

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 781

Staff

Director: *Dr. G.L. Thomas* - Ph.D. University of Washington, Fisheries Science, 1978. Experience: conducted basic and applied research since 1971 for Scripps Institute of Oceanography (UC), Fisheries Research Institute (UW), Cooperative Fisheries Research Unit (UW), and Applied Physics Laboratory (UW).

Administratively, served as Assistant Leader of the Cooperative Fishery Research Unit and as Internal Director of the North Pacific International Chapter of the American Fisheries Society.

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Office Manager/Bookkeeper: Penelope Oswalt

Education Coordinator: Elizabeth Trowbridge

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Rosita Worl, Smithsonian Institution

Future

A major grant from the Murdock Charitable Trust and federal funding of the Prince William Sound Oil Spill Recovery Institute (OSRI) by NOAA has allowed Dr. Thomas to assume a full-time position and move to Cordova. He will be working on developing the Oil Spill Recovery Institute and the annual workshops -- 1991: Biological Interactions of Natural and Enhanced Salmon, and 1992: Timber, Fish and Wildlife -- sponsored through a major grant from the Pew Charitable Trusts.

**CHENEGA BAY SALTERY  
REMOVAL & CLEANUP**

**\$585,000**

Excerpt from  
Saltery Restoration Plan by James R. Clinton  
December, 1990

The study and report present a demolition plan and a project budget for the removal of the abandoned fish processing plant which presently exists at Chenega Bay, Alaska.

Summary:

The project can be accomplished without overly severe environmental regulatory complication or prohibitive cost penalty resulting from the regulation.

General Information:

The original construction utilized locally cut and milled spruce. During the past several years much of the usable lumber has been salvaged leaving the plant open to the full force of the weather. The remaining structure is full of dry rot and is in the process of collapsing. Most of the operating machinery was left in the plant and is useless for anything but scrap iron. A substantial amount of this machinery and its' attendant piping is supported off the floor by rotting wood.

Several large steel tanks exist outside and immediately adjacent to the plant. Several were fuel tanks in which was stored bunker oil and probably, diesel oil. These tanks are supported from three to five feet off the ground on wood piers, wood caps, and a timber deck system, all of which is in a condition ranging from good to advanced decay. All have been damaged severely by rust and snow loads.

In its' present advanced state of decay it is difficult to overstate the danger this structure presents to anyone in it, on it, or under it. Unfortunately it presents an irresistible temptation to the village children as a place to play. To protect their safety it must be removed.

Cost Estimate Summary:

Mobilization and demobilization	\$239,000
Dismantling and disposal	257,000
Contract preparation and administration	39,000
Project contingency	50,000
Total Estimated Project Cost	\$585,000

# Alaska State Legislature

Legislative Research Agency



P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 463-3991  
Fax: (907) 463-3351

June 27, 1991

## MEMORANDUM

TO: Representative Gene Kubina

FROM: Glenn T. Gray <sup>GTG</sup>  
Legislative Analyst

RE: Hazardous Substances at Chenega Bay Saltery Site  
Research Request 91.313

You asked for information about a herring saltery at Chenega Bay that the community would like to have removed. You specifically asked about possible funding sources to do the work, which involves removal of hazardous substances. This memorandum provides a history of the problem and identifies the current status of the clean-up effort as well as possible funding sources.

## Background

The Chenega Bay herring saltery site currently poses several threats to local villagers. First, the buildings are collapsing and village leaders fear that someone will be injured. Although the site is posted against trespassers, children and other villagers are often seen at the site. Second, friable asbestos is present in the buildings, both on the floor and on pipes and other fixtures. Third, large fuel oil tanks are leaking bunker crude onto the ground and into the water. Other threats include 55-gallon drums containing unidentified substances. The creosote-treated pilings supporting the structures are also considered a hazard and cannot be burned. A report by the Alaska Health Project identifies these and other concerns (Attachment A).

Although the site is currently administered by the State of Alaska, the federal government originally owned the land. The U.S. Forest Service issued various fish processing companies special use permits to use the Chenega Bay herring saltery site. Use of the site ended in the 1940s. The community of Chenega Bay relocated close to the saltery after the 1964 earthquake. The Chenega Native Corporation selected this saltery site as part of its land entitlement under the Alaska Native Claims Settlement Act (ANCSA), and the Bureau of Land Management (BLM) issued an interim conveyance to the corporation in 1979. Authorized by a provision in the ANCSA [Section 14 (c) (3)], the corporation conveyed the land to the state in trust during 1983 until a local municipality

Representative Kubina  
June 27, 1991  
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becomes incorporated.<sup>1</sup> The site, administered by the Department of Community and Regional Affairs (DCRA) as part of the Municipal Lands Trustee Program, was leased to the Chenega Village Council in 1984 for future use as a bulk fuel storage site.

After the land was conveyed to the state, the Alaska Department of Environmental Conservation (DEC) identified the hazardous substances at the site and notified the Village of Chenega Bay (Attachment B). In 1985, the State of Alaska sued the Forest Service (i.e., the Secretary of Agriculture) in an attempt to get federal funding to clean up the site. During September 1990, the federal district court granted judgment to the federal government, and the Attorney General decided not to appeal the case (Attachment C).

Rick Elliot, program manager for the Municipal Lands Trustee Program, said that the community originally planned to use the site for bulk fuel storage. According to a letter written by Marty Rutherford of the DCRA, the community of Chenega Bay now intends to develop a port facility at the saltery site (Attachment D). Before the port facility can be developed, however, the buildings will have to be removed. Prior efforts to remove the buildings by the community have been curtailed because of special treatment needed to remove the asbestos, fuel oil and creosote-treated pilings.

According to Lynn Chambers of the North Pacific Rim, the regional nonprofit Native corporation, the saltery buildings were constructed on pilings over the water. The buildings are currently collapsing and some of the oil tanks still have about a foot of sludge in them that is slowly leaking. Ms. Chambers said that an engineering firm (H4M Engineering) has estimated that it will cost about \$585,000 to remove the buildings and that the Chenega Bay Village Council does not have resources to pay for such a removal. The removal of the buildings includes storage of the creosote-treated pilings, treatment of the asbestos, removal of the fuel tanks, and removal of machinery.

#### Clean-up Funding Options

According to Jane Tonkin of DEC's Cordova office, various funding options have been or are currently being explored to remove the contamination. The department has unsuccessfully tried to add the site to the superfund list (the list of the nation's worst sites contaminated by hazardous substances) and the agency is currently exploring the possibility of using funds available for emergency response. The site, however, ranked low on the state's hazardous sites priority list.

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<sup>1</sup>AS 44.47.150 directs the commissioner of the Department of Community and Regional Affairs to "accept, administer, and dispose of land conveyed to the state in trust by village corporations" pursuant to the ANCSA provision.

Representative Kubina  
June 27, 1991  
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Lynn Chambers of the North Pacific Rim said that she has unsuccessfully attempted to obtain removal funds from the U.S. congressional delegation. Ms. Chambers noted that the site has been included on a BLM list of contaminated sites conveyed to Native corporations. A recent article in the Anchorage Times claims that Congress will ask the BLM to negotiate with the Alaska Federation of Natives to determine how these sites will be cleaned up (Attachment E). However, according to Wayne Svejnoha, a BLM hazardous materials specialist, it is unlikely that the BLM would assist with the clean-up of this site because the contamination occurred while the Forest Service managed the land.

The party or parties liable for the clean-up of this site is unclear. However, according to Assistant Attorney General Breck Tostevin, the state is not liable for the clean-up because of how it received the land. A federal court has found that the USDA Forest Service is not liable for the asbestos removal. The Chenega Native Corporation could be found liable for clean-up costs, but the corporation does not have funds for this clean-up. Mr. Tostevin thinks that if federal funds cannot be obtained for the clean-up, it may be necessary to appropriate state funds for this purpose.

I hope that you find this information useful. Should you wish additional information about this issue, please contact this agency.

Attachments

## STATE OF ALASKA -- ELECTION DISTRICT REPORT

SALEDST

## DISTRICT 06 PRINCE WILLIAM SOUND

3/19/92

## CAPITAL BUDGET SUMMARY

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FISCAL YEAR 1993

BUDGET COMPONENT	GOV CAP
DEPARTMENT OF EDUCATION	
AVTEC MAINT/EQUIP/DORMITORY	300.0 ✓
DEPARTMENT OF TRANSPORTATION/PUBLIC FACILITIES	
CENTRAL REGION FEDERAL HIGHWAY	
SEWARD HWY, MP 50-65.5 RECONST	15414.3 ✓
EXIT GLACIER RD, MP 0-3.9	443.6 ✓
CENTRAL REGION FED AVIATION	
CHENEGA BAY ARPT DEVELOPMENT	3328.2 ✓
NORTHERN REGION FEDERAL HWYS	
COPPER RIVER HWY, PE	970.0
VALDEZ ARPT RD INTER UPGRADE	150.0 ✓
NORTHERN REGION FED AVIATION	
CORDOVA AIRPORT IMPROVEMENTS	1320.0 ✓
VALDEZ SAND STORAGE BUILDING	400.0 ✓
DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS	
CHENEGA CONTAM SITE CLEANUP	30.0
*** ELECTION DISTRICT TOTAL ***	22356.1
FED RCPTS	22026.1
GENERAL FUND	330.0

CHENEGA BAY DEMOLITION PLAN

Cost Estimate Summary

CONTRACT COSTS:

Labor	224,350.
Equipment	123,600
Petroleum, oils, & lubricants	15,100
Transportation	<u>52,500</u>
Total estimated cost	\$415,550
Contractor contingency, O. H., profit	<u>81,000</u>
Total estimated contract	\$496,550

ROUNDED CONTRACT COST 496,000

ADMINISTRATIVE OVERHEAD: 39,000

PROJECT CONTINGENCY: 50,000

TOTAL ESTIMATED PROJECT COST IN 1991 DOLLARS 585,000

A PLAN FOR THE RESTORATION  
OF  
THE SITE OF THE ABANDONED CANNERY  
AT  
CHENEGA BAY, ALASKA

Prepared By

JAMES R. CLINTON

December 10, 1990

For

THE NORTH PACIFIC RIM  
3300 C Street  
Anchorage, Alaska

CHENEGA BAY, ALASKA  
A PLAN FOR THE SITE RESTORATION OF THE ABANDONED CANNERY

December 10, 1990

This study and report will present a demolition plan and a project budget for the removal of the abandoned fish processing plant which presently exists at Chenega Bay, Alaska.

SUMMARY:

1. The project can be accomplished without overly severe environmental regulatory complication or prohibitive cost penalty resulting from the regulations.

2. Project budget in 1991 dollars is \$585,000.

GENERAL INFORMATION:

Chenega Bay is located on Evans Island in Prince William Sound, Alaska, on the shore of a small cove formerly known as Crab Bay. It's coordinates are

Latitude: 60°04'N  
Longitude: 148°02'W

The abandoned fish processing plant at this location is reported to have been constructed about 1930 although the machinery it contains and the style of construction would indicate it to be ten years older. It operated as the Chatham Stuart Fish Company until about 1956. It operated spasmodically after that depending on the fish run until 1960 and has not operated since then. Nor has it been maintained. The original construction utilized locally cut and milled spruce insofar as practical. During the past several years much of the useable lumber has been salvaged leaving the plant open to the full force of the weather. The remaining structure is full of dry rot and is in the process of collapsing. Most of the operating machinery was left in the plant and is useless for anything but scrap iron. A substantial amount of this machinery and its' attendant piping is supported off the floor by rotting wood. The installed machinery included a steam boiler and a quantity of steam piping which was insulated with asbestos/plaster wrapped with muslin cloth in the style of the time. Only a few scattered remnants of this insulation remain - the rest having weathered off the pipe, fallen to the floor, and been washed away by rain and snow.

Several large steel tanks exist outside and immediately adjacent to the plant. Several were fuel tanks in which was stored bunker oil and, probably, diesel oil. These tanks are supported from three to five feet off the ground on wood piers, wood caps, and a timber deck system, all of which is in a condition ranging from good to advanced decay. The tanks are of bolted construction. All have been damaged severely by rust and snow loads. It is probable that the bottoms below the outlets contain sludge residues of the products that were stored in them. Some spills have occurred around the tanks. At the time of inspection the snow and ice cover in the area rendered it not possible to estimate how much product has spilled, but other investigators have previously estimated that about 3,000 gallons or a little more have emptied on the ground. It was not possible to see how far it has spread or to what degree it has weathered.

The piles supporting the over water portion of the structure are a mixture of native spruce and other wood piles which appear to have received some sort of treatment which is probably creosote. The untreated piles are rotting above water and destroyed by marine worms below water. The creosote piles have weathered almost surface clean but appear to be in better shape. A sixteenhundred square foot area of the center of the pile supported structure has collapsed into the waters' edge at this writing. It would not strain the imagination to picture the whole pile supported section collapsing into the bay with this winters' snow load during the southeasterly storms which are common to the area. In such an event the debris would be scattered by wind, wave, and tide throughout Prince William Sound to become a hazard to both navigation and the fishermen who use these waters.

In its' present advanced state of decay it is difficult to overstate the danger this structure presents to anyone in it, on it, or under it. Unfortunately it presents an irresistible temptation to the village children as a place to play. To protect their safety it certainly must be removed.

#### DEMOLITION PLAN:

1. MOBILIZATION. It has been assumed in the preparation of the cost estimate for this project that the equipment and supplies for the project will be moved to Chenega Bay from Seward or Whittier. Mobilization from Valdez or Cordova would cost about the same.

Conversations with the Community Administrator of Chenega Bay indicate that the community desires that local residents be given preference in hiring for the work. This is desirable in all respects depending on the availability of qualified people at the time needed. If the job is timed correctly it should be started as soon as the snow is gone in the spring to take advantage of the best weather for the work. But this would time the work to be in full swing at the same time as the fishing season in the Sound. Obviously, since Chenega Bay is a fishing village, this would present a choice to qualified local residents.

It was also indicated that the residents would not fully enjoy the influx of a crew from outside the community. It is a quiet, insular community. Intrusions of this nature are very distressing to them.

In resolving these issues the conservative option has been taken in preparing the cost estimate. The cost of a temporary camp which will accommodate a maximum of 14 people is included. This camp will require cooperation from the village in providing a suitable site with access to sewer and water. It might be of interest to the community to use this as an opportunity to leverage the acquisition of some quarters for accommodating visitors to the village.

1. ASBESTOS. Two sets of regulations apply:
  - a) Alaska Department of Labor  
Division of Labor Standards and Safety  
Occupational Safety And Health Standards  
Construction Code (Asbestos)

Copies of this code may be obtained in Anchorage at the Alaska Department of Labor, 3301 Eagle Street.

- b) United States Environmental Protection Agency

Office of Pesticides and Toxic Substances  
Washington, DC 20460

Guidance for Controlling Asbestos-  
Containing Materials in Buildings

Ref: Paragraphs 61.145, 61.146, 61.147

Copies of these regulations may be obtained in Anchorage at the Alaska Operations Office, Federal Court House, 222 W. 7th Ave., Room 537.

Note should be taken of 61.145(c). If a higher governmental authority (Borough or State) ordered demolition then the EPA requirements are simplified. Unfortunately no Borough exists and no State agency claims that authority.

The written notice required in para 61.146 is mandatory and must be submitted as specified.

The general effect of these regulations is to require that the asbestos be removed by trained, certified people. These workers will be required to wear respirators and disposable protective clothing. Nobody will be permitted on the jobsite during asbestos removal excepting these equipped workers. They will have to keep the material which they are removing wet while it is being handled. The asbestos will be packaged in marked, sealed, double bags. Disposal of the bags must be in a permitted landfill. The closest permitted landfill is in Anchorage. This work is a specialty and is ordinarily subcontracted out by a General Contractor to a specialist. Prudent care must be taken by both the General Contractor and the Subcontractor to keep this phase of the operation safe for the workers.

2. GENERAL DEMOLITION. The overall plan for demolition is as follows:

- a) Remove the asbestos.
- b) Prepare the community landfill site to receive the scrap wood for burning.
- c) Clean up the sludge as it may appear inside the tanks and package the sludge in acceptable tanks and the soiled sorbents and waste in poly bags. These containers will be stockpiled for later shipment with the asbestos containers and scrap iron to acceptable disposal sites.
- d) Dismantle or cut up the tanks into convenient sizes for handling and shipping, and stockpile them in the area of the beach landing site.
- e) Clean up the spilled oil sludge from the ground, and package and stockpile it for later shipment. Alaska DEC regulations require the ground contamination to be reduced to 20 parts per million.
- f) Continue the onshore demolition. Haul the wood to the landfill and pile and burn it. Reduce the iron to convenient handling and shipping size and pile it for loading and shipping.

- g) The demolition of the portions of the structure which are supported on piles over the water requires some discussion.

It is possible that a resourceful demolisher could remove the pile supported sections of the structure from the land. It would be risky and inconvenient to do so, but it can be done. In the interest of safety and the more conservative approach, the cost estimate contained herein has been based on working from the water utilizing a crane mounted on a barge to remove the over-water portions of the structure. These operations can and should be conducted concurrently with the onshore work.

Everything above the pile heads will be hauled to the landfill site and burned.

The piles will be removed by breaking them off at the mud line with the crane. The native spruce piles can be burned. Alaska DEC regulations 18AAC 50.030(b)(c) forbid burning creosote treated piles. They must either be salvaged and stockpiled for future use or removed from Chenega Bay and hauled to and buried in a licensed landfill. Anchorage is the closest place. This plan anticipates salvaging and stockpiling the creosoted piles in the area of the Chenega Bay landfill. The creosoted piles should not be stacked in a tight pile, but they should be cribbed with space between piles and tied at the corners to keep them from rolling. The salvaged piles will be useful in the future as building piers.

### 3. DISPOSAL.

- a) Asbestos, properly bagged and marked, will be sent to the landfill in Anchorage.
- b) Oil, oily waste and grease will be sent to a disposal site in Oregon.
- c) Creosote treated piles will be salvaged and stockpiled at the landfill site in Chenega Bay.
- d) Scrap iron will be sent to Anchorage for consolidation with other scrap for shipment to the scrap markets outside.

- e) Scrapped lumber and any other combustibles will be burned at the Chenega Bay Landfill and the residue buried. Other noncombustible trash will be buried in the landfill.

PROJECT BUDGET:

Mobilization and demobilization	\$239,000
Dismantling and disposal	257,000
Contract preparation and administration	39,000
Project contingency	<u>50,000</u>
TOTAL PROJECT BUDGET	\$585,000

CHENEGA BAY DEMOLITION PLAN

Cost Estimate Summary

CONTRACT COSTS:

Labor	224,350.
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Petroleum, oils, & lubricants	15,100
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Total estimated cost	\$415,550
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ROUNDED CONTRACT COST 496,000

ADMINISTRATIVE OVERHEAD: 39,000

PROJECT CONTINGENCY: 50,000

TOTAL ESTIMATED PROJECT COST IN 1991 DOLLARS 585,000

# CHENEGA BAY DEMOLITION PLAN

## Operation Schedule & Labor

No.	Operation	Cal Days	Man-days	Rate	Tot. Labor
1	Mobilize in Anchorage	10	40	200	8000
2	Load & Ship	5	30	400*	12000
3	Unload & Setup @ Chenega	6	36	425-	15300
4	Prepare Landfill & Jobsite	3	18	425-	7650
5	Remove Asbestos & Haz. Wastes	14	56	675-	37800
6	Dismantle & Stockpile Tanks @ Beach	12	72	350-	25200
7	Remove Scrap Iron	12	36	350-	12600
8	Extend Access Ramp @ Jobsite	1	.5	350-	1050
9	Remove & Burn Onshore Combustibles	4	24	350-	8400
10	Mobilize Work & Tender Scows	5	30	200	6000
11	Dismantle Overwater Structure,	12	102	425-	43350
12	Handle & burn NO. 11 Above	6	36	350-	12600
13	Remove Concrete	3	12	350*	4200
14	Load & Ship Scrap Iron	3	18	350-	6300
15	Unload & Rehandle Scrap Iron	2	12	350*	4200
16	Dispose of Hazardous Wastes	2	6	200	1200
17	Demobilize @ Chenega	4	24	350-	8400
18	Ship Equip't to Place of Origin	1	6	350-	2100
19	Demobilize at Point of Origin	10	40	200	8000
TOTALS			398.5		3224350

**NOTES:**

\* Denotes that a room & board allowance of \$150 per man-day is included.

Small computational errors in items 7 & 11 were discovered & corrected to give a revised total for labor from that which appears in the report.

## CHENEGA BAY DEMOLITION PLAN

### Equipment, Transportation & Administrative Overhead

#### EQUIPMENT:

Units	Item	Time	Rate	Total	SQL
1	Reach crane or hoe	3 Mo.	9000	27000	4050
1	Bulldozer	" "	3600	10800	1620
2	Dumptrucks	" "	4000	24000	3600
1	Front end Loader 3 cy	" "	5000	15000	2250
1	Compressor 150 cfm	" "	300	900	135
1	Water pump 5" Hi press.	" "	300	900	135
1	Welding Machine 200 amp.	" "	300	900	135
1	Clamshell bucket	" "	150	450	68
4	Chainsaws	" "	LS	600	90
1	Jackhammer	2 wks	LS	100	15
	Camp for 14 mer	3 Mo.	Included in Labor		---
1	Crane-barge 50 ton	1 "	25000	25000	1500
1	Tender barge	2 "	4000	8000	1000
1	Work skiff & motor	3 "	500	1500	160
lot	Hand tools & rigging		LS	6000	---
lot	Misc vehicles & equip't	3 Mo.	---	2400	360
	TOTAL			\$123550	\$15118
	ROUNDED			\$123600	\$15100

#### TRANSPORTATION:

2 R/T	Hvy duty lowboy	1050	2100
6 R/T	Flatbed or Van	650	3900
30 R/T	Air charters	250	7500
6 R/T	Tug charters	5000	30000
2 C/L	Scrap shipment	2000	4000
	Hazardous waste shipment	LS	5000
	TOTAL		\$52500

#### ADMINISTRATIVE OVERHEAD:

Contract preparation	2650
" Advertizing	500
" supplies & printing	750
" administration	29000
" Transportation 8 R/T @ 250	2000
Testing fees	4000
TOTAL	\$38900
ROUNDED	\$39000

## RECAP OF CHENEGA BAY SALTERY HISTORY

- . March 1930 U. S. Forest Service issued a use permit to Chatham Straits Fish Company.
- . July 1965 U.S. Forest Service issued a special use permit to Washington Fish and Oyster Company for the 5.3 acre site for use in connection with fish processing. Improvements consisted of: Cannery, Residence, Bunkhouse, Outbuildings and dock.
- . Feb. 1968 Above permit terminated for failure to comply with permit conditions, namely maintaining the improvements and premises acceptably to forest officer in charge.
- . June 1979 Federal Interim Conveyance of surface rights to Chenega Bay Corp. and subsurface rights to Chugach Corp.
- . Sept. 1984 Alaska Department of Environmental Conservation first learned, that prior to the conveyances, 4000 gal. of oil had spilled, leaked or discharged from storage tanks, penetrating the ground and migrating into the waters of Prince William Sound.
- . Sept. 1987 State of Alaska files suit against U. S. Secretary of Agriculture asking the court to order clean up and containment of all pollution at the cannery site.
- . Dec. 1990 State of Alaska accepts Sept. 1990 federal court judgement for the United States. The court concluded there was insufficient evidence that asbestos was disposed of during federal ownership. State Dept. of Law recommends renewed efforts to seek federal funding, in light of new emphasis in Congress on cleaning up former federal facilities.

# Alaska State Legislature

Chairman  
State Affairs  
Committee

Legislative Council

Transportation  
Committee



Representative Eugene Kubina

During Session:  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4859

During Interim:  
P.O. Box 2463  
Valdez, Alaska 99686  
(907) 835-2111

August 13, 1991

Edgar Blatchford, Commissioner  
Department of Community and Regional Affairs  
P.O. Box B  
Juneau, AK 99811

Dear Edgar,

When we last met in June, we discussed the issue of the herring saltery in Chenega Bay and the necessity of its removal. We agreed at that time to each look further into the matter. My efforts continue to be thwarted by the legalities involved. Have your inquiries yielded any answers?

As you know, the saltery is an ongoing health and safety threat to the people of Chenega Bay. I feel it is urgent that we figure out a way to solve the responsibility question and move on toward a removal of this hazard at the soonest opportunity.

Thank you very much for your help in this matter. I look forward to hearing from you soon.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gene".

Representative Gene Kubina  
District Six

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •

**ALASKA PACIFIC  
SHELLFISH HATCHERY**

**\$800,000**

## SEWARD SHELLFISH HATCHERY

### SUMMARY SHEET

#### The Alaska Mariculture Industry

- The shellfish mariculture industry in Alaska is expanding rapidly.
- The number of permitted aquatic farms in Alaska now exceeds the number for Oregon and Washington combined.
- Shellfish sales from Alaska farms is expected to reach \$2 million in 1992 and exceed \$4 million in 1993.
- The concern about health problems associated with eating shellfish from polluted waters has significantly dampened market demand. Alaska, with its pollution free waters and strict inspection program for naturally occurring toxins such as PSP and domoic acid, is one of the very few places that can market shellfish that is genuinely safe to eat. This could turn the state into a major shellfish supplier.

#### Hatchery Rationale

- Insure a reliable supply of oyster seed for the grow-out farms. Currently, all oyster seed is supplied by two hatcheries located outside the state, one in California and one in Washington state. If either hatchery loses its certification or has production problems, it could devastate the industry in Alaska.
- There is a concern that bringing large volumes of oyster seed into the state will increase the risk that a shellfish pathogen will slip through the detection net and be introduced into Alaska waters. An oyster hatchery in Alaska would significantly reduce the need for seed from outside the state.
- Currently there is no effort to culture clams or scallops in the state because it is too difficult to obtain clam or scallop seed. A hatchery in the state could provide a source for clam and scallop seed and allow shellfish farmers to begin taking advantage of the exceptional markets for both these species.
- Reseeding projects to restore clam beds destroyed by the Exxon Valdez oil spill will need an in-state hatchery to supply the seed stock.

#### Concept

- The Chugach Regional Resources Commission (CRRRC), a Native consortium involved with natural resource development in the Chugach Native region, is proposing to oversee construction and operation of a shellfish hatchery located in Seward. This hatchery will be used to supply seed stock to shellfish farmers including those operations located in the Native villages in the region.

## SEWARD SHELLFISH HATCHERY

### SUMMARY SHEET

#### The Alaska Mariculture Industry

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- The concern about health problems associated with eating shellfish from polluted waters has significantly dampened market demand. Alaska, with its pollution free waters and strict inspection program for naturally occurring toxins such as PSP and domoic acid, is one of the very few places that can market shellfish that is genuinely safe to eat. This could turn the state into a major shellfish supplier.

#### Hatchery Rationale

- Insure a reliable supply of oyster seed for the grow-out farms. Currently, all oyster seed is supplied by two hatcheries located outside the state, one in California and one in Washington state. If either hatchery loses its certification or has production problems, it could devastate the industry in Alaska.
- There is a concern that bringing large volumes of oyster seed into the state will increase the risk that a shellfish pathogen will slip through the detection net and be introduced into Alaska waters. An oyster hatchery in Alaska would significantly reduce the need for seed from outside the state.
- Currently there is no effort to culture clams or scallops in the state because it is too difficult to obtain clam or scallop seed. A hatchery in the state could provide a source for clam and scallop seed and allow shellfish farmers to begin taking advantage of the exceptional markets for both these species.
- Reseeding projects to restore clam beds destroyed by the Exxon Valdez oil spill will need an in-state hatchery to supply the seed stock.

#### Concept

- The Chugach Regional Resources Commission (CRRC), a Native consortium involved with natural resource development in the Chugach Native region, is proposing to oversee construction and operation of a shellfish hatchery located in Seward. This hatchery will be used to supply seed stock to shellfish farmers including those operations located in the Native villages in the region.

- The hatchery will be located in Seward on land provided by the University of Alaska, Institute of Marine Science. Seward has all the infrastructure necessary to support the hatchery. Both the Alaska Department of Fish & Game and the Alaska Shellfish Growers Association have endorsed Seward as a primary hatchery location.
- The hatchery will produce mainly oyster seed but will also develop seed stock for clam and scallop operations.

### Design

- The hatchery is being designed to produce between 10 million and 12 million oyster seed a year at full capacity plus a small amount of clam and scallop seed.
- Production strategy will be to have all seed ready for distribution to the grow-out farms in May and June of each year.
- It is estimated that it will take between three and five years for the hatchery to reach full capacity. If the hatchery is constructed in 1993, year to year increases in production capacity will parallel the increasing demand for oyster seed in the state. Demand will outstrip capacity by 1998.
- The hatchery building will encompass 20,000 square feet. About 10,000 ft.<sup>2</sup> will be used to house offices, wet lab/R&D setup, broodstock holding, the spawning area and the seed production area. The water treatment and distribution system and the algae production area will be located in the remaining 10,000 ft.<sup>2</sup>.
- Hatchery water supply will be saltwater with a salt concentration of at least 20 parts per thousand. Water source will be a combination of a deep water intake in Resurrection Bay and saltwater wells.

### Cost

- It is estimated that the hatchery will cost between \$1 million and \$1.3 million to design, construct and equip. Design and construction will take approximately one year to complete once funding has been obtained.
- The annual operating cost is estimated to run between \$300,000 and \$350,000.
- CRRC is searching for funding to construct the hatchery.
- CRRC will take responsibility for the operating costs.

scallop production not only to take advantage of additional markets, but to diversify the product base in order to help insulate the industry from problems that may develop with a particular species.

Currently, the lack of available seed stock is preventing farms in the state from producing clams and scallops. It is planned that the hatchery will initiate a program for producing clam and scallop seed stock. Significant production of clam and scallop seed will take several years to develop. Identifying wild stocks of clams and scallops in the state that are suitable for culture operations will take a lot of time. In addition, difficulties in culturing the commercially valuable weathervane scallop will need to be overcome. It is estimated that it will take five to seven years to achieve significant production of clam seed and perhaps longer for scallops.

The hatchery that is envisioned for Seward will require 20,000 ft.<sup>2</sup> of enclosed space. About 10,000 ft.<sup>2</sup> of this will house offices, the wet lab/R&D setup, broodstock holding, spawning and seed production areas. The remaining 10,000 ft.<sup>2</sup> will contain the water treatment and distribution system and algae production. Unlike salmon hatcheries shellfish hatcheries manufacture the food needed to produce the seed stock. Bivalve shellfish eat microalgae through their entire life cycle. These shellfish require great quantities of algae and the most practical way to obtain it in a hatchery situation is to grow it on site. Eight to ten 40,000 liter tanks will be needed to produce the amount of algae needed to grow the 10 to 12 million oyster seed to a size of 15 millimeters or greater. Both algae and the seed stock need saltwater with a salt concentration greater than 20 parts per thousand. Saltwater for the Seward hatchery will be obtained from a combination of a deepwater intake in Resurrection Bay and saltwater wells.

The hatchery will be in production for 10 months a year and be shut down for two months for maintenance and disinfection. The production strategy will be to produce maximum size seed for distribution to grow-out farms in May and June. This will be done by growing the seed in separate production cycles of up to 2 million seed per cycle. Seed reaching the desired size prior to the May - June distribution time will be placed on a maintenance diet and held in a relatively dormant state until it is time for them to be shipped to the grow-out farms.

It is estimated that the hatchery will cost between \$1 million and \$1.3 million to design, construct and equip. The annual operating cost is estimated to be between \$300,000 and \$350,000.

Although the hatchery is a very important part of Alaska's shellfish mariculture industry, the industry is not in a position at this time to underwrite construction and operating costs by itself. CRRC is in the process of putting a package together to cover design and construction. The oil spill restoration fund money is certainly a legitimate source for some of the construction funding. CRRC will also put together a package to underwrite operating costs up to the time the hatchery becomes self sufficient.

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4100

February 20, 1992

Mr. Richard A. Rolland  
Executive Director  
The North Pacific Rim  
3300 "C" Street  
Anchorage, AK 99503-3920

Dear Mr. Rolland:

Thank you for your letter of support to Governor Hickel for the department's proposed Mariculture Technical Center (MTC). You are aware that during this time of declining revenues and increased costs that not all capital requests will be funded. However, because this project will support a new and developing, primarily rural industry in Alaska, I am hopeful that it has a good chance for funding this year.

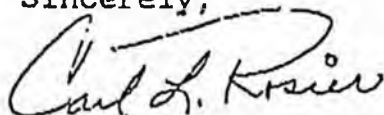
I compliment your organization on the commitment to build Alaska's first commercial shellfish hatchery. It is sorely needed, and is an essential step in the evolution of the industry. The MTC would add the needed extension of research and development of technology that could be applied directly to your endeavor. Aquatic farming has excellent potential to add to the economic base and diversity of the coastal Native communities in Alaska. Your efforts in developing that opportunity are outstanding.

Though a final site has not been selected, a list of sites with suitable physical and biological characteristics was developed by the department in consultation with the aquatic farm industry and University of Alaska staff. The Seward location was rated highly. Should the project be funded, that location will be one of the primary sites considered.

Please feel free to contact Jim Cochran, Division of Fisheries Rehabilitation, Enhancement and Development Mariculture Coordinator, at 465-4160, if you have further questions regarding the project proposal.

Thank you for your interest.

Sincerely,

  
Carl L. Rosier  
Commissioner

Mr. Richard A. Rolland

-2-

February 20, 1992

cc: Clem Tillion  
Commissioners ADF&G, DCRA, and DCED  
Jim Cochran, FRED  
Jeff Koenings, FRED  
Rodger Painter, ASGA

# STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

☐ 150 THIRD STREET  
JUNEAU, ALASKA 99801-1291  
PHONE: (907) 665-4700

☐ 949 E. 36TH AVENUE, SUITE 100  
ANCHORAGE, ALASKA 99508 4302  
PHONE: (907) 563-1073

March 9, 1992

Mr. Richard A. Rolland  
Executive Director  
The North Pacific Rim  
3300 "C" Street  
Anchorage, AK 99503-3920

RE: Capital Funds Request for Mariculture Center

Dear Richard:

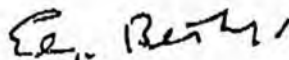
Thank you for your letter of February 11, 1992, requesting support for your funding request to establish a mariculture hatchery in conjunction with a mariculture technology center.

I fully support the development of a mariculture industry in Alaska; it's a natural for our maritime environment. I have brought this issue before the Rural Sub-Cabinet and I feel they are in support as well. Officials from the Department of Fish and Game have reported phenomenal growth in the shoreside mariculture industry and indicate this is only the beginning. I have assigned a staff task force to study the issue of permitting and recommend to the Sub-Cabinet ways to streamline and accelerate currently cumbersome permitting requirements.

The FY93 capital budget is due out early this week. I will review it closely for mariculture funds. At the same time, I caution you to note the severe fiscal crisis looming before the state. Oil revenues are much less than forecast and budget cuts are imminent. Discussions are currently underway to slice some \$200 M plus from the operating budget. Critics note that possibly some cuts should come from the capital budget as well. All this affects our ability to address development funding needs such as yours.

Please stay in close contact with this office as well as the Department of Fish and Game as the budget process works its way to the end. Thank you for your letter and concerns.

Sincerely,



Edgar Blatchford  
Commissioner

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4100

March 12, 1992

Mr. Richard A. Rolland  
Executive Director  
The North Pacific Rim  
3300 "C" Street  
Anchorage, AK 99503-3920

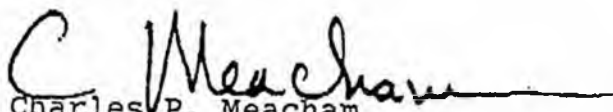
Dear Mr. Rolland:

Thank you for your February 11 letter to Commissioner Rosier that provides additional information on The North Pacific Rim's proposed shellfish hatchery. I also appreciate your continued cooperation and support for the department's Mariculture Technical Center funding request.

I agree that aquatic farming is an excellent opportunity for economic diversification in rural Alaska communities. The program you outline for development of the farms at Tatitlek as well as other communities you are involved with sounds exceptional. I want to assure you that you have my support in these endeavors; I offer my assistance and that of my staff in your efforts. It is a unique opportunity to have the state and private enterprise work together to achieve development of a new industry for Alaska.

Please keep me apprised of your progress and any assistance the department may be able to provide. Thank you for your continued interest and involvement.

Sincerely,



Charles P. Meacham  
Deputy Commissioner

cc: Clem Tillion, Governor's Special Assistant  
Jim Cochran  
Jeff Koenings  
John Nielsen, President, ASGA  
Rodger Painter, ASGA Special Projects

## Alaska State Legislature



Representative Eugene Kubina

Write in Session:  
P.O. Box V  
State Capital  
Juneau, Alaska 99811  
465-4809

P. O. Box 2463  
Valdez, Alaska 99586  
835-2695

February 20, 1992

Mr. Richard A. Rolland  
Executive Director  
The North Pacific Rim  
3300 "C" Street  
Anchorage, Alaska 99503-3920

Dear Dick:

Thank you for the letter on the Mariculture development taking place in Prince William Sound. I am aware of, and appreciate, all of the effort that the Chugach Regional Resources Commission is involved in with some of the villages in District 6.

We're all aware of the dramatic need for economic diversification throughout the region, and Mariculture seems to be a natural for serving this purpose. The success that the oyster culture test beds have shown in the last year implies that there may be great potential for long term employment if the projects are developed to their full potential. The fact that the villages of Tatiklek and Chenega Bay have the opportunity to be involved is encouraging to say the least.

I intend to include the request, for funding of the Mariculture projects outlined in your letter, in the annual capital improvement projects request as well as in the special restoration funds requests that we are currently preparing. In fact, I talked today to Max Hodel, the Governor's Chief of Staff on the subject. He agreed that this is one area where Exxon Valdez money can and should be used.

It was good to meet with you earlier this month. I hope to see you if you visit Juneau again during the session. Thank you again for all the encouraging information you have provided.

Sincerely,

*Eugene Kubina*  
Representative Eugene Kubina  
District 6

GK/rjl



Official Business

# Alaska State Legislature

SENATE

*Committee on Finance*P.O. Box V  
State Capitol  
Juneau, Alaska 99811

RECEIVED FEB 21 1992

February 13, 1992

Richard A. Rolland, Executive Director  
The North Pacific Rim  
3300 C Street  
Anchorage, AK 99503-3920

Dear Mr. Rolland:

I have received your February 11, letter concerning mariculture development. Please extend my congratulations to the villages of Chenega and Tatitlek for their success in oyster development.

I have noted your request for \$1 million in state funding for an oyster hatchery in Seward to be affiliated with the Institute of Marine Science. Also, I have noted your support of the Department of Fish and Game's \$1.8 million request for a mariculture research and development center.

Thank you for keeping me advised of your opinions on these matters.

Sincerely,



Jay Kerttula  
State Senator

JK:ms



RECEIVED FEB 21 1992

**REPRESENTATIVE LOREN LEMAN** West Anchorage

3111 C Street Anchorage, AK 99503 561-7614 During Session: P.O. Box V Juneau, AK 99811 465-2095

February 18, 1992

Mr. Richard A. Rolland  
Executive Director  
The North Pacific Rim  
3300 C St  
Anchorage AK 99503-3920

Dear Mr. Rolland:

RE: Mariculture Development in Prince William Sound

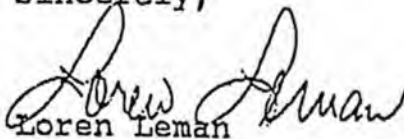
Thank you for your February 11 letter with supporting information regarding resource development in the Chugach Native Region. I applaud you for your aggressive efforts at establishing a promising new industry.

I support your efforts to fund new facilities. Your projects seem like classic examples for funding from the Exxon Valdez settlement.

You mentioned the development of oyster farms as a means for "replacing resources lost in the Exxon Valdez spill." I know that the spill resulted in substantial loss of birds, otters, seals and sea lions. However, what are the lost resources that oyster farming will replace?

I too enjoyed our brief conversation at the AFN reception. Thank you for stopping to chat with Joseph and me.

Sincerely,

  
Loren Lemman

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 2, 1992

Mr. Richard Rolland  
Executive Director  
The North Pacific Rim  
3300 C Street  
Anchorage, AK 99503-3920

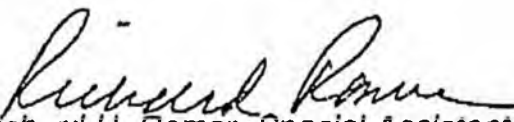
Dear Mr. Roland:

*This is to acknowledge your letters to myself and Governor Hickel, both dated February 11, 1992, regarding your organizations mariculture project.*

*The project appears to show enormous potential for economic development and job opportunities for your communities and region. We are pleased that you are taking the initiative and have the foresight to create the opportunities for local residents. These are the types of projects the Governor likes to see because they have a direct positive impact on the people and their communities.*

*Please feel free to call or visit next time you are in Juneau.*

Sincerely,

  
Richard H. Romer, Special Assistant  
for Rural Affairs

cc/enc: Commissioner Edgar Blatchford, DCRA  
Shelby Stastny, Director, OMB  
Paul Fuhs, Legislative Liaison

bcc/enc: Jackie Brown

**ALASKA DEPARTMENT OF FISH AND GAME**  
**DIVISION OF**  
**FISHERIES, REHABILITATION, ENHANCEMENT AND DEVELOPMENT**



**REPORT**  
**on**  
**AQUATIC FARMING ACTIVITIES**  
**in 1991**

**JUNEAU, ALASKA**  
**JANUARY, 1992**

Prepared by:

James O. Cochran, Mariculture Coordinator

Jeffery P. Koenings, Ph.D., Director

## THE MARICULTURE PROGRAM

### Background

The Aquatic Farm Act (Section 19, Chapter 145, SLA 1988) was signed into law on June 8, 1988, authorizing the Commissioner of ADF&G to issue permits for the construction or operation of aquatic farms, and hatcheries to supply aquatic plants or shellfish to aquatic farms. The intent of the program was to create an industry in the state that would contribute to the state's economy and strengthen the competitiveness of Alaska seafood in the world marketplace, broadening the diversity of products and providing year-round supplies of premium quality seafood. The law limited aquatic farming to shellfish and aquatic plants. In 1990 CSHB 432 became law, prohibiting farming of finfish in the state.

Regulations to administer the aquatic farm program were developed by the resource agencies during 1988 and 1989. The Department of Natural Resources (DNR) divided coastal Alaska into eleven districts. The law required that each district be opened annually for 60 days for farm site application. Permits for farm or hatchery sites not located on state land may be applied for at any time.

The ADF&G, FRED Division Mariculture Program, in cooperation with the department's fisheries management and Habitat Divisions, carries out the statutory and regulatory responsibilities of the department pertaining to aquatic farming in Alaska.

The Mariculture Program responsibilities include:

- in cooperation with ADF&G Habitat Division, coordination of the permitting process for aquatic farms and hatcheries
- review of aquatic farm and hatchery permit applications for site suitability and technical and operational feasibility
- issuing and administering the department aquatic farm and hatchery permits
- interdivisional coordination of the aquatic farm program
- administration and coordination of aquatic stock acquisition permits for the purpose of supplying brood stock and seed stock to aquatic farms and hatcheries
- administration and coordination of the shellfish and aquatic plant transport permit system
- administration and coordination of research permits for aquatic farming and hatchery activities
- provide technical assistance to other divisions, agencies and the public sector

- coordinate aquatic farming and hatchery research activities statewide

### Program Implementation

The FRED Division Mariculture program continued to evolve in 1991. Budget constraints eliminated the research program and reduced technical assistance provided to the industry. The administrative work load associated with the large number of permittees continued to grow.

Considerable interaction with the other resource agencies, including the Department of Environmental Conservation (DEC), DNR, Division of Governmental Coordination (DGC) and Federal agencies was required to review and revise the permitting process and insure coordination of effort. The Interagency Mariculture Workgroup (IAMWG) ceased to formally exist with the change of administration. An informal group of agency representatives met several times to review and revise the aquatic farm permit application form and to discuss applications. FRED Division and Habitat Division continued to coordinate the farm permitting process. FRED Division coordinated the overall department program, reviewed permit applications, and issued aquatic farm permits. Habitat Division coordinated the department Alaska Coastal Management Program (ACMP) and statutory review, providing that information to DGC.

Permitting and administration responsibilities for aquatic stock acquisition, shellfish and aquatic plant transport and Scientific or Educational Permits were administered. One clerical position was assigned to the program to assist with administrative functions.

Forty eight aquatic farm permit applications were received and processed this year. Thirty one farm operation permits were issued. Three permits were closed at the request of the respective permittees. Scientific/educational (research) and acquisition/transport permit applications were at levels consistent with the number of permitted farms (table 11.1) and are expected to increase again in 1992, reflecting the increase in active farms.

A statewide opening of all aquatic farm districts is again scheduled for March/April, 1992.

The division proposed a Mariculture Technical Center (MTC) for inclusion in the Governor's capital projects budget for fiscal year 1993. The Commissioner supported the request and prioritized it in the top 1/3 of projects submitted by the ADF&G to the Governor for consideration. If funded, the MTC would be a central facility providing assistance to the industry through practical research and development, providing indigenous seed stocks not available from commercial sources, and space for private mariculture development projects. The Alaskan Shellfish Grower's Association (ASGA) voted unanimous support of the project and elected sub-committees to work with the department during project development. A committee composed of the FRED Division Mariculture Coordinator and University of Alaska staff met to initiate the site selection process. Considering only technical criteria, locations were ranked according to physical and biological variables that would not compromise facility operations for any species of potential value to the industry. Two locations, Seward and Juneau, were determined to

meet the criteria defined. Other sites (Sitka, Seldovia area) were determined to have features that would compromise the facility. Two sites, Kodiak and Yakutat, could not be evaluated because of insufficient information. A conceptual design and detailed cost estimate were prepared. Further work on the project was deferred awaiting a determination on facility funding.

### Aquatic Farm Operations

1991 was a pivotal year for the aquatic farm industry in Alaska. With the implementation of the Aquatic Farm Act, farmers could acquire a farm site permit from DNR that was a property right revokable only for breach of permit conditions. The initial permit is for a three year period, during which the permittee must attain goals agreed upon in the farm's development plan. Once the goals are attained the permittee may apply for a ten-year lease which is assignable. This added stability to the industry and should provide some remuneration for the effort and investment of developing a farm site. A number of farms reached their development plan goals in 1991. The first applications for conversion of DNR permits to leases are expected in 1992.

Aquatic farmers aggressively pursued operations in 1991, even though the Southcentral permits were issued late in the spring. Thirty seven of the 56 permitted farms reported inventory in the water at the end of 1991 (table 11.2). At market size, this inventory was valued at over \$2.7 million. Aquatic farm sales for 1991 were again slightly less than \$100,000. Production was dominated by oysters, with a small amount of mussels produced in southcentral Alaska. This was expected because no new farms had received permits by beginning of the growing season and the existing farms had taken a conservative approach to seed purchases and acquisition in 1989 and 1990.

Southeast farmers received an average of \$0.28/oyster, up slightly from the \$0.27 received in 1990. The Southcentral value was, as last year, higher at \$0.42/oyster. This was down from \$0.48 in 1990. The average price received for mussels was \$1.73/lb. The amount of product sold was small, though, and probably does not reflect the price farmers are likely to receive for mussels as production increases. One farmer harvested wild, adult mussels and cycled them through his farm for periods of several weeks to a few months. Though legally definable as farm product, this "semi-farmed" product represented a quality question for the industry. For purposes of blue mussel value projections, \$1.50/lb seemed attainable. (table 11.2) All prices were based upon landed value at the farms and did not take into account production or transportation costs.

A growing facet of the aquatic farm industry was employment opportunities provided by farm operations. Excluding owner-operators and non-resident managers or consultants, 94 individuals were employed by the farm industry this year, working over 3600 person-days (table 11.2). No figures for jobs in the processing sector were available.

### Industry Projections

Though 1991 production was low, the end of year inventory of farm product was

encouraging. Over 5.5 million oyster spat were purchased by Alaskan farmers. Production was regional in nature, attributable to successes of farms within the regions. The picture will change in 1992, though, primarily due to active native corporation farms in Southcentral. Southeast Alaska will cease to be the state's largest producer of farmed shellfish. Oysters available from the farms should increase significantly, statewide. Mussel production is not expected to increase. No other species of shellfish or aquatic plants will contribute to farm sales.

Large-scale aquatic farm industry development was again constrained in 1991 by the lack of government assistance (loan funds, grants, etc.) and the general lack of loans or other sources of investment capital from the private sector. Out-of-state businesses did not show interest in investing in the industry this year. This is almost certain to change. Nationwide, shellfish production is constrained by pollution and competition for limited coastal resources. The major eastern U.S. production areas, such as Chesapeake Bay, have ceased to be a major factor in shellfish production. For the first time, Washington state became the largest oyster producer in the United States. There, increasing effects of pollution, upland development and user conflicts are occurring and will limit growth of the industry. Washington has approximately half the number of permitted aquatic farms that Alaska has, though they are larger. British Columbia's industry is growing, receiving considerable support from the public sector. Alaska, with its clean waters and large amount of protected coastline, has immense potential of becoming a major aquatic farming area. Investment capital, the logistics of producing and selling product, and lack of a vertically integrated industry are major constraints that will have to be addressed before this can occur.

A major component lacking in Alaska is a hatchery industry to provide a dependable supply of seed to aquatic farms. No shellfish or aquatic plant hatcheries exist in-state. All oyster seed must be imported from Washington. Collection of indigenous stock seed is susceptible to the vagaries of nature. To help address this problem, the North Pacific Rim, representing native people in the southcentral Alaska area, committed to construction of an oyster hatchery in Seward. This facility is intended primarily to produce seed for native-owned farms in the area. If funded, the MTC will also help provide a consistent supply of shellfish and, possibly, aquatic plant seed until other commercial hatcheries come on-line.

The benefits of aquatic farming as a source of income and economic stability is of interest to a number of rural Alaskan communities. In 1991 development and site suitability research was conducted near Angoon in Southeast and Chenega Bay in Southcentral. Active farms were being operated by the Klawock Heenya Corporation and Yak-Tat Kwaan in Southeast, and the Tatitlek Native Corporation in Southcentral. Considerable interest in aquatic farming was shown by villages on Kodiak Island, Prince William Sound and the Kenai Peninsula. Even the educational community was involved, with Petersburg High School operating a for-profit farm.

Table 11.1. 1991 Aquatic Farm Program Permit data.

	Southeast Districts	Southcentral Districts	TOTAL
<u>OPERATIONS</u>			
Permit applications	10 <sup>1)</sup>	38	48
Permits issued	2	29	31
Permits withdrawn	2	1	3
Permits pending or still in process	6	19	25
Permitted farms as of 12/31/91	26	30	56
Farms operating in 1991 that reported inventory	20	17	37
Farms in certified growing areas <sup>2)</sup>	17	22	39
<u>RESEARCH</u>			
No. permit applications received	5	4	9
Permits issued	4	2	6
Permits pending	0	1	1
<u>SHELLFISH AND AQUATIC PLANT ACQUISITION/TRANSPORT</u>			
Permit applications received	39	68	107
Permits issued	33	64	97
Permits pending	6	1	7

1) Includes 3 applications for significant permit amendments

2) More than one farm may be located in a growing area as defined by the Department of Environmental Conservation

Table 11.2. 1991 Aquatic Farm Operations Data.

	<u>Southeast Districts</u>	<u>Southcentral Districts</u>	<u>TOTAL</u>
<b><u>SALES</u></b>			
Oysters (ind.)	160,376 <sup>1)</sup>	61,380	221,756
Value \$44,440	\$25,780	\$70,220	
Mussels (lbs)	0	17,076	17,076
Value \$0	\$29,628	\$29,628	
	Total Aquatic Farm Sales		\$99,848
<b><u>END OF YEAR INVENTORY</u></b>			
Oysters (ind.)	4,933,600 <sup>2)</sup>	2,849,655 <sup>1)</sup>	7,783,255
Value (\$0.35/ind)	\$1,726,760	\$997,379	\$2,724,139
Mussels (lbs)	3,600	45,800	49,400
Value (\$1.50/lb)	\$5,400	\$64,566	\$69,966
	Total Aquatic Farm Inventory Value		\$2,794,105
<b><u>EMPLOYMENT SUMMARY</u></b>			
No. employees	31 <sup>3)</sup>	63 <sup>3)</sup>	94
Days worked	1,921	1,700	3,621
No. volunteers	16 <sup>4)</sup>	0	16
Days worked	55	0	55

1) One active farm did not report production data in 1991. 1990 information used to extrapolate estimate in this table.

2) One active farm did not report end of year inventory.

3) Does not include farm owner or non/resident manager

4) Includes participants at school owned site

**ALASKA  
SEALIFE CENTER**

**\$600,000**

CITY OF SEWARD  
CAPITAL PROJECT ASSISTANCE 1992

CATEGORY - ECONOMIC DEVELOPMENT

PROJECT TITLE: ALASKA SEALIFE CENTER

PROJECT COST: EXCESS OF \$40,000,000

ANNUAL O & M COST: \$4,000,000 TO \$5,000,000

DESCRIPTION:

The Center will consist of a world-class, state-of-the-art research, rehabilitation and public viewing facility that will be a national and international destination point. It will be located on the south shoreline of Seward's downtown business district, south of Railway Avenue between Third and Fifth Avenues and adjacent to the University of Alaska Institute of Marine Science. The area will be developed into a park like setting, with promenades and pedestrian amenities connecting buildings, pools and other facilities.

IUSTIFICATION:

Seven species of marine life, including four animals and three birds that live in the subarctic area adjacent to the Alaskan coastline are classified as threatened. If any of these species are classified as endangered, severe restrictions will be enforced in the area where they reside and upon their natural food, which includes salmonoid and bottom fish. Such restrictions could have a disastrous effect on the economy of Alaska, especially coastal fishing and tourist communities. The center will have a primary mission to research the endangered species and develop solutions to halt their alleged decline. Public education and rehabilitation of stranded, injured or sick animals, whether from natural or environmental disasters, will be equally important functions.

No similar facility that includes all three areas - research, education and rehabilitation exists or is planned in the world. The facility will have a profound economic impact on Alaska. Research projects are anticipated to draw \$10 to \$12 million of research funds and employ 60 to 70 scientists year around. Basic seasonal employment at the facility will be 200 to 400 new jobs. It is estimated 400,000 tourists will visit the facility annually.

OPERATING COST: Estimated to be 4.5 to 5 million dollars per year.

<u>SOURCE OF FUNDING:</u>	Local (Inkind and cash)	\$ 2,000,000
	Private Contributions	150,000
	State (Oil Spill Settlement fund)	<u>\$40,000,000</u>

CONTACT: Darryl Schaefermeyer  
City Manager  
224-3331

The Honorable Walter Hickel  
Governor of Alaska  
February 1, 1991  
Page 2

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premiere center for Arctic marine mammal research. However, the AMMC is needed to achieve this goal.

Another area of concern is the lack of facilities within the state capable of rehabilitating injured or ailing marine mammals. At the present time, they are transported to sites outside the state, at great expense and at increased risk to the animal, for rehabilitation. The AMMC would provide state of the art care in the animals' natural environment as well as additional information to the research arm of the AMMC.

Exxon operated a temporary marine mammal rescue center in Seward during the oil spill. They invested over \$8 million in that facility. Ironically, it is now dismantled and would have to be totally rebuilt in the event of another spill. The AMMC project would take care of that eventuality.

Static displays and viewing areas will be incorporated into the design of the facility to give tourists and Alaskans alike the opportunity to see and learn about our marine mammal life. Our natural curiosity about seals, sea otters, and other marine life will make the AMMC a popular attraction for adults and children alike throughout the year. We foresee a time when school children from throughout southcentral Alaska will make annual trips to Seward as part of their school's science program.

Once the Alaska Marine Mammal Center is built we plan to cover operating costs from operating revenues.

The Alaska Marine Mammal Center is not just a dream. The local community has contributed in excess of \$20,000 to the project. By resolution, the Seward City Council has officially dedicated waterfront property as a site for the facility and has appropriated \$10,000 to assist SAAMS during its initial organizational phase. So far, we have about \$50,000 additional in donated scientific, engineering and legal services. Considering the value of our land, we have a million dollar head start on making the AMMC a reality. We will be meeting with representatives of Cambridge Seven, an internationally recognized design firm, next week to begin development of a site plan and conceptual drawings. We will provide you a set as soon as they are ready.

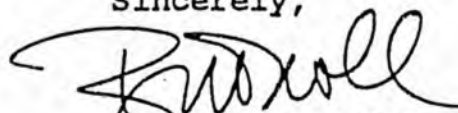
The groundwork for the Alaska Marine Mammal Center has been laid. The need for the AMMC has been justified by the scientists. Funds are now needed to complete design work and to begin construction. I urge you to keep this project in mind during your discussions with Exxon and as you deliberate on the use of

The Honorable Walter Hickel  
Governor of Alaska  
February 1, 1991  
Page 3

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settlement funds for excellent Alaskan projects. We would be most happy to meet with you or with representatives of Exxon to further discuss this project. Thank you very much for your consideration.

Sincerely,



William C. Noll  
Mayor of Seward

Enclosures: Letters of Support

cc: Senator Kerttula  
Senator Menard  
Representative Kubina  
Deputy Chief of Staff Roberts  
Municipal Liaison Overstreet  
OMB Director Stasny  
OMB Budget Review Director Fresca  
Commissioner Blatchford

-1- Linnell, JTT/LS  
CS 4/12/90



OREGON STATE UNIVERSITY  
2030 S. Marine Science Drive · Newport, Oregon 97365 · 5296  
Telephone 503·867·0100 Fax 503·867·0138  
Bitnet HMSC@ORSTATE.BITNET

September 5, 1990

Mayor William Noll  
Seward Assoc. for the Advancement  
of Marine Science  
P.O. Box 730  
Seward, AK 99664

Dear Mayor Noll:

I am writing you at the request of Dr. Michael Castellini of the University of Alaska, Fairbanks who advised me that you are endeavoring to obtain information from the scientific community of interest in the proposed construction of a marine mammal center in Seward.

There are few opportunities where people can view marine mammals endemic to the Alaska region and even less where scientists might have access to these animals for non-lethal studies. I would personally favor seeing such a facility available to University of Alaska and researchers throughout the world to conduct studies of importance for a better understanding of these animals. Many such studies are important for continued conservation of these animals.

I have been active in marine mammal research for over 20 years and can assure you that such a facility would be used by many responsible scientists.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Bruce R. Mate'.

Bruce R. Mate, Ph. D.  
Associate Professor  
Oceanography

BRM:vb



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
1335 East-West Highway  
Silver Spring, MD 20910  
OFFICE OF THE DIRECTOR

JUL 24 1990

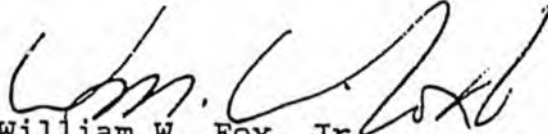
Dr. A. J. Paul  
University of Alaska Fairbanks  
School of Fisheries and Ocean Sciences  
Seward, Alaska 99664

Dear Dr. Paul:

Thank you for your letter regarding my reply to Senator Ted Stevens about the feasibility of establishing a new marine mammal research center in Seward.

I continue to believe that Alaska's Institute of Marine Science conducts valuable marine mammal research at its Seward Marine Center, and Seward may be the appropriate location to conduct long-term studies on resident populations of marine mammals.

Sincerely,

  
William W. Fox, Jr.

THE ASSISTANT ADMINISTRATOR  
FOR FISHERIES



UNIVERSITY OF CALIFORNIA, SAN DIEGO

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



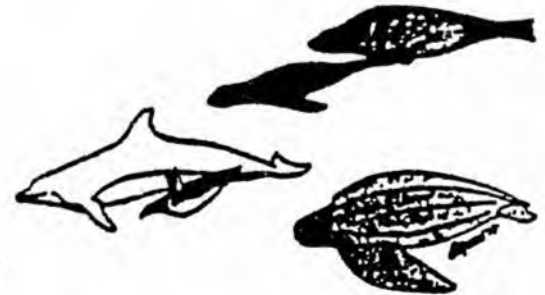
SANTA BARBARA • SANTA CRUZ

SCRIPPS INSTITUTION OF OCEANOGRAPHY  
PHYSIOLOGICAL RESEARCH LABORATORY  
SCHOLANDER HALL A-004

LA JOLLA, CALIFORNIA 92093-0204

July 24, 1990

Mayor William Noll  
Seward Association for the Advancement  
of Marine Science  
P.O. Box 730  
Seward, Alaska 99664



Dear Mayor Noel:

On my recent visit to Seward and your offices with Dr. M. Castellini, I was very impressed with the potential facilities there. I hope your plans for establishing a marine mammal center are realized. There is no doubt in my mind that if such a facility, in its key location, were available that myself and my colleagues would be anxious to use it in the course of our ongoing research on the behavior and physiology of birds and mammals. Therefore, if there is any assistance I can give you or Dr. Castellini in this endeavor, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "G. L. Kocyan".

Gerald L. Kocyan, Ph.D.

GLK:pf

cc: M. Castellini



# United States Department of the Interior



## NATIONAL PARK SERVICE

IN REPLY REFER TO

ALASKA REGIONAL OFFICE  
2525 Gambell Street, Room 107  
Anchorage, Alaska 99503-2892

N2219 (KEFJ)

05 JUN 1990

Dr. A. J. Paul  
P.O. Box 1197  
Seward, Alaska 99664

Dear Dr. Paul:

Thank you for your letter of May 1 requesting our support for the proposed Marine Mammal Center in Seward. We agree that Seward seems to be an ideal place for such a center and that the time for a project of this nature is ripe. Such a center could add vital dimensions to the knowledge and protection of sea mammals and benefit many parties, especially our sister agency, the Fish and Wildlife Service. They have the primary responsibility for the protection and management of sea mammals.

I have enclosed a copy of a letter to Mayor Bill Noll from Kenai Fjords Superintendent Anne Castellina regarding the center. I have also asked Ms. Castellina to contact her counterpart at Alaska Maritime National Wildlife Refuge and let him know of this project. She will contact you as events progress.

Good luck with your efforts to establish this important scientific and educational facility.

Sincerely,

Paul F. Haertel

Acting Regional Director

Enclosure



TEXAS A&M UNIVERSITY AT GALVESTON

Marine Mammal Research Program  
Department of Marine Biology  
P.O. Box 1675  
Galveston, TX 77553-1675

Director: (409)740-4413  
Technician: 740-4420  
Students: 740-4425  
FAX: 762-8276

July 24, 1990

Mayor William McIl  
Seward Association for the Advancement of Marine Science  
P.O. Box 730  
Seward, AK  
99664

Dear Mr Mayor

I am an Assistant Professor of Marine Mammalogy at Texas A&M University at Galveston and have been active in marine mammal research for 11 years. I am writing in support of the proposal to build a marine research facility in your city. I think that such a facility would be incredibly useful from both the research perspective and public education. I have only recently moved to Texas from California, where I was located at the University of California at Santa Cruz, and previous to that was at the University of Guelph, in Canada. Both of these facilities had the capability of holding captive marine mammals and I am now in the position of attempting to create a research program without that capability for the first time. I dearly miss it. The capability to hold marine mammals in captivity, even for short periods of time, allows us to learn things about their biology that we could never learn in the wild state. This knowledge will expand our capabilities for the better protection of endangered species as well as possibly preventing other species from becoming threatened. I enthusiastically support the development of a facility in Seward and would very much like the opportunity to make use of those facilities at some time in the future.

Sincerely yours

*Graham A.J. Worthy*  
Graham A.J. Worthy  
Assistant Professor of Marine Mammalogy



# United States Department of the Interior

CB/S/24/90

## NATIONAL PARK SERVICE

Kenai Fjords National Park

1212 Fourth Avenue

Post Office Box 1727

Seward, Alaska 99664

IN REPLY REFER TO:

N2219

May 23, 1990

William C. Noll  
Mayor, City of Seward  
P.O. Box 167  
Seward, AK 99664

Dear Mayor Noll,

Kenai Fjords National Park would like to take this opportunity to offer its support for the proposed Seward Marine Mammal Center outlined in your May 10, 1990 letter. The goals of scientific research, public education, and rehabilitative services for distressed or injured mammals are consistent with Kenai Fjords' Congressional mandate to:

"...maintain unimpaired the scenic and environmental integrity of the...coastal fjords and islands in their natural state; and to protect seals, sea lions, other marine mammals, and marine and other birds, and to maintain their hauling and breeding areas in their natural state..."

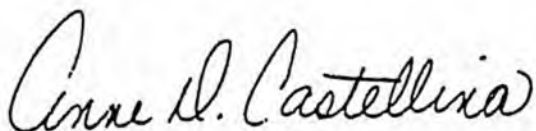
Recognition by Congress of this area's outstanding natural environment, diverse ecosystems, and abundant wildlife led to the establishment of the park in 1980. Since then the park has worked to study, protect and interpret the living laboratory of change characterized by the 580,000 acres within the park boundaries.

Over the past ten years we have become increasingly concerned by the as yet unexplained decline in seal and sea lion populations, the long term effects on marine mammals of oil spills and other pollution, and the possible adverse effects of increasing numbers of visitors and commercial operators in the fjords. These, and other areas of concern, deserve study. The National Park Service in Alaska is currently engaged in strengthening and expanding its efforts in resource management. The "Alaska Science Initiative" was endorsed by Congress and partially funded in 1990 and shows promise of receiving additional funding in 1991 and beyond. Kenai Fjords will benefit from this initiative with the addition of several resource management specialists. Their ability to interact with scientists at a Marine Mammal Center such as the one proposed would greatly enhance their work. Park interpreters involved in environmental education programs would also reap the benefits from the Center as would the community of Seward and the larger worldwide scientific community.

The City of Seward, Kenai Fjords National Park, the Alaska Maritime National Wildlife Refuge, and the Institute of Marine Science, Seward Marine Center would all gain from the establishment of a Marine Mammal Center in Seward as would the growing number of visitors and schoolchildren to this area. Seward offers a unique location for this facility. The study subjects are here in abundance and easily accessible. Federal and State agencies concerned and mandated to protect the marine mammals are already based in Seward. There cannot be many other areas in Alaska (if any) where all of these factors mesh as well as they do here.

We look forward to working with you and the Seward Association for the Advancement of Marine Science (SAAMS) as your objectives and plans continue to expand and clarify.

Sincerely,

A handwritten signature in cursive script that reads "Anne D. Castellina". The signature is written in dark ink and is positioned above the typed name and title.

Anne D. Castellina  
Superintendent.



# UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive  
Anchorage, Alaska 99508

July 26, 1990

OFFICE OF THE CHANCELLOR

Mayor Bill Noll  
City of Seward  
PO Box 1789  
Seward AK 99664

Dear Mayor Noll:

I was pleased to learn of your proposal to establish a marine mammal study center in Seward. Such a center, incorporating research and public education, would be of great value to Alaska and to other parts of the circumpolar north.

The future of our ecosystems which support our natural resources is dependent upon an accurately informed citizenry. This requires education based upon up-to-date information generated by scientists on the cutting edge of their fields. Marine ecosystems will be under increasing pressure as oceans are increasingly utilized for food, minerals and sources of transport. Due to the positions they occupy in food webs, marine mammals are important indicator species for the health of these ecosystems. Thus the importance of increased knowledge of these animals is clear.

A marine mammal center in Seward would attract productive scientists from other states and nations, as well as Alaska. It would be of great value to the University of Alaska in pursuing research and public service activities. From the standpoint of the University of Alaska Anchorage (UAA), such a center would provide opportunities for faculty and graduate student research in physiology, morphology, ecology, etc. Basic research opportunities would transcend the interests of marine scientists, and include those focused on human health. This would include UAA and UAF scientists in the Washington-Alaska-Montana-Idaho (WAMI) medical program and in the Alaska-Siberia Medical Research Program. All of these endeavors should combine to bring increased federal and private foundation funding to Alaska for high priority needs.


The educational value of a marine mammal center would range from formal college course work for credit to a broad array of short courses, seminars, conferences, and other programs for a variety of publics. The UAA College of Continuing Education could be invaluable in helping to plan and implement a broad program of public education for the proposed center.

UNIVERSITY OF ALASKA ANCHORAGE  
Office of the Chancellor

Mayor Bill Noll  
Page 2  
July 26, 1990

In summary, I envision many significant advances in research and education that could flow from a marine mammal study center in Seward. These advances would be of great value to Alaska, the nation, the northern Pacific Rim nations, and the circumpolar north. Accordingly, I commend you for your vision and initiative in proposing this center, and pledge the support of UAA in assisting you to make it a reality.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald F. Behrend".

Donald F. Behrend  
Chancellor

DFB:sr

CHENEGA BAY, ALASKA  
A PLAN FOR THE SITE RESTORATION OF THE ABANDONED CANNERY

December 10, 1990

This study and report will present a demolition plan and a project budget for the removal of the abandoned fish processing plant which presently exists at Chenega Bay, Alaska.

SUMMARY:

1. The project can be accomplished without overly severe environmental regulatory complication or prohibitive cost penalty resulting from the regulations.
2. Project budget in 1991 dollars is \$535,000.

GENERAL INFORMATION:

Chenega Bay is located on Evans Island in Prince William Sound, Alaska, on the shore of a small cove formerly known as Crab Bay. It's coordinates are

Latitude: 60°04'N  
Longitude: 148°02'W

The abandoned fish processing plant at this location is reported to have been constructed about 1930 although the machinery it contains and the style of construction would indicate it to be ten years older. It operated as the Chatham Stuart Fish Company until about 1956. It operated spasmodically after that depending on the fish run until 1960 and has not operated since then. Nor has it been maintained. The original construction utilized locally cut and milled spruce insofar as practical. During the past several years much of the useable lumber has been salvaged leaving the plant open to the full force of the weather. The remaining structure is full of dry rot and is in the process of collapsing. Most of the operating machinery was left in the plant and is useless for anything but scrap iron. A substantial amount of this machinery and its' attendant piping is supported off the floor by rotting wood. The installed machinery included a steam boiler and a quantity of steam piping which was insulated with asbestos/plaster wrapped with muslin cloth in the style of the time. Only a few scattered remnants of this insulation remain - the rest having weathered off the pipe, fallen to the floor, and been washed away by rain and snow.

**FAXED**  
4-2-92

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**MT. MARATHON NATIVE ASSOCIATION**

**Facsimile Cover Sheet**

**To: Representative Kubina**  
**Company: Alaska. State Legislature**  
**Phone: 465-4859**  
**Fax: 465-2287**

**From: Ken Blatchford, President**

**Company: Mt. Marathon Native Association**  
**Phone: 224-3118**  
**Fax: 224-5874**

**Date: 04/02/92**

**Pages including this  
cover page: - 1**

**Comments:**

Dear Representative Kubina:

I am writing to support the inclusion of \$800,000 in HB 411 to support the development of the Chugach Regional Resources Committee OYSTER SPAT HATCHERY. The Chugach Regional Resources Committee of which Mt. Marathon is a member, has been very successful in the development of the Oyster industry in Prince William Sound. An Oyster Spat Hatchery built by CRRC in cooperation with the Alaska Shellfish Growers Association the ADF&G FRED division and others will have a powerful influence on the success of the Oyster industry in Alaska. If you need any technical information you can contact Dave Daisy at the CRRC office in Anchorage. His number is 586-4155.

Thank you for your support of this Important matter.

*Ken Blatchford*

CHENEGA BAY I. R. A. COUNCIL

U R G E N T

April 3, 1992

via TELECOPIER and FIRST CLASS MAIL

Representative Eugene Kubina  
ALASKA STATE LEGISLATURE  
Post Office Box V  
Juneau, Alaska 99811

APR 10 1992

RE: HB 411

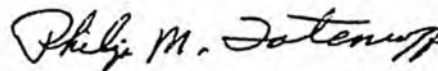
Dear Gene:

We strongly support the CHUGACH REGIONAL RESOURCE COMMISSION'S request for \$800,000.00 to build an oyster spat hatchery. We strongly urge and request that you provide support for House Bill 411.

Please keep us informed as to the progress on this bill. Thanking you in advance for your assistance.

Sincerely,

CHENEGA BAY I.R.A. COUNCIL



Philip M. Totemoff, President

ariculture.kubina.ltr/1



P.O. Box 705  
Cordova, AK 99574  
(907) 424-5800 FAX: (907) 424-5820

FOR IMMEDIATE RELEASE

APR 20 1992

April 15, 1992

The Prince William Sound Science Center was awarded a major competitive grant in March from the M.J. Murdock Charitable Trust of Vancouver, Washington. The three-year \$300,000 award will provide start-up support for the Center's operation. This funding has allowed Dr. Gary Thomas to assume a full-time position as Director and establish Cordova residence on April 1.

"The M.J. Murdock Charitable Trust recognizes the importance of developing a self-supporting research organization in this region that will provide critical resource information and encourage local participation in natural resource stewardship," said Dr. Thomas. "The Science Center is promoting an ecosystem monitoring and research program that will give resource managers and users better information to consider in balancing the continuing pressures of development with the need to maintain a healthy ecosystem."

This is the second major grant the Science Center has received from national foundations. In late 1990, the Pew Charitable Trusts, of Philadelphia, Pennsylvania, awarded the Center \$120,000 over two years to organize workshops on critical resource management issues.

The Science Center was established in 1989, shortly after the EXXON VALDEZ oil spill. A non-profit research organization, its purpose is to conduct research and ecosystem monitoring to improve

monies in the testing of promising concepts and in the launching of well-thought out programs which have the potential to thrive beyond the stage of initial funding.

In 1990, the M.J. Murdock Charitable Trust provided monies to support the initial phase of a geographic information system (GIS) project for the Greater Prince William Sound region. The GIS program was initially based in Anchorage but the Science Center is looking for cooperators to move this computer facility to Cordova this summer.

The Trust also supported the publication in 1991 of a 16-page document with color maps presenting an initial overview of the Greater Prince William Sound region's ecosystems. Titled Prince William Sound/Copper River/North Gulf Ecosystem, it examines the physical and biological resources, as well as the role of human activities in relation to the resources of the region.

Other accomplishments of the Science Center include the hosting of two workshops, one in 1990 on the long-term research needs for the region, and the second in 1991 on the interactions of natural and enhanced stocks of salmon in Alaska. In addition to the ecosystem overview document, Center publications include: Research for the 1990's in Prince William Sound and the Copper River Delta, and Biological Interactions of Natural and Enhanced Stocks of Salmon in Alaska - Interim Report from the Cordova Workshop. November 10-15, 1991.

In the education field, the Science Center in 1990 helped

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

May 10, 1992

**SUBJECT:** HB 411: Appropriation for the commercial fisheries development endowment (SCS CSHB 411(RES))

**TO:** Representative Mike Navarre

**FROM:** George Utermohle, *GU*  
Legislative Counsel

You have asked what are the consequences of funding the commercial fisheries development endowment from the remedial and compensatory payments received by the state as the result of the criminal plea agreement in the federal case against the Exxon Corporation and its subsidiary.

The remedial and compensatory payments received by the state as the consequence of the plea agreement between the United States and Exxon Corporation and one of its subsidiaries may be expended by the state for only certain purposes. Those purposes are set out in the restitution order issued by the federal district court. According to the order, the State may use the restitutionary payment "exclusively for restoration projects, within the State of Alaska, relating to the "Exxon Valdez" oil spill. Restoration includes restoration, replacement, and enhancement of affected resources; acquisition of equivalent resources and services; and long-term environmental monitoring and research programs directed to the prevention, containment, cleanup, and amelioration of oil spills."<sup>1/</sup>

Under the terms of the order of restitution, restoration projects include those projects that would promote the restoration, replacement, and enhancement of affected resources (including fishery resources) and services provided by those resources. Use of the remedial and compensatory payments to support commercial fisheries

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<sup>1/</sup> Judgment, United States of America v. Exxon Corporation, United States District Court, District of Alaska, Case No. A90-015 CR, p. 4.

Judgment, United States of America v. Exxon Shipping Company, United States District Court, District of Alaska, Case No. A90-015 CR, p. 4.

Representative Mike Navarre  
May 10, 1992  
Page 2

development in the oil spill affected area would fall within the purposes for which the payments were intended.

The intended recipient of the earnings of the commercial fisheries development endowment is the Alaska Fisheries Development Foundation (AFDF). Many of the successful projects that the AFDF has undertaken in the past would be consistent with the purposes of the remedial and compensatory payments as set out by the federal district court. However, as the consequence of funding the commercial fisheries development endowment from the remedial and compensatory payments, in the future the AFDF must be sure that any projects it undertakes with earnings received from the endowment are consistent with the purposes for which the payments were made to the state. In particular, the AFDF must determine that any such projects it undertakes are related to the restoration, replacement, and enhancement of resources affected by the Exxon Valdez oil spill, to acquisition of resources and resource services that are equivalent to those affected by the Exxon Valdez oil spill, or to long-term environmental monitoring and research directed to the prevention, containment, and amelioration of oil spills. Commercial fisheries development projects outside the spill affected area or involving resources that were not affected by the oil spill must be reviewed especially carefully to determine whether the projects may be funded through monies derived from the remedial and restitutionary payments.

In view of the limited purposes to which the endowment can be put as the result of the constraints attached to remedial and compensatory payments that were used to create the endowment, the Department of Revenue may have to annually determine that the AFDF will use the earnings of the endowment on the appropriate projects. The determination of whether a proposed project to be funded from the earnings of the endowment is consistent with the purposes of the payments can be made by the Department of Law.

In order to support research by the AFDF on commercial fisheries development projects outside of the oil spill affected area involving resources not affected by, or not equivalent to those affected by, the Exxon Valdez oil spill, it would be necessary to deposit unrestricted general fund money into the endowment, or expand the endowment to include unrestricted private donations or government grants, in order to fund those kinds of projects. The earnings generated by such additions to the endowment would not be subject to the restrictions attached to the remedial and compensatory payments received under the Exxon plea agreement.

If I may be of further assistance, please advise.

GU:mi  
92-071.mai



# Alaska State Legislature

## HOUSE RESOURCES COMMITTEE

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3715

### MEMORANDUM

TO: Representative Eileen MacLean, Co-chair  
✓ Representative Mike Navarre, Co-chair  
House Finance Committee

FROM: Representative Cliff Davidson, Chairman  
House Resources Committee

DATE: 15 April, 1992

SUBJECT: Exxon Valdez Restitution Funds

Attached is a letter I received recently from Attorney General Cole concerning the disposition of the \$50 million in Exxon Valdez restitution. I believe that it clearly illustrates the constraints under which the restitution monies can be spent.

cc: Senate Finance Committee

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

- 1031 W 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 276-3697
- KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 456-1317
- P.O. BOX K - STATE CAPITOL  
JUNEAU, ALASKA 99311-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

April 10, 1992

The Honorable Cliff Davidson  
Chairman, House Resources Committee  
Alaska State Legislature  
Room 108, State Capitol  
Juneau, AK 99801-1182

Dear <sup>Cliff</sup> Chairman Davidson:

Thank you for your letter of April 6, 1992 regarding the restrictions on the State's use of the \$50 million in criminal restitution payments from Exxon. You are correct that these funds are restricted in their use under the judgment entered by the United States District Court. Specifically, the funds are to be used by the State,

exclusively for restoration projects, within the State of Alaska, relating to the 'Exxon Valdez' oil spill. Restoration includes: restoration, replacement, and enhancement of affected resources; acquisition of equivalent resources and services; and long term environmental monitoring and research programs directed to the prevention, containment, cleanup, and amelioration of oil spills.

For your use I am attaching a copy of the judgments entered by the court.

These restrictions remain on the funds until they are spent for the purposes described in the judgment. It is the intention of the administration to place all of the restitution funds that are not otherwise properly appropriated by this legislature for the purposes described in the court's judgment, into a restricted account.

Letter to The Honorable Cliff Davidson

April 10, 1992  
Page 2

I hope this explanation fully addresses your concerns.  
If I can be of further help, please contact me at your convenience.

Very truly yours,

*C. E. Cole*

Charles E. Cole  
Attorney General

CEC:bkn

Encl

CS for HB 411 (RES)

SECTION	PURPOSE	AMOUNT	LOCATION
2	habitat purchase	4,350,000	Eyak Lake, Nelson Bay, Simpson Bay, Sheep Bay
3	habitat purchase	2,175,000	Port Fidalgo, Bligh Island
4	habitat purchase	2,175,000	Chenega Is., Knight Is., Eshamy Bay, etc.
5	habitat purchase	9,000,000	Cape Suckling (unm)
6	habitat purchase	11,000,000	Kachemak Bay
7	habitat purchase	2,800,000	Kenai River embankment
8	habitat purchase	2,750,000	Rocky River-Kenai Penin.
9	fishery weir	75,000	Bear Creek
10	habitat purchase	7,000,000	Afognak Island
11	habitat purchase	1,300,000	Afognak Island
12	fishery weir	350,000	Kodiak
13	fishery enhancement	1,400,000	Prince William Sound
14	fishery management	560,000	Cook Inlet Central Region
15	fishery management	100,000	Kenai River, Susitna River, Kasilof River
16	fishery management	30,000	Kenai River
17	fishery management	300,000	Kenai River
18	fishery management	250,000	Thumb Cove-Resurrection Bay
19	radio reciever	10,000	Chenega Bay
20	killer whale research	60,000	Prince William Sound
21	beach cleanup	200,000	Chenega Bay
22	archeological assessmer	800,000	(impacted region)
23	education endowment	3,000,000	(impacted region)
24	fishery research	100,000	Kodiak
<b>TOTAL</b>		<b>49,785,000</b>	

habitat purchase	42,550,000
fishery management/research	3,225,000
etc.	4,010,000
<b>total</b>	<b>49,785,000</b>

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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### MEMORANDUM

February 21, 1992

**SUBJECT:** Use of Exxon Valdez oil spill restitutionary payments (Work Order No. 7-LS1810)

**TO:** Representative Cliff Davidson  
Attn: Jay Nelson

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum addresses the issue of whether the restitutionary payment received by the State of Alaska as part of the Plea Agreement between the United States and Exxon Corporation and Exxon Shipping Company (Exxon) must be used exclusively for natural resources restoration projects.

### SHORT ANSWER

Two things are clear. First, under the terms of a Memorandum of Agreement, the State of Alaska and the United States have agreed to use the restitutionary payments only for restoration of natural resources. Second, the State of Alaska, the United States, and the Court intend that the restitutionary payments be used to restore natural resources and the environment in the areas affected by the Exxon Valdez oil spill. What is unclear is the extent to the State of Alaska and the United States may have agreed, subsequent to entering into the Memorandum of Agreement, to use the restitutionary funds for purposes in addition to restoration of natural resources and the environment.

### DISCUSSION

There is nothing inherent in the concept of restitution that requires the State of Alaska to use the restitutionary payment received under the Plea Agreement between the United States and Exxon for restoration of natural resources damaged by the Exxon Valdez oil spill. The victim of a crime is entitled to restitution for the loss of or damage to the property caused by the perpetrator of a crime. Money received as restitution is to make the victim whole and to restore the victim to the position the victim occupied before the crime. Generally, the victim is not required to use the

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money received to replace the specific property that is lost or damaged; the victim may use the money for other purposes.<sup>1/</sup>

However, at the specific request of Attorney General Cole, the Court included the purposes for which the restitutionary payments may be used as part of the Judgment.<sup>2/</sup> Attorney General Cole made the request so that there is no misunderstanding as to how the restitutionary payments are to be used.<sup>3/</sup> The order of restitution contained in the Judgment states, in relevant part:

The monies paid in restitution are to be used by the State of Alaska and the United States of America exclusively for restoration projects, within the State of Alaska, relating to the "Exxon Valdez" oil spill. Restoration includes restoration, replacement, and enhancement of affected resources; acquisition of equivalent resources and services; and long-term environmental monitoring and research programs directed to the prevention, containment, cleanup, and amelioration of oil spills.<sup>4/</sup>

The order of restitution does not refer expressly to restoration of natural resources. Instead, in describing what are permissible restoration projects, the order uses only

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<sup>1/</sup> For the purposes of the Exxon Valdez oil spill Plea Agreement, the victims are the State of Alaska and the United States of America. Transcript of Proposed Change of Plea, United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Case No. A90-015 CR, p. 68, October 8, 1991. Cited as Transcript.

<sup>2/</sup> Judgment, United States of America v. Exxon Corporation, United States District Court, District of Alaska, Case No. A90-015 CR.

Judgment, United States of America v. Exxon Shipping Company, United States District Court, District of Alaska, Case No. A90-015 CR.

Cited collectively as Judgment.

<sup>3/</sup> MR. COLE: I would like to have the scope of that restitution set out in full in the Agreement, as I recall it's set out in the Plea Agreement, so there's no misunderstanding on the part of anyone as to the scope of what those restitutionary funds may be used for. That was a carefully negotiated provision.

THE COURT: All right. The Plea Agreement, and I'm looking at Page 9, says such monies are to be used by the State of Alaska and the United States exclusively for restoration projects within the State of Alaska relating to Exxon Valdez oil spill, and then there's some more.

MR. COLE: Yes. I would like that . . . . .

THE COURT: I would be happy to include that expressed language in the judgment.

Transcript at 76.

<sup>4/</sup> Judgment at 4.

the broad term "resources". The failure to specifically refer to natural resources does not preclude the possibility that the order meant "natural resources" and only natural resources.

In order to determine whether the order of restitution meant "natural resources" when it said only "resources", it is necessary to look behind the order to the documents<sup>5/</sup> which the Court had before it at the time and to the representations by the parties to the Court supporting acceptance of the Plea Agreement and the restitution requirement included therein.

The order of restitution is derived virtually verbatim from the Plea Agreement between the United States and Exxon. The Plea Agreement initiated the use of the term "resources" but does not indicate whether the term should be construed narrowly to mean only natural resources.

The best support for the conclusion that the restitutionary payment received by the State of Alaska may be used for restoration of natural resources and only natural resources is found in the MOA. Under the MOA the United States and the State of Alaska agreed to dedicate all natural resource damage recoveries received as the result of the Exxon Valdez oil spill to restoration of natural resources. For purposes

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<sup>5/</sup> Plea Agreement, United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, Alaska District, Case No. A90-015 CR., September 26, 1991. Cited as Plea Agreement.

Memorandum of Agreement and Consent Decree, United States of America v. State of Alaska, United States District Court, District of Alaska, Civil Action No. A91-081 CV, August 27, 1991. Cited as MOA.

Agreement and Consent Decree, United States of America v. Exxon Corporation et al., United States District Court, District of Alaska, Civil Action No. A91-082 CV and United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Civil Action No. A91-083 CV, filed October 9, 1991. Cited as Consent Decree.

Governments' Memorandum in Support of Agreement and Consent Decree, United States of America v. Exxon Corporation et al., United States District Court, District of Alaska, Civil Action No. A91-082 CV and United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Civil Action No. A91-083 CV, filed October 8, 1991.

Government's Memorandum in Aid of Sentencing, United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Case No. A90-015 CR, filed April 16, 1991.

Joint Sentencing Memorandum of Exxon Corporation and Exxon Shipping Company, United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Case No. A90-015 CR, dated April 16, 1991.

of the MOA "natural resource damage recoveries" is defined to include "criminal restitution, unless the parties otherwise agree that criminal restitution recoveries can be separately managed by either government consistent with this MOA."<sup>6/</sup>

The presentations made to the Court by Charles De Monaco of the U.S. Department of Justice and Attorney General Charles Cole state that the both the United States and the State of Alaska do intend to use the restitutionary payments for natural resources restoration projects, but are not wholly clear as to whether the payments will be used exclusively for natural resource restoration projects. In recommending that the Court accept the Plea Agreement, Mr. De Monaco said:

The Plea Agreement strives to settle the criminal litigation with pleas of guilty and a criminal sentence consisting of a fine in [sic] restitution. The amount of the sentence actually required to be paid within 30 days of conviction is 125 million dollars, with the bulk of the money earmarked for use in Alaska for restoration of the areas affected by the oil spill.

This oil spill was a catastrophe, and it was also an environmental crime. The criminal remedy should, likewise, in substantial part, be environmental in nature; that is 100 million dollars to be paid in restitution to be used exclusively in the State of Alaska for restoration of Prince William Sound and the Gulf of Alaska. The restitutionary components of a sentence for an environmental crime cannot be understated. The environment, as a victim, must be aided quickly through efforts funded by restitutionary payments.

...

Consequently, of the 125 million dollar sentence that is actually to be paid, 112 million dollars will go directly toward in aiding the environment for this environmental offense.<sup>7/</sup>

Mr. De Monaco also said:

The Governments urge that there be restitution now for the areas affected by the oil spill, and it should not await years of legal battles over damages and liabilities. The Plea Agreement provides and [sic] immediate infusion of money needed to continue the work of restoring

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<sup>6/</sup> MOA at 6 - 7.

<sup>7/</sup> Transcript at 26 - 27.

the Prince William Sound and the Gulf of Alaska, while the Consent Decree provides money over the long term to insure that the restoration work can continue over time to heal the damages caused by the Exxon Valdez oil spill.<sup>8/</sup>

Attorney General Cole presented the position of the State of Alaska regarding how the restitutionary payments were going to be used, as follows:

Very important from the State's standpoint is that 100 million dollars of this Plea Agreement will be used for the restoration of the damage to the natural resources, and for, perhaps, other purposes in the State of Alaska.<sup>9/</sup> (Emphasis added.)

In addition to indicating support for the Plea Agreement and the order of restitution, this statement by Attorney General Cole highlights an ambiguity as to whether the restitutionary payments are to be used exclusively for restoration of natural resources. For what "other purposes in the State of Alaska" may the restitutionary payments be used? Is Attorney General Cole referring only to the proposed science center to study oil spills or is he allowing an opportunity for the restitutionary payments to be used for additional restoration projects for non-natural resources under the right circumstances?

It is worth noting that the Court did not balk at the suggestion that the State of Alaska may use part of the restitutionary payment for purposes other than restoration of natural resources.

At the same time that the Plea Agreement was being negotiated and completed in the criminal case against Exxon, the same parties were engaged in negotiating and completing the MOA and Consent Decrees in three related civil cases: United States of America v. State of Alaska;<sup>10/</sup> United States of America v. Exxon Corporation et al.;<sup>11/</sup> and United States of America v. Exxon Corporation and Exxon Shipping Company.<sup>12/</sup> In each of these cases the parties provided in detail for the

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<sup>8/</sup> Transcript at 32 - 33.

<sup>9/</sup> Transcript at 39.

<sup>10/</sup> United States of America v. State of Alaska, United States District Court, District of Alaska, Civil Action No. A91-081 CV.

<sup>11/</sup> United States of America v. Exxon Corporation et al., United States District Court, District of Alaska, Civil Action No. A91-082 CV.

<sup>12/</sup> United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Civil Action No. A91-083 CV.

establishment and use of a trust fund for restoration of natural resources damaged by the Exxon Valdez oil spill. Each of the agreements and consent decrees used and defined the term "natural resources".<sup>13/</sup> The MOA also included a definition of "restoration" that discussed restoration only in the context of natural resources.<sup>14/</sup> If the State of Alaska and the United States intended to limit restoration projects funded through the restitutionary payments to only those projects involving natural resources, they could have expressly provided for such, as they did in the civil agreements and consent decrees.

The restitutionary provisions of the Plea Agreement were "carefully negotiated"<sup>15/</sup> by several skilled and experienced attorneys so it is difficult to believe that any ambiguity in such a basic provision of the agreement was not the result of a conscious decision of the parties.

The extent to which the restitutionary payments may be used for other purposes is a matter known only to the parties who negotiated the Plea Agreement and the Court, because only they know why they used the term "resources" instead of "natural resources", what they intended the term "resources" to mean, and what subjective or implied constraints they intended to place on the use of the payments.

The Court was concerned that the money received in the settlement of the civil and criminal cases, including the restitutionary payments, is spent as the Court intended. The Court stated its continuing interest in seeing that the money is spent on the right things and imposed an obligation on the parties to the settlement, including Attorney General Cole, to monitor how the money is spent. If the money is being misdirected then the parties would have to bring it to the attention of the Court.<sup>16/</sup> If the legislature is potentially subject to being brought before the federal District Court for

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<sup>13/</sup> MOA at 6.

Consent Decree at D-10.

<sup>14/</sup> "Restore" or "Restoration" means any action, in addition to response and cleanup activities required or authorized by state or federal law, which endeavors to restore to their pre-spill condition any natural resource injured, lost, or destroyed as a result of the Oil Spill and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resources and affected services. Restoration includes all phases of injury assessment, restoration, replacement, and enhancement of natural resources, and acquisition of equivalent resources and services.

MOA at 6 - 7.

<sup>15/</sup> Transcript at 76 and 77.

<sup>16/</sup> Transcript at 73.

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misusing the restitutionary payment, it is important, and only fair, that one of the participants in the drafting of the Plea Agreement inform the legislature of the constraints on the use of the payment.

Attorney General Cole is a key person in determining how the money is to be spent. As representative of the State of Alaska in the Exxon Valdez oil spill settlement negotiations, an active participant in those negotiations, one of the state trustees for the Exxon Valdez settlement trust, and "court appointed monitor" of the expenditures of the money received in the civil and criminal settlements, Attorney General Cole is an important resource available to the legislature to resolve the ambiguity as to what the State of Alaska, the United States of America, and the Court meant when they used the term "resources" in the order of restitution and Plea Agreement. Attorney General Cole can also resolve whether the restitutionary payments may be used for anything other than restoration projects relating to natural resources.

If I may be of further assistance, please advise.

GU:pl

92-118.plm



Sunrise, Mt. McKinley

Ansel Adams

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## MEMORANDUM

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**TO:**  
**FROM:** Eric Jorgensen  
**RE:** Limitations on oil spill restitution funds  
**DATE:** February 12, 1992

My review of the plea agreement entered to resolve the criminal charges against Exxon Corporation arising out of the Exxon Valdez spill leads me to conclude there are stringent limits on the purposes for which the State of Alaska may spend the restitution payments it received pursuant to that agreement. This memo briefly summarizes my views on this issue. I would be happy to discuss this with you at greater length if you wish.

Fundamentally, I believe the plea agreement must be interpreted with an eye toward the violations underlying the agreement. Exxon pled guilty to violations of three environmental statutes--the Clean Water Act, Refuse Act, and Migratory Bird Treaty Act. All three statutes are designed to foster protection of the environment, wildlife and water quality in particular. The plea agreement describes the restitution payments as "remedial and compensatory." I would interpret the document to provide generally only for use of these funds in a manner which remedies the injuries addressed in the criminal complaint--that is, injuries to the environment and natural resources. Any other use--subsidizing development projects, for example--would not remedy or compensate for this injury and therefore should be barred.

This interpretation is confirmed if one reviews the statements made at the hearing on the approval of the plea agreement conducted by Judge Holland. There are numerous references to the restitutionary payments during the discussion of the plea agreement by the lawyers for the United States and Alaska, as well as Judge Holland, which indicate clearly that the parties and the court

intended the plea agreement to limit carefully the expenditure of funds to projects related to restoration of the natural environment. See, e.g., Plea Agreement Hearing Transcript at pages 26, 27, 32, 33, 40, 47-48, 68. The only possible exception provided for in these discussions is for an oil spill research center in Alaska. Attorney General Cole made a careful effort to explain to the court that this was the one area which might not fit the traditional definition of restoration, but which the State had explicitly negotiated to facilitate with the restitutionary payments. See Transcript at 77, 39, 47.

Given that this is the only project which may not fit the strict definition of restoration that was specifically mentioned by the State, I would argue that any other project not directed toward restoration of the natural environment be prohibited. Clearly, the State was aware of the narrow limits imposed by the agreement and required by the court and yet chose to insist on only this one exception. This is a clear indication that the parties and the court expected and agreed that this would be the only exception.

This interpretation of the agreement is also supported by a careful examination of the definition of "restoration" in the agreement. The first half of the definition, describing restoration, replacement and enhancement of affected resources and acquisition of replacement resources, is based on the similar provisions of the Clean Water Act, 33 U.S.C. section 1321(f)(5) and should be similarly interpreted. The main addition to the Clean Water Act definition is the specific reference to "long-term environmental monitoring and research programs." This is the oil spill research center so carefully preserved by the remarks of Attorney General Cole. Thus, both the language of the agreement and the Attorney General Cole's interpretation of the agreement at the hearing support a two part definition of the proper uses of the funds: first, restoration of the natural environment in the traditional sense as described in federal law; and second, long-term monitoring and research relating to oil spills. See Plea Agreement Hearing Transcript at 39 and 47.

Though arguments might be made to broaden the scope of the plea agreement, none of them is persuasive. It is true that the plea agreement uses the word "resources" to define the object of restoration efforts, in contrast to the consent decree entered to settle the civil litigation, which uses the term "natural resources". Thus, it might be argued that the plea agreement payments can be used to restore a broader group of resources than the "natural resources" benefitted by the civil

settlement. This argument should fail, however, because it conflicts with the clear understanding expressed by the parties at the plea hearing and, more fundamentally, with the idea that the payments must be used to remedy the injury for which the criminal charges were brought-- environmental injury. In other words, properly interpreted in context, "resources" should be understood to mean natural resources, with the sole identified exception for a spill study center.

An argument could also be made that because the definition of restoration in the plea agreement is not exclusive (it says restoration "includes" rather than "means", or some other exclusive term) that other uses of the money are possible. In light of all the other evidence to the contrary, I do not believe this argument standing alone can prevail. Moreover, the force of the argument is severely limited by the general rule of contract and statutory interpretation which provides that if a definition is not exclusive, other possible meanings must be of the same nature or general type as the listed meanings. In this case, the definition of restoration in the agreement lists specific activities which are permissible. Even if the use of the word "includes" is interpreted to mean that other uses of the funds are appropriate, those uses must be of the same general nature as the specifically listed uses.

I have not discussed in this memo any arguments that might be made based on the briefs filed by the parties in support of the plea agreement. I simply did not have time to review them. If it would be helpful to you, I will try to find the time later in the week.

PLEASE MICROFILM TOP PAGE ONLY

DOCUMENTS WHICH HAVE NOT BEEN  
FILMED BUT ARE AVAILABLE IN THE  
ORIGINAL FILE INCLUDE:

→ Miscellaneous Correspondence

→ letters of support / opposition

→ Educational and miscellaneous proposals

→ Correspondence & Proposals 1) Kodiak Island Area

2) Kachemak Bay

3) Cook Inlet