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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By ~~_____~~ Deputy

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No. A90-015-CR
Plaintiff,)	
v.)	
EXXON CORPORATION AND)	GOVERNMENT'S MEMORANDUM
EXXON SHIPPING COMPANY,)	IN AID OF SENTENCING
Defendants.)	

I. INTRODUCTION

United States v. Exxon Corporation and Exxon Shipping Co. is a criminal prosecution arising out of this nation's largest oil spill. The 11 million gallons of oil that spilled from the Exxon Valdez polluted a vast expanse of the previously pristine waters and shores of Prince William Sound and the Gulf of Alaska, and killed a multitude of wildlife. The disaster was caused by egregious failings that could and should have been foreseen and prevented.

Consequently, the United States in the plea

- 2 -

agreement seeks imposition of the largest criminal fine in an environmental case to date. This fine would reflect the seriousness of the conduct that caused the grounding of the Exxon Valdez, and the resulting environmental injury, and would send a strong message that companies that violate environmental statutes face serious punishment. In addition, the plea agreement provides for immediate payment of special compensation to the State of Alaska. This payment will provide needed funds for the rehabilitation of Prince William Sound and other areas affected by the spill.

The plea agreement addresses more than punishment and compensation. It also acknowledges that the defendants made substantial efforts to rectify the consequences of their conduct by financing oil spill clean-up efforts. Consequently, the plea agreement does not ask that either defendant be placed on probation, and provides that one-half of the fine be remitted. It thus provides a message that the government will take into account steps voluntarily taken by responsible parties to correct the consequences of acts that constitute environmental crimes.

This criminal prosecution and the resulting plea agreement cannot resolve all the issues relating to the oil spill. However, the government believes that the purposes of criminal prosecution -- conviction of the guilty, just punishment for wrongful conduct, deterrence of future criminal conduct, and the need to provide compensation to

- 3 -

victims -- are effectively addressed by the plea agreement, and the United States respectfully urges the Court to approve it.

II. FACTUAL BACKGROUND

Most of the significant facts that underlie the criminal charges in this case have been set forth in prior pleadings.¹ Consequently, this memorandum does not provide a lengthy factual background of the grounding, but summarizes briefly what the government's evidence would have shown if the case had gone to trial. While most of this evidence relates to conduct of Exxon Shipping's employees, the government would have been prepared to prove that Exxon Shipping was acting as Exxon's agent, making Exxon liable under this Court's ruling upholding the government's theory of agency liability.

The VLCC tanker² vessel Exxon Valdez departed Valdez on March 23, 1989 at about 9:20 p.m., transporting crude oil owned by Exxon Corporation. Assigned to direct the ship through the initial portion of Prince William Sound was

¹See e.g., Bill of Particulars, July 31, 1990; Government's Consolidated Opposition to Motions of Exxon Corporation to Dismiss Counts One, Two, Three, Four and Five, Sept. 20, 1990; Government's Opposition to Motion of Exxon Shipping Company to Dismiss Count Four for Failure to Charge an Offense, Sept. 20, 1990; Factual Basis for Guilty Plea of Exxon Shipping Company, March 22, 1991.

² Very large crude carrier, a tanker exceeding 160,000 dead-weight tons. The Exxon Valdez had a capacity of more than 60 million gallons of crude oil.

- 4 -

Captain William Murphy, a certified marine pilot. The master of the Exxon Valdez was Captain Joseph Hazelwood. Prior to leaving port, Captain Hazelwood had consumed several alcoholic beverages with two of his shipmates.³

Captain Murphy disembarked at 11:24 p.m. Before doing so, he informed Captain Hazelwood of the presence of glacial ice blocking the shipping lanes. Captain Hazelwood, who was the only person on the vessel who had the required pilotage certification for Prince William Sound, then resumed responsibility for navigating the ship. In order to avoid the ice, Hazelwood ordered the ship to alter course to 180 degrees, a course out of the shipping lanes and directly toward Bligh Reef. He placed the ship on autopilot and ordered the ship to "load program up."⁴ After the course was changed, the individuals on the bridge with Captain Hazelwood were Third Mate Gregory Cousins and helmsman Robert Kagan, a "step-up" (or temporary) able-bodied seaman (AB).

Captain Hazelwood instructed Cousins to turn the ship back into the shipping lanes when it reached a point

³Ten hours after the grounding of the Exxon Valdez, blood and urine samples were taken from Captain Hazelwood. The blood sample showed an alcohol concentration of .061 percent and the urine sample showed an alcohol concentration of .09 percent. The government has no evidence that Captain Hazelwood consumed alcohol between the time of the grounding and the time the blood and urine samples were obtained.

⁴ At "load program up," the speed of the main engine was being increased slowly by a computer from maneuvering full ahead (55 rpm) to full-ahead sea speed (78.9 rpm). It would have required about 43 minutes to attain the maximum speed.

- 5 -

about three minutes to the south. He then left the bridge and went to his cabin to "get out some messages," leaving the bridge critically undermanned while Cousins had to perform a dangerous nighttime maneuver around ice and near reefs.⁵

After Hazelwood left the bridge, Cousins disengaged the autopilot, took navigational fixes, and ordered a series of rudder commands intended to route the ship between Bligh Reef and the leading edge of the glacial ice, a distance estimated by Cousins to be .9 mile. As a result of errors by Cousins and Kagan, the Exxon Valdez ran aground on Bligh Reef shortly after midnight on March 24, 1989, rupturing eight cargo tanks and discharging approximately 11 million gallons of crude oil into the pristine waters of Prince William Sound, causing the death of several hundred thousand migratory birds.⁶

The person with the primary responsibility for safely navigating the Exxon Valdez was Captain Hazelwood. He was known to both defendants to be an alcoholic. Medical records provided to both defendants in 1985 showed that he was hospitalized in an alcohol rehabilitation facility and diagnosed as suffering from episodic alcohol abuse and dysthymia and that he needed aftercare treatment. After

⁵ There is no evidence that Captain Hazelwood sent out any messages that evening.

⁶As stated at page 8 of the government's Summary of Damage to Natural Resources, preliminary estimates of the total number of birds killed range from 260,000 to 580,000.

- 6 -

Hazelwood's hospitalization and a three-month leave of absence, Exxon Shipping's managers returned him to duty as a ship's master. Unfortunately, his rehabilitation proved unsuccessful; he continued to use and abuse alcohol on and off duty up to the time of the grounding. Exxon Shipping failed to respond to reports and evidence that it received of Captain Hazelwood's ongoing alcohol use and abuse, and to take adequate steps to monitor his fitness to serve as a master in light of his history of alcohol abuse.

Robert Kagan was the helmsman at the time of the grounding. He had been an ordinary seaman with Exxon Shipping since 1974. In 1985, Kagan was "stepped-up" to AB for a few months, but then returned to ordinary seaman because of his unsatisfactory performance. In late 1988, Mr. Kagan was again "stepped up" to AB and assigned to serve on the Exxon Valdez. After serving 30 days on the ship, the chief mate prepared a written evaluation of Mr. Kagan's performance as an AB, which was received by the Exxon Shipping Fleet Manning Department prior to the grounding. This performance evaluation stated that "Mr. Kagan lacks the necessary skills to do the AB's job" and rated him "unsatisfactory" in his ability to work without supervision. A few weeks before the grounding, the alternate master of the Exxon Valdez told Captain Hazelwood that Mr. Kagan could not steer a ship and required too much supervision.

- 7 -

III. THE PLEA AGREEMENT

Pursuant to the plea agreement, Exxon Corporation has pled guilty to a violation of the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 and 707(a), and Exxon Shipping has pled guilty to violations of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1319(c)(1)(A); the Refuse Act, 33 U.S.C. §§ 407 and 411; and the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 and 707(a). The total maximum statutory fines that the court could impose for these violations as to both defendants is \$420,000.00, unless the loss-doubling provision of 18 U.S.C. § 3571(d) is applied. However, in the plea agreement, Exxon Shipping has agreed to the imposition of a fine of \$75 million, with \$37.5 million remitted, and Exxon has agreed to a fine of \$25 million with \$12.5 million remitted. In addition to the agreed-upon fines, the defendants have agreed to make compensatory payments of \$50 million to the State of Alaska. The parties have agreed that the provisions of Rule 11(e)(1)(C), Fed. R. Crim. P., apply to the plea agreement.

IV. FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE

The court has asked the parties to address succinctly the plea agreement in light of the sentencing factors in 18 U.S.C. § 3553. The relevant factors are discussed below.

A. § 3553(a)(1) - The nature and circumstances of the offense

A significant factor in the grounding of the Exxon

- 8 -

Valdez was Captain Joseph Hazelwood's decision to leave the bridge while the ship was executing a critical nighttime maneuver around glacial ice in the vicinity of Bligh Reef. In the face of increasing danger, which demanded greater precaution, Captain Hazelwood's decision to leave the bridge was a dereliction of his duty to supervise the safe navigation of the vessel. His unsound judgment in leaving the bridge undermanned set into motion a chain of events that culminated foreseeably in the ship running aground.

Third Mate Gregory Cousins, the junior officer left alone in charge of trying to guide the VLCC tanker, travelling at approximately 12 knots, through a .9 mile passage separating a field of glacial ice and Bligh Reef, was overwhelmed by the task that confronted him. As a result of having to do both the job of conning the vessel and fixing the vessel's position frequently, he failed to ensure that his rudder commands were properly executed and failed to assess the increasingly dangerous situation as the vessel approached Bligh Reef. The failure of the third mate and the helmsman to exercise due care in directing the ship safely past the reef were proximate causes of the grounding.

Neither Exxon Corporation nor Exxon Shipping should find refuge in the fact that Captain Hazelwood's conduct

- 9 -

violated company policy.⁷ Both defendants were aware that Captain Hazelwood had a history of alcohol abuse and dysthymia. After returning him to command of one of the world's largest oil tankers, it was incumbent upon them to monitor him carefully for alcohol abuse. This was not done. Had effective monitoring occurred, Captain Hazelwood would have been relieved of duty prior to the grounding. As Lawrence Rawl, C.E.O. of Exxon Corporation said after the grounding, "The first drink the captain had after he had (been) rehabilitated was a basis for dismissal."

The Fleet Manning Department of Exxon Shipping, which made the decision to temporarily assign Robert Kagan as an AB to the Exxon Valdez, was notified prior to the grounding that he lacked the skills necessary to do an AB's job. In light of this evaluation, and a long history of poor performance ratings, he should not have been retained in that capacity on the Exxon Valdez.

B. § 3553(a)(2)(A) - The need of the sentence to reflect the seriousness of the offense

The Exxon Valdez oil spill is the largest oil spill in United States history. As an aid to the Court in determining whether the sentence set forth in the plea agreement is appropriate, the United States filed a "Summary of Effects of the Exxon Valdez Oil Spill on Natural Resources

⁷ In a 1987 performance evaluation of Captain Hazelwood, the evaluator noted that he "does not proactively support co. policies at times."

- 10 -

and Archaeological Resources" on April 8, 1991. This document summarizes the injuries to natural resources that have been documented to date. Based on the seriousness of the harm resulting from the oil spill, the fine contained in the plea agreement is appropriate.

C. § 3553(a)(2)(A) - The need of the sentence to promote respect for the law

More than any other case in environmental litigation, this case has riveted the attention of the nation, and has been a sobering lesson that the environment is a vulnerable victim that requires great care in the conduct of environmentally hazardous activities. Acceptance of the plea agreement should heighten the business community's and the public's awareness of and respect for laws designed to protect the environment.

D. § 3553(a)(2)(A) - The need of the sentence to provide just punishment for the offense

The maximum statutory penalties allowable for the crimes to which the defendants have pled guilty total \$420,000.00. The fine agreed to in this plea agreement is \$100 million with \$50 million remitted. This fine would be the largest criminal fine ever imposed in an environmental criminal case. A fine of this magnitude is warranted in light of the egregiously deficient conduct of the defendant's employees and agents, both aboard the Exxon Valdez and in management, and of the tremendous harm to the environment and the people of Alaska caused by those failings.

- 11 -

E. § 3553(a)(2)(B) - The need of the sentence to afford adequate deterrence to criminal conduct

Criminal violations of environmental statutes have the potential to and often result in enormous injury. The United States believes that the fine imposed in this case must send a strong message to businesses and individuals alike. As the government's evidence would have shown, the discharge of nearly 11 million gallons of crude oil was directly related to criminally negligent conduct by Exxon Shipping in failing to exercise the high standard of care required in transporting crude oil through a pristine environment. Imposition of the statutory fines that would apply in this case, amounting to no more than \$420,000.00, would utterly fail to send that message. For that reason, the United States believes that the loss-doubling provision of 18 U.S.C. § 3571(d) should be applied. The fines contained in the plea agreement and agreed to by the defendants are of a magnitude that should deter future corporate carelessness with the environment.

F. § 3553(a)(3) - The kinds of sentences available

Only two sanctions apply to an organization convicted of a crime. Those sanctions - a fine or a term of probation - are set forth in 18 U.S.C. §3551(c). In considering whether to impose a fine and the amount of the fine, the court should consider, in addition to the factors set forth in § 3553(a) and described elsewhere in this

- 12 -

sentencing memorandum, the factors set forth in 18 U.S.C. § 3572. Those factors, which are discussed below, amply support imposition of the \$100 million fine set forth in the plea agreement as well as the remission of a portion of it.

The first of those factors is whether the defendant is an organization. If so, the Court should consider its size. Exxon Corporation is one of the largest and most profitable corporations in the world, and its wholly owned subsidiary, Exxon Shipping Company, has assets worth hundreds of millions of dollars.

The next factor to be considered is any measure taken by the organization to discipline any employee responsible for the offense. In this case, Exxon Shipping fired Captain Hazelwood for his conduct of using alcohol four hours before assuming duty and for his leaving the bridge during a hazardous maneuver. Mr. Cousins was reassigned to the status of AB as disciplinary action for his role on the grounding.⁸

The last factor the court can consider in determining the amount of the fine are any measures taken by the defendants to prevent a recurrence of the offense. Since the grounding, Exxon Corporation has revised its substance

⁸ Following the grounding, Mr. Cousins' license was suspended for nine months by the USCG. The government is unaware of any other disciplinary action taken against Exxon Shipping employees as a result of the events related to the grounding.

- 13 -

abuse policy substantially. Specifically, employees who have had or are found to have a substance abuse problem will not be permitted to work in safety sensitive positions and employees who have returned from rehabilitation will be required to participate in an aftercare program. The policy subjects persons in safety sensitive positions to unannounced periodic or random drug and alcohol testing and permits the defendants to conduct unannounced searches for drugs and alcohol on property owned or controlled by the defendants.

In addition, the defendants have created the position of loading mate in the Ports of Valdez and San Francisco. The loading mate has the responsibility of loading and unloading cargo from tanker vessels in port. The creation of this position should eliminate a significant source of fatigue. The National Transportation Safety Board concluded that the third mate's fatigue and excessive workload contributed to the grounding of the Exxon Valdez, and that Exxon Shipping's personnel policies encouraged marine employees "to work long hours without concern for debilitating fatigue."

A primary reason the government would request a term of probation in this case would be to serve as a vehicle for the Court to order restitution as a condition of probation. Since the terms of the plea agreement include a payment of \$50 million in compensatory payments to the State of Alaska by the defendants, the United States does not

- 14 -

believe probation is required in this matter.

G. § 3553(a)(6) - The need to avoid unwarranted sentence disparities among defendants guilty of similar conduct

There have been only a few other prosecutions for negligent oil spills, and none have involved environmental harm as widespread as that caused by the Exxon Valdez spill. The only other case that approaches this one is United States v. Ashland Oil Co., No. 88-146 CR (W.D. Penn. 1988), where the court imposed a fine of \$2.25 million for a negligent spill of about 700,000 gallons of diesel oil into the Monongahela River. That spill was the largest inland oil spill in U.S. history. The present case involves a spill about 16 times larger than the Ashland spill, and Exxon Corporation is several times larger than Ashland Corporation. Thus, it is appropriate that the fine in this case be much larger than in Ashland. The government believes that the record \$100 million fine agreed to in this case, with \$50 million remitted, appropriately reflects the seriousness of the offenses to which defendants have pled guilty, and is not inconsistent with other fines for oil spills.

H. § 3553(a)(7) - The need to provide restitution to any victim of the offense

While restitution is an important consideration, the criminal sentence cannot provide relief to every victim of the oil spill. However, many of those injured by the spill have been compensated or will be compensated. For

- 15 -

example, the plea agreement provides \$50 million in compensatory payments to the State of Alaska and a separate civil settlement requires the defendants pay up to \$900 million over the next ten years, and possibly an additional \$100 million if reopener conditions are met, for the restoration of Prince William Sound. The defendants have also paid more than \$300 million to third parties in settlement of claims resulting from the oil spill and there are presently pending, in federal and state court, a multitude of claims requesting various forms of relief. It would be extremely complicated, in light of all the pending litigation, for this Court to fashion an order of restitution for all those who claim to have suffered losses resulting from the oil spill.

Under 18 U.S.C. § 3663(d), the Court may decline to make a restitution order if the Court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution outweighs the need to provide restitution to any of the victims. A protracted hearing to determine restitution for every victim of the oil spill may run afoul of Fed. R. Crim. P. 32(a)(1), which generally requires that sentence shall be imposed without unnecessary delay.

- 16 -

V. LEGAL AUTHORITY TO IMPOSE THE FINE SET FORTH IN THE PLEA AGREEMENT AND TO THEREAFTER REMIT A PART OF THE FINE

The Court asked the parties to address the Court's authority to impose the agreed fine, and to remit a portion of a fine once the fine has been imposed. The plea agreement calls for imposition of a \$75 million fine on Exxon Shipping, and a \$25 million fine on Exxon Corporation. The Court's authority to impose these fines rests on 18 U.S.C. § 3571(d), which permits a fine of up to double the gross pecuniary loss to persons other than the defendant caused by the offense. If sentencing under this statute were litigated, the government would be prepared to prove that the offenses to which the defendants have entered pleas of guilty caused pecuniary losses to others in excess of \$50 million, providing a basis for a fine of \$100 million. In the plea agreement at page 4, defendants agree that there is a legal basis for the Court to impose the agreed fines.

The plea agreement calls for remission of \$37.5 million of Exxon Shipping's fine, and \$12.5 million of Exxon Corporation's fine, in recognition of defendants' conduct following the spill. The Court has the authority to order remission of part of a fine it has imposed, because the Court has the inherent authority to reduce a sentence it has imposed. In United States v. Benz, 282 U.S. 304 (1931), the Supreme Court upheld a district court's reduction of a

- 17 -

defendant's prison sentence after it began, stating:

The general rule is that judgments, decrees and orders are within the control of the court during the term at which they were made. They are then deemed to be "in the breast of the court" making them, and subject to be amended, modified, or vacated by that court. The rule is not confined to civil cases, but applies in criminal cases as well, provided the punishment be not augmented.

Id. at 306-07 (citations omitted). More recent decisions of the Supreme Court on sentencing authority have cited the rule laid down in Benz without question. See United States v. DiFrancesco, 449 U.S. 117, 138 (1980). Lower courts following Benz have distinguished between a court's power to reduce a sentence, which is inherent, and a court's power to suspend execution of a sentence, which a court may do only by imposing probation. See United States v. Ellenbogen, 390 F.2d 537, 540-41 (3d Cir. 1968), cert. denied 393 U.S. 918.

The distinction between reduction and suspension is logical: reduction of a sentence is unconditional, while a suspended sentence may be reimposed at some future date. A defendant whose sentence is suspended is entitled to be placed on a term of probation with a definite ending date and express conditions, so that he knows what conduct, during what period, will subject him to reimposition of his sentence. A defendant whose sentence is reduced without

- 18 -

condition has no such need.

VI. RESPONSE TO COMMENTS FROM THE PUBLIC

The Court has directed the parties to respond to the public's comments on the plea agreement. The Court received 87 comments in response to the Court's invitation to the public to express their views on the criminal plea agreement in this case. Almost all the comments were from private citizens residing in Alaska. The Audubon Society, the Green Party, and the National Wildlife Federation also submitted comments, as did two attorneys representing plaintiffs in the civil oil spill litigation. Finally, three Alaskan villages and one native corporation submitted comments.

Many of the comments raise similar objections or concerns about the plea agreement. Hence, instead of responding to each comment separately, we have grouped the comments into several categories sharing common themes, and have responded to each of those themes. One characteristic that almost all of the comments share is that they address both the criminal plea agreement and the proposed consent decree, often confusing the two. Many of the objections concern the adequacy of the civil recoveries under the consent decree, rather than the sentence proposed under the plea agreement. The proposed consent decree is independent from the plea agreement; consequently, it is not appropriate for the government to respond here to objections to the

- 19 -

consent decree.

A. Comments Favoring the Plea Agreement

Eleven commenters urged the Court to accept the plea agreement. In general, those commenters cited the value of obtaining a certain result in this case immediately, rather than an uncertain result after years of litigation. Some commenters also cited a desire to give Exxon credit for its efforts to clean up the spill. The government agrees that the definite sentence set forth in the plea agreement is preferable to the uncertain sentence that could result even if convictions were obtained after trial. The range of uncertainty in this case is particularly broad, because of the dramatic difference between the normal maximum fines and the level of fines that the Court could, in its discretion, impose under the Alternative Fines Act.

B. Comments Opposing Agreement Not to Prosecute Alyeska

Representative George Miller, Vice-Chairman of the Committee on Interior and Insular Affairs of the U.S. House of Representatives, wrote to the Court to say that he objects to the provision in that plea agreement in which the government agreed not to prosecute Alyeska Pipeline Service Company for any offense arising from Alyeska's preparation of oil spill contingency plans. The National Wildlife Federation raised a similar objection. Vice-Chairman Miller stated that Alyeska knew that it could not and would not

- 20 -

respond effectively to a major oil spill, and suggested that the government could charge Alyeska with violating the false statement provision of the Clean Water Act, 33 U.S.C. § 1319(c)(4), or the false statement provision at 18 U.S.C. § 1001.

At the outset, it is necessary to clarify the meaning of the non-prosecution provision of the plea agreement and respond to this comment. First, the plea agreement preserves the federal government's right to prosecute any employees of Alyeska for any criminal conduct that may have been associated with the spill plan. This would, of course, include the government's ability to prosecute any individuals for possible false statements in violation of 18 U.S.C. § 1001. Moreover, the State of Alaska retains full authority to prosecute Alyeska and its employees for any criminal violation of state law that may have occurred.

The government conducted a thorough investigation of possible criminal conduct associated with Alyeska's submission of spill plans. The evidence would not support a prosecution for false statements under the Clean Water Act, 33 U.S.C. § 1319(c)(4), because that section applies only to documents required to be filed under the Clean Water Act. Alyeska's spill plans were not required to be filed under that Act. After carefully weighing the evidence, the relevant law and attendant litigation risks, the possible

- 21 -

sanctions for any criminal charges that might have been brought against Alyeska,⁹ and the unprecedented criminal fines and guilty pleas the government would obtain from Exxon under the plea agreement, the government concluded that it was in the best interests of the public to include a non-prosecution agreement for Alyeska in the plea agreement.

C. Objections to Lack of Data on Spill Damage

In order to assist the Court in reviewing the plea agreement, the government filed a summary of preliminary results of a number of extensive oil spill damage assessment studies. That summary does not purport to offer a definitive tally of the tremendous damage done by the spill to the waters, wildlife and people of Alaska. It does, however, provide the government's present best estimate of these damages, based on all the information they have collected over the two years since the spill. This assessment of the harm caused by the spill was available to responsible government officials who negotiated the plea agreement and consent decree. While the full scope of that harm may not be known for several years, there are no present indications of significant long term injury to resources other than those specifically identified in the summary.

⁹The maximum corporate fine for a false statement in violation of 18 U.S.C. § 1001 is \$500,000, pursuant to 18 U.S.C. § 3571(c).

- 22 -

Notwithstanding the government's release of a full summary of the natural resource damage assessment study results, a number of commenters object that they cannot evaluate the plea agreement without access to all state and federal studies on injury to natural resources caused by the spill. However, the plea agreement does not seek to redress all injury caused by the Exxon Valdez spill; it seeks only to affix criminal responsibility for the spill, to impose just punishment, and to begin a flow of restitution that will continue in the civil context. In order to determine whether punishment in this case is just, it is enough to know that Exxon and its subsidiary, in violation of applicable environmental laws, caused an environmental disaster of unprecedented proportions, warranting a fine of unprecedented proportions.

D. Objections to Dismissal of Felony Charges

A few letters opposed the plea agreement because it calls for the dismissal of Counts 4 and 5 of the Indictment, which charged felony offenses. The decision by the Department of Justice to dismiss certain counts in an indictment at the time of sentencing is one committed to the discretion of the prosecutors.

E. Objections That Fine Is Insufficient

A number of letters ask the Court to not accept the plea agreement on the basis that the fine and the restitution called for in the agreement are inadequate. The plea

- 23 -

agreement provides for the largest criminal fine ever imposed in an environmental prosecution. To date, the largest criminal fine for an oil spill is \$2.25 million, paid by the Ashland Oil Company in a Clean Water Act prosecution arising out a serious river spill, which contaminated drinking water in several states and disrupted the lives of thousands of people.

The size of the proposed fine in this case is much greater than that imposed on Ashland just over two years ago. The magnitude of the fine reflects both the larger size of these corporate defendants and the damage created by the Exxon Valdez oil spill. The record fine and the concomitant restitution are designed to punish both defendants for their actions and send a strong message of deterrence to other potential polluters.

F. Objections That the Settlement Deprives Public of a Public Trial

A few of the comments oppose the plea agreement because it means that there will be no public trial of the criminal charges. This is the result of any plea agreement, and is the manner in which most convictions in federal criminal cases are obtained. The commenters misconstrue the purpose of a criminal trial, which is not to satisfy the public's curiosity, but to determine guilt.

In any event, unlike most criminal cases, most of the evidence of the defendants' criminal conduct in this case

- 24 -

has been made public. This evidence was aired in inquiries by the National Safety Transportation Board, several Congressional committees, and the Alaska State Oil Spill Commission, as well as in U.S. Coast Guard proceedings to suspend the licenses of Joseph Hazelwood and Gregory Cousins, and the State of Alaska's six-week trial of Joseph Hazelwood, much of which was broadcast on radio and television.

G. Objections to Payment of Civil Damages Over Ten-Year Period

Comments that the plea agreement should not be accepted because of the payment schedule set forth in the settlement of state and federal civil claims have no relevance to this separate criminal case. The fines and restitution specified in the plea agreement will be paid within thirty days of the Court's acceptance of the agreement.

H. Objections By Alaska Native Villages

Three Alaska Native Villages, a council of elders, and one Native corporation submitted comments objecting to the plea agreement. For example, Mr. Patrick Norman, President of the Port Graham Corporation, objected to the agreement because the fine monies will go into a national fund for victims of crime. Mr. Norman stated that since the money compensates for crimes committed in Alaska, "the money should be spent on the cities, and villages that were traumatized emotionally and physically by the oil spill and

- 25 -

the clean up efforts."

By statute, federal criminal fines are deposited in the fund established by the Victims of Crimes Act, 42 U.S.C. § 10601, et. seq. There is no mechanism for a federal criminal fine to be used as compensation for a particular class of victims, or for natural resource damages. For this reason, the plea agreement imposes a substantial criminal fine as punishment and then specifies that an additional \$50 million be paid as restitution to the State of Alaska. Paragraph IV.A. expressly provides that: "Such [restitution] monies are to be used by the State of Alaska exclusively for restoration projects relating to the 'EXXON VALDEZ' oil spill." By this provision, the plea agreement provides generally for redress of injuries similar to those sought by Mr. Norman and the Port Graham Corporation. The restitution monies will be paid soon after the acceptance of the plea agreement, and will be earmarked for the restoration of areas adversely affected by the Exxon Valdez oil spill.

I. Objections to Lack of Provision Regarding Damage to Archeological Resources

Seven commenters objected to the plea agreement because it does not address damage to cultural resources protected by the Archeological Resources Protection Act. None of the commenters suggested how such damage might be addressed. There are extensive pending civil claims by private parties that rest on damage to cultural resources.

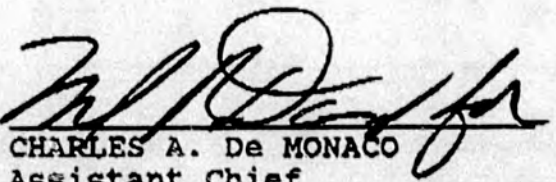
- 26 -

Issues concerning possible archeological damage are issues concerning the civil settlement, and not the resolution of the criminal prosecution.

VII. CONCLUSION

This prosecution was brought after investigation determined that criminal conduct was involved in the grounding of the Exxon Valdez. In a plea agreement submitted to the Court for approval, both defendants have offered guilty pleas and have agreed to pay a fines totalling \$100 million, \$50 million of which would be remitted, and have agreed to pay \$50 million in compensatory payments to the State of Alaska. The government believes that this would be a just resolution of the criminal charges, and respectfully urges the Court to accept the plea agreement.

Dated this 16th day of April, 1991, at Anchorage, Alaska.



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	No. A90-015-2CR
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
EXXON CORPORATION AND	)	
EXXON SHIPPING COMPANY,	)	
	)	
Defendants.	)	

The undersigned hereby certifies that he is an employee of the United States Department of Justice and is a person of such age and discretion as to be competent to serve papers.

That on April 16, 1991, he served one copy of the attached:

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING
by hand delivery on Robert C. Bundy and Douglas J. Serdahely,
Bogle & Gates, 1031 West 4th Avenue, Suite 600, Anchorage,
Alaska to effect service on Exxon Shipping Company and by

overnight express service on John F. Clough, III, Clough & Associates, 431 North Franklin Street, Suite 202, Juneau, Alaska to effect service on Exxon Corporation.



MARK R. DAVIS
Special Assistant U.S. Attorney