must require sufficient evidence of historical average catch data to

1 warrant payment of a claim.

2 \* Sec. 2. SURCHARGE ON SEVERANCE TAX. (a) Every producer of oil shall  
3 pay a surcharge of \$.10 per barrel of oil produced from each lease or  
4 property in the state, less any oil the ownership or right to which is  
5 exempt from taxation.

6 (b) The surcharge imposed by (a) of this section is in addition to  
7 and shall be paid in the same manner as the tax imposed by AS 43.55.

8 (c) A producer of oil shall make reports of production in the same  
9 manner and under the same penalties as required under AS 43.55.

10 (d) The commissioner of revenue shall deposit the proceeds of the  
11 surcharge levied by this section into the general fund.

12 (e) The commissioner of administration shall separately account for  
13 all proceeds of the surcharge that are deposited into the general fund.

14 \* Sec. 3. Section 1 of this Act is repealed July 1, 1991.

15 \* Sec. 4. Section 2 of this Act is repealed on the last day of the  
16 calendar quarter next following the date on which the commissioner of  
17 administration determines that receipts to the general fund from the sur-  
18 charge levied by that section equal or exceed \$50,000,000.

6-1416H

Chenoweth

4/2/90

Original sponsor(s): SEN. KERTTULA, Szymanski, Binkley

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CSSB 331(C&RA)

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