

SCOMM

76:18

Submission to House Committee on Exxon Valdez Oil Spill Settlement regarding Regional Aquaculture Salmon Enhancement Tax

8/15/89 Letter from Jeff Bush, Assistant AG confirming commitment of Exxon to pay tax

10/1/89 Letter from Kodiak Regional Aquaculture Association to Exxon requesting money to cover lost tax

10/18/89 letter from Exxon to Aquaculture Association acknowledging deduction of 2% from fishermen, and requesting submission of claim

10/25/89 letter to Exxon from Aquaculture Association setting out claim for lost enhancement tax

11/8/89 letter from state A.G. confirming original agreement of Exxon to pass through aquaculture enhancement tax irrespective of any other factors that might affect claims.

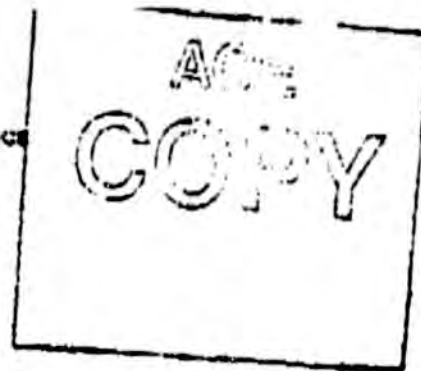
4/27/90 letter from Department of Fish & Game indicating nature of alleged setoff to claim for enhancement tax, and explaining that cost recovery money which Exxon was suggesting should eliminate claim for enhancement tax belonged to state, not the association.

5/24/90 letter from Exxon nonetheless rejecting claim for fisheries enhancement based on setoff idea, and directing association to take matter of lost enhancement tax up with the state.

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
ALASKA OIL SPILL COORDINATING OFFICE



August 15, 1989

Rick Eichner  
Exxon Claims Office  
Exxon Company, U.S.A.  
P.O. Box 240489  
Anchorage, AK 99524-0489

Re: Salmon Enhancement Taxes

Dear Rick:

Thank you for meeting with Steve Kettel and me on July 28 to discuss how to deal with funds deducted from fishermen's claim payments that otherwise would be paid to the state as salmon enhancement taxes. This will confirm Exxon's commitment to work directly with the affected aquaculture associations to arrange payment of the withheld funds directly to them.

As I indicated at our meeting, salmon enhancement tax collections affect the budgets of the aquaculture associations during the next fiscal year. Any lost tax revenue this summer will not be felt by the associations until July 1990. Therefore, I encourage you to arrange for Exxon's direct payments to the associations to be made sometime after July 1, 1990.

The state has recently filed a lawsuit against Exxon and others in which one of its claims is for lost salmon enhancement tax revenue. When Exxon reaches formal agreement with all the aquaculture associations, please forward copies of the agreements and the appropriate back up material to me. Assuming everything is in order, the state will then agree not to pursue its claim for these taxes for this tax year.

Rick Eichner  
August 15, 1989  
Page 2

I have received a number of telephone calls from concerned fishermen regarding Exxon's treatment of these withheld funds in Upper Cook Inlet. These fishermen allege that Exxon is withholding the tax funds but does not intend to turn these funds over to the aquaculture association. I told these people to deal directly with you on this issue, and I assume some solution will be reached.

Thank you again for coming to Juneau to meet with us. I am pleased that this potentially thorny issue appears to be resolved, and I look forward to receiving copies of the agreements with the associations, once they are completed.

Sincerely,



Jeffrey W. Bush

cc: Steve Kettel, Director  
Division of Income and Excise Audit  
Department of Revenue

Barbara Herman  
Assistant Attorney General  
Department of Law

# KODIAK REGIONAL AQUACULTURE ASSOCIATION

BOX 3407 KODIAK, ALASKA 99515

(907) 488-8555

October 1, 1989

Mr. Dick Harvin, Manager  
Exxon Claims Office  
P. O. Box 240489  
Anchorage, Ak., 99524



Dear Mr. Harvin:

Several weeks ago our Executive Board met with John Peavy of your Kodiak Claim's office to discuss our association and the affects of the Exxon "Valdez" oil spill. At that time Mr. Peavy indicated that the 2% Enhancement Tax would be withheld from the fishermen's claims. It was assumed that this money once withheld would then be submitted to the Department of Revenue for future allocation back to KRAA.

It is, we understand, Exxon's intention to assure funding of KRAA as usual and toward this goal Exxon will make up the shortfall of difference between the preseason estimate and the actual commercial catch. As you are probably aware, KRAA managed a special one-time cost recovery at the Kitoi Hatchery under an addendum to our co-operative agreement with ADF&G. Under the conditions of the addendum, the funds obtained through the sale of those fish are to be used for the future operational cost of the Kitoi Hatchery. As such, the funds are entirely separate from any funds or accounts of KRAA and are not available for KRAA's normal projects.

KRAA's normal operation costs, i.e., administrative and enhancement and rehabilitation projects AREA WIDE are funded through a contract with Department of Commerce and Economic Development. This contract is prepared and funded through allocation by the legislature of those 2% funds collected from the fishermen within Kodiak Management Area K. In this particular year, that normal funding source has not been available to the extent anticipated as only a limited amount of commercial fishing has been done within this area. The difference between the preseason estimate and actual catch at this point is in the neighborhood of \$600,000.00. Final catch figures should be available from ADF&G some time during the month of October and the final difference can be calculated at that time.

Mr. Dick Harvin, page 2

October 1, 1989

If you have any questions on this matter or wish to meet with member of KRAA's Executive Committee please do not hesitate to contact our office at (907) 486-6555. As we are currently in the process of planning the budget for the next year's project your early attention to this matter would be appreciated.

Sincerely,

*Oliver N. Holm*

Oliver N. Holm  
President KRAA  
Board of Directors

**EXXON COMPANY, U.S.A**

EXXON CLAIMS OFFICE  
TELEPHONE (907) 564-3836  
FAX (907) 564-3857  
FAX (907) 564-3874  
POST OFFICE BOX 240489 • ANCHORAGE, ALASKA 99524-0489

October 18, 1989

Mr. Oliver N. Holm, President  
Kodiak Regional Aquaculture Association  
Box 3407  
Kodiak, Alaska 99615

Dear Mr. Holm:

I would like to clarify some points you made in your letter to me dated October 1, 1989. As part of our voluntary claims settlement procedure to determine the amount due to salmon permit holders, we are deducting the aquaculture assessment from the value of the fish not caught. We are not withholding the tax for the Department of Revenue, rather we are recognizing the 2% as a cost not incurred by the fisherman.

We discussed this arrangement with the Department of Revenue in July. The key point in these discussions is that we would treat the aquaculture associations as if they were individual permit holders under our guidelines. As such, if the Kodiak Regional Aquaculture Association (KRAA) has incurred losses to the M/V Exxon Valdez oil spill, a claim should be submitted to this office.

The claim should consider all factors occurring as a result of the spill. Given the exceptional results of the Kitoi hatchery catch this year versus the forecast, the funding relationship between the hatchery and the Association need to be considered. The statutory/contractual relationships of the hatchery, KRAA, Department of Fish and Game, and Department of Commerce and Economic Development will need to be evaluated to determine if a claim from the KRAA has value.

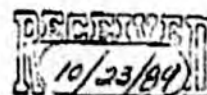
Please contact us if you have any questions.

Sincerely,



R. T. Harvin  
Exxon Claims Manager

JH108/yc



# KODIAK REGIONAL AQUACULTURE ASSOCIATION

BOX 3407 KODIAK, ALASKA 99615

(907) 486-6565

25 October 1989

Mr. R. T. Harvin  
Exxon Claims Manager  
Exxon Company, USA  
P. O. Box 240489  
Anchorage, Alaska 99524-0489



Dear Mr. Harvin:

Thank you for your letter of October 18, 1989, which clarified Exxon's position on the 2% Enhancement Tax normally collected from the permit holders.

You indicated in your letter that if the Kodiak Regional Aquaculture Association (KRAA) had incurred losses due to the M/V Exxon Valdez oil spill, a claim should be submitted to your office. Please accept this letter as a formal claim for losses KRAA incurred due to the M/V Exxon Oil Spill.

Due to the oil spill, a normal commercial fishery could not be conducted. In 1988, the Permit Holders of Kodiak Management Area K voted in a 2% tax based on their individual gross sales. These taxes are collected by the processors at the time of the sale, and those funds are later granted to KRAA for the area-wide enhancement and rehabilitation projects; administration of the office and management of those projects. This is the only funding available to KRAA for the area-wide projects, and without the normal commercial fishery KRAA does not have access to those funds. We are therefore making claim for those funds that would have been collected for the 1989 season through the 2% Tax. As to the relationship between KRAA and the Department of Commerce and Economic Development, that department is simply the agency through which the 2% funds are passed from the Department of Revenue for distribution to the area aquaculture associations. Since this is a state tax; state law regulates the handling of these funds, KRAA has no control over that process.

Your letter of October 18, 1989, mentioned the funding relationship between the Kitoi Bay Hatchery and KRAA. Under a co-operative agreement with the Department of Fish & Game, FRED Division, KRAA manages a cost recovery program each year to obtain sufficient funds for operating the hatchery. These funds are separate from the normal activities of KRAA and are not co-mingled with KRAA accounts, nor can any of these funds be used for the normal day to day operations of the KRAA office. The Kitoi cost recovery funds are not available for those enhancement and rehabilitation projects established area wide. The co-operative agreement

\* Enhancing Salmon in Kodiak Waters

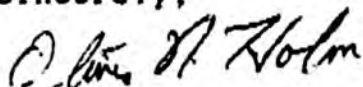
designates those cost recovery funds for operational cost of the Kitoi Bay Hatchery.

Under normal conditions, a minimal cost recovery is conducted to obtain funds for the hatchery's following year budget, and this minimal recovery program would have continued through the duration of the existing contract. Due to the extent of the M/V Exxon oil spill, it was necessary this year to recover some of the fish that returned to the hatchery. So rather than leading the operational funding cost recovery over several years, it was accomplished in one season. As a result of the exceptional results of this season's recovery, KRAA will not have funding for the area wide project since these fish were not available to Area K permit holders, and therefore the 2% tax was not collected.

If ADF&G's 1989 Harvest Forecast is used, the area value for all species is \$42,107,500. Two percent of that value would be \$842,150.00. According to ADF&G's records the 1989 commercial catch within Management Area K totalled \$11,699,125.00; 2% of that value would be \$233,982.50 that was collected from the commercial fishermen by the processors. Using this formula KRAA's loss due to the M/V Exxon's oil spill is: \$608,167.50. The actual number of fish returning to the area and normally available for harvest was much higher than the ADF&G forecast and if those figures were used, the loss to KRAA would be much greater than indicated.

Members of our Executive Board would like to meet with a representative from your claims office at your earliest convenience to discuss this matter. Please advise when you or someone from your office would be available for such a meeting.

Sincerely,



Oliver N. Holm, President  
KRAA Board of Directors

enc.

ALASKA FISH  
AQUACULTURE ASSOCIATION  
Box 3407  
Kodiak, AK 98615

EXXON OIL CLAIMS - WORKSHEET  
PREVENTED SALES

1989 ADF&G  
Harvest Forecast  
Area Value

\$42,107,500.00

2% Area Value, Normal Fishery.....\$ 842,150.00

Value Actual Commercial Harvest, 1989

\$11,699,125.00

2% Commercial Harvest collected. 233,982.50

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TOTAL LOSS DUE TO M/V EXXON OIL SPILL \$ 608,167.50

ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

November 8, 1989

R. T. Harvin  
Exxon Claims Manager  
Exxon Company, U.S.A.  
P.O. Box 240489  
Anchorage, AK 99524-0489

## REPLY TO:

☐ 1031 W 4th AVENUE SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 278-3550  
FAX: (907) 278-3697

☐ 1st NATIONAL CENTER  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1588  
FAX: (907) 458-1317

☒ P.O. BOX K--STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

Re: Negotiations with aquaculture  
associations

Dear Mr. Harvin:

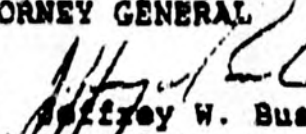
I recently received a copy of your letter of October 18, 1989 to the Kodiak Regional Aquaculture Association. I am particularly concerned with respect to your representations regarding discussions held with state officials, including me, this summer. The process that you outline in your letter for Exxon's treatment of the 2 percent salmon enhancement tax that it has withheld from fishermen totally misrepresents the understanding reached during our discussions. Before the discussions, Exxon admitted liability for the withheld funds, and the only subject of our discussion was the method that would be used to get these funds to the aquaculture associations. It was agreed that rather than have Exxon pass the money through the state, Exxon would pay these funds directly to the associations as part of the normal claims process. A copy of my letter to Rick Eichner, confirming the agreement reached at that meeting, is enclosed for your reference.

These funds are owed by Exxon irrespective of any other factors that may impact potential claims.

factors that may impact potential claims by these associations.  
I hope you will undertake whatever steps are necessary to ensure  
that these funds are turned over to the appropriate associations.

Sincerely yours,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:   
Jeffrey W. Bush  
Assistant Attorney General

JWB:jf

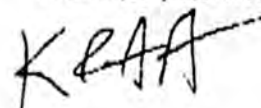
# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 485-4100



April 27, 1990

Mr. Oliver Holm, President  
Kodiak Regional  
Aquaculture Association  
P.O. Box 3407  
Kodiak, AK 99615

Dear Mr. Holm:

Recently, some confusion has arisen concerning the intent of the July 29, 1989, amendment to Contract [redacted] an agreement between the Alaska Department of Fish and Game (ADF&G) and Kodiak Regional Aquaculture Association (KRAA) for KRAA to operate the Kitoi Bay Hatchery with a portion of operational costs to be borne through sale of returning fish by KRAA. I am providing the following background and contract language review so that all parties will be clear on the intent of the 1989 harvest and disposition of revenue generated.

The Exxon Valdez oil spill (EVOS) impacted the fishery to the extent that salmon returning to the Kitoi Bay Hatchery could not be harvested in the traditional manner by gear groups. Rather than allow a record return of pink salmon to be wasted on the beach, the state negotiated the July 29 amendment for KRAA to harvest the pink salmon available beyond hatchery broodstock needs. The joint-venture approach on harvesting was necessary since the State of Alaska does not conduct cost-recovery harvest at its hatcheries at this time. The guidelines were specifically determined between ADF&G and KRAA for the conduct and disposition of funds from, as the contract amendment specifies, a "...special, one-time cost recovery harvest. ..." After consultation with the Alaska Department of Law and the Office of the Governor, ADF&G developed contract language concerning use of revenue generated from the harvest. The funds were to be placed in a federally insured, interest-bearing account and, according to the contract:

"Due to the extraordinary circumstance, and due to the uncertainty regarding hatchery returns for cost recovery purposes, it is prudent to use the remaining funds in the account to cover future cost recovery needs at the Kitoi Bay Hatchery. Therefore, additional revenues generated through this special cost recovery

Mr. Oliver Holm

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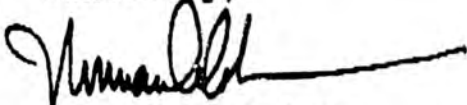
April 27, 1990

effort shall be used to fund KRAA's share of future operational costs at Kitoi Bay Hatchery, beginning in fiscal year 1991 (July 1, 1990, to June 30, 1991) and continuing through the life of the contract."

Review of the amendment language clarifies that the first intent of the amendment was to harvest in the Kitoi Bay Hatchery Special Harvest Area, the pink salmon made inaccessible to the fishermen because of EVOS and, secondarily, to be certain any revenue from that harvest would not be used for any other purpose except for the original intent of the contract; that is, supporting operational costs of the hatchery. Having been involved in the negotiation of the amendment, I can reach no other interpretation of the intent. Any diversion of these funds for fisheries enhancement purposes at other locations or for administrative costs not directly connected with Kitoi Bay Hatchery operations would constitute violation of the contract.

If any misunderstanding about the purpose of the Kitoi Bay Hatchery EVOS revenue remains, or you have other questions, please contact Jerry Madden.

Sincerely,



Norman A. Cohen  
Deputy Commissioner

bcc: N. Holt  
T. Joyce  
J. Sanders  
L. White

5/13/90

**EXXON COMPANY, U.S.A.**

EXXON CLAIMS OFFICE  
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FAX (907) 564-3874  
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May 24, 1990

Mr. M.D. Jamin  
Jamin, Ebell, Bolger & Company,  
Attorneys at Law  
323 Carolyn Street  
Kodiak, Alaska 99615

VIA FAX: 486-6112

Dear Matt:

Thank you for your letter of May 11, 1990 asking that we reconsider KRAA's request that Exxon compensate for its claimed loss of salmon enhancement tax proceeds from the State.

While it is interesting to know the specifics of the KRAA agreement with the State on how proceeds from the special 1989 Kitoi Hatchery harvest may be spent, this does not change our fundamental view of the situation. It is still quite clear to us that, as a result of the March 1989 Exxon Valdez accident and taking into account the special Kitoi harvest, KRAA and the State have received funding substantially in excess of what they might have hoped absent the accident. Given this excess of funding, we do not understand how KRAA can conclude it has suffered a net economic loss that should be compensated by Exxon. In taking this position, we are not expressing any view as to the appropriate disposition of the funds being held from the special harvest. If Kodiak fishermen and KRAA now feel that the original terms of their agreement with the State do not permit optimal disposition of the available funds, we would suggest that the matter be raised with the State.

Finally, we find that some in Kodiak are under the misconception that we have withheld State salmon enhancement taxes from our claim payments to fishermen. This is clearly not the case! Our voluntary claim settlement program provides compensation for the permit holder's net economic loss directly resulting from the accident. It is necessary to consider a variety of factors, including salmon enhancement tax the permit holders did not incur in 1989 because of the Kodiak closures, in the calculation of a permit holder's net economic loss. Clearly, there is no salmon enhancement tax payable on fish that were not caught, and it is factually incorrect to imply that Exxon has withheld a tax which it has failed to pass on to the appropriate taxing authority. I trust you understand this, and I would ask that you assist in clarifying the matter to any of your clients who may hold this misconception.

Best regards, and I look forward to seeing you soon on the various other issues that remain open between your clients and Exxon Claims.

Very truly yours,



David E. Shoup