

SJR

17

Senate Resources

NOT
HEARD
ON 4-19-06

April 19, 2005

SJR 17 – Sponsor Packet

Cover Sheet _____	1 page
Sponsor Statement _____	1 page
SJR 17 _____	3 pages
Fiscal Note: OMB 4-17-06 _____	1 page
US Fish & Wildlife Service Paper on "Reopener" _____	2 pages
Kodiak Island Borough Letter & Resolution _____	3 pages
City of Cordova Letter & Resolution _____	3 pages
Prince William Sound Science Center Resolution _____	1 page
Chugach Regional Resources Commission Letter _____	3 pages
Total Pages: _____	18 pages

ALASKA STATE LEGISLATURE

SENATOR HOLLIS FRENCH

SJR 17 Exxon Valdez Reopener

- Sponsor Statement

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 17th 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: _____
 Bill Version: SJR 17
 () Publish Date: _____

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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



U S Fish & Wildlife Service

Exxon Valdez Oil Spill -- Civil Settlement "Reopener"

Potential Funds for Restoration of Unanticipated Injuries to Natural Resources

What is the "Reopener"?

The 1991 agreement settling the federal and state governments' civil claims against Exxon contains a provision entitled "Reopener for Unknown Injury." Under that provision, Exxon could be required to make additional payments totaling as much as \$100 million for specific restoration projects if all of the following conditions are met:

The governments must establish that

- (1) a population, habitat, or species has suffered a substantial and continuing loss or decline in the spill area;
- (2) the loss or decline is attributable to the spill; and
- (3) the loss or decline could not have been known nor reasonably anticipated by any of the federal or state trustees from information available to them when the settlement was signed in 1991.

If the answer to each of these questions is "yes," the federal and state governments must then determine that there are projects they could undertake to restore the population, habitat or species, the costs of which are not "grossly disproportionate" to the "magnitude of the benefits anticipated from the remediation."

The governments' monetary demand can not exceed the predicted cost of the specific restoration projects proposed.

How will the decision be made?

The federal and state governments will decide whether to assert a claim against Exxon under

the Reopener. In the case of the federal government, the three federal agencies whose trust resources were injured by the spill, the Department of Interior, the Department of Agriculture, and the Department of Commerce, will determine whether they have sufficient evidence to support a demand of additional monies from Exxon. If they make an affirmative decision, they will recommend that the Department of Justice make a claim on behalf of the United States. While the agencies represented on the Exxon Valdez Trustee Council have important roles in making this decision, the Council itself is not directly involved.

When will the decision be made?

The reopener option expires on September 1, 2006. If the governments decide to make a demand of Exxon, they must provide the company with detailed restoration plans, a statement of claims, and all relevant supporting information at least 90 days before September 1, 2006. If a demand is made, these materials will be provided to Exxon by June 2, 2006.

What about reopening for injured services?

The settlement with Exxon does not permit a claim brought pursuant to the reopener provisions to be based on declines in services.

How much can the governments recover from Exxon?

Under the 1991 settlement, any additional recoveries from Exxon must be based on the specific costs of restoration projects and

cannot exceed \$100 million.

How much have the federal and state governments recovered from Exxon?

Exxon has paid the governments the equivalent of \$900 million to settle the civil claims associated with the Exxon Valdez oil spill; a portion of that was used to reimburse the governments for cleanup costs. Under a separate settlement of federal criminal charges, the company also paid \$25 million in fines and \$100 million, divided equally between the United States and Alaska, as restitution for its criminal conduct.

Is any of the money still left?

Of the original \$900 million in civil recoveries, approximately \$146 million remains for new restoration projects. The money is used by the Exxon Valdez Trustee Council to fund ongoing restoration through a public process that involves the award of funds to conduct research, monitoring and general restoration; to acquire habitat; and to provide public information about, and science management and administration of, the restoration process.

What resources were injured by the spill?

In its 2002 *Update on Injured Resources and Services*, the Exxon Valdez Trustee Council identified the following resources and services as not having recovered from the spill: certain seabirds and sea ducks, Pacific herring and other fish, subtidal communities, clams, designated Wilderness areas, intertidal communities, Killer whales, mussels, sea otters, sediments, and services including recreation and tourism, commercial fishing, passive uses and subsistence. The following

resources were identified as "recovered": archaeological resources, bald eagles, certain seabirds, river otters, and pink and sockeye salmon. In an effort to update the injured resource list, the Trustee Council has recently funded projects that synthesize the latest monitoring results.

What is the current status of each of those resources?

Information concerning the status of injured resources appears in numerous scientific studies by the governments (using their own researchers as well as those outside the governments), Exxon, and other researchers in the sixteen years since the spill. Exxon scientists have been critical of some of the results of the government-sponsored research and vice-versa. Study of the spill's effects continues, and government officials are making as complete an assessment as possible of potential reopener claims.

Has the government exercised a reopener before?

No. Although many natural resource damage settlements from oil spills and other forms of environmental contamination typically include reopener provisions, such provisions have not been invoked for natural resource damages. Reopening the case against Exxon would be the first such action of its kind by either the federal government or the State of Alaska.

U.S. Fish & Wildlife Service
Natural Resource Damage Assessment & Restoration
1011 E. Tudor Road, Anchorage, Alaska 99503
907/786 3309

Visit www.r7.fws.gov

January 2006



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

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

A handwritten signature in black ink that reads "Jerome M. Selby". The signature is written in a cursive style with a horizontal line underneath.

Jerome M. Selby
Borough Mayor

Nj

Enclosure

Introduced by: Mayor Selby
Requested by: Assembly
Introduced: 11/03/2005
Adopted: 11/03/2005

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:

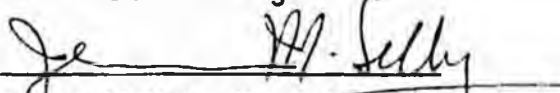
1. Fund an assessment of injured resources through the National Research Council
2. Fund a review and assessment of oil spill cleanup products that are not toxic to humans or the environment through the National Research Council
3. Develop and implement national education programs on new understanding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

Measures to reduce risk of large spills:

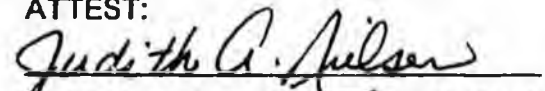
1. Endow citizen oversight council for the Trans-Alaska Pipeline System (estimated cost: \$25 million)

**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

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 manimal-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

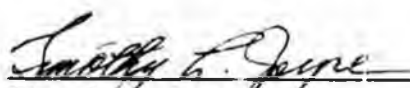
Public education:

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)

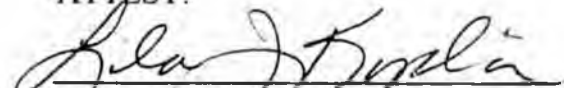
Measures to reduce risk of large spills:

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:


Lila J. Koplin, City Clerk



Prince William Sound Science Center

Resolution 06-01

A Resolution urging the U.S. and Alaska Attorney Generals to file a claim for \$100 million for unanticipated injury from the Exxon Valdez oil spill

Whereas the 1991 settlement between the United States, the State of Alaska and Exxon over damage to public's natural resources from the 1989 Exxon Valdez oil spill contains a provision allowing for additional claims up to \$100 million for injury not known at the time of the settlement;

Whereas the Prince William Sound Science Center's scientific team has published recent research which details a pathway for injury from the oil spill to the Sound's Pacific herring population not known at the time of the settlement;

Whereas Exxon Valdez Oil Spill Trustee Council-sponsored research has conclusively shown that oil from the Exxon Valdez spill has lingered in the marine environment (including intertidal and subtidal areas) longer than originally anticipated and in a more toxic state than originally anticipated;

Therefore, be it resolved that the Prince William Sound Science Center Board of Directors urges the U.S. Attorney General and the State of Alaska Attorney General to file a claim before the U.S. District Court in the Exxon settlement case for unanticipated injury from the 1989 oil spill detailing this unanticipated injury and that these funds be used to restore the lingering damage in the following ways:

1. Endow a long-term (50 years or more) program to study and monitor the long-term life and effects of lingering Exxon Valdez oil in the marine environment, as well as to assess new remediation techniques, and to specifically include,
2. A long-term (50 years or more) herring research and restoration program to study the life history of Pacific herring and advise fisheries management entities on further restoration efforts.

Be it further resolved that the Prince William Sound Science Center offers and reaffirms its support to all parties involved in the process of objectively unearthing these issues, whether dedicated to the "response," the existing restoration process, or ongoing monitoring and management of the incalculable and irreplaceable resources of Prince William Sound.

Edward H. Beckus (a)

Edward H. Beckus, Chair
Board of Directors

September 24, 2005

PWS Science Board Executive Committee

Edward H. Beckus, Chair
Jerry Gallinger, 2nd Vice Chair
Molly McCannan, Secretary

Meera Kohler, 1st Vice Chair
Gale Vick, Treasurer
David Raggiani, Member-at-Large

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TrusteesForAlaska

DIV. ENRD

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Jung Kim US
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Chugach Regional Resources Commission

- Chugach Bay
- Eyak
- Nanwalek
- Fort Graham
- Qutlukuk
Naave Tribe
- Tatletle
- Valdez Native
Tribe

August 3, 2005

The Honorable Alberto Gonzales, Attorney General
 United States Department of Justice
 950 Pennsylvania Avenue NW
 Washington, DC 20530-0001

ENVIRONMENT & NATURAL
 RESOURCES DIVISION
 APPELLATE SECTION
 2001 AUG 16 4:PM '05

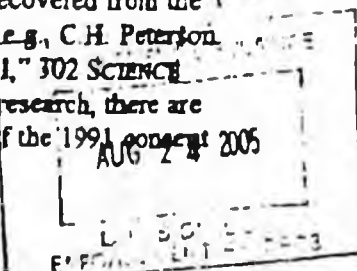
Dear Mr. Attorney General:

We are writing to request the assistance of the United States Government in a matter related to the Exxon Valdez Oil Spill. A Memorandum of Agreement and Consent Degree dated October 8, 1991, was signed between the United States, the State of Alaska, and the Exxon Corporation. This document included a re-opener clause for unknown injury to populations, habitats, or species that have suffered a substantial loss as a result of the oil spill.

The clause states, in part, that "between September 1, 2002, and September 1, 2006, Exxon shall pay to the Governments such additional sums as are required for the performance of restoration projects in Prince William Sound and other areas affected by the Oil Spill to restore one or more populations, habitats or species which, as a result of the Oil Spill, have suffered a substantial loss or substantial decline in the areas affected by the Oil Spill; provided, however, that for a restoration project to qualify for payment under this paragraph, the project must meet the following requirements . . ." These requirements include providing proof that "injury to the affected population, habitat or species could not reasonably have been known nor could it reasonably have been anticipated . . ."

We are confident that existing evidence clearly shows that the conditions for meeting this re-opener are fully met. The Exxon Valdez Oil Spill (EVOS) Trustee Council has said that the species and resources of Prince William Sound are not fully recovered from the effects of the 1989 spill. Scientists have reached similar conclusions, e.g., C.H. Peterson et al., "Long Term Ecosystem Responses to the Exxon Valdez Oil Spill," *302 SCIENCE* 2082 (Dec. 19, 2003). Finally, based upon our own observations and research, there are several species that have suffered damage not anticipated at the time of the 1991 consent

90514-3343



decree. All species located within the inter-tidal zone, Pacific herring, and harbor seals are just three examples of such damage, not to mention lingering oil.

There is documented proof in correspondence and written testimony that the Tribes in the oil spill affected area have repeatedly requested that the federal trustees meet their federal trust responsibility and work in the best interest of the Tribes in the restoration process. This has not been the case. Now the deadline for invoking the re-opener clause is nearing (September 1, 2006), and it does not appear that the federal government is showing any interest in pursuing this clause.

As part of its federal trust responsibility to Tribes, the Tribal leaders of the Native Villages of Tatitlek, Chenega Bay, Port Graham, Nanwalek, and Eyak are hereby requesting that the United States Government invoke the re-opener clause on behalf of the Tribal Governments affected by the *Exxon Valdez* Oil Spill. As our trustee, we are confident that you will agree with us that steps should be taken to secure this \$100 million for the betterment of the environment, natural resources, and Tribes affected by the *Exxon Valdez* Oil Spill. Courts have said many times that the U.S. is duty-bound to act in the best interests of the Indian Tribes and to protect their natural assets and other properties.

The Ninth Circuit Court of Appeals has said that while Alaskan Natives may have suffered inordinately from the effects of this spill, the law can do nothing about it. In *Native Class*, 104 F.3d 1196 (9th Cir. 1997). We know you cannot reverse this court decision, but you can rectify it. Please see the injustice that lingers here in the areas affected by the oil spill and collect for us the funds already set aside to improve the situation.

As Tribal Governments with members who depend upon the sea and its resources to maintain our subsistence lifestyle, we are very interested in how the settlement funds are spent. By our calculations, the EVOS Trustee Council devoted \$4.9 million or .7 percent of the first \$705 million it spent to Local Subsistence Related Projects. This meager amount does not even come close to what we believe should be spent to bring the resources back to pre-spill conditions. One way to address this inequity is to work towards invoking the re-opener clause and collect on the \$100 million now due.

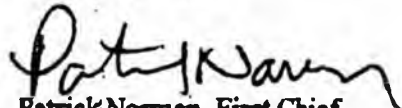
We are prepared to work with you to gather all the backup documentation to prove that a request to invoke the re-opener clause is both valid and necessary.

Thank you for your consideration of this request. We would appreciate a response by September 30, 2005, outlining your intentions. If we do not hear from you, we will assume you are not going to pursue the re-opener clause, at which time we will implement our own plan of action.

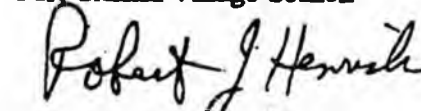
Sincerely,



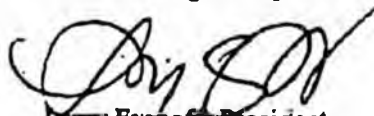
Gary P. Kompkoff, Village Chief
Tatitlek Village IRA Council



Patrick Norman, First Chief
Port Graham Village Council



Robert Henrichs, President
Native Village of Eyak Traditional Council



Larry Evanoff, President
Chenega IRA Council



Emilie Swenning, First Chief
Nanwalek IRA Council

Senator Hollis French

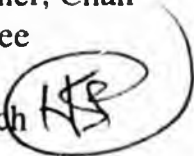
Capitol Room 504
465-3892
465-6595 fax



MEMORANDUM

Date: February 1, 2006

To: Senator Tom Wagoner, Chair
Resources Committee

From: Senator Hollis French 

RE: Request for Hearing - SJR 17 - "Urging the United States Department of Justice and the Alaska Department of Law to identify all natural resource damages from the Exxon Valdez oil spill that were unanticipated at the time of the 1991 settlement, to develop plans to remedy the damages, and to present the ExxonMobil Corporation with a request for the full \$100,000,000 that is available through the "Reopener for Unknown Injury" clause of the 1991 civil settlement to carry out these plans."

This is a request that you schedule a hearing on SJR 17 - "Urging the United States Department of Justice and the Alaska Department of Law to identify all natural resource damages from the Exxon Valdez oil spill that were unanticipated at the time of the 1991 settlement, to develop plans to remedy the damages, and to present the ExxonMobil Corporation with a request for the full \$100,000,000 that is available through the "Reopener for Unknown Injury" clause of the 1991 civil settlement to carry out these plans."

I have attached a copy of the bill and a sponsor statement for your use. Additional materials will be made available to your committee aide prior to the hearing.



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

April 19, 2006

Senator Thomas Wagoner, Chair
Senate Resources Committee
Alaska State Legislature
State Capitol (Mail Stop 3100)
Juneau, AK 99801-1182

Dear Senator Wagoner,

The United Fishermen of Alaska (UFA) supports SJR 17 in support of the "reopener" clause of the Exxon Valdez settlement with the State of Alaska.

UFA is in full support of pursuing the reopener clause for unforeseen damages, with the primary evidence that herring stocks have not rebounded to pre-spill abundance levels. Herring was commercially harvested in Prince William Sound before the spill, and is a critical forage fish for salmon, halibut and other commercial fisheries. It is clear that Alaska's fishermen continue to suffer unforeseen damages resulting from the spill.

UFA represents 31 Alaska commercial fishing organizations from fisheries throughout the state and its offshore waters, altogether representing thousands of Alaska commercial fishermen. We appreciate your consideration of our input on this matter.

Sincerely,

Mark Vinsel
Executive Director

Cc: Senator Hollis French
Senator Johnny Ellis
Senator Kim Elton

MEMBER ORGANIZATIONS

Alaska Crab Fishermen's Association • Alaska Dungeness Association • Alaska Longline Fishermen's Association • Aleutian Keta • Aleutian Producers Association
Brook Bay Resource • Commercial Alaska M. Fishermen • Cook Inlet Aquaculture Association • Cordova District Fishermen's Union
Douglas Island Pink and Green • Fishing Vessel Owners Association • Groundfish Forum • Ketchikan Peninsula Fishermen's Association
Kodiak Regional Aquaculture Association • North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation
Plymouth Vessel Owners Association • Seafood Producers Cooperative • Southeast Alaska Herring Sellers Marketing Association
Southeast Alaska Fishermen's Alliance • Southeast Alaska Regional Diver Fishermen's Association • Southeast Alaska Sellers Association
Southern/Southeast Regional Aquaculture Association • West Catcher Bivalve • West Coast Salmon Association • United Southeast Alaska Collaborative
United Fishermen Development Association • Women's and Alaska's Environment

TRUSTEES FOR ALASKA

A NonProfit, Public Interest, Environmental Law Firm

1026 W.4th Ave. Anchorage Alaska 99501 (907) 276-4244 (907) 276-7110 Fax
 Email: ecolaw@trustees.org

FACSIMILE COVER SHEET

Number of Pages Sent (including cover page): 31

Date: March 21, 2006

From: Ben Weaver (for Justin Massey)

RE: Exxon Valdez Oil Spill Reopener Restoration Planning Process

To: Trustees Exxon Valdez Oil Spill Trustee Council	907 276 7178
Cc: Dr. Rowan Gould, U.S. Department of the Interior	907 786 3306
Craig O'Connor, National Oceanic & Atmospheric Administration	206 526 6665
St. e Zemke, Chugach National Forest	907 743 9476
Jim Balsiger, National Oceanic & Atmospheric Administration	907 586 7249
Joe Meade, Chugach National Forest	907 743 9488
Drue Pearce, U.S. Department of the Interior	202 219 0229
Sen. Ted Stevens, U.S. Senate	202 224 2354
Sen. Lisa Murkowski, U.S. Senate	202 224 5301
Rep. Don Young, U.S. House of Representatives	202 225 0425
Sen. Gary Stevens, Majority Leader, Alaska Senate	907 465 3517
Sen. Johnny Ellis, Minority Leader, Alaska Senate	907 465 2529
Sen. Thomas Wagoner, Chair, Committee on Resources, Alaska Senate	907 465 4779
Sen. Albert Kookesh, Alaska Senate	907 465 2827
Sen. Hollis French, Alaska Senate	907 465 6595
Sen. Kim Elton, Alaska Senate	907 465 2108
Rep. John Harris, Speaker, Alaska House of Representatives	907 465 3799
Rep. John Coghill, Jr., Majority Leader, Alaska House of Representatives	907 465 3258
Rep. Ethan Berkowitz, Minority Leader, Alaska House of Representatives	907 465 2137
Rep. Jay Ramras, Co-Chair, Committee on Resources, Alaska House of Representatives	907 465 2070

Privileged and Confidential

Rep. Ralph Samuels, Co-Chair, Committee on Resources, Alaska House of Representatives	907 465 3810
Rep. Eric Croft, Alaska House of Representatives	907 465 4419
Rep. David Guttenberg, Alaska House of Representatives	907 465 3519
Rep. Beth Kerttula, Alaska House of Representatives	907 465 4748
Rep. Bill Thomas, Alaska House of Representatives	907 465 2652
Rep. Gabrielle LeDoux, Alaska House of Representatives	907 465 4956
Rep. Berta Gardner, Alaska House of Representatives	907 465 3834
Rep. Kurt Olson, Alaska House of Representatives	907 465 3835
Rep. Mike Chenault, Alaska House of Representatives	907 465 2833
Rep. Paul Seaton, Alaska House of Representatives	907 465 3472

Notes:

If you have any questions, please contact me at (907) 276-4244 Ext. 102 or bweaver@trustees.org

Thank you.

Privileged and Confidential

TRUSTEES FOR ALASKA

A Nonprofit Public Interest Law Firm Providing Counsel to Protect and Sustain Alaska's Environment

1026 W. 4th Ave., Suite 201 Anchorage, AK 99501 (907) 276-4244 (907) 276-7110 Fax Email: ecolaw@trustees.org
Web address: www.trustees.org

March 20, 2006

Trustees
Exxon Valdez Oil Spill Trustee Council
441 West 5th Avenue, Suite 500
Anchorage, AK 99501

Re: *Exxon Valdez* Oil Spill Reopener Restoration Planning Process

Dear Trustees:

Please accept this letter on behalf of the Alaska Center for the Environment, Alaska Forum for Environmental Responsibility, Alaska Public Interest Research Group, Cook Inlet Keeper, Cascadia Wildlands Project, Eyak Preservation Council, and the National Wildlife Federation.

On February 8, 2006, many of these organizations requested that you promptly initiate a process to engage the public in identifying unanticipated injury and in generating qualifying restoration projects under the "Reopener for Unknown Injury" section of the natural resource damages settlement arising out of the *Exxon Valdez* Oil Spill. Thank you for providing the names of State and federal decisionmakers and for adding a Reopener page to the Trustee Council website – the growing list of local governments, communities, and organizations that support reopening the settlement may also benefit from this information. We write, however, to renew our request that State and federal decisionmakers hold public meetings in Spill-affected communities to solicit public input regarding unanticipated injuries to affected populations, habitats, and species, and restoration projects to remedy these injuries, in time to influence the restoration plan that decisionmakers must submit to Exxon by June 1, 2006 under the terms of the Reopener.

You represent Alaskans and Americans in enforcing the largest natural resource damages settlement in American history. This is a historic moment. With approximately two months remaining to decide whether to seek up to \$100 million for additional restoration projects under the Reopener, it is incumbent upon you to solicit the concerns and ideas of the people on whose behalf you act as Trustees. While we understand that Reopener decisions will not feature the transparent decisionmaking that otherwise applies to administrative actions because they will be made in the context of litigation, this merely heightens your obligation to visit affected communities and solicit public information about the long term impacts of the Spill. Public meetings in Spill-affected communities will be the most effective and efficient way to involve the public in generating information that will inform this historic decision.

We remind you that in 1991 both Exxon and the State and federal governments predicted rapid recovery of natural resources damaged by the Spill. Shortly before agreeing to the Reopener, for example, Exxon announced "a rapid recovery" of affected resources:

Exxon Valdez Oil Spill Reopener Restoration Planning Process

Page 1 of 4

[Exxon-commissioned studies] and other published studies describing the state of the ecology in the affected area demonstrate, among other things, that the water is clean, fish are abundant and safe to eat, and wildlife is thriving. . . .

The extensive cleanup program conducted by Exxon, in combination with natural processes, removed the threat of further injury to wildlife by direct contact, substantially restored the aesthetic appeal of the area, and facilitated biologic recovery, particularly in the heavily oiled areas. Furthermore, the studies summarized herein demonstrate a rapid recovery of the impacted resources.

Notice of Lodging by Exxon Corporation and Exxon Shipping Company of Summary Regarding Natural Resources at att. at 1, 8, *United States v. Exxon Corporation et al.*, Nos. A91-082 Civ. (Apr. 16, 1991). Similarly, the governments predicted that injured resources would recover before Reopener funds would be necessary: "Based on the results of the damage assessment, the Governments do not believe that they will ever need to invoke [the Reopener]." *Governments' Memorandum in Support of Agreement and Consent Decree* at 28, *United States et al. v. Exxon Corporation et al.*, Nos. A91-082 CIV & A91-083 CIV (Oct. 8, 1991).

Despite these optimistic predictions, and despite predictable disagreement by Exxon, science persuasively establishes that *Exxon Valdez* oil continues to injure natural resources:

Disagreements exist between Exxon- and government-funded scientists [], and unknowns persist, especially in understanding how multiple processes combine to drive observed dynamics. Nevertheless, these uncertainties do little to diminish the general conclusions: oil persisted beyond a decade in surprising amounts and in toxic forms, was sufficiently bioavailable to induce chronic biological exposures, and had long-term impacts at the population level. Three major pathways of induction of long-term impacts emerge: (i) chronic persistence of oil, biological exposures, and population impacts to species closely associated with shallow sediments; (ii) delayed population impacts of sublethal doses compromising health, growth, and reproduction; and (iii) indirect effects of trophic and interaction cascades, all of which transmit impacts well beyond the acute-phase mortality.

Charles H. Peterson et al., *Long-Term Ecosystem Response to the Exxon Valdez Oil Spill*, 302 *Sci.* 2082 (Dec. 19, 2003) (internal citation omitted). Of greatest relevance to the Reopener, and of perhaps greatest concern to Alaskans and Americans, these injuries may persist for years or decades if left unaddressed. See Jeffrey W. Short et al., *Estimate of Oil Persisting on the Beaches of Prince William Sound 12 Years After the Exxon Valdez Oil Spill*, 38 *Envtl. Sci. &*

Tech. 19 (Nov. 1, 2004) (indicating that *Exxon Valdez* oil has declined in the environment at "an annual loss rate of 20- 26%, substantially slower than expected").

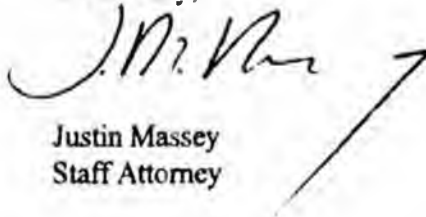
If *Exxon Valdez* oil persists as predicted, many of the nearly two dozen resources and services that have yet to recover from the Spill may remain injured indefinitely. See *Exxon Valdez Oil Spill Trustee Council, 2004 Annual Report 6-7* (2004) (reporting that 23 of 30 resources and services injured by the Spill have not recovered). It is thus essential that State and federal decisionmakers visit Spill-affected communities to engage the public in identifying unanticipated injuries and generating qualifying restoration projects.

In view of the important issues surrounding the Reopener, we request that you respond to our public meetings request by March 24, 2006 – the 17th anniversary of the Spill. On that day, various organizations, including those listed above, will host public events in Anchorage, Cordova, and perhaps other communities to commemorate the Spill. These events will emphasize the importance of meaningful public participation in the injury assessment and restoration process, with particular attention to the Reopener. Your timely response will enable the organizers to inform attendees of the opportunities that State and federal decisionmakers will provide for public participation in the Reopener process.

In planning a public process, please provide at least two weeks of public notice prior to public meetings, and please conclude the process in time to enable decisionmakers to incorporate the information received into a restoration plan that decisionmakers must submit to Exxon by June 1, 2006. As you are aware, this complicated issue will require preparation to ensure an exchange of valuable and relevant information.

Thank you again for your efforts to restore the magnificent natural resources damaged by the Spill and to hold Exxon accountable for the *Exxon Valdez* Oil Spill. Thank you in advance for promptly attending to this matter. Please contact me if I can provide further information.

Yours truly,



Justin Massey
Staff Attorney

Enclosures

Cc: Dr. Rowan Gould, U.S. Department of the Interior
Craig O'Connor, National Oceanic & Atmospheric Administration
Steve Zemke, Chugach National Forest
Jim Balsiger, National Oceanic & Atmospheric Administration
Joe Meade, Chugach National Forest
Drue Pearce, U.S. Department of the Interior
Sen. Ted Stevens, U.S. Senate

Sen. Lisa Murkowski U.S. Senate
Rep. Don Young, U.S. House of Representatives
Sen. Gary Stevens, Majority Leader, Alaska Senate
Sen. Johnny Ellis, Minority Leader, Alaska Senate
Sen. Thomas Wagoner, Chair, Committee on Resources, Alaska Senate
Sen. Albert Kookesh, Alaska Senate
Sen. Hollis French, Alaska Senate
Sen. Kim Elton, Alaska Senate
Rep. John Harris, Speaker, Alaska House of Representatives
Rep. John Coghill, Jr., Majority Leader, Alaska House of Representatives
Rep. Ethan Berkowitz, Minority Leader, Alaska House of Representatives
Rep. Jay Ramras, Co-Chair, Committee on Resources, Alaska House of Representatives
Rep. Ralph Samuels, Co-Chair, Committee on Resources, Alaska House of Representatives
Rep. Eric Croft, Alaska House of Representatives
Rep. David Guttenberg, Alaska House of Representatives
Rep. Beth Kertula, Alaska House of Representatives
Rep. Bill Thomas, Alaska House of Representatives
Rep. Gabrielle LeDoux, Alaska House of Representatives
Rep. Berta Gardner, Alaska House of Representatives
Rep. Kurt Olson, Alaska House of Representatives
Rep. Mike Chenault, Alaska House of Representatives
Rep. Paul Seaton, Alaska House of Representatives



The Exxon Valdez Oil Spill: 17 Years Later

Still Affecting Communities, Fish, Wildlife & Wetlands



Alaska Museum of History and Art

Please join us for a multi-media event that will be held in honor of the 17th anniversary of the Exxon Valdez Oil Spill. The final day of a year-long period of events is dedicated to the long term harm to fish, birds, and all stages of the spill's impact.



A One Night Only Multi-Media Event

September 21st, 8:00pm - 10:00pm
September 22nd, 10:00am - 12:00pm
September 23rd, 10:00am - 12:00pm
September 24th, 10:00am - 12:00pm
September 25th, 10:00am - 12:00pm
September 26th, 10:00am - 12:00pm
September 27th, 10:00am - 12:00pm
September 28th, 10:00am - 12:00pm
September 29th, 10:00am - 12:00pm
September 30th, 10:00am - 12:00pm

Cooper Inlet Keeper
Trustees for Alaska
EPA's Prevention Council
Alaska Wetlands Project
Alaska Center for the Environment

The Sierra Club
National Wildlife Federation
Prince William Sound Keeper
Alaska Community Action on Toxics
Alaska Public Interest Research Group
Alaska Forum for Environmental Responsibility

For more information, go to www.alaska.gov or call 907-261-2000

**CITY OF KODIAK
RESOLUTION NUMBER 05-44**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK REQUESTING
THE 1991 CIVIL SETTLEMENT OF THE EXXON VALDEZ OIL SPILL BE REOPENED**

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: five-six years for pink salmon; about eight years for black oyster catchers 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 Council of the City of Kodiak, Alaska, as part of the Exxon Valdez Oil Spill Region, 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, exclusive of additional land purchases; and

BE IT FURTHER RESOLVED, that the U.S. 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)

CITY OF KODIAK


MAYOR

ATTEST:


CITY CLERK

Adopted: November 17, 2005





**ALASKA MUNICIPAL LEAGUE
RESOLUTION #2006-07**

A RESOLUTION OF SUPPORT BY THE ALASKA MUNICIPAL LEAGUE 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 Alaska Municipal League 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 U.S. 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)

Introduced by:	Martin
Date:	12/06/05
Action:	Adopted as Amended
Vote:	7 Yea, 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;

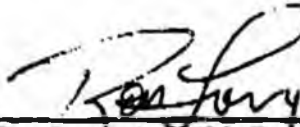
NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

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 Con 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

ATTES T:


Sherry Biggs, Borough Clerk



**Alaska Citizens for the Chugach
RESOLUTION 01-05-06**

**A RESOLUTION OF SUPPORT FROM THE ALASKA CITIZENS FOR THE
CHUGACH 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 Alaska Citizens for the Chugach 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)

Respectfully submitted, Alaska Citizens for the Chugach

~Beth Verrelli, Anchorage ~ Pat Lavin, Anchorage ~ Deborah Perkins, Anchorage
~ Billy Finley, Anchorage ~ Lance Trasky, Anchorage ~ Barbara Bennett,
Anchorage ~ Bobbie Jo Skibo, Bird Creek ~ Debbie Carlson, Cooper Landing ~
Dominic Bauer, Cooper Landing ~ Bill Stockwell, Cooper Landing ~ Steve Smith,
Cordova ~ Gabe Scott, Cordova ~ Eben Stone, Girdwood ~ Katherine Fuselier,
Eagle River ~ Frank Gwartney, Hope ~ Bjorn Olson, Moose Pass ~ Ann Painter,

Moose Pass ~ Jon Miller, Jack Bay, Prince William Sound ~ Paul Forman, Seward
~ Charlie Crangle, Seward ~ Mark Luttrell, Seward ~ Russ Maddox, Seward ~
Natasha Latta, Valdez ~ Dean Rand, Whittier~

*The Alaska Citizens for the Chugach is a citizens based group representing the Chugach National
Forest communities including Cordova, Valdez, Whittier, Anchorage, Girdwood, Hope,
Sunrise, Cooper landing, Seward, Jack Bay (PWS), Indian, Moose Pass, and other
surrounding areas. The group's mission is to develop long term solutions to natural resource
issues while fostering sustainable economies and preserving the quality of life.*

PASSED AND APPROVED 1/5/05



P.O. Box 939
Cordova, Alaska 99574
(907) 424-3447 FAX (907) 424-3430

January 25, 2006

Honorable Frank Murkowski
Governor, State of Alaska
PO Box 110001
Juneau, Alaska 99811-0001

Re: \$100 Million Reopener Clause

Dear Governor Murkowski,

The Board of Directors for Cordova District Fishermen United (CDFU) urges the United States Department of Justice and the State of Alaska to Reopen the 1991 Civil Settlement for the Exxon Valdez Oil Spill and Claim the Full \$100 Million for Mitigation of Unanticipated Long-Term Harm.

As you are aware, a great deal of unforeseen harm to oil-damaged populations, habitats and species in the spill zone has been identified since the time of the original settlement. Unanticipated long-term harm from the Exxon Valdez oil spill has conclusively been demonstrated by scientists funded through the EVOS Trustee Council as well as private organizations, universities, state & federal agencies.

The Board of Directors for CDFU believes that herring losses are one of the areas that should be strongly considered as one species which may qualify for action under the re-opener for Exxon. Herring biomass losses have been documented and are clearly an example of unforeseen damages that could not reasonably have been anticipated at the time of the settlement.

As the deadline on this "clause" quickly approaches, there is increased urgency to take action on this issue, before the opportunity is lost forever. Therefore, CDFU is in full support to Reopen the 1991 Civil Settlement for the purpose of claiming the remaining \$100 Million.

Thank you for your attention in this matter.

Sincerely,

Diane Platt

Diane Platt
Executive Director
Cordova District Fishermen United

Cc: United States Department of Justice

COOK INLET REGIONAL CITIZENS ADVISORY COUNCIL**Resolution 06-03**

A resolution urging the United States Department of Justice and the Alaska Department of Law to identify and estimate natural resource damages from the Exxon Valdez Oil Spill (EVOS) that were unanticipated at the time of the 1991 settlement, to develop plans to remedy the damages, and to initiate proceedings to reopen the 1991 civil settlement and claim the full \$100 million allowed by the "Reopener for Unknown Injury" clause

WHEREAS, on October 9, 1991, the U.S. District Court for the District of Alaska approved a settlement among Exxon, the United States, and the State of Alaska for injuries to natural resources from the *Exxon Valdez Oil Spill* (EVOS) in the amount of \$900 million; and

WHEREAS, this settlement includes a clause entitled the "Reopener for Unknown Injury," which provides that no later than September 1, 2006, if requested, "Exxon shall pay to the Governments such additional sums as are required [up to \$100 million] for the performance of restoration projects in ... areas affected by the Oil Spill to restore one or more populations, habitats or species which, as a result of the Oil Spill, have suffered a substantial loss or substantial decline" provided the injury could not reasonably have been anticipated at the time of the settlement; and

WHEREAS, unanticipated injuries from the EVOS have been documented^{1,2}, including unanticipated injury to intertidal habitat and species from lingering oil that remains buried in beach sediments and which NOAA scientists estimate could take over 20 years to degrade, naturally; and

WHEREAS, the long-term effects of this buried oil could not have been anticipated because at the time of the settlement scientists believed that for most shoreline habitats the oil would be rapidly dispersed, microbially degraded, or naturally weathered; that the toxicity of oil to fish occurred only in the very short term (days) at relatively high concentrations (ppm); and higher trophic levels would be impacted by spilled oil solely through short-term acute exposures; and

WHEREAS, science now shows that under certain conditions, oil can remain in subsurface sediments in a relatively unweathered [fresh] state for decades; that oil can be toxic to developing fish embryos at levels a thousand to a million times less concentrated than previously believed (at the ppb or ppt level), and that; higher trophic levels can be impacted over the long term due to chronic exposure to oil through ingestion of hydrocarbon contaminated prey or interaction with contaminated habitat; and

WHEREAS, the existing cash reserve of the EVOS Trustee Council has been identified for and should continue to be dedicated to research, monitoring, and general restoration of known injuries; and

WHEREAS, research and monitoring includes plans to implement a multi-decadal Gulf of Alaska ecosystem monitoring plan that will improve our understanding of the links between and among various trophic levels and between the biological and physical components of the environment; and

¹ Short, J.W., M. R. Lindeberg, P. M. Harris, J. M. Masello, J. J. Pella, S. D. Rice. 2004. Estimate of Oil Persisting on the Beaches of Prince William Sound 12 Years after the Exxon Valdez Oil Spill. *Environ. Sci. Technol.* 38(1), pp. 19-25.

² Petersen, C.H., S. D. Rice, J. W. Short, D. Eiler, J. I. Bodkin, B.E. Ballachry, D.B. Irons. 2003. Long-Term Ecosystem Response to the Exxon Valdez Oil Spill. *Science* 203(5653), pp. 2082-2086.

WHEREAS, the legal conditions required to trigger the reopener have been demonstrated in that "one or more populations, habitats, or species...suffered a substantial loss or substantial decline" that were a result of the oil spill; that injury to the affected population, habitat, or species could not reasonably have been known or anticipated by any Trustee, and; the cost of a restoration project [at \$100 million] would not be grossly disproportionate to the magnitude of the benefits anticipated from the remediation; and

WHEREAS, sufficient evidence and expertise are available to trigger the reopener clause and to develop a detailed plan for restoration projects to be filed with Exxon by June 2, 2006; and

WHEREAS, neither the United States nor the State of Alaska have acted to reopen the settlement; and

WHEREAS, it is in the very best interest of the citizens of Alaska, and specifically the citizens within the EVOS region, that the Government assert this claim for full payment allowed under the reopener clause; and

NOW, THEREFORE, BE IT RESOLVED that the Cook Inlet Regional Citizens Advisory Council hereby urges the United States Department of Justice and the State of Alaska to identify all natural resource damages from the EVOS that were unanticipated at the time of the settlement (October 9, 1991), develop a restoration plan, and reopen the 1991 civil settlement and claim the entire \$100 million to enact the plan; and

BE IT FURTHER RESOLVED THAT the Attorney General of the State of Alaska or the Attorney General of the United States report to the Alaska State Legislature on or before March 24, 2006, the 17th anniversary of the spill, on the status of the governments' claim to the reopener.

Adopted by the Cook Inlet Regional Citizens Advisory Council on this 24th day of February, 2006.

ATTEST:

President, Cook Inlet RCAC

Secretary, Cook Inlet RCAC

**CITY OF HOMER
HOMER, ALASKA**

Mayor

RESOLUTION 06-27

A RESOLUTION OF SUPPORT BY THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA, TO REOPEN THE 1991 CIVIL SETTLEMENT FROM THE EXXON VALDEZ SPILL AND CLAIM THE FULL \$100 MILLION FOR RESTORATION OF NATURAL RESOURCES SUFFERING UNANTICIPATED INJURY.

WHEREAS, On October 19, 1991, the U.S. District Court for the District of Alaska approved a settlement among Exxon, the United States, and the State of Alaska for injuries to natural resources from the Exxon Valdez Oil Spill (EVOS); and

WHEREAS, This settlement includes a clause entitled the "Reopener for Unknown Injury," which provides 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 injured populations, habitats, or species if the injury could not reasonably have been known nor anticipated at the time of the settlement; and

WHEREAS, Long-term injuries were unanticipated at the time of the settlement because the understanding of oil persistence and toxicity held that oil only caused short-term injury at water levels of parts per million, and scientists now realize that oil also causes long-term injury at water levels of parts per billion and trillion; and

WHEREAS, Only 7 of the 30 resources or species listed by the EVOS Trustee Council as injured by the EVOS have recovered; and

WHEREAS, 18 of the 30 resources or species listed by the EVOS Trustee Council as injured by the EVOS have not recovered, including

- Common Loons
- Harbor Seals
- Pacific Herring
- Cormorants (3 spp.)
- Harlequin Ducks
- Pigeon Guillemots
- Clams
- Intertidal Communities
- Marbled Murrelets
- Sea Otters
- Designated Wilderness
- Killer Whales (AB Pod)
- Mussels

Page 2 of 2
Resolution 06-27
City of Homer

- Sediments
- Recreation Tourism
- Passive Uses
- Commercial Fishing
- Subsistence; and

WHEREAS, the status of the remaining 5 of the 30 resources or species listed by the EVOS Trustee Council as injured by the EVOS is unknown; and


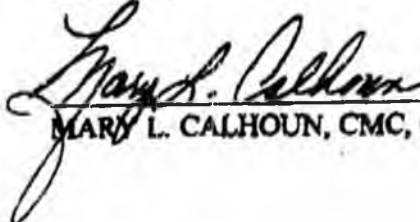
WHEREAS, Unanticipated injury from the EVOS has been documented by scientists funded through the EVOS Trustee Council and, separately through federal and state agencies, universities and private foundations; and

WHEREAS, Neither the United States nor the State of Alaska have acted to reopen the settlement.

NOW, THEREFORE, BE IT RESOLVED That the City Council of the City of Homer, Alaska, hereby requests that the United States and the State of Alaska reopen the 1991 civil settlement and claim the entire \$100 million to restore populations, habitats, or species that suffered significant losses or declines as a result of the spill and that suffer injuries that could not reasonably have been known or anticipated at the time of the settlement.

PASSED AND ADOPTED by the Homer City Council this 27th day of February, 2006.

ATTEST:



MARY L. CALHOUN, CMC, CITY CLERK

CITY OF HOMER


JAMES C. HORNADAY, MAYOR

Fiscal Note: N.A.

**Resolution 2006-01
Exxon Valdez Oil Spill Public Advisory Committee
March 6, 2006**

A Resolution Urging The Trustee Council Agencies To Pursue All Available Means To Identify and Restore Injured Species and Habitats

Whereas, on March 24, 1989, Exxon Spilled at least 11 million gallons of crude oil into Prince William Sound, Alaska, killing more wildlife than any previous oil spill, oiling approximately 1,300 miles of coastline, including critical habitat areas for many species of fish, birds, and mammals, much of it publicly owned National Forest, Alaska State Parks, and Game Sanctuaries; and

Whereas, the 1991 civil settlement between the U.S. Government, the State of Alaska, and Exxon Corporation for damages from the Exxon Valdez Oil Spill to Publicly-Owned natural resources provided for a "Reopener for Unknown Injury" not anticipated at the date of the settlement; and

Whereas, scientists have documented long-term and continuing ecological damage and injuries from the *Exxon Valdez* oil spill that could not have been reasonably anticipated or known at the time of the 1991 settlement; and

Whereas, only 7 of the 30 resources or species listed by the Exxon Valdez Oil Spill Trustee Council as damaged and injured by Exxon have recovered; and

Whereas, species and resources listed by the Exxon Valdez Oil Spill Trustee Council as injured have not recovered, including common loons, harbor seals, cormorants, harlequin ducks, pigeon guillemots, clams, intertidal communities, marbled murrelets, sea otters, killer whales, mussels, pacific herring, commercial fishing and subsistence; and

Whereas, unanticipated injury continues from highly volatile lingering oil deposits that remain buried on publicly owned land where scientists estimate at least 20 more years will be required for the deposits to naturally degrade; and

Whereas, the Exxon Valdez Oil Spill Trustee Council Public Advisory Committee represents numerous individuals, communities, organizations and stakeholder groups that have been adversely affected by this unanticipated injury.

Now therefore be it resolved that the Exxon Valdez Oil Spill Trustee Council Public Advisory Committee hereby requests that the Trustee Council and its member agencies ensure that all available means are pursued to restore publicly owned

wildlife, lands and ecosystems services that have suffered significant and unanticipated injury as a result of the Exxon Valdez Oil Spill.

Approved and Adopted this 6th day of March, 2006 by the Exxon Valdez Oil Spill Trustee Council Public Advisory Committee.

EVOS Trustee Council PAC

Date