

HJR

9

# SENATE COMMITTEE REPORT

DATE: 4/26/05

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered HOUSE JOINT RESOLUTION NO. 9 am

## HJR 9 URGE CONGRESS HONOR EXXON VALDEZ JUDGMENT

Urging the United States Congress to honor the process and judgment of the federal courts in the case of the Exxon Valdez disaster and to refrain from enacting legislation that would affect the outcome of the courts' resolution of the case.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**CS Senate Bill:**

- Same Title
- New Title

**SCS House Bill:**

- Same Title
- Technical Title Change
- New Title w/ SCR # \_\_\_\_\_

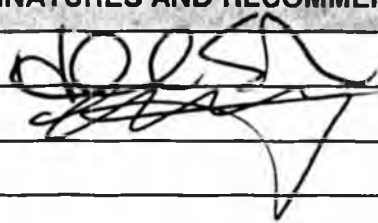
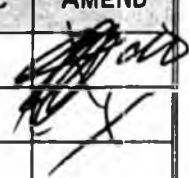
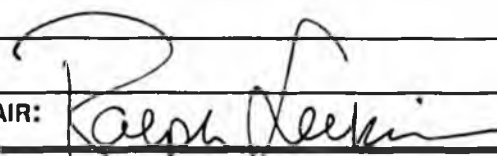
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
	X			
CHAIR: 			✓	

**SENATE CONCURRENT RESOLUTION NO.  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Introduced:  
Referred:**

**A RESOLUTION**

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**  
2 **Legislature, concerning House Joint Resolution No. 9, urging the United States Congress**  
3 **to honor the process and judgment of the federal courts in the case of the Exxon Valdez**  
4 **disaster and to refrain from enacting legislation that would affect the outcome of the**  
5 **courts' resolution of the case.**

6 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of  
8 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding  
9 changes to the title of a bill, are suspended in consideration of House Joint Resolution No. 9,  
10 urging the United States Congress to honor the process and judgment of the federal courts in  
11 the case of the Exxon Valdez disaster and to refrain from enacting legislation that would  
12 affect the outcome of the courts' resolution of the case.

24-LS0532AG  
Bullock  
5/2/06

**SENATE CS FOR HOUSE JOINT RESOLUTION NO. 9( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES LEDOUX, Gara, Gruenberg, Thomas, Guttenberg, Kerttula, Elkins, Gardner**

**SENATORS Elton, Ellis, Kookesh, Wagoner, Dyson, Gary Stevens**

**A RESOLUTION**

1 **Urging the United States Congress to honor the process and judgment of the federal**  
2 **courts in the case of the Exxon Valdez disaster and to refrain from enacting legislation**  
3 **that would affect the outcome of the courts' resolution of the case; urging the United**  
4 **States Department of Justice and the Alaska Department of Law to identify all natural**  
5 **resource damages from the Exxon Valdez oil spill that were unanticipated at the time of**  
6 **the 1991 settlement, to develop plans to remedy the damages, and to present the**  
7 **ExxonMobil Corporation with a request for the full \$100,000,000 that is available**  
8 **through the "Reopener for Unknown Injury" clause of the 1991 civil settlement to carry**  
9 **out these plans.**

10 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

11 **WHEREAS, on March 24, 1989, the Exxon Valdez ran aground on Bligh Reef in**  
12 **Prince William Sound, Alaska, spilling more than 11,000,000 gallons of crude oil and**  
13 **becoming what President George H. W. Bush called "the worst marine environmental disaster**



1 this nation has ever experienced"; and

2 **WHEREAS** the grounding and spill released oil across more than 10,000 square miles  
3 of Alaska's coastal oceans and 1,300 miles of shoreline, including five state parks, four state  
4 critical habitat areas, one state game sanctuary, and many Alaska Native ancestral lands; the  
5 spilled oil killed hundreds of thousands of birds, marine mammals, fish, and invertebrates;  
6 and the grounding and spill seriously disrupted the economy, culture, and livelihoods of  
7 coastal residents; and

8 **WHEREAS**, on October 9, 1991, the United States District Court for Alaska in  
9 Anchorage approved a settlement (Civil Actions No. A91-082 and A91-083) between Exxon  
10 Corporation, the United States of America, and the State of Alaska for damages to natural  
11 resources, including publicly owned wildlife and wild lands, from the Exxon Valdez oil spill;  
12 and

13 **WHEREAS** this settlement includes a clause that provides for a "Reopener for  
14 Unknown Injury," which states that the governments may, between September 1, 2002, and  
15 September 1, 2006, request that the ExxonMobil Corporation pay additional sums as needed,  
16 up to \$100,000,000, to restore oil-damaged populations, habitats, or species in the spill zone if  
17 the injury could not reasonably have been known nor anticipated at the time of the settlement;  
18 and

19 **WHEREAS** this provision was a key factor in addressing the uncertainty of the  
20 public, the Alaska State Legislature, the United States Congress, the State of Alaska, and the  
21 United States District Court regarding the potential for future damages and, therefore, in  
22 winning approval of this settlement; and

23 **WHEREAS**, in September 1994, a unanimous jury of Alaskans found Exxon  
24 Corporation liable for the Exxon Valdez oil spill and awarded damages of ~~\$5.3~~ billion to  
25 those injured by the spill, including punitive damages in the amount of \$5 billion; and

26 **WHEREAS**, 16 ~~15~~ <sup>17</sup> years after the disaster, and <sup>now</sup> ~~more than 10~~ <sup>11</sup> years after the  
27 original jury verdict, the victims are still awaiting resolution of the litigation; and

28 **WHEREAS** the Ninth Circuit Court of Appeals is currently reviewing the latest  
29 appeal of the damages order by Exxon Mobil Corporation and is expected to issue its decision  
30 sometime later this year; and

31 **WHEREAS**, during consideration by the United States Congress of the Oil Pollution

#1  
\$4.5  
-12.7 billion

1 Act of 1990, Exxon Mobil Corporation sought an amendment that would have substantially  
2 reduced the punitive damages that it would have to pay for the Exxon Valdez oil spill;

3 **WHEREAS** scientists funded through the Exxon Valdez Oil Spill Trustee Council  
4 and by federal and state agencies, universities, and private foundations have clearly and  
5 conclusively demonstrated substantial long-term harm from the Exxon Valdez oil spill; their  
6 findings include evidence of direct and indirect harm to native species, coastlines, and the  
7 peoples of the spill zone; and

8 **WHEREAS** all of these long-term damages from oil were unanticipated at the time of  
9 the 1991 settlement because of the complexity of the intertidal spill zone environment, the  
10 unexpected persistence of subsurface oil, species decline that did not become manifest until  
11 after the settlement, and increased modern scientific recognition of the toxicity of oil to  
12 wildlife; and

13 **WHEREAS** there exist many cost-effective restoration opportunities to mitigate these  
14 unanticipated injuries; and

15 **WHEREAS** the governments are required to submit detailed plans for use of reopener  
16 funds 90 days before a formal request to ExxonMobil Corporation, and the last day on which  
17 the governments may make those requests is September 1, 2006; and

18 **WHEREAS** it is clearly in the interest of the citizens of Alaska that the governments  
19 assert this claim for full payment for the additional damages from the Exxon Valdez oil spill;

20 **BE IT RESOLVED** that the Alaska State Legislature respectfully urges that the  
21 United States Congress respect the judicial process and refrain from enacting any legislation  
22 that would reduce or delay payment of the punitive damages awarded to more than 32,000  
23 plaintiffs as a result of the 1989 Exxon Valdez oil spill as finally determined by the federal  
24 courts; and be it

25 **FURTHER RESOLVED** that the Alaska State Legislature urges the United States  
26 Department of Justice and the Alaska Department of Law to identify all natural resource  
27 damages from the Exxon Valdez oil spill that were unanticipated at the time of the settlement,  
28 to develop plans to remedy the damages, and to present the ExxonMobil Corporation with a  
29 request for the full \$100,000,000 available under the reopener clause to enact these plans; and  
30 be it

31 **FURTHER RESOLVED** that the Attorney General of the State of Alaska or the

Handwritten marks on the right margin, including a vertical line of small circles and a bracket-like shape.

1 Attorney General of the United States report to the Alaska State Legislature on or before  
2 June 2, 2006, on the status of the governments' claim for reopener damages.

3 **COPIES** of this resolution shall be sent to the Honorable George W. Bush, President  
4 of the United States; the Honorable Richard B. Cheney, Vice-President of the United States  
5 and President of the U.S. Senate; the Honorable Bill Frist, Majority Leader of the U.S. Senate;  
6 the Honorable Harry Reid, Minority Leader of the U.S. Senate; the Honorable J. Dennis  
7 Hastert, Speaker of the U.S. House of Representatives; the Honorable John Boehner, Majority  
8 Leader of the U.S. House of Representatives; the Honorable Nancy Pelosi, Minority Leader of  
9 the U.S. House of Representatives; the Honorable Alberto Gonzales, Attorney General of the  
10 United States; the Honorable David W. Marquez, Alaska Attorney General; and the  
11 Honorable Ted Stevens and the Honorable Lisa Murkowski, U.S. Senators, and the Honorable  
12 Don Young, U.S. Representative, members of the Alaska delegation in Congress.

# ALASKA STATE LEGISLATURE



SENATOR HOLLIS FRENCH

## SJR 17 Exxon Valdez Reopener

### Sponsor Statement

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SJR 17 urges the United States Department of Justice or the Alaska Department of Law to pursue the \$100 million made available for mitigation of unanticipated damages stemming from the 1989 Exxon Valdez oil spill. The 1991 civil settlement contains a "Reopener for Unknown Injury" clause which provides that between September 1, 2002 and September 1, 2006, the governments can request an additional \$100 million from the Exxon Corporation if they determine that the spill had caused substantial, unanticipated harm, and present a cost-effective plan to remedy that harm. This provision is on top of the \$900 million already paid for civil recovery, \$100 million in criminal restitution, and a \$25 million fine. This will not affect the ongoing litigation regarding the over \$5 billion Exxon owes to individual Alaskans in punitive damages. The resolution also requests an update on or before March 24, 2006, the 17<sup>th</sup> anniversary of the spill, from the Attorneys General of Alaska or the United States regarding the status of this claim.

Since the spill and settlement, scientists funded by the initial payments have determined a number of unanticipated injuries to the spill zone. One major result of the spill that did not become evident until after the settlement was the 1993 crash of the herring population. Scientists since that time have determined that crude oil affected the reproductive processes of the herring, which explains the delayed onset of the population crash. Other significant discoveries regard lingering oil. A number of beaches in Prince William Sound still contain significant amounts of oil that has yet to biodegrade as expected. Since the spill and settlement, scientists have also realized the toxicity of crude oil to wildlife, a danger that was underestimated at the time. These issues, among others, show the necessity of these additional funds to restore these areas to health.

The Kenai Peninsula Borough, Kodiak Island Borough, and City of Cordova have already passed resolutions in support of this action.

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSJR 17(RES)  
 (S) Publish Date: 4/27/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: All  
 Title: Exxon Valdez Spill Damages RDU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor: Sen. French  
 Requester: Senate Resources Committee Component No. \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

This resolution would not have a fiscal impact on any state agency.

Prepared by: Jack Kreinheder, Senior Analyst Phone 465-4676  
 Division: Office of Management and Budget Date/Time 4/17/06 1:22 PM  
 Approved by: Cheryl Frasca Director Date 4/17/2006  
 Agency: Office of Management and Budget

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NATIONAL DESK

## WASHINGTON AT WORK; In Exxon Deal, Transportation Chief Wins Another One for the President

By KEITH SCHNEIDER, SPECIAL TO THE NEW YORK TIMES (NYT) 1673 words

Published: March 21, 1991

WASHINGTON, March 20 -

A week ago Tuesday, Lawrence G. Rawl, the chairman of Exxon, flew to Washington. In an informal ceremony at the Justice Department just before midnight he signed a \$1.1 billion settlement that he hoped would put the nation's worst oil spill, and the two years of civil and criminal cases that followed, behind him and his company.

Standing with Mr. Rawl, Gov. Walter J. Hickel of Alaska and the lawyers for the Department of Justice was Transportation Secretary Samuel K. Skinner.

Once again Mr. Skinner had pulled it out for the White House, bringing to a successful conclusion talks that by all accounts could easily have tipped the other way.

"I viewed my job as a facilitator," said Mr. Skinner, a former United States Attorney from Chicago. "You had a huge amount of egos and interests that had to be blended together.

"In my experience I've found that if the principals don't want to settle they look for an opportunity to get out. In this case everybody wanted a deal because they knew the alternatives didn't make sense."

A 52-year-old lawyer and protege of James R. Thompson, the former Governor of Illinois who at one time was considered as a potential national Republican figure himself, Mr. Skinner has made his career in the capital handling domestic political issues without embarrassing the President. His background as a litigator has helped. So has his instinct for the spotlight and his good feel for the Washington social circuit. In Response to Disasters

When the tanker Exxon Valdez struck a reef in Prince William Sound in Alaska on March 24, 1989, spilling 11 million gallons of Alaska crude into the sound and turning beaches into a chaos of oil-soaked birds and dying otters, it was Mr. Skinner who was dispatched to supervise the Government's response.

Earlier that month, when machinists at Eastern Airlines went on strike, President Bush tapped Mr. Skinner instead of Elizabeth Dole, then Secretary of Labor, to handle the strike. Mr. Skinner's advice to

the President: stay out of the struggle.

In September 1989 Hurricane Hugo swept through the Caribbean and struck the mainland in South Carolina, killing 24 Americans and causing immense property damage. A month later a powerful earthquake hit the San Francisco Bay area, killing 59 people. In both disasters Mr. Skinner was called in.

Now there is the Exxon deal. With his company facing a criminal trial in April and civil litigation afterwards being prepared by the Justice Department, Mr. Rawl had been ready for months to talk. "It's been a burden to us," the Exxon chairman said in a news conference on March 13 in Irving, Tex. Eager for a Settlement

Governor Hickel, an independent, wanted a consistent source of money to continue recovery work in Prince William Sound, the source of a prosperous fishing and tourism industry.

The Federal Government was eager to settle, too. The civil case against Exxon was expected to take at least five years to litigate, and in the criminal case, scheduled to begin April 10, the Justice Department was going to be testing new applications of environmental law. Nobody knew how a jury would respond.

"The cleanup efforts Exxon had made in the sound made a significant difference," Mr. Skinner said. "Nature had also done a tremendous job there. Scientists were telling everybody this was not a multibillion-dollar damage suit."

Mr. Rawl and Lee R. Raymond, Exxon's president, flew to Juneau, Alaska, on Jan. 15 at Governor Hickel's invitation. The state and the Federal Government had agreed three weeks earlier to work together, he told them. Mr. Raymond called Mr. Skinner and told him that the Governor was seeking an agreement.

Mr. Skinner said he believed that a successful negotiation was possible, but only if it was conducted at the Cabinet level. "I said this case will not be settled by lawyers," Mr. Skinner said. "First of all, they don't know how to settle it. Second, they have a built-in conflict of interest. This could go on for years." The Chairman Cools His Heels

On Feb. 5 Mr. Rawl and Mr. Raymond were asked to come to Washington for a meeting at the Commerce Department with the Federal and state negotiators: Mr. Skinner; Manuel Lujan Jr., Secretary of the Interior; William K. Reilly, Administrator of the Environmental Protection Agency; John Knauss, Administrator of the National Oceanic and Atmospheric Administration; Governor Hickel and Charles E. Cole, the Alaska Attorney General.

Mr. Rawl, a combative executive whose four-year tenure as Exxon's chairman had been marred by the oil spill, was in a dour mood, several negotiators recalled. After being asked to wait outside a conference room for 30 minutes while the government officials finished a meeting, Mr. Rawl became furious.

"I went out twice and asked them to please be patient," said Thomas A. Campbell, general counsel of the National Oceanic and Atmospheric Administration, who organized the meeting. "Rawl said: 'Just tell them they don't need to take much time. What I'm going to say is short and sweet.' He was going to tell them he's had it, he'll see them in court."





# CITY OF CORDOVA



February 2, 2006

Senator Hollis French  
State Capitol, Room 504  
Juneau, AK 99801-1182

Senator French:

As Mayor of Cordova, I strongly support SJR17 and HJR29 urging the United States Department of Justice and the Alaska Department of Law to request the full \$100,000,000 that is available through the "Reopener for Unknown Injury" clause of the 1991 civil settlement from the ExxonMobil Corporation. As you are aware, the residents of Cordova and the Prince William Sound natural resources were tremendously impacted in 1989 when the *Exxon Valdez* went aground spilling approximately 11 million gallons of North Slope crude oil into our pristine waters. Many lingering effects from that oil spill still remain today.

Independent research has shown without a doubt that several beaches in Prince William Sound still contain *Exxon Valdez* oil and it still remains highly toxic. This toxicity has affected the use of the beaches by locals for recreational and cultural uses. The Prince William Sound herring fishery collapsed in 1993 when juvenile recruitment herring, which were spawned shortly after the oil spill, failed to survive to become viable spawning adult fish. Recruitment failures of Prince William Sound herring remains a chronic problem. The Prince William Sound herring fishery at one time contributed between \$5 million and \$12 million a year to the Cordova economy. That once lucrative herring fishery no longer exists.

These are just two examples of the lingering effects from the Exxon Valdez oil spill that no one could foresee in 1991. At this time, no one has an answer on how to correct these lingering effects. The "Reopener for Unknown Injury" clause needs to be exercised so the issues of lingering effects can be addressed.

I have attached a resolution that passed unanimously by the Cordova City Council supporting the "Reopener for Unknown Injury" clause of the settlement. The city supports your efforts to fulfill the intent of the 1991 civil settlement from the ExxonMobile Corporation.

Sincerely,

Timothy L. Joyce  
Mayor City of Cordova

TLJ: sb

Cc: Representative William Thomas  
Senator Albert Kookesh

**CITY OF CORDOVA, ALASKA  
RESOLUTION 12-05-51**

**A RESOLUTION OF SUPPORT BY THE CITY COUNCIL OF THE CITY OF  
CORDOVA, ALASKA, TO REOPEN THE 1991 CIVIL SETTLEMENT FROM THE  
EXXON VALDEZ SPILL AND CLAIM THE FULL \$100 MILLION FOR MITIGATION  
OF UNANTICIPATED LONG-TERM HARM**

**WHEREAS**, on October 9, 1991, the U.S. District Court of Alaska in Anchorage approved a settlement among Exxon, the United States, and the state of Alaska for damages to "natural resources" (publicly-owned wildlife and wild lands) from the *Exxon Valdez* oil spill (EVOS); and

**WHEREAS**, this settlement included a clause that provided a "Reopener for Unknown Injury," which states (essentially) that, between September 1, 2002, and September 1, 2006, Exxon shall pay to the Governments such additional sums as are required (up to \$100 million) to restore oil-damaged populations, habitats, or species in the spill zone *if the injury could not reasonably have been known nor anticipated at the time of the settlement*; and

**WHEREAS**, unanticipated long-term harm from the *Exxon Valdez* oil spill has been clearly and conclusively demonstrated by scientists funded through the EVOS Trustee Council and, separately, through federal and state agencies, universities, and private foundations; and

**WHEREAS**, unforeseen damage includes delayed recovery of: 5-6 years for pink salmon; about 8 years for black oystercatchers and river otters; and 15 or more years for mussel beds and beach communities, sea otters, and fish-eating orcas (from slow replacement of losses after spill); and

**WHEREAS**, unforeseen damage includes species not recovered after 15 or more years such as: harlequin ducks, Pacific herring, pigeon guillemots, harbor seals (from slow replacement of losses after spill), and mammal-eating orcas (from spill losses and impaired reproduction due to high body burdens of PCBs); and

**WHEREAS**, unforeseen damage includes indirect effects to species like black-legged kittiwakes that were not initially harmed by the spill, but were harmed through spill-related loss of prey species such as Pacific herring; and

**WHEREAS**, much of the documented unforeseen damage stems from unexpectedly high levels of spilled oil, which remains buried in the intertidal zone and which NOAA scientists now estimate will take at least another 20 years to naturally degrade; and

**WHEREAS**, all of these long-term damages from oil were completely unanticipated at the time of settlement because the understanding of oil toxicity then held that oil only caused short-term harm at water levels of parts per million, while scientists now realize that oil also causes long-term harm at water levels of parts per billion and trillion; and

WHEREAS, because of the scientific finding that oil is more toxic than previously thought, it is critical to educate the public as to this finding and take measures to reduce risk of spills as well as to mitigate lingering harm; and

WHEREAS, none of the three parties to the settlement—Exxon, the federal government, or the State of Alaska—have petitioned to reopen the settlement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cordova, Alaska, hereby requests the United States Department of Justice and the State of Alaska to reopen the 1991 civil settlement and claim the entire \$100 million for mitigation projects; and

BE IT FURTHER RESOLVED THAT the US Justice Department and the State of Alaska consider, at a minimum, the following potential mitigation projects:

Mitigation of lingering harm:

1. Monitor weathering and toxicity of residual oil under beaches
2. Monitor recovery of, and oil contamination in, subsistence foods on oiled beaches
3. Continue to monitor species that have not yet recovered
4. Establish, and compensate for, cost of unforeseen injury to species
5. Conduct a feasibility study and cohort epidemiology study on cleanup workers whose health may have been impaired by the EVOS cleanup
6. Study of treated and untreated beaches to determine if any treatment methods used during the EVOS cleanup actually worked; i.e., improved recovery of beach ecology over the long-term

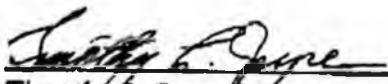
Public education:


1. Fund an assessment of injured resources through the National Research Council
2. Fund a review and assessment of oil spill cleanup products that are not toxic to humans or the environment through the National Research Council
3. Develop and implement national education programs on new understanding that oil is more toxic than previously thought to humans and the environment (like tobacco industry settlement)

Measures to reduce risk of large spills:

1. Endow citizen oversight council for the Trans-Alaska Pipeline System (estimated cost: \$25 million)

PASSED AND APPROVED THIS 7TH DAY OF DECEMBER, 2005.

  
Timothy L. Joyce, Mayor

ATTEST:  
  
Lisa J. Koplitz, City Clerk



# *Kodiak Island Borough*

*Office of the Borough Mayor*

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9310 Fax (907) 486-9391

E-mail: [jnielsen@kib.co.kodiak.ak.us](mailto:jnielsen@kib.co.kodiak.ak.us)

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February 8, 2006

Senator Hollis French  
State Capitol, Room 504  
Juneau, AK 99801

Dear Senator French:

Subject: Letter of Support for SJR 17 and HJR 29

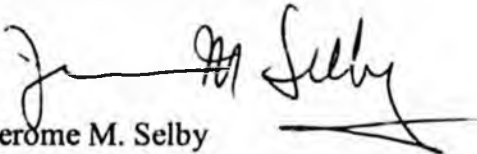
I am writing on behalf of myself and the Kodiak Island Borough Assembly to express support for Senate Joint Resolution No. 17 and House Joint Resolution No. 29.

On November 3, 2005, the Assembly unanimously adopted the attached resolution, Kodiak Island Borough Resolution No. FY2006-17, urging the United States Department of Justice and the State of Alaska to reopen the 1991 Civil Settlement from the Exxon Valdez Oil Spill and to claim the full \$100 million for mitigation of unanticipated long-term harm.

The Assembly and I understand the importance of the need to develop plans to remedy the damages caused by the Exxon Valdez spill to coastal communities such as Kodiak. It is clearly in the interest of the citizens Kodiak and the citizens of Alaska to assert this claim for full payment.

Sincerely,

OFFICE OF THE MAYOR

  
Jerome M. Selby  
Borough Mayor

Nj

Enclosure

Introduced by: Mayor Selby  
Requested by: Assembly  
Introduced: 11/03/2006  
Adopted: 11/03/2006

**KODIAK ISLAND BOROUGH  
RESOLUTION NO. FY2006-17**

**A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY URGING  
THE UNITED STATES DEPARTMENT OF JUSTICE AND THE STATE OF ALASKA  
TO REOPEN THE 1991 CIVIL SETTLEMENT FROM THE EXXON VALDEZ OIL SPILL AND  
CLAIM THE FULL \$100 MILLION FOR  
MITIGATION OF UNANTICIPATED LONG-TERM HARM**

**WHEREAS**, on October 9, 1991, the U.S. District Court of Alaska in Anchorage approved a settlement among Exxon, the United States, and the state of Alaska for damages to "natural resources" (publicly-owned wildlife and wild lands) from the Exxon Valdez oil spill (EVOS); and

**WHEREAS**, this settlement included a clause that provided a "Reopener for Unknown Injury," which states (essentially) that, between September 1, 2002, and September 1, 2006, Exxon shall pay to the Governments such additional sums as are required (up to \$100 million) to restore oil-damaged populations, habitats, or species in the spill zone if the injury could not reasonably have been known nor anticipated at the time of the settlement; and

**WHEREAS**, unanticipated long-term harm from the Exxon Valdez oil spill has been clearly and conclusively demonstrated by scientists funded through the EVOS Trustee Council and, separately, through federal and state agencies, universities, and private foundations; and

**WHEREAS**, unforeseen damage includes delayed recovery of: 5-6 years for pink salmon, about 8 years for black oystercatchers and river otters; and 15 or more years for mussel beds and beach communities, sea otters, and fish-eating areas (from slow replacement of losses after spill); and

**WHEREAS**, unforeseen damage includes species not recovered after 15 or more years such as: harlequin ducks, Pacific herring, pigeon guillemots, harbor seals (from slow replacement of losses after spill), and mammal-eating orcas (from spill losses and impaired reproduction due to high body burdens of PCBs); and

**WHEREAS**, unforeseen damage includes indirect effects to species like black-legged kittiwakes that were not initially harmed by the spill, but were harmed through spill-related loss of prey species such as Pacific herring; and

**WHEREAS**, much of the documented unforeseen damage stems from unexpectedly high levels of spilled oil, which remains buried in the intertidal zone and which NOAA scientists now estimate will take at least another 20 years to naturally degrade; and

**WHEREAS**, all of these long-term damages from oil were completely unanticipated at the time of settlement because the understanding of oil toxicity then held that oil only caused short-term harm at water levels of parts per million, while scientists now realize that oil also causes long-term harm at water levels of parts per billion and trillion; and

**WHEREAS**, because of the scientific finding that oil is more toxic than previously thought, it is critical to educate the public as to this finding and take measures to reduce risk of spills as well as to mitigate lingering harm; and

**WHEREAS,** none of the three parties to the settlement-Exxon, the federal government or the State of Alaska-have petitioned to reopen the settlement.

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT** the Assembly hereby urges the United States Department of Justice and the State of Alaska to Reopen the 1991 Civil Settlement From the Exxon Valdez Oil Spill and Claim the Full \$100 Million for Mitigation of Unanticipated Long-Term Harm: and

**BE IT FURTHER RESOLVED THAT** the US Justice Department and the State of Alaska consider, at a minimum, the following potential mitigation projects:

Mitigation of lingering harm:

1. Monitor weathering and toxicity of residual oil under beaches
2. Monitor recovery of, and oil contamination in, subsistence foods on oiled beaches
3. Continue to monitor species that have not yet recovered
4. Establish, and compensate for, cost of unforeseen injury to species
5. Conduct a feasibility study and cohort epidemiology study on cleanup workers whose health may have been impaired by the EVOS cleanup
6. Study of treated and untreated beaches to determine if any treatment methods used during the EVOS cleanup actually worked; i.e., improved recovery of beach ecology over the long-term

Public education:

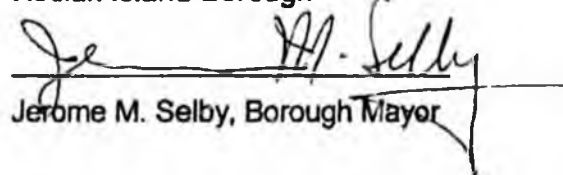
1. Fund an assessment of injured resources through the National Research Council
2. Fund a review and assessment of oil spill cleanup products that are not toxic to humans or the environment through the National Research Council
3. Develop and implement national education programs on new understanding that oil is more toxic than previously thought to humans and the environment (like tobacco industry settlement)

Measures to reduce risk of large spills:


1. Endow citizen oversight council for the Trans-Alaska Pipeline System (estimated cost: \$25 million)

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH  
THIS THIRD DAY OF NOVEMBER 2005**

Kodiak Island Borough

  
Jerome M. Selby, Borough Mayor

ATTEST:

  
Judith A. Nielsen, CMC, Borough Clerk

Introduced by: Martin  
Date: 12/06/05  
Action: Adopted as Amended  
Vote: 7 Yes, 2 No

**KENAI PENINSULA BOROUGH  
RESOLUTION 2005-105**

**A RESOLUTION SUPPORTING REOPENING THE 1991 CIVIL SETTLEMENT FROM  
THE EXXON VALDEZ OIL SPILL AND CLAIMING THE FULL \$100 MILLION FOR  
MITIGATION OF UNANTICIPATED LONG-TERM HARM**

**WHEREAS,** On October 9, 1991, the U.S. District Court of Alaska in Anchorage approved a settlement among Exxon, the United States, and the State of Alaska for damages to "natural resources" (publicly owned wildlife and wild lands) from the Exxon Valdez oil spill (EVOS); and

**WHEREAS,** this settlement included a clause that provided a "Reopener for Unknown Injury," which states (essentially) that between September 1, 2002, and September 1, 2006, Exxon shall pay to the governments such additional sums as are required (up to \$100 million) to restore oil-damaged populations, habitats, or species in the spill zone *if the injury could not reasonably have been known nor anticipated at the time of the settlement*; and

**WHEREAS,** unanticipated long-term harm from the Exxon Valdez oil spill has been clearly and conclusively demonstrated by scientists funded from the EVOS Trustee Council and separately through federal and state agencies, universities, and private foundations; and

**WHEREAS,** the severity and duration of the impact this oil spill would have on the native villages in Kachemak Bay, as well as the entire coastline of the Kenai Peninsula extending south from Seward to the west side of the Kenai Peninsula was not, and could not have reasonably been known as the above-described effects on species have drastically damaged these areas and the native village lifestyle, economics and populations; and

**WHEREAS,** all of these long-term damages from oil were completely unanticipated at the time of settlement because the understanding of oil toxicity then held that oil only caused short-term harm at water levels of parts per million, while scientists now realize that oil also causes long-term harm at water levels of part per billion and trillion; and

**WHEREAS,** none of the three parties to the settlement – Exxon, the federal government, or the State of Alaska – have petitioned to reopen the settlement;

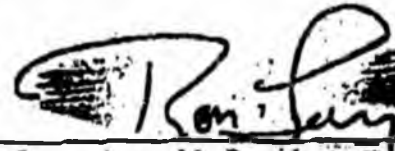
**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That the Kenai Peninsula Borough Assembly hereby requests the United States Department of Justice and the State of Alaska to reopen the 1991 civil settlement and claim the entire \$100 million for mitigation projects; and

**SECTION 2.** That copies of this resolution shall be sent to Governor Frank Murkowski, Senator Thomas Wagoner, Senator Gary Stevens, Senator Cou Bunde, Senator Albert Kookesh, Representative Woodie Salmon, Representative Mike Hawker, Representative Mike Chenault, Representative Kurt Olson, Representative Paul Seaton, U.S. Attorney Timothy M. Burgess and Department of Natural Resources Commissioner Michael Menge.

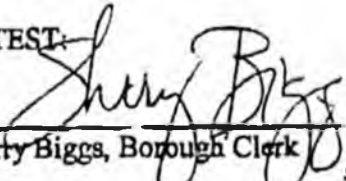
**SECTION 3.** This resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF DECEMBER, 2005.**



Ron Long, Assembly President

ATTEST



Sherry Biggs, Borough Clerk





43961 Kalfornsky Beach Road • Suite E • Soldotna, Alaska • 99669  
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: [kpfa@alaska.net](mailto:kpfa@alaska.net)

May 3, 2006

Governor Frank Murkowski  
P.O. Box 110001  
Juneau, AK 99811-0001

Dear Governor Murkowski,

Kenai Peninsula Fisherman's Association (KPFA) is in full support of the "Re-opener for Unknown Injury" (RUI) clause.

We would like the US Department of Justice and the Alaska Department of Law to fully identify all natural resource damages resulting from the Exxon Valdez Oil Spill (EVOS) – including those effects which were unanticipated at the time of the 1991 settlement. From this assessment, plans must be developed to remedy the damages. Finally, the proceedings must be initiated to reopen the 1991 civil settlement so that claim of the full \$100,000,000 allowed by the "Re-opener for Unknown Injury" clause may be made.

Research funded through the EVOS trustee and other reputable institutions have identified, both clearly and concisely, substantial long term harm from the Exxon Valdez oil spill. These findings include concrete evidence of direct and indirect harm to native species, coast lines, and people of the spill zone. Many of the long term damages from oil were unanticipated at the time of the 1991 settlement. This can be attributed to the complexity of the near tidal spill zone environment, the unexpected persistence of subsurface oil, species decline which did not fully manifest itself until after the settlement and increase recognition by modern science of the toxicity of oil to wildlife.

Critical for assessment and mitigation for the distant future requires accountability to continue the State's responsibility to the public trust. It is imperative that the State and future generations should not have to shoulder these unintended costs.

Respectfully,

Paul A. Shadura II  
Executive Director

# ALASKA STATE LEGISLATURE



SESSION ADDRESS  
Alaska State Capitol  
Juneau, AK 99801-1182  
(907) 465-2487  
Fax (907) 465-4956

INTERIM ADDRESS  
112 Mill Bay Road  
Kodiak, AK 99615  
(907) 486-8872  
Fax (907) 486-5264

## Representative Gabrielle LeDoux

### MEMO

**TO:** MEMBERS OF SENATE JUDICIARY  
**FROM:** REPRESENTATIVE GABRIELLE LEDOUX  
**SUBJECT:** HOUSE JOINT RESOLUTION 9  
**DATE:** 5/3/2006

---

Litigation Status on Exxon.

Oral Argument occurred on January 27, 2006 before Judges Schroeder, Browning and Kleinfield. The argument is available on line to listen to at: [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov). Once there, hit a button in the upper left hand corner of the site for "audio files," and then enter 04-35182 in the field that requests a "case number." The argument takes about one hour. There are no time constraints on the court for issuance of its decision.

Once the three judge panel rules, a party unhappy with its result may ask a larger panel of 15 judges from the circuit to hear the case, called en banc consideration. If granted, that would trigger a delay, probably including a new argument to the larger panel, and a new decision. If denied, the 9th circuit decision would be final, and a party unhappy with the court's result would have to ask the supreme court to hear the case through a petition for certiorari. We estimate that the least amount of time for the supreme court to deny certiorari is approximately 7 months from the final 9th circuit decision. Of course, if the supreme court took the case, the process would take longer.

# ALASKA STATE LEGISLATURE



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Juneau, AK 99801-1182  
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## Representative Gabrielle LeDoux

### SPONSOR STATEMENT FOR HOUSE JOINT RESOLUTION 9

**This resolution from the Alaska State Legislature urges that the United States Congress respect the judicial process and refrain from enacting any legislation that would alter the punitive damages awarded to more than 32,000 plaintiffs as a result of the 1989 Exxon Valdez oil spill as finally determined by the federal courts.**

**Nearly 15 years after the disaster, and more than ten years after the original jury verdict, the plaintiffs are still waiting resolution of the lawsuit.**

**While the United States Congress considered the Oil Pollution Act of 1990, Exxon Mobil Corporation sought an amendment that would have substantially reduced the punitive damages that it would have paid for the Exxon Valdez oil spill. This resolution urges Congress only to let the courts determine this matter.**

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HJR 9 am  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
 Title "Urging the United States Congress to BRU Legislative Council  
honor the process and judgment of the federal courts..." Component: Council and Subcommittees  
 Sponsor "Representatives LeDoux, Gara, ..." Session Expenses  
 Requestor Senate Judiciary Component No. 783

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626  
 Division: Administrative Services Date/Time 1/24/06 1:39 PM  
 Approved by: Pamela Varni, Executive Director Date 1/24/2006  
 Agency: Legislative Affairs Agency



# UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 110  
Juneau, Alaska 99801-1172  
(907) 586-2620  
(907) 463-2545 Fax  
E-Mail: [ufa@ufa-fish.org](mailto:ufa@ufa-fish.org)  
[www.ufa-fish.org](http://www.ufa-fish.org)

March 3, 2005

Representative Ralph Samuels, Co-Chair  
House Resources Committee  
Alaska State Legislature  
State Capitol (Mail Stop 3100)  
Juneau AK 99801-1182

Dear Representative Samuels,

UFA represents thirty-one Alaska commercial fishing groups and hundreds of individual fishermen, crew members and related businesses.

United Fishermen of Alaska (UFA) supports HJR 9 as a meaningful statement from the State of Alaska to urge that the United States Congress respect the judicial process and refrain from enacting any legislation that would alter the punitive damages awarded to more than 32,000 plaintiffs as a result of the 1989 Exxon Valdez oil spill as finally determined by the federal courts.

The sixteen year delay in just compensation has prolonged the economic damage from the spill beyond justification. All reasonable positions in this sad episode have received due process in courts. Fishermen and communities should be compensated without any undue further delay.

We appreciate your consideration and encourage your support of HJR 9.

Sincerely,

Mark D. Vinsel  
Executive Director

CC: Representative Gabrielle LeDoux

#### MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Armstrong Keta • At-sea Processors Association  
Bristol Bay Reserve • Concerned Area "M" Fishermen • Cordova District Fishermen United • Douglas Island Pink and Chum  
Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association  
North Pacific Fisheries Association • North Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association  
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation  
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Southeast Alaska Herring Seiners Marketing Association  
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association  
United Catcher Boats • United Salmon Association • United Southeast Alaska Gillnetters • Valdez Fisheries Development Association  
Western Gulf of Alaska Fishermen

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Anchorage Daily News

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## 16 years later, pressure mounts to settle spill suit

**EXXON VALDEZ: State, federal lawyers must decide by next summer whether to seek additional damages.**

By TOM KIZZIA  
Anchorage Daily News

*(Published: February 27, 2005)*

State and federal officials in charge of spending Exxon Valdez oil spill settlement funds are pushing new efforts to reach "closure" on controversies about environmental damage posed by crude oil, some of which still lies buried in the sands of Prince William Sound.

Since the election of Gov. Frank Murkowski in 2002, the oil spill trustees have put some broader, long-range scientific projects on hold. Instead, the trustee council has directed Exxon settlement funds to studies of herring and other injured species in hopes of writing the final chapter on spill damage and the effects of so-called lingering oil.

A key piece of that work has been contracted to a private Seattle consulting firm that normally does much of its work for companies accused of pollution. Integral Consulting has \$850,000 in contracts to weigh conflicting studies by government and Exxon scientists and reach independent conclusions on the lingering spill impacts. A state lawyer said the firm is expected to have some answers by late summer or fall.

The change in priorities has drawn strong protests from public advisers and scientists, who say they don't know what's going on because the council has conducted little open discussion. Some critics say they fear the Murkowski and Bush administrations are eager to close the book on a resource-development public-relations mess.

### TRUSTEE COUNCIL MISSION

The trustee council was formed to oversee restoration of the ecosystem damaged by the 1989 Exxon Valdez oil spill. The comp tanker hit a charted reef and dumped a reported 11 million gallons of crude oil into Prince William Sound.

The oil spill trustees say they haven't been secretive. But under fire from their public advisory group, which approved a sharply critical resolution last month, they say they are trying harder to make their intentions plain. In recent interviews, several trustees said the new priorities are necessary in part to address the lingering oil, which only showed up in studies beginning in 2001.

"The lingering oil was something no one contemplated back in '89 when the spill happened," said Drue Pearce, the Alaska special assistant for the U.S. Department of the Interior, who holds a federal seat on the Exxon Valdez Oil Spill Trustee Council. Pearce said she visited a beach last summer with still-smelly oil buried in the sand and found it "astounding."

Pearce said findings of the Integral Consulting study will be important to state and federal lawyers, who must decide by the summer of 2006 whether to seek additional damages of up to \$100 million from the spiller, now known as Exxon Mobil. The 1991 settlement between Exxon and the state and federal governments included a short "reopener" period allowing new claims based on

environmental harm that was not foreseen at the time.

## UNRESOLVED QUESTIONS

That litigation deadline aside, the trustees appear uncomfortable with having unresolved questions of environmental damage hover indefinitely over the Sound.

"Maybe (herring) will never recover. But we need to bring closure to that question," said Kurt Fredriksson, acting commissioner of the Department of Environmental Conservation and one of three state trustees. "We need to get restoration of those resources taken care of, or conclude that we cannot."

Scientists involved in past research have questioned the apparent change of direction, saying the new council members were ignoring years of scientific planning and recommendations from peer-review groups. Many were concerned that broader ecosystem research, considered by previous administrations the best way to examine long-term spill impacts, would eventually be canceled. The trustees have \$106 million left for scientific work from the \$900 million civil settlement paid by Exxon.

Trustees have recently assured them that the long-range work will continue after this pause, said Brenda Norcross, a University of Alaska marine science professor and co-chairwoman of the trustees' scientific advisory committee.

Critics also expressed concern over the Christmas-week firing of the trustee council's science director, Phil Mundy, who had helped build the old research program.

"It's very difficult to get all the work done without a science director," Norcross said.

Mundy said he was given no reason except that his firing was ordered by Murkowski's office. Trustee council executive director Gail Phillips said she could not discuss the decision because it was a confidential personnel matter.

## SKEPTICISM ABOUNDS

The council's actions were viewed warily by the advisory committee set up under the settlement to ensure public involvement in how the funds are spent. In January, the committee passed a resolution branding council actions last August secret and illegal, and calling on the council to reconsider its work plan, this time in public.

"I think the controversy is more the secrecy of how they are doing it," said committee member Pat Lavin of the National Wildlife Federation. "We think it's pretty clear the council violated its own procedures."

Lavin and others say the push for new priorities has come largely from trustees representing the state.

Some question giving the important job of summarizing past research to an independent firm like Integral Consulting.

"They're a complete outsider to this. I don't think they've got the history to make the judgment," said Stan Senner, a longtime science coordinator for the trustee council who is now executive director of Audubon Alaska.

But Craig Tillery, an assistant attorney general for the state who has been involved in the oil spill since the tanker hit Bligh Reef, said it's the right time for an independent summary.

"You've got these disparate studies. You don't have an analysis," Tillery said.

Stacy Studebaker, a Kodiak environmentalist who has served nine years on the public advisory committee, is suspicious.

"I think there's a mandate on the state trustees to get this thing over with, to tidy things up," Studebaker said. "They're trying to clean up a PR mess with Exxon."

But her fellow committee member Lavin said the focus on answering the big remaining questions seems to make sense.

"It's exactly what they should be doing," he said. "My great fear is that, voila, the studies show that everything's great. But I have no reason to think that will happen."

## LONG-TERM PROJECTS

The trustee council, made up of six top bureaucrats from the federal and state governments, has spent \$375 million on buying and protecting habitat, \$176 million to reimburse governments for spill response costs, and \$173 million on scientific studies.

By the spill's 10-year anniversary in 1999, with echoes of the Exxon Valdez catastrophe growing fainter, officials and science advisers were turning attention to planning long-term projects under the umbrella of the so-called Gulf Ecosystem Monitoring Program, or GEM. In 2002, most of the remaining money, around \$87 million, was set aside for GEM studies looking at long-range spill impacts in the context of broader changes in the North Pacific. The council now spends between \$3 million and \$5 million a year on various studies.

The Bush-Murkowski council began to change course in 2004. An August decision to turn down funding for some GEM projects drew a stern complaint from University of Alaska president Mark Hamilton. He said the council had ignored recommendations of staff and science advisers in rejecting high-ranked projects by university scientists while funding some that had been recommended against.

"Violation of the practices and tenets of science sponsorship which have for generations guided successful research in this country -- including peer review, openness, and transparency -- puts at risk the scientific credibility of not only yourselves as trustees, but the organizations you represent," Hamilton wrote the trustees last September.

The state trustees responded with a stout defense of their prerogative, saying their "highest priority" was projects with "the most direct and immediate restoration effects" on damaged resources and lost services. "While some disappointment is expected among investigators whose projects did not receive funding, no reasonable person should conclude a conspiracy exists in the process or a mystery surrounds our decisions," the state trustees wrote to Hamilton.

Studebaker came back with a newspaper column saying the council didn't need to rubber-stamp projects but did need to explain its reasons. Its failure to do so in August had been "a stick in the eye" to those trying to keep public the often-politicized science surrounding the Exxon Valdez spill, she said.

Trustee council members are now going further to explain their thinking, saying the attention to

assessing and restoring damage is essential under the council's 1994 work plan.

"From where I sit, it was a nicety that we jumped to too quickly," DEC's Fredriksson said of the GEM program. "We hadn't completed the restoration work that had to be done."

He said an assessment of resource recovery hadn't been made since 2002. At that point, five species and several other resources were listed as still recovering, while eight species were listed as "not recovering."

The apparent shift in priorities makes some sense to one prominent oil industry critic, Rick Steiner, a marine biologist at the University of Alaska Anchorage. Steiner, who has pushed government officials to stay focused on restoring the Sound, said it is important for the council to not allow its endowment to become a "cash cow" for general scientific research.

Steiner said he's worried, however, that the Bush and Murkowski administrations appear hostile to reopening spill litigation around continuing effects of the spill, which he contends go far beyond sheens leaching into the water from buried oil. He said debating the larger questions in court could reflect badly on their efforts to open other areas to oil drilling.

"The last thing they want is discussion of 15-year long-term damage we didn't expect," Steiner said.

## CONFLICTING INTERESTS?

An example of these conflicting interests, cited by Steiner and others, is that Phillips, who made \$105,000 last year as the trustee council's executive director, has played a prominent role in Arctic Power, the group promoting oil development in the Arctic National Wildlife Refuge. Last year, Phillips was Arctic Power's co-chairman. She recently resigned the leadership position because of the complaints, she said, though she remains on the group's board.

"In my mind, it was never a conflict because I had been doing it for so long," said Phillips, a former state House speaker and candidate for lieutenant governor. "But I could understand where people could have thought it was."

Phillips said the question of whether to reopen the spill case is up to state and federal lawyers, not the trustee council.

Tillery, the assistant attorney general, said government lawyers are seriously exploring the potential for a reopener. He would not comment further.

It was Steiner who obtained secret trustee council documents in 2003 outlining the possibilities for reopening the case at that point. The documents, featured in a subsequent story in the Wall Street Journal, detailed growing scientific concern over lingering oil and cited unanticipated damage to pink salmon, sea otters, mussels and harlequin ducks.

"Much, if not all, of the information upon which a claim would be made is generated by the Trustee Council's restoration program," wrote Molly McCammon, Phillips' predecessor, in one of the secret memos.

That was then. Now, said Pearce, vital information for making any such claim is likely to be drawn from the analytical study of lingering oil and damaged resources by Seattle-based Integral Consulting.

## INTEGRAL CONSULTING STUDY

The national consulting firm was first recommended to the state for spill restoration work by Murkowski's first DEC commissioner, Ernesta Ballard, who served as a spill trustee until resigning last year. Ballard said this month she had worked with Integral on a project for the Ketchikan Pulp Co. before joining state government.

According to the company's Web site, Integral is a specialist in polluted sediments and does much of its work for private companies accused of spills -- "potential responsible parties," in the legal term. Integral has also been involved in cleanup for government agencies such as the Port of Seattle, its Web site said.

The company reported at a January symposium that initial findings show the buried oil continues to leach into the environment, but most of the resources "currently" classified as injured are not exposed to it, Integral's Web site said.

Several calls to Integral officials handling the Alaska project were not returned.

Trustee council meetings are known for the jaw-dropping tedium of discussions about scientific appropriations of tens of thousands of dollars. So it was all the more surprising that there was little discussion on March 1, 2004, when the council returned from a lunchtime executive session and voted to give \$1.5 million to the state Department of Law for research "to fill in gaps related to lingering oil."

The motion was made by Jim Balsiger, Alaska administrator for the National Marine Fisheries Service, with little discussion, other than to specify that the department should work with federal agencies and with Integral Consulting. Ballard seconded.

Assistant attorney general Tillery spoke briefly in support, saying the lingering oil was "a cloud hanging over us of unfinished business," according to a transcript of the trustee council meeting.

Integral later received a \$200,000 contract to study sediments and a \$650,000 contract to analyze the lingering oil data and provide a fresh assessment of how species have recovered. The latter contract also calls for recommendations on monitoring and treatment of old oil, as well as "effective communication" to the public of the technical results.

## CONFUSION LINGERS

Public confusion about the state's intentions has not been helped by turnover among the Murkowski administration trustees. In addition to Ballard, who left last October to become a senior vice president for the forest products giant Weyerhaeuser, Fish and Game Commissioner Kevin Duffy resigned at the end of the year to head the factory trawlers association. Now the third trustee, Attorney General Gregg Renkes, has resigned amid conflict of interest allegations involving a coal technology company.

Fredriksson said the spill trustees sought to explain themselves with a passage in their annual report released this month, which Phillips read aloud when asked about the changes:

"Over the next eighteen months, the Council has determined the need to realign priorities and restorative activities, placing focus on critical work required to reach closure in areas of restoration related to lingering oil and injured species."

The trustees also acceded to a request from public advisory committee members for more

dialogue, Phillips said. The next council meeting, scheduled for June in Cordova, will include time for an unprecedented back-and-forth conversation with committee members, she said.

"I think most of the trustees would agree we haven't done as great a job of communicating with our PAC as we might," Pearce said.

Reporter Tom Kizzia can be reached at [tkizzia@adn.com](mailto:tkizzia@adn.com) or in Homer at 1-907-235-4244.

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Statement in Support of House Resolution re: Exxon

To whom it may concern:

Before the 3/24/89 Exxon Valdez oil spill, 43 U.S.C. Sec. 1653 established a Trans-Alaska Pipeline Liability Fund (TAPLF), by which vessel owners and operators, if they spilled oil that had passed through the Alaska pipeline were strictly liable for damages from the discharge, up to \$100,000,000.

When the spill occurred on 3/24/89, plaintiffs looked to the Fund as one source of money to pay damages, but brought our primary litigation claims in state and federal court, arguing that state statutes, state common law theories (such as negligence, trespass and nuisance), and federal admiralty law all gave claimants (fishermen, municipalities, businesses, landowners, etc) rights of action. We were aware then that 43 U.S.C. Sec. 1653 (c)(9) said specifically that the law that established the Fund "shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements," and thus assumed that the existence of the Fund legislation, and the Fund itself, should not bar, or hold back our claims.

With increased federal interest in legislation after the spill (which ultimately resulted in OPA 90), we were very concerned that the industry would try to interfere with what we viewed as our non-Fund existing remedies. We were able to secure a special section in OPA that said, "Nothing in this title shall apply to any cause of action or right of recovery arising from any incident which occurred prior to August 18, 1990. Such claims shall be adjudicated pursuant to the law applicable at the date of the incident. 33 U.S.C. Sec. 2717(e)." OPA also added some good language that we fought for, (and which applied both to future spills and retroactively to our case), relating to the right of a municipality or state to recover for additional public services (like police and fire services) after a spill, which language countered a legal doctrine based on a case called Flagstaff which said that such costs were not recoverable, but had to be passed through to taxpayers, and also permitting states and municipalities to recover for lost revenues, such as taxes.

As we were pursuing our federal and state claims after the passage of OPA 90, Exxon argued in federal court to Judge Holland that all of those claims had to be pursued first before the Liability Fund, even though section 1653 (c)(9) said specifically that it "shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements."

In 1992, when it appeared that Judge Holland might require us to present all the claims first to the TAPLF before we could proceed on our other claims in federal court, we asked for an amendment to the TAPLF legislation which would clarify that the Fund was not the exclusive arbiter of damages from oil spills. Exxon and other oil companies opposed the legislation as it was inconsistent with their position in court that at the very least we had to exhaust remedies with the Fund before we could pursue court claims.

Matt Jamin  
Jamin, Ebell, Schmitt & Mason

## Timeline of *Exxon Valdez* Punitive Damages Litigation

Date	Litigation Milestones
<b>1989</b>	<ul style="list-style-type: none"> <li>▪ <i>Exxon Valdez</i> oil tanker runs aground on Bligh Reef in Prince William Sound, Alaska, discharging 11 million gallons of toxic crude oil. Within a month, numerous civil suits are filed in U.S. District Court and Alaska State court for compensatory and punitive damages.</li> </ul>
<b>1990</b>	<ul style="list-style-type: none"> <li>▪ U.S. District Court initially denies motion for certification of class action, resulting in thousands of additional individual lawsuits being filed, mostly in State court.</li> </ul>
<b>1991</b>	<ul style="list-style-type: none"> <li>▪ State court grants motion for certification of class action.</li> <li>▪ Exxon removes most of the certified class action cases pending in State court to U.S. District Court. These cases are consolidated by the District Court into <u>In re: Exxon Valdez Oil Spill Litigation</u>.</li> </ul>
<b>1992</b>	<ul style="list-style-type: none"> <li>▪ Cases consolidated in <u>In re: Exxon Valdez Oil Spill Litigation</u> consist of nearly 200 direct actions on behalf of approximately 5,000 named plaintiffs and five certified class actions, with class membership estimated to be in the tens of thousands.</li> </ul>
<b>1993</b>	<ul style="list-style-type: none"> <li>▪ U.S. District Court dismisses the first of Exxon's many attempts to avoid punitive damages by arguing it is not subject to them as a matter of law.</li> </ul>
<b>1994</b>	<ul style="list-style-type: none"> <li>▪ U.S. District Court grants final approval of mandatory punitive damages class.</li> <li>▪ Trial takes place from May 2 – September 16.</li> <li>▪ U.S. District Court jury returns a verdict for plaintiffs, finding Exxon liable for punitive damages in the amount of \$5 billion.</li> <li>▪ Exxon, and the ship's captain, file 22 post-trial motions seeking, among other things, a new trial on the issue of punitive damages.</li> </ul>
<b>1995</b>	<ul style="list-style-type: none"> <li>▪ U.S. District Court denies Exxon's post-trial motions.</li> </ul>
<b>1996</b>	<ul style="list-style-type: none"> <li>▪ U.S. District Court enters final judgment as to the mandatory punitive damages class in the amount of \$5 billion (paving the way for the appeals process to begin), and stays execution of the judgment based on Exxon's posting of an irrevocable letter of credit.</li> <li>▪ Exxon seeks entitlement to a portion of the punitive damages award based on secret settlement agreements made with a group of seafood processors who agreed to obtain the punitive damages on Exxon's behalf.</li> </ul>
<b>1997</b>	<ul style="list-style-type: none"> <li>▪ Exxon appeals the amended judgment, both as to liability and amount of the punitive damages award.</li> </ul>
<b>2002</b>	<ul style="list-style-type: none"> <li>▪ Ninth Circuit affirms original judgment regarding liability for punitive damages but vacates the award and remands to the U.S. District Court to reduce the amount of the award.</li> <li>▪ On remand, U.S. District Court concludes that the full \$5 billion punitive damages is constitutionally permissible but reduces award to \$4 billion based on Ninth Circuit's direction that the award be reduced.</li> </ul>
<b>2003</b>	<ul style="list-style-type: none"> <li>▪ Exxon and plaintiffs both appeal the reduced award to the Ninth Circuit.</li> <li>▪ U.S. Supreme Court decides a separate case (<u>State Farm Mutual Auto Insurance Co. v. Campbell</u>), revisiting due process issues as they relate to punitive damages.</li> <li>▪ Prior to hearing the appeal, the Ninth Circuit vacates the \$4 billion punitive judgment without ruling on the merits and remands to the U.S. District Court to reconsider the award in light of the <u>State Farm</u> decision.</li> <li>▪ Exxon files second renewed motion to reduce the amount of the punitive damages</li> </ul>

Date	Litigation Milestones
2004	<ul style="list-style-type: none"><li>▪ award.</li><li>▪ U.S. District Court issues its order on remand, in which it considers the recent Supreme Court case, concludes that the punitive damages award still comports with due process and that the full \$5 billion is not excessive, and enters a final judgment for \$4.5 billion in punitive damages.</li><li>▪ Exxon appeals to the Ninth Circuit, and plaintiffs cross appeal.</li><li>▪ Ninth Circuit receives briefing on appeal.</li></ul>
2005	<ul style="list-style-type: none"><li>▪ Ninth Circuit expected to hear oral argument and issue a decision on appeal later this year.</li></ul>

# Exxon Valdez Update<sup>1</sup>

## The Spill

When the Exxon Valdez ran aground on Bligh Reef in 1989, it released eleven million gallons of toxic crude oil that spread throughout and beyond Prince William Sound. The oil spread past numerous islands and along the coast of the Kenai Peninsula, Cook Inlet, and Kodiak Island. The spill disrupted the lives and livelihoods of those in its path, including fishermen in commercial fisheries that were closed for the 1989 season; additional commercial fisheries that were not closed but suffered significant price declines; the subsistence fisheries in Prince William Sound and Lower Cook Inlet villages; shore-based businesses dependent on the fishing industry; and the people of cities such as Cordova.

## Initial Litigation

Litigation included both civil and criminal actions. Civil suits came first but developed slowly due to their number and complexity. Both the United States and the State of Alaska sued Exxon for environmental damage, and that litigation was settled by means of a consent decree whereby Exxon agreed to pay to the governments, for environmental damage, \$900 million over a period of ten years, with a "re-opener" provision allowing for additional claims of up to \$100 million for damage discovered after settlement.

Exxon was prosecuted by the federal government for various environmental crimes. Exxon Corporation and Exxon Shipping pleaded guilty to a total of four counts of violating three different environmental laws, were jointly fined \$25 million and ordered to pay restitution in the amount of \$100 million.

## The Class Action Suit

The civil cases were ultimately (with a few exceptions) consolidated into one class action suit with more than 32,000 plaintiff class members from all fifty states, which has been winding its way through the courts for nearly 16 years. In the consolidated cases, there was never any dispute as to Exxon's liability for compensatory damages, only the amount of economic losses and the appropriateness of punitive damages were controverted. By the time of the punitive damages phase of the trial in 1994, the parties had stipulated that the actual damages were estimated to be between \$432 million and \$768 million, and compensable harm was eventually determined to be \$513 million.

This figure does not include additional harms that have never been compensated. The Ninth Circuit observed that the spill "obviously caused harm beyond the 'purely economic.'" The District Court Judge found: "The social fabric of Prince William Sound and Lower Cook Inlet

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<sup>1</sup> Unless otherwise noted, all information contained in this update is from the January 24, 2004, Order No. 364 of the U.S. District Court for the District of Alaska, *In re: the EXXON VALDEZ*, Case Number A89-0095CV.

was torn apart," citing research that clearly delineated a chronic pattern of spill-related economic loss, social conflict, cultural disruption and psychological stress; an increased incidence of alcohol and drug abuse, domestic violence, mental health problems, and occupation related problems; and a high percentage of affected fishermen suffering from severe depression, post-traumatic stress disorder, generalized anxiety disorder, or a combination of all three.

### Punitive Damages

For the punitive damages phase of the trial, unusually detailed jury instructions were developed. The jury was specifically instructed that even if it found Exxon's conduct reckless, it was not required to award punitive damages; that it must use reason in setting the amount of punitive damages; that any award should bear a reasonable relationship to the harm caused; that punitive damages are not intended to provide compensation; and that jurors should assume the plaintiffs had already been fully compensated.

Factors the jury was told it could consider in setting an amount of punitive damages included the reprehensibility of the defendants' conduct, the amount of harm suffered by members of the plaintiff class as a result of the defendants' conduct, and the financial condition of the defendants. As to the defendants' wealth, the jury was instructed to consider the defendants' financial condition only in terms of what level of award would be necessary to achieve punishment and deterrence. The jury was also instructed that it should not count any damage to natural resources or the environment in general when assessing harm suffered by plaintiff class members, and that it could consider mitigating factors (such as criminal fines or civil awards already levied for the same conduct) and the extent to which the defendants had taken steps to remedy the consequences of the spill and prevent future ones.

The Alaska jury deliberated for 22 days on the issue of punitive damages and ultimately returned a unanimous verdict in the amount of \$5 billion. The District Court denied Exxon's motion to reduce the award, concluding that it was not so grossly excessive as to "violate the defendants' due process rights.

### Appeals and Remands

Exxon appealed both its liability for, and the amount of, the punitive damages awarded by the jury and upheld by the District Court in 1994. The Ninth Circuit Court of Appeals rejected Exxon's contention that punitive damages should have been barred and concluded that there was substantial evidence to support a jury verdict of liability for punitive damages as to both Exxon and the ship's captain. In the end, the Court of Appeals also found that the amount of the award was too high and remanded the matter to the District Court for further review and reduction of the award. After considering the briefing and hearing oral arguments, the District Court found again in 2002 that the award of punitive damages complied with due process. It reduced the punitive damages award to \$4 billion and entered the judgment on December 10, 2002. Exxon appealed again, and the plaintiffs also appealed.

The Ninth Circuit Court of Appeals, prior to receiving briefing on either appeal, vacated the \$4 billion punitive damages judgment and again remanded the case to the District Court, this time to

consider the award in light of a recent U.S. Supreme Court case providing new guidance on evaluating punitive damages awards. Both parties submitted supplemental briefing and engaged in oral arguments applying the new guidance. The District Court then considered, for the third time, the question of whether the \$5 billion punitive damages award against Exxon comports with due process. The court applied the Supreme Court guidance and concluded that the \$5 billion award was not grossly excessive and that it had no principled means by which it could reduce the award. Ultimately, however, to comply with the directive of the Ninth Circuit's remand, the District Court entered judgment in the amount of \$4.5 billion and encouraged plaintiffs to cross appeal if Exxon chose to take further appeal of the punitive damages award. In doing so, the District Judge stated that he would have denied the defendants any reduction in the award had it not been for the specific direction imposed by the Court of Appeals to effect some reduction in the punitive damages award.

The \$4.5 billion judgment entered by the District Court represents a 9:1 ratio between punitive damages and the \$513 million of compensated harm. Courts applying the Supreme Court's punitive damage decisions have understood those decisions to provide a general guideline that "[s]ingle-digit multipliers are more likely to comport with due process." In the three cases in which the Supreme Court held that punitive damage awards were excessive, the awards ultimately approved on remand were 9:1 (*State Farm v. Campbell*), 10:1 (*Cooper v. Leatherman*) and 12.5:1 (*BMW v. Gore*).

#### Current Status of Case

Presently, Exxon is appealing the punitive damages award for the third time. The Ninth Circuit Court of Appeals is expected to issue its decision on the appeal sometime later this year.

#### Ongoing Damage

Damage from Exxon Valdez oil continues to this day. According to the 2003 Status Report of the Exxon Valdez Oil Spill Trustee Council, more than fifteen different species and resources, as well as commercial fishing, recreation and tourism, and subsistence harvesting, have still not fully recovered; and the recovery of five resources is considered unknown.<sup>2</sup> Trustee Council-funded researchers with the National Marine Fisheries Service's Auke Bay Laboratory found beaches in Prince William Sound still contaminated in 2001. More oil was found than expected, especially in the subsurface; subsurface oil was less weathered and more toxic; and oil was found in the intertidal zone, closest to the zone of biological production. Other Trustee Council-funded research indicates that these remaining pockets of oil may be impeding the recovery of several species.

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<sup>2</sup> Not recovering: common loon, cormorants, harbor seal, harlequin duck, Pacific herring, and pigeon guillemot. Recovering: clams, designated wilderness, intertidal communities, killer whale (AB pod), marbled murrelet, mussels, sea otter, and sediments. Recovery unknown: cutthroat trout, dolly varden, Kittlitz's murrelet, rockfish, subtidal communities.

## Natural Resource Damages: A Primer

### Introduction

The purpose of this primer is to define Natural Resource Damage (NRD) concepts and terms, and discuss the following topics as they relate to NRD: the authority under which NRD are assessed; the definition of natural resources; the role of EPA; the designation of Natural Resource Trustees; and the conduct of natural resource damage assessments (NRDAs) and restorations. **Although impacts to natural resources may be addressed under other statutory authorities, this site focuses on provisions under CERCLA or OPA.**

Natural resource injuries may occur at sites as a result of releases of hazardous substances or oil. Trustees use NRDAs to assess injury to natural resources held in the public trust. This is an initial step toward restoring injured resources and services and toward compensating the public for their loss.

### CERCLA and OPA Statutory Authority

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) provides a comprehensive group of authorities focused on one main goal: to address any release, or threatened release, of hazardous substances, pollutants, or contaminants that could endanger human health and/or the environment. CERCLA's response provisions focus on the protection of human health and the environment. The statute also provides authority for assessment and restoration of natural resources that have been injured by a hazardous substance release or response.

The Oil Pollution Act (OPA) was enacted in reaction to the Exxon Valdez oil spill and provides authority for oil pollution liability and compensation as well as for the Federal government to direct and manage oil spill cleanups. Similar to CERCLA, OPA contains authorities to allow the assessment and restoration of natural resources that have been contaminated by the discharge, or threatened discharge, of oil.

### Natural Resources Defined

Both CERCLA and OPA define "natural resources" broadly to include "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources..." Both statutes limit "natural resources" to those resources held in trust for the public, termed Trust Resources. While there are slight variations in their definitions, both CERCLA and OPA state that a "natural resource" is a resource "belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by" the United States, any State, an Indian Tribe, a local government, or a foreign government [CERCLA §101(16); OPA §1001(20)].

**NRD are for injury to, destruction of, or loss of natural resources, including the reasonable costs of a damage assessment [CERCLA §§101(6); 107(a)(4)(C); OPA §§1001(5); 1002(b)(2)]. The measure of damages is the cost of restoring injured resources to their baseline condition, compensation for the interim loss of injured resources pending recovery, and the reasonable cost of a damage assessment [ 43 CFR Part 11 ; 15 CFR Part 990].**

### **EPA's Role: Notification and Coordination**

**EPA is not a Natural Resource Trustee, nor is it authorized to act on behalf of Natural Resource Trustees. Rather, under CERCLA and OPA, EPA shares with the U.S. Coast Guard the general responsibility for investigating and responding to contamination by hazardous substances or oil. The Coast Guard is primarily responsible for contamination involving the coastal zone including all U.S. waters subject to the tide, the Great Lakes, and deepwater ports. EPA is primarily responsible for contamination on land and inland waters.**

### **Natural Resource Trustees**

**Under both CERCLA and OPA, responsibility for protection of natural resources falls with Federal, State, and Tribal Trustees. This is because no one individual "owns" a natural resource; rather, they are held in trust for the public.**

**Both CERCLA and OPA provide authority for designated Trustees to act as Natural Resource Trustees on behalf of the public. In both CERCLA and OPA, certain Federal, State, and Indian Tribe officials can be designated as Trustees. However, under OPA foreign governments can also choose officials to act as Trustees.**

**Trustees have been given responsibility for restoring injured natural resources. The two major areas of Trustee responsibility under CERCLA and OPA are:**

- \* Assessment of injury to natural resources; and**
- \* Restoration of natural resources injured or services lost due to a release or discharge.**

**To meet these responsibilities, both statutes provide several mechanisms. The Trustees can either:**

- \* Sue in court to obtain compensation from the potentially responsible parties (PRPs) for NRD and the costs of assessment and restoration planning; or**
- \* Conduct assessments or restorations in accordance with certain standards specified by the Federal government and file a claim for reimbursement from the Trust Fund established under OPA; or**
- \* Participate in negotiations with PRPs to obtain PRP-financed or PRP-conducted assessments and restorations of NRD.**

**Details about these statutory tools can be found in NRD Related Statutory Information.**

## NRD Assessments

One of the primary responsibilities of Trustees under both CERCLA and OPA is to assess the extent of injury to a natural resource and determine appropriate ways of restoring and compensating for that injury. A natural resource damage assessment (NRDA) is the process of collecting, compiling, and analyzing information to make these determinations. Trustees have the option of using the methodologies prescribed by the Department of the Interior (DOI), 43 CFR Part 11, or the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), 15 CFR Part 990. The DOI regulations are to assess NRD under CERCLA, while the NOAA methodologies are applicable for NRDA's under OPA. NRDA's are underway in a variety of locations; many of which involve one or more Superfund sites.

The overall intent of the assessment regulations is to determine appropriate restoration and compensation for injuries to natural resources. If a Federal or State Trustee goes into Federal court and sues a potentially responsible party (PRP) for NRD under CERCLA, an assessment done in accordance with the DOI regulations is given the force and effect of a "rebuttable presumption" [CERCLA §107(f)(2)(C)]. If a Federal, State, or Tribal Trustee sues a PRP for NRD under OPA, an assessment done in accordance with the NOAA regulations is given a rebuttable presumption [OPA §1006(e)(2)]. This means that the burden of persuasion in court shifts to the PRP. It will be the task of the PRP to disprove the Trustee's assessment.

## NRD Restorations

Under CERCLA, monies recovered from an NRD claim are to be used only for restoration or replacement of the injured natural resource, or for acquisition of an equivalent resource (hereinafter called "restoration" unless otherwise noted) [CERCLA §107(f)(1)]. Under OPA, recovered sums are to be used only to reimburse or pay costs incurred by the Trustee with respect to the natural resources [OPA §1006(i)]; these include costs incurred while conducting NRDA's and developing and implementing plans for "the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources" [OPA §1006(c)]. **Any amount in excess of these costs must be deposited in the Oil Spill Liability Fund [OPA §1006(f)].**

Restoration actions are principally designed to return injured resources to baseline conditions, but may also compensate the public for the interim loss of injured resources from the onset of injury until baseline conditions are re-established. Restoration activities have been successfully completed at several sites.

Natural Resource Trustees are required to develop and implement plans for the restoration of natural resources. The Trustee's plans form the basis of calculating NRD for court actions or claims against the OPA Trust Fund [OPA §§1006(c), (d)(1)-(2), 1012(a)(2)].

*Suzanne: Here are some FAQ's from another EPA site on OPA.*

1. Which federal agencies are responsible for implementing the Oil Pollution Act (OPA)?

Executive Order 12777, issued on October 18, 1991, delegated the authority to implement the Oil Pollution Act (OPA) to several federal agencies. EPA carries the responsibility for non-transportation-related onshore facilities and incidents in the Inland Zone. **United States Coast Guard (USCG) has responsibility for marine transportation-related facilities and incidents in the Coastal Zone. The Department of Transportation's Office of Pipeline Safety within the Research and Special Programs Administration oversees onshore transportation-related facilities. The Department of Interior has responsibility for off-shore fixed facilities beyond the coastline. The National Oceanic and Atmospheric Administration is responsible for natural resource damage assessments relating to oil discharges.**

2. How can I report an oil spill?

Spills should be reported immediately to the National Response Center at 800-424-8802. Threats of discharges or releases to the waters of the U.S. should also be reported.

3. What is the definition of oil?

**Oil is defined as oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil [40 CFR 112.2 and CWA Section 311(a)(1)]. Section 1001(23) of the Oil Pollution Act (OPA) further narrows this definition by excluding any substance which is specifically listed or designated as a hazardous substance under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund").**

4. Does the Oil Pollution Act (OPA) preempt state laws?

**No. The Oil Pollution Act (OPA) Section 1018(a) specifically provides that the OPA does not preempt state laws.**

5. Who is responsible for cleanup costs incurred under the Oil Pollution Act (OPA)?

Section 1001(32)(B) of the Oil Pollution Act (OPA) states that in the case of an onshore facility, any person owning or operating the facility is the responsible party.

6. Who can be ordered to cleanup an oil spill?

EPA can enter into an agreement or order any person who owns or operates a facility to perform a cleanup under Section 311(c) and/or (e) of the Clean Water Act (CWA), as amended by the Oil Pollution Act (OPA).

7. Where can I find the text of the laws dealing with Oil Spills?

The Oil Pollution Act (OPA) can be found at <http://www4.law.cornell.edu/uscode/33/ch40.html>.

# FISCAL NOTE

**STATE OF ALASKA  
2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HJR 9 am  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
 Title: "Urging the United States Congress to BRU: Legislative Council  
honor the process and judgment of the federal courts..." Component: Council and Subcommittees  
 Sponsor: "Representatives LeDoux, Gara, ..." Component: Session Expenses  
 Requestor: Senate Judiciary Component No.: 783

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-5626  
 Division: Administrative Services Date/Time 1/24/06 1:39 PM  
 Approved by: Pamela Varni, Executive Director Date 1/24/2006  
 Agency: Legislative Affairs Agency

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HJR 9  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
Title "Urging the United States Congress to BRU Legislative Council  
honor the process and judgment of the federal courts..." Component: Council and Subcommittees  
Sponsor "Representatives LeDoux, Gara, ..." Session Expenses  
Requestor House Resources Committee Component No. 783

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 Mental Health						
Other (Specify Type—Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626  
Division Administrative Services Date/Time 3/29/05 10:02 AM  
Approved by: Pamela Varni, Executive Director Date 3/29/2005  
Agency Legislative Affairs Agency