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HOUSE SPECIAL COMMITTEE ON EXXON VALDEZ
OIL SPILL CLAIMS SETTLEMENT

ATTACHMENTS TO APRIL 10, 1991 MINUTES

Alaska State Legislature

House of Representatives

Official Business

P.O. Box V
State Capitol, Rm. 216
Juneau, Alaska 99811
(907) 465-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

April 10, 1991

Honorable H. Russel Holland
United States District Judge
District of Alaska
222 West 7th Avenue #4
Anchorage, Alaska 99513

Dear Judge Holland:

The House Special Committee on the Exxon Valdez Oil Spill Settlement has received and reviewed a copy of Rep. George Miller's letter to you dated April 8.

The matters raised in the letter present significant new issues regarding the propriety of the Plea Agreement pending in your court. The ~~documented~~ allegation that Alyeska knowingly disregarded the requirements of its own contingency plan indicates a level of culpability on the part of both Exxon and Alyeska ~~that goes~~ well beyond the criminally negligent conduct previously alleged against Exxon.

The Committee believes that the Plea Agreement must be considered, not solely in light of its impact on Exxon, but also with respect to its impact on Alyeska. Our report to the House, scheduled to be issued prior to April 24, will reflect that aspect of the case.

In view of these new allegations, we respectfully renew our request, embodied in HCR 19, that you delay final action on the Plea Agreement until after May 3, when the legislature will have considered this issue and the remainder of this committee's report.

Sincerely,

Rep. Max F. Gruenberg
Chairman

Alaska State Legislature

House of Representatives

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The matters raised in the letter present significant new issues regarding the propriety of the Plea Agreement pending in your court. The allegation by Congressman Miller that Alyeska knowingly disregarded the requirements of its own contingency plan indicates a level of culpability on the part of both Exxon and Alyeska that could go well beyond the criminally negligent conduct previously alleged against Exxon.

The Committee believes that the Plea Agreement must be considered, not solely in light of its impact on Exxon and Alyeska, but also with respect to its impact on the State of Alaska. Our report to the House, scheduled to be issued prior to April 24, will reflect that aspect of the case.

We respectfully renew our request, embodied in HCR 19, that you delay final action on the Plea Agreement until after May 3, when the legislature will have considered this issue and the remainder of this committee's report.

Sincerely,

Rep. Max F. Gruenberg, Jr.
Chairman

cc: John F. Clough III, Counsel for Exxon Corporation
Charles A. DeMonaco, United States Deparrtment of Justice

OPENING STATEMENT OF U.S. REPRESENTATIVE GERRY E. STUDDS

CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

AMH

MARCH 20, 1991

THE SUBCOMMITTEE ON FISHERIES MEETS JOINTLY THIS AFTERNOON WITH THE SUBCOMMITTEE ON COAST GUARD AND THE SUBCOMMITTEE ON OCEANOGRAPHY TO DISCUSS THE RECENTLY NEGOTIATED SETTLEMENT OF FEDERAL AND STATE CLAIMS ARISING OUT OF THE EXXON VALDEZ OIL SPILL. ALTHOUGH THE SETTLEMENT WAS ANNOUNCED ON MARCH 13, ITS FATE WILL BE DETERMINED BY THE FEDERAL DISTRICT COURT IN ALASKA FOLLOWING A PERIOD OF 30 DAYS FOR PUBLIC COMMENT.

UNDER LAW, FEDERAL AGENCIES HAVE A RESPONSIBILITY TO SEEK RECOVERY FOR INJURY TO NATURAL RESOURCES BELONGING TO THE UNITED STATES. THE MONEY THAT IS RECOVERED IS TO BE RETAINED BY THE TRUSTEES AND USED TO RESTORE OR REPLACE THE INJURED RESOURCES. IT IS IN FULFILLMENT OF THAT TRUSTEESHIP RESPONSIBILITY THAT THE SETTLEMENT WHICH WE WILL DISCUSS TODAY WAS NEGOTIATED. OUR PURPOSE IS TO DETERMINE, AS BEST WE CAN, WHETHER THE AGENCIES REPRESENTED HERE TODAY HAVE, IN FACT, ACTED IN THE BEST INTERESTS OF THE UNITED STATES AND OF THE RESOURCES WHOSE WELL-BEING THEY ARE REQUIRED TO PROTECT.

UNFORTUNATELY, IT IS DIFFICULT TO MAKE THAT JUDGMENT WITHOUT THE FACTS AND THE FACTS UPON WHICH THIS DEAL IS BASED ARE NOT NOW AVAILABLE TO THE PUBLIC.

WHAT <u>IS</u> CLEAR, HOWEVER, IS THAT WHAT ITS AUTHORS HAVE CALLED A BILLION DOLLAR DEAL FOR RESTORING PRINCE WILLIAM SOUND IS ACTUALLY A FIVE HUNDRED MILLION DOLLAR DEAL--OR EVEN LESS IF YOU TAKE INTO ACCOUNT THE DEFLATIONARY EFFECTS OF SPREADING THE PAYMENTS OVER TEN YEARS; THE $134 MILLION IN REIMBURSEMENTS FOR PAST COSTS; THE CREDIT GIVEN TO EXXON FOR ALL FUTURE CLEANUP COSTS; AND THE FACT THAT EXXON CAN DEDUCT VIRTUALLY ALL OF ITS PAYMENTS FROM FEDERAL INCOME TAXES.

IT IS ALSO CLEAR THAT IF THIS CASE HAD GONE TO COURT, THE GOVERNMENT WOULD HAVE BEEN CAST IN THE ROLE NOT ONLY OF PROSECUTOR, BUT OF DEFENDANT, AS WELL. COUNTER CLAIMS AGAINST THE GOVERNMENT FOR ITS ROLE IN BOTCHING THE CLEANUP WOULD CERTAINLY HAVE BEEN FILED. AND BECAUSE THE ADMINISTRATION DID NOT WANT TO SEE ITSELF ON TRIAL ALONG WITH EXXON, ITS ABILITY TO INSIST ON FULL PAYMENT FROM EXXON--AND FULL RESTORATION FOR PRINCE WILLIAM SOUND--MAY HAVE BEEN SERIOUSLY UNDERMINED.

IT IS, MOREOVER, FAR FROM CLEAR THAT THE SUMS OBTAINED IN THIS SETTLEMENT WILL BE USED FOR THE PURPOSES WHICH BY LAW THEY MUST BE USED--TO RESTORE THE ENVIRONMENT OF PRINCE WILLIAM SOUND. UNDER THE AGREEMENT, EACH OF THREE ALASKA STATE AGENCIES WILL HAVE A VETO OVER WHERE AND WHEN AND HOW THE MONEY OBTAINED FROM EXXON WILL BE SPENT.

I DO NOT DOUBT THE ENERGY OR THE SINCERITY OR THE COMPETENCE OF THE WITNESSES WE WILL HEAR FROM TODAY. I AM CONFIDENT THAT THOSE NEGOTIATING ON BEHALF OF THE UNITED STATES DID THE BEST THEY COULD. AND I SUPPORT ENTHUSIASTICALLY THE GOAL OF AVOIDING LITIGATION AND LEGAL FEES WHENEVER AND WHEREVER POSSIBLE.

BUT THE FACT IS THAT WE DON'T KNOW WHAT THE FULL COST OF RESTORING PRINCE WILLIAM SOUND WILL BE. AND NEITHER THE FEDERAL GOVERNMENT, NOR THE STATE GOVERNMENT, HAVE MADE PUBLIC THEIR OWN ESTIMATES IN THIS REGARD. AS A RESULT, WE DON'T KNOW--WE CAN ONLY GUESS--WHETHER THIS SETTLEMENT IS FAIR. WE KNOW ONLY THAT THE ADMINISTRATION, ALASKA'S NEW GOVERNOR AND EXXON WENT INTO A ROOM AND CAME OUT WITH AN AGREEMENT THEY SAY IS GOOD FOR THE ENVIRONMENT. THAT MAY BE, BUT I SUBMIT THAT WE WOULD BE FOOLS TO ACCEPT THAT WITHOUT FAR MORE EVIDENCE AND FAR BETTER ANSWERS THAN WE HAVE YET RECEIVED.

ONE HUNDRED SECOND CONGRESS

WALTER B. JONES, NORTH CAROLINA, CHAIRMAN

GERRY E. STUDDS, MASSACHUSETTS
CARROLL HUBBARD, JR., KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
EARL HUTTO, FLORIDA
[illegible]Y TAUZIN, LOUISIANA
THOMAS M. FOGLIETTA, PENNSYLVANIA
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WILLIAM O. LIPINSKI, ILLINOIS
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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515-6230

CHIEF COUNSEL
EDMUND B. WELCH

CHIEF CLERK
BARBARA L. CAVAS

MINORITY STAFF
DIRECTOR/CHIEF COUNSEL
GEORGE D. PENCE

Witness List

Subcommittee on Fisheries and Wildlife Conservation and the Environment

Subcommittee on Coast Guard and Navigation

Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf

March 20, 1991

Mr. Richard B. Stewart
Assistant Attorney General
Natural Resources Division
Department of Justice

Mr. Thomas A. Campbell
General Counsel
National Oceanic and Atmospheric Administration

Mr. Martin Suuberg
Deputy Solicitor
U.S. Department of the Interior

Mr. Alan Raul
General Counsel
Department of Agriculture

Ms. LaJuana S. Wilcher
Assistant Administrator for Water
U.S. Environmental Protection Agency

Mr. John Gaughn
Chief of Staff
Department of Transportation

SUMMARY OF PAYMENTS TO BE MADE BY EXXON

1. Criminal fine of $100 million, of which $50 million is remitted to the State of Alaska.

2. Civil payments totalling $900 million as follows:

- o $ 90 million within ten days of final settlement
- o $150 million on September 1, 1992
- o $100 million on September 1, 1993
- o $ 70 million on September 1, 1994
- o $ 70 million on September 1, 1995
- o $ 70 million on September 1, 1996
- o $ 70 million on September 1, 1997
- o $ 70 million on September 1, 1998
- o $ 70 million on September 1, 1999
- o $ 70 million on September 1, 2000
- o $ 70 million on September 1, 2001

3. Of the $900 million, up to $72 million may be used to reimburse the State of Alaska for past costs and up to $62 million may be used to reimburse Federal agencies for past costs.

4. Exxon is entitled to a credit of up to $4 million for costs incurred between January 1, 1991 and the effective date, and a credit for all costs after the effective date for cleanup operations conducted pursuant to the direction of the Federal or state governments. The costs are defined to include "costs and obligations incurred for salary, wages, benefits, and expenses of Exxon employees, for contractors, for equipment purchase and rental, for office and warehouse space, and for insurance, accounting and other professional services".

5. Between September 1, 2002 and September 1, 2006, Exxon will pay additional amounts of up to $100 million for natural resource restoration projects if new evidence of injury to the resource in question arises after the effective date of the agreement.

Department of Justice

TESTIMONY

OF

RICHARD B. STEWART
ASSISTANT ATTORNEY GENERAL
ENVIRONMENT & NATURAL RESOURCES DIVISION
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, COAST GUARD AND NAVIGATION, AND OCEANOGRAPHY SUBCOMMITTEES

OF

THE COMMITTEE ON MERCHANT MARINE & FISHERIES
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

PROPOSED SETTLEMENT OF CIVIL AND CRIMINAL LIABILITY ARISING FROM THE EXXON VALDEZ OIL SPILL

WEDNESDAY, MARCH 20, 1991

Mr. Chairman and Members of the Subcommittees:

Good afternoon. I am Richard B. Stewart, the Assistant Attorney General in charge of the Justice Department's Environment and Natural Resources Division. I am pleased to have this opportunity to appear on behalf of the Department to discuss the proposed settlement of the federal government's claims of civil and criminal liability arising from the Exxon Valdez oil spill. I should add that I am especially pleased to be joined in this appearance by representatives of those federal agencies who are natural resource trustees for Prince William Sound, and in particular by NOAA General Counsel Tom Campbell, who provided important leadership in meeting the complex practical and legal challenges presented by litigation over the Exxon Valdez spill.

Background to the Litigation

Mr. Chairman, I am sure that the members of the subcommittees have followed events in Prince William Sound closely since the spill, so I will only briefly recite the events that gave rise to the claims against the Exxon Corporation and the settlement that now is pending. As the subcommittees will recall, the tanker vessel Exxon Valdez was outbound from Port Valdez, Alaska on the night of March 23-24, 1989, carrying 50 million gallons of Alaska North Slope crude oil. The tanker, which was owned by an Exxon subsidiary and commanded by Joseph Hazelwood, left the sound's designated shipping lanes and went

hard aground on Bligh Reef, a well-known and well-marked navigational hazard.

The grounding pierced the ship's hull, and best estimates are that 11 million gallons of oil spilled into the pristine waters of Prince William Sound and the Gulf of Alaska. The oil fouled those waters and much of the 1100 miles of adjacent shoreline. In the weeks and months following the spill, Exxon began an extensive campaign to clean up the oiled beaches, which continued through the fall of 1989. In response to public pressure, Exxon resumed cleanup work in the Spring of 1990, and is expected to undertake further cleanup this spring. Exxon reports that so far it has spent more than $2 billion in cleanup activities.

Both the federal government and the State of Alaska have asserted claims against Exxon. Initially, the Justice Department successfully sought the criminal indictment both of Exxon Shipping, the owner of the Exxon Valdez, and the parent Exxon Corporation. We regard the spill as a classic example of culpable corporate management failure. A ten-count indictment was returned in February 1990, including felony charges for knowing violations of the Ports and Waterways Safety Act and the Dangerous Cargoes Act, and misdemeanor counts under the Clean Water Act, the Refuse Act and the Migratory Bird Treaty Act. The criminal charges were scheduled for trial next month.

The federal government also has a number of civil claims, particularly on behalf of those federal agencies that

serve as trustees for natural resource damages under the Clean Water Act and other federal statutes and common law. These claims have been asserted in a complaint that was filed along with the proposed settlement documents last week. The State of Alaska has had civil claims pending since August 1989, when the state filed a complaint in Alaska Superior Court seeking damages under state law.

In support of both the civil and criminal claims, the federal and state governments together have undertaken extensive scientific studies to assess the impact of the spill and the probable damage to natural resources. By June, the two governments will have spent a total of more than $80 million in such studies. This investigation was necessary because the damage issues lie at the frontiers of scientific knowledge concerning the effect of oil spills on marine and coastal resources.

While the spill presents factual issues that lie on the scientific frontier, the case also presents many issues on what can only be described as a legal frontier. Many if not most of the legal issues that would be litigated against Exxon are issues of first impression in the federal courts. By way of example, the Exxon defendants' exposure to criminal fines could range from $600 million to a meager $3 million, depending on whether and how the court were to apply the Alternative Fines Act in this case.

Settlement Objectives

Because of these daunting uncertainties, both the Justice Department and the State of Alaska recognized the desirability of resolving their respective claims that would eliminate the uncertainty and expense of protracted litigation and permit early funding of restoration work for the Sound, but only if Exxon would come to the table ready to recognize its responsibility for the spill and the magnitude of the damage to natural resources in and around Prince William Sound.

Accordingly, the Justice Department and the federal trustees, together with EPA, concluded from the outset that no settlement would be acceptable without three elements: first, there would have to be sufficient recovery of damages for the trustees to undertake a prompt and thorough restoration program for the Sound; second, any settlement would have to be made public and include an appropriate opportunity for public comment; and third, Exxon would have to acknowledge its criminal conduct and pay a substantial criminal penalty that reflects the seriousness of the offenses that led to the spill.

I am happy to report to the subcommittees that all three of these elements have been met by the proposed civil settlement and the criminal plea. A vital impetus for this favorable settlement was the Justice Department's aggressive prosecution of the criminal charges, and early favorable rulings by the court in the criminal case. These established the seriousness with which the government has regarded Exxon's

criminal responsibility for the spill as a binding principle for settlement.

On the civil side of the case, considerable credit also should go to Alaska Governor Hickel's initiative, this past January, for talks between the corporation and the state and federal governments. These talks began with direct bargaining among the principals, involving Exxon Chairman Lawrence Rawl, Governor Hickel and Alaska Attorney General Cole, and the heads of the federal agencies concerned -- the Departments of Agriculture, Interior, and Transportation, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration. NOAA General Counsel Tom Campbell, on behalf of the natural resource trustees, provided crucial leadership in ensuring that these early negotiations forged a suitable framework for an agreement in principle, and I would expect that he will speak directly to that process.

Eight weeks of hard bargaining with Exxon resulted, finally, in the settlement proposed last week. Those negotiations were marked by extraordinary cooperation among Governor Hickel and Attorney General Cole of Alaska, Interior Secretary Lujan, NOAA Administrator Knauss and General Counsel Campbell, EPA Administrator Reilly, Transportation Secretary Skinner, and Agriculture General Counsel Raul. Their collective leadership helped shape a settlement that should be regarded as an unprecedented win for the environment.

Settlement Terms

Under the settlement, Exxon will pay $900 million over ten years to satisfy the state and federal governments' civil damage claims. Exxon also may be liable for an additional $100 million if the future discloses currently unforeseen damage that was not discovered by the extensive damage survey the two governments have undertaken to date. These amounts will be used both to reimburse the state and the federal government for past expenses and restoration costs, and to fund a thorough program to restore Prince William Sound's natural resources. These funds also may be used to fund additional cleanup work by Exxon in 1991. The schedule of payments under the settlement agreement is expected generally to coincide with the future funding needs for restoration work now being planned by the federal trustees.

The settlement also includes a number of releases and covenants by the parties not to bring certain claims. Exxon has agreed not to sue the United States for any claims arising from the spill. The United States and Alaska have agreed not to sue Alyeska Pipeline Service Company for natural resource damages, because the settlement satisfies all of those claims and because Alyeska could seek to recover any liability to the United States for such damage from Exxon. This covenant reasonably protects Exxon from having to pay twice, in effect, for the same claims. In turn, Exxon has agreed to indemnify Alaska and the United States for any claims Alyeska might assert against the two governments. The United States has preserved all other claims

against Alyeska, including potential claims for civil penalties, that do not involve natural resource damages.

Apart from the civil settlement, the two corporate defendants -- and here I mean Exxon Corporation and Exxon Shipping -- have agreed to plead guilty to four serious criminal charges arising from the spill. Exxon shipping will plead guilty to three counts under the Clean Water Act, the Refuse Act, and the Migratory Bird Treaty Act, and Exxon Corporation will plead guilty to one count under the Migratory Bird Treaty Act. Exxon will pay a $100 million fine, half of which will be remitted, and Exxon will pay of $50 million as restitution to the State of Alaska for restoration of damaged natural resources.

These sums -- totalling a billion dollars -- represent the largest environmental liability settlements in history. Based on the survey of damage to natural resources undertaken by the natural resource trustees, this recovery should provide sufficient funds to undertake and complete the needed restoration program for the Sound. And Exxon will have to pay up to $100 million more if future exposure discloses additional damage that cannot be discovered now. More importantly, these funds will be available to the trustees far sooner than would have been possible through protracted and complex litigation that would have taken years.

I am sure the Chairman can appreciate the significance of avoiding years of litigation from the experience of his own district: there, more than seven years of intensive litigation

have been necessary to recover for natural resource damage to New Bedford Harbor from PCB contamination. Restoration there is only now getting substantially underway.

Standing alone, the criminal fine will be the largest ever paid for an environmental crime. This meets our objective of securing a fine that is commensurate with the seriousness of the underlying offenses. When Exxon's past cleanup costs are taken into account, the spill will have cost Exxon considerably more than $3 billion.

Finally, the subcommittees should know that the agreement with Exxon fully meets our objective of having this be a public settlement, one that affords an opportunity for public comment and participation. For the federal government, public participation has been a paramount concern throughout the process of litigation and restoration planning. The civil settlement is conditioned on court approval following a public comment period. Let me emphasize that this step was not required by law; the concerned federal agencies and the State of Alaska have insisted that the settlement be incorporated into a consent decree that will be subject to a thirty day public comment period in federal court. Judge Holland, who oversees our criminal case against Exxon, has said he would follow a similar procedure with respect to the plea agreement.

The United States and the State will have the right to withdraw from the agreement if the public comment period shows that the settlement is inappropriate or inadequate. The State

of Alaska also may withdraw if the Alaska legislature disapproves of the agreement. Exxon does not have a comparable right of withdrawal based on public comment or other information, but may withdraw if the court modifies the agreement.

The federal trustees will seek to provide the subcommittees -- and, ultimately, the public -- with information concerning natural resource damage and restoration costs that should remove any doubt that the settlement meets the objectives that I previously set forth. But there remains the possibility that both the state and federal governments might return to full-scale criminal and civil prosecution of their claims against Exxon if the settlement ultimately is rejected by the court or one of the parties. Both the Justice Department and the trustees, therefore, are constrained not to present any information that might tip the government's hand concerning specific evidence it has against Exxon. After the decree is finalized and scientific studies have undergone peer review, disclosure of most of the resulting information will, of course, be possible.

Finally, I think it important for the subcommittees to understand that despite the federal and state governments' success in meeting the federal government's objectives in this settlement, that success has not been achieved at the expense of any of the many other parties who may have lawsuits pending against Exxon. As the subcommittees are aware, the spill has spawned an immense amount of litigation. Private plaintiffs

ranging from environmental and Native American groups to commercial fishermen and cannery workers have filed suits for damages and/or injunctive relief.

To ensure that the settlement would not prejudice those claims, the settlement specifically provides that it is not intended to affect legally the claims of third parties against Exxon. Paragraph 13 of the proposed consent decree has even more explicit protection for Alaska Native villages to recover natural resource damages, as well as protection for those who hold any property interest affected by the spill.

Administering Settlement Monies

The objectives of thorough natural resource restoration and public participation have been protected not only by the Agreement with Exxon but also in the Agreement between the federal government and the State of Alaska that will govern use of the settlement monies. Under the Agreement, expenditures for restoration must be approved unanimously, and must be for natural resource restoration and enhancement. The Agreement specifically provides that its governance structure, which will be further developed by the trustees, must incorporate procedures for meaningful public participation. Of course the trustees already have been true to this spirit of public involvement by submitting their initial restoration plan for public comment; the plan was published in the Federal Register on March 1, 1991. The trustees

remain committed to sustaining public participation in the restoration planning process.

I would be happy to answer any questions you may have.

TESTIMONY
OF
MR. THOMAS A. CAMPBELL
GENERAL COUNSEL
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
SUBCOMMITTEE ON OCEANOGRAPHY AND GREAT LAKES
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

MARCH 20, 1991

Mr. Chairman and Members of the Subcommittees:

I appreciate the opportunity to participate in this oversight hearing concerning the Exxon VALDEZ settlement. My name is Tom Campbell, and I am the General Counsel of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce. I am representing Dr. John Knauss who is in Paris today for the International Oceanographic Conference. NOAA is the lead Federal trustee for the Exxon VALDEZ damage assessment, and I am here today on behalf of the other Federal trustees - the Department of the Interior and the Department of Agriculture.

Under the Clean Water Act, NOAA, the Department of the Interior and the Department of Agriculture act as stewards for the Nation's natural resources. The spill of 11 million gallons of oil into the pristine environment of the Prince William Sound on a dark night in March 1989, brought our respective trust

responsibilities into sharp focus. For the past year and 11 months, the Federal trustees have done everything in their power to assess the injuries to natural resources and determine the economic damages done to the Sound and other areas of Alaska, and to prepare to present the Federal Government's claim in court.

NOAA first became involved in assessing injuries to marine resources and their habitats with the grounding of the Amoco CADIZ which occurred in 1978. In that case the vessel split in two, spilling 68 million gallons of crude oil on the coast of Brittany, France. Claims arising from this environmental disaster have been in litigation for 13 years. On July 24, 1990, a Federal judge in Chicago ordered Amoco to pay $105 million in damages to the French Government. Amoco has appealed, and the litigation process continues.

Litigation is wasteful and protracted. Litigation is like war and litigation like war should be avoided if reasonably possible. Litigation also represents failure -- failure of one party to properly assess his position in a conflict.

In the fall of 1990, NOAA was made the lead Federal trustee on the Exxon VALDEZ spill. Under the leadership of Administrator Knauss we have tried to act as the "honest broker." Our first responsibility was to fully assess the natural resource injuries and prepare for possible litigation. Our second responsibility was to explore the possibility of an equitable out of court settlement.

It is the Federal trustees' belief that the settlement achieved with Exxon represents a fulfillment of our stewardship responsibility. It provides us with money this year to do necessary restoration instead of 5 to 10 years from now.

As the trustees weighed the benefits of settling with Exxon and grappled with the proper range of negotiating values, we considered a myriad of factors such as the extent of the injury demonstrated thus far, the likelihood of translating those injuries into provable damages, the value of beginning restoration now rather than 5 - 10 years later, and the estimated cost of restoration. The settlement that was announced last week falls well within the range of values estimated by the trustees.

Finally, let us not lose sight of the fact that this represents the largest environmental settlement in the world -- one billion dollars -- ten times that recovered in Amoco CADIZ, a spill that was six times larger. It is a very good deal for Prince William Sound, and it is an outstanding deal for the United States and Alaska. The State of Alaska and the Federal trustees have exercised their trusteeship responsibly and with considerable imagination in bringing these complicated negotiations to fruition.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions concerning the settlement.

Statement for the Record of Martin J. Suuberg
Deputy Solicitor, Department of the Interior
Before the House Subcommittee on Fisheries and Wildlife
Conservation and the Environment
On The Exxon Valdez Oil Spill -- Settlement Agreement with Exxon
March 20, 1991

Mr. Chairman, thank you for the opportunity to testify about the settlement agreement recently entered into between the United States, the State of Alaska, and Exxon Corporation and two of its affiliates. My name is Martin J. Suuberg. I am the Deputy Solicitor, U.S. Department of the Interior. In this capacity, I have advised the Secretary of the Interior with respect to the natural resource damage assessment done in response to the Exxon Valdez Oil Spill and the settlement negotiations with Exxon. As you are aware, the Secretary is designated to act as the trustee on behalf of the public in asserting natural resource damage claims under the Clean Water Act for injuries to natural resources under the Department of the Interior's jurisdiction. These include sea otters, migratory birds, and park and refuge lands and their associated resources.

The Department of the Interior fully endorses the recent settlement of all federal and state claims against Exxon arising out of the Exxon Valdez accident. We do so because we believe that the settlement provides fair compensation to the federal and state natural resource trustees for injuries to the affected resources under their jurisdictions, and allows us to focus our efforts now on restoring those resources and the services that they provide. The alternative, litigation, could mean years of waiting before we had any recoveries in hand with which to fund necessary restoration projects, and the outcome of such litigation would be far less certain than the terms of the settlement agreement. We are satisfied that the settlement arrangement will provide sufficient funds at appropriate intervals to enable us to meet our restoration responsibilities.

The trustees have yet to design the specific organizational structure that will be used to implement the settlement agreement. We are very interested in learning what the public has to say about the terms of the settlement and how they should be carried out. For this reason, the trustees have asked, through notices published yesterday in the Federal Register, the public to review and comment on the settlement agreement and an associated Memorandum of Agreement (MOA) with the State of Alaska. In making those comments, we hope that members of the public will address what types of public participation procedures they would like to see adopted by the trustees for fostering meaningful public involvement in the restoration planning process. The MOA sets forth the basic ground rules under which natural resources damage recoveries will

be administered. Instead of pursuing lengthy litigation with the State of Alaska over which particular trustee has the paramount interest in a particular resource, the two governments decided to treat their trusteeship over the affected resources as co-equal and indivisible. The consequence of this principle is that all decisions concerning the use of natural resource damage recoveries for restoration purposes must be made by the unanimous agreement of the federal and state trustees. We believe that this basic requirement for expending settlement proceeds will ensure that the public interest is met in reaching restoration decisions.

Throughout our negotiation of the settlement agreement and the MOA, we have been very mindful of the Secretary's concern for Alaska Natives who may have been affected by the spill and subsequent cleanup activities. We have been very careful to structure the settlement agreement and the MOA not to affect or impair the rights of Alaska Natives to pursue their own claims for compensation against Exxon. We have also preserved our ability to assist Alaska Natives in ways normally provided by the Bureau of Indian Affairs as a part of its assistance programs. Because the Department is concerned about the views of Alaska Natives, we are in the process of making a special mailing to affected Alaska Native organizations and individuals to invite their comments on the settlement agreement and the MOA.

Statement of Alan Charles Raul
General Counsel
U.S. Department of Agriculture

Subcommittees on Fisheries and Wildlife Conservation and the Environment; Coast Guard and Navigation; and Oceanography, Great Lakes and the Outer Continental Shelf of the Committee on Merchant Marine and Fisheries
U.S. House of Representatives

March 20, 1991

Chairman Studds, Chairman Tauzin, Chairman Hertel, and committee members, thank you for this opportunity to appear before your subcommittees to discuss the recent settlement agreement with the Exxon Corporation regarding the March 24, 1989 tanker accident. My name is Alan Charles Raul, and I am the General Counsel of the Department of Agriculture. The Secretary of Agriculture is a Trustee for natural resources injured in the Exxon Valdez oil spill by virtue of the U.S. Forest Service's management of the Chugach National Forest.

This settlement is an important milestone in the history of the Exxon Valdez disaster. It has been nearly two years since the fateful grounding of the tanker resulted in nearly 11 million gallons of oil spilling into Prince William Sound. Much of the oil washed up on the shoreline of the Chugach National Forest. Approximately 350 miles of the Forest's shoreline were fouled with oil that continues to disrupt the environment despite considerable response mitigation. The Department of Agriculture, through the Forest Service, has spent almost two years preparing to prosecute our claims for damages to natural resources against Exxon. The State of Alaska and federal agencies including the Department of the Interior, NOAA and USDA have spent well over $100 million to assess the spill's damages with an

eye towards restoration as well as litigation. State and federal agencies plan to spend another $35 million in this year alone. This unprecedented scientific effort has resulted in over 70 integrated scientific studies, each concentrating on a different aspect of injury to the Sound. All of these studies have produced preliminary results, and it is these results that have formed the basis for the trustees' decision making.

Most of the lands and natural resources in Prince William Sound are managed by either the federal government or the state of Alaska. Many of those lands are the trustee responsibility of the U.S. Forest Service. In fact, more than 80% of the land in Prince William Sound is managed by the Forest Service. The Forest Service is actively engaged in managing the water, soil, air, mineral and timber resources of the entire area. In addition to its stewardship of natural resources, the Forest Service is committed to protecting the rich cultural heritage of these lands for Alaska natives and preserving their benefits for local residents and tourists.

I would stress, again, that the settlement does not mark the end of our commitment to restoring Prince William Sound's environment. Most of our work is still ahead. It will take the dedication and years of hard work of scientists and Forest Service managers working together to develop restoration options that are ecologically viable and beneficial to the Sound. By ending the significant uncertainty and delays of litigation, this settlement allows us to redouble our efforts towards restoring the environment. It ensures our ability to maintain a long term commitment to the ecology of the Sound. The Forest Service takes its stewardship seriously, and, as mandated by President Bush nearly two years ago, we intend to spare no efforts to restore the Sound fully to its pre-spill condition.

Pat Williams

CONSENT DECREE

MASTER LIST OF ISSUES
(revised 3/29)

[I]
Introduction
(pages 2-3)

1. Could the state still sue Exxon for violation of state criminal laws? Does it intend to do so? [PF]

2. Does the fact that the money is exchanged for the extinguishment of claims under state law affect the applicability of the CWA and regulations under it? [PF]

3. The parties represent that the payments called for are in addition to "those described above". Does this mean that for purposes of the Consent Decree, the amounts recovered are not subject to CWA limitations?

[II]
Jurisdiction
(paragraph 1; page 4)

4. Why did the parties want to have a consent decree as well as an agreement extinguishing claims? (To have a remedy available to enforce the agreement? Other?) [PF]

[III]
Parties
(paragraphs 2-5; page 4)

[IV]
Definitions
(paragraph 6 [a-i]; pages 5-7)

5. Why are the natural resources damages of the state not separated from the natural resource damages of the federal government? [PF]

6. If the court signs the consent decree, when does the time for appealing that decision expire? [PF]

7. Does the reference to claims under state law mean that this recovery is not entirely under the CWA? [PF]

8. What do the terms in the first three lines of page 6 mean? Does "natural resource damage" include economic loss to the state, e.g. lost taxes [PF]

8.1 When was the last date that all parties signed? [PF]

[V]
Effect of Entry of Decree by Court
(paragraph 7, page 7)

9. What impact does the agreement have on the state's rights/legal position prior to "final approval" but after the "effective date", i.e., right now?

[VI]
Payment Terms
(paragraphs 8 [a-d], 9-10; pages 9-11)

Payment Schedule (paragraph 8)

10. What is the present value of the amounts to be paid by Exxon? [PF]

11. Has Exxon paid the first $90 million? [PF]

12. What guarantee is there that Exxon will pay the required amount? Is this a debt dischargeable in bankruptcy? [PF]

13. Are the amounts Exxon will pay deductible under federal tax law? Under state tax law? [PF]

Escrow (paragraph 9)

Use of Money (paragraph 10)

14. Art. IX, Sec. 7 of Alaska's Constitution prohibits dedicated funds. Money recovered under the CWA must be dedicated, as this paragraph reflects. Can the A.G. choose to settle a case under a law that requires a dedicated fund, especially when the state could recover under state law, which does not require dedication? Is recovery under the CWA participation in a "federal program" such that the prohibition against dedicated funds would not apply? [PF; Rep. Barnes, 3/19]

15. Does any state statute require that money received in this settlement be deposited in the General Fund?

16. Is legislative authorization needed to accept funding from the trustees? [Rep. Ulmer, 3/21, p. 10]

17. Alaska's Constitution vests the appropriation power in the legislature alone. Federal laws and regulations applicable to the CWA require the Governor to appoint a trustee who will decide how money recovered under the CWA is to be spent. Is the scheme under the CWA contrary to Alaska's Constitution, and if so, does the A.G. have the power to enter into an agreement under the CWA? [PF]

18. How much has the state spent for response, cleanup, damage assessment, and litigation costs? (This question includes supplementals tied to the oil spill and regular department budgets related to it.) How much has Exxon reimbursed for these activities to date? How does the remainder owing compare to the $72 million maximum that the state could get back as reimbursement under the consent decree? [PF]

19. To what extent would the legislature's approval of the consent decree constitute an approval of the MOA? [PF]

20. This paragraph refers to "natural resource services." What is a "natural resource service?" [PF] Could it include economic loss? [Rep. Hudson, 3/27]

NB: This term is also used, and undefined, in the MOA (page 8 [paragraph IIIA]).

21. It appears that the reimbursements to the state (up to $72 million) are not restricted as to use. Is this true? [PF; Rep. Hudson, 3/20, p.12]

22. Despite the statement to the contrary, will a private party have a right to enforce the restrictions in use set forth in this paragraph? [PF]

23. Does the settlement provide for federal or state funding for continued damage assessment studies?

24. By "representing" to the court that money will be spent pursuant to the MOA, are the governments barred from changing the MOA without court approval? Do they in effect approve the MOA? [3/19, p. 6]

25. Could the trustees, or the court if breaking an impasse, act through a private party (e.g. the Nature Conservancy or a Native corporation) to preserve or utilize natural resources under the settlement? [Rep. Phillips, 3/19, p.11]

26. Does the Alaska Constitution bar the state from bypassing the appropriation process in disposing of state assets, i.e., the litigation proceeds? [Rep. Barnes, 3/19, p. 11]

reserve 27. How was the $950 million amount for compensation calculated?

28. To what extent can the losses of third parties, for which the state is found liable, be paid out of these funds? [Rep. Phillips, 3/20, p.10]

29. Will any of these funds go into the Sec. 470 fund? [Rep. Brown, 3/20, p.12] Which funds get used first -- the trust funds, or Sec. 470 funds? [Rep. Hudson, 3/25]

[VII]
Commitment by Exxon to Continue Cleanup
(paragraphs 11[a-b], 12[a-b]; pages 11-14)

Cleanup Duties (paragraph 11)

30. If the SOSC or the FOSC disagree with Exxon's proposed costs, does Exxon still have to do the work? (What does "subject to prior approval" mean?) In the event of a dispute about the costs, who makes the final decision? [PF]

31. The first sentence of 11(b) provides that Exxon has no cleanup obligations after final approval of the consent decree "except as set forth in this Agreement." Does another paragraph of the agreement impose cleanup obligations after final approval? [PF]

32. What does the last sentence of 11(a) -- concerning immunity of Exxon from liability "by reason of undertaking clean-up work" in accordance with directions of the FOSC or SOSC -- mean? Is it intended to immunize Exxon from liability for acts connected with cleanup work Exxon does under the direction of the FOSC or SOSC? Can it be read as an agreement by the state and federal governments to indemnify Exxon if a third party recovers against Exxon based on acts related to this cleanup? Does it apply to past work? Does it apply to workers compensation? Contract claims? [PF; Rep. Navarre, 3/19, p.16]

33. To what extent is Exxon's current liability for cleanup limited by the settlement? Why are we reimbursing Exxon for future cleanup even if the settlement is rejected? [Rep. Davidson, 3/20, p.11]

Set Off for Cleanup Expenses (paragraph 12)

34. Can Exxon setoff amounts approved by the FOSC against amounts owed the state? Can Exxon setoff amounts approved by the SOSC against amounts owed the federal government? [PF]

[IX]
Releases and Covenants Not to Sue by the Governments
(paragraphs 13 [a-d], 14-16; pages 14-17)

Release of Exxon (paragraph 13; pages 14-15)

35. In the state case, the state asserted claims for lost revenue from the salmon enhancement tax, loss of oil and gas production tax revenue, loss of corporate income tax revenue, and loss of oil production royalties. These claims will be given up as to Exxon. Would the state have been able to prove this claimed loss of revenue, and if so, how much did the state believe it could prove? Does the state intend to continue litigating against other defendants in the state case, and if so, does it expect to be successful? What has it gained in the consent decree to compensate for the loss of those claims? [PF]

36. If the state settles under the consent decree, what happens to the state claims against the remaining defendants? Are there any state claims remaining against Alyeska? [PF/State Claims]

37. Number 2 of the exceptions refers to Alaska Native "villages". Are there any other Native groups (corporations?0 whose claims would be affected by this settlement? [PF]

38. Do political subdivisions of the state retain their claims against Exxon under this settlement? [Rep. Kubina 3/19; Rep. Leman 3/21, p.2]

39. Although the consent decree states that it does not affect third party claims related to the oil spill, will settlement between the state and Exxon have any practical effect on the ability of third parties to litigate their claims (e.g. is there any effect on confidentiality of scientific and economic data)? [PF]

Release of Exxon Pipeline (paragraph 14; pages 15-16)

Release of Claims Against Employees, etc.
(paragraph 15; pages 16-17)

40. From the way paragraph 15 is structured, it appears that there may be a civil case pending against an employee, director, or officer of Exxon Pipeline or Exxon. Is this true? [PF]

Dismissal of Actions (paragraph 16; page 17)

[IX]
Reopener for Unknown Injury
(paragraphs 17-19; pages 17-18)

Qualified Restoration Projects (paragraph 17; pages 17-18)

41. How likely is it that the state or federal government will be able to take advantage of this provision, given the requirement that the injury can not have been anticipated by any trustee? [PF; Reps. Leman, Davidson, 3/21, p.3]

42. How will "benefits" be quantified under this clause? [Reps. Gruenberg, Leman, 3/21, p.3]

$100 Million Limitation (paragraph 18; page 18)

Filing of Plans (paragraph 19; page 18)

[X]
Releases and Covenants Not to Sue by Exxon and Exxon Pipeline
(paragraph 20; pages 18-19)

43. What claims have Exxon or Exxon Pipeline asserted against the state or federal government? [PF]

[XI]
Trans-Alaska Pipeline Liability Fund
(paragraph 21; page 19)

44. How likely is it that the TAPL fund will assert claims against the state for money (if any) the fund pays to Alyeska? [PF]

[XII]
Provisions Pertaining to Alyeska
(paragraphs 22-25; pages 20-21)

Release of Alyeska (paragraph 22; page 20)

45. The consent decree releases Alyeska from liability to the state for "damages for injury to Natural Resources." Are we reserving any other types of civil claims against Alyeska e.g., economic loss)? [PF]

Partial Payment to Exxon (paragraph 23; page 20)

Partial Payment to Governments (paragraph 24; page 21)

Indemnification of Governments by Exxon (paragraph 25; page 21)

[XIII]
Third Party Litigation
(paragraphs 26-30; pages 21-23)

No Contribution or Indemnity; Allocation of Liability (paragraph 26; page 21)

46. Are there third party suits against Exxon and the state, or are there likely to be? (Under paragraph 26, the state could not recover against Exxon for its losses in such cases.) [PF] What will the cost of litigating third party suits be to the state? [Rep. Barnes, 3/19]

47. Can scientific and economic information acquired by the state in connection with the claims being released in this case be kept confidential under state law once the claims are dismissed? [Rep. Navarre, 3/19]

Suits Against Exxon or A Government Only (paragraph 27; page 22)

48. Are there third party suits against the state, or are there likely to be such, in which Exxon is not a defendant? (Under paragraph 27 the state could not recover against Exxon for its losses in such cases.) [PF] What value do the claims have? What portion of the claim could we collect from Exxon? What will the litigation cost? [Rep. Navarre, 3/19]

No Reduction in Payments (paragraph 28; page 23)

No Tender as Defendants (paragraph 29; page 23)

49. Paragraphs 29 and 30 are not limited to lawsuits related to the oil spill. How likely is a court to interpret these paragraphs as applying only to spill-related lawsuits? [PF]

Settlement With Exxon and Suit Against A Government (paragraph 30; page 23)

50. Can the state and federal governments recover against each other for judgments they have to pay to third parties? [PF]

[XIV]
Interest for Late Payments
(paragraph 31; pages 23-24)

[XV]
Reservation of Rights
(paragraphs 32-35; pages 24-25)

No Admission (paragraph 32)

No Claims Created (paragraph 33)

Government Programs Not Impaired (paragraph 34)

Existing Contracts Not Impaired (paragraph 35)

[XVI]
Notices and Submittals
(paragraph 36; pages 25-26)

[XVII]
Process for Entry of Agreement
(paragraphs 37-38; pages 26-27)

Notice, Legislative Approval, Withdrawl (paragraph 37)

51. It appears that the governments could keep the agreement in effect even if the state legislature does not approve it. If the legislature does not approve it and the state or federal government does not with draw, could the legislature

intervene in the federal case to prevent approval by the court? Could it intervene in the state court to prevent a dismissal of claims? [PF]

52. To what extent would the legislature's approval of the consent decree constitute an approval of the MOA? [PF/Overview; Rep. Barnes, 3/19, p.6]

53. Is the federal court bound to wait the full 45 days before ruling?

54. Can the legislature approve the settlement conditionally, with stipulations? [Rep. Hudson, 3/19, p.12]

55. If the consent decree is not approved, does the plea agreement terminate? [Rep. Ulmer, 3/20, p.20]

Termination of Agreement (paragraph 38)

56. What did the state receive in exchange for the setoff in paragraph 12, assuming the agreement is terminated? [PF]

57. Can the setoff be applied against amounts owed the state if the work was approved by the FOSC, but not the SOSC? [PF]

58. If the court rejects the Plea Agreement, can the U.S. or Alaska terminate the settlement?

59. Does legislative approval of the settlement estop the state or third parties from making constitutional challenges to the authority of the administration to enter into it, or to the funding mechanisms? [Rep. Barnes, 3/19, p.12]

[XVIII]
Retention of Jurisdiction
(paragraph 39; page 28)

60. Who drafted which parts of the documents, and will they be interpreted against the drafter? [Rep. Gruenberg, 3/21, p.4 Is there any record of the settlement negotiations?

61. Is the Consent Decree to be interpreted under federal law, or under Alaska law? [Rep. Gruenberg, 3/21, p.6]

62. Is the agreement in violation of the law of any other jurisdiction? [Rep. Gruenberg, 3/21, p.6]

63. Why is there no provision for judicial review in the Consent Decree, as there is in the MOA? [Rep. Gruenberg, 3/27]

[XIX]
Miscellaneous
(paragraphs 40-41; page 28)

Modification (paragraph 40)

Assertion of Authority (paragraph 41)

64. Does this Article estop the legislature or a third party from litigating the issue of authority? [PF, 3/21 p.9]

OPENING STATEMENT OF U.S. REPRESENTATIVE GERRY E. STUDDS

CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

AMH

MARCH 20, 1991

THE SUBCOMMITTEE ON FISHERIES MEETS JOINTLY THIS AFTERNOON WITH THE SUBCOMMITTEE ON COAST GUARD AND THE SUBCOMMITTEE ON OCEANOGRAPHY TO DISCUSS THE RECENTLY NEGOTIATED SETTLEMENT OF FEDERAL AND STATE CLAIMS ARISING OUT OF THE EXXON VALDEZ OIL SPILL. ALTHOUGH THE SETTLEMENT WAS ANNOUNCED ON MARCH 13, ITS FATE WILL BE DETERMINED BY THE FEDERAL DISTRICT COURT IN ALASKA FOLLOWING A PERIOD OF 30 DAYS FOR PUBLIC COMMENT.

UNDER LAW, FEDERAL AGENCIES HAVE A RESPONSIBILITY TO SEEK RECOVERY FOR INJURY TO NATURAL RESOURCES BELONGING TO THE UNITED STATES. THE MONEY THAT IS RECOVERED IS TO BE RETAINED BY THE TRUSTEES AND USED TO RESTORE OR REPLACE THE INJURED RESOURCES. IT IS IN FULFILLMENT OF THAT TRUSTEESHIP RESPONSIBILITY THAT THE SETTLEMENT WHICH WE WILL DISCUSS TODAY WAS NEGOTIATED. OUR PURPOSE IS TO DETERMINE, AS BEST WE CAN, WHETHER THE AGENCIES REPRESENTED HERE TODAY HAVE, IN FACT, ACTED IN THE BEST INTERESTS OF THE UNITED STATES AND OF THE RESOURCES WHOSE WELL-BEING THEY ARE REQUIRED TO PROTECT.

UNFORTUNATELY, IT IS DIFFICULT TO MAKE THAT JUDGMENT WITHOUT THE FACTS AND THE FACTS UPON WHICH THIS DEAL IS BASED ARE NOT NOW AVAILABLE TO THE PUBLIC.

WHAT <u>IS</u> CLEAR, HOWEVER, IS THAT WHAT ITS AUTHORS HAVE CALLED A BILLION DOLLAR DEAL FOR RESTORING PRINCE WILLIAM SOUND IS ACTUALLY A FIVE HUNDRED MILLION DOLLAR DEAL--OR EVEN LESS IF YOU TAKE INTO ACCOUNT THE DEFLATIONARY EFFECTS OF SPREADING THE PAYMENTS OVER TEN YEARS; THE $134 MILLION IN REIMBURSEMENTS FOR PAST COSTS; THE CREDIT GIVEN TO EXXON FOR ALL FUTURE CLEANUP COSTS; AND THE FACT THAT EXXON CAN DEDUCT VIRTUALLY ALL OF ITS PAYMENTS FROM FEDERAL INCOME TAXES.

IT IS ALSO CLEAR THAT IF THIS CASE HAD GONE TO COURT, THE GOVERNMENT WOULD HAVE BEEN CAST IN THE ROLE NOT ONLY OF PROSECUTOR, BUT OF DEFENDANT, AS WELL. COUNTER CLAIMS AGAINST THE GOVERNMENT FOR ITS ROLE IN BOTCHING THE CLEANUP WOULD CERTAINLY HAVE BEEN FILED. AND BECAUSE THE ADMINISTRATION DID NOT WANT TO SEE ITSELF ON TRIAL ALONG WITH EXXON, ITS ABILITY TO INSIST ON FULL PAYMENT FROM EXXON--AND FULL RESTORATION FOR PRINCE WILLIAM SOUND--MAY HAVE BEEN SERIOUSLY UNDERMINED.

IT IS, MOREOVER, FAR FROM CLEAR THAT THE SUMS OBTAINED IN THIS SETTLEMENT WILL BE USED FOR THE PURPOSES WHICH BY LAW THEY MUST BE USED--TO RESTORE THE ENVIRONMENT OF PRINCE WILLIAM SOUND. UNDER THE AGREEMENT, EACH OF THREE ALASKA STATE AGENCIES WILL HAVE A VETO OVER WHERE AND WHEN AND HOW THE MONEY OBTAINED FROM EXXON WILL BE SPENT.

I DO NOT DOUBT THE ENERGY OR THE SINCERITY OR THE COMPETENCE OF THE WITNESSES WE WILL HEAR FROM TODAY. I AM CONFIDENT THAT THOSE NEGOTIATING ON BEHALF OF THE UNITED STATES DID THE BEST THEY COULD. AND I SUPPORT ENTHUSIASTICALLY THE GOAL OF AVOIDING LITIGATION AND LEGAL FEES WHENEVER AND WHEREVER POSSIBLE.

BUT THE FACT IS THAT WE DON'T KNOW WHAT THE FULL COST OF RESTORING PRINCE WILLIAM SOUND WILL BE. AND NEITHER THE FEDERAL GOVERNMENT, NOR THE STATE GOVERNMENT, HAVE MADE PUBLIC THEIR OWN ESTIMATES IN THIS REGARD. AS A RESULT, WE DON'T KNOW--WE CAN ONLY GUESS--WHETHER THIS SETTLEMENT IS FAIR. WE KNOW ONLY THAT THE ADMINISTRATION, ALASKA'S NEW GOVERNOR AND EXXON WENT INTO A ROOM AND CAME OUT WITH AN AGREEMENT THEY SAY IS GOOD FOR THE ENVIRONMENT. THAT MAY BE, BUT I SUBMIT THAT WE WOULD BE FOOLS TO ACCEPT THAT WITHOUT FAR MORE EVIDENCE AND FAR BETTER ANSWERS THAN WE HAVE YET RECEIVED.

ONE HUNDRED SECOND CONGRESS

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
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Witness List

Subcommittee on Fisheries and Wildlife Conservation and the Environment

Subcommittee on Coast Guard and Navigation

Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf

March 20, 1991

Mr. Richard B. Stewart
Assistant Attorney General
Natural Resources Division
Department of Justice

Mr. Thomas A. Campbell
General Counsel
National Oceanic and Atmospheric Administration

Mr. Martin Suuberg
Deputy Solicitor
U.S. Department of the Interior

Mr. Alan Raul
General Counsel
Department of Agriculture

Ms. LaJuana S. Wilcher
Assistant Administrator for Water
U.S. Environmental Protection Agency

Mr. John Gaughn
Chief of Staff
Department of Transportation

SUMMARY OF PAYMENTS TO BE MADE BY EXXON

1. Criminal fine of $100 million, of which $50 million is remitted to the State of Alaska.

2. Civil payments totalling $900 million as follows:

- o $ 90 million within ten days of final settlement
- o $150 million on September 1, 1992
- o $100 million on September 1, 1993
- o $ 70 million on September 1, 1994
- o $ 70 million on September 1, 1995
- o $ 70 million on September 1, 1996
- o $ 70 million on September 1, 1997
- o $ 70 million on September 1, 1998
- o $ 70 million on September 1, 1999
- o $ 70 million on September 1, 2000
- o $ 70 million on September 1, 2001

3. Of the $900 million, up to $72 million may be used to reimburse the State of Alaska for past costs and up to $62 million may be used to reimburse Federal agencies for past costs.

4. Exxon is entitled to a credit of up to $4 million for costs incurred between January 1, 1991 and the effective date, and a credit for all costs after the effective date for cleanup operations conducted pursuant to the direction of the Federal or state governments. The costs are defined to include "costs and obligations incurred for salary, wages, benefits, and expenses of Exxon employees, for contractors, for equipment purchase and rental, for office and warehouse space, and for insurance, accounting and other professional services".

5. Between September 1, 2002 and September 1, 2006, Exxon will pay additional amounts of up to $100 million for natural resource restoration projects if new evidence of injury to the resource in question arises after the effective date of the agreement.

Department of Justice

TESTIMONY

OF

RICHARD B. STEWART
ASSISTANT ATTORNEY GENERAL
ENVIRONMENT & NATURAL RESOURCES DIVISION
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, COAST GUARD AND NAVIGATION, AND OCEANOGRAPHY SUBCOMMITTEES

OF

THE COMMITTEE ON MERCHANT MARINE & FISHERIES
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

PROPOSED SETTLEMENT OF CIVIL AND CRIMINAL LIABILITY ARISING FROM THE EXXON VALDEZ OIL SPILL

WEDNESDAY, MARCH 20, 1991

Mr. Chairman and Members of the Subcommittees:

Good afternoon. I am Richard B. Stewart, the Assistant Attorney General in charge of the Justice Department's Environment and Natural Resources Division. I am pleased to have this opportunity to appear on behalf of the Department to discuss the proposed settlement of the federal government's claims of civil and criminal liability arising from the Exxon Valdez oil spill. I should add that I am especially pleased to be joined in this appearance by representatives of those federal agencies who are natural resource trustees for Prince William Sound, and in particular by NOAA General Counsel Tom Campbell, who provided important leadership in meeting the complex practical and legal challenges presented by litigation over the Exxon Valdez spill.

Background to the Litigation

Mr. Chairman, I am sure that the members of the subcommittees have followed events in Prince William Sound closely since the spill, so I will only briefly recite the events that gave rise to the claims against the Exxon Corporation and the settlement that now is pending. As the subcommittees will recall, the tanker vessel Exxon Valdez was outbound from Port Valdez, Alaska on the night of March 23-24, 1989, carrying 50 million gallons of Alaska North Slope crude oil. The tanker, which was owned by an Exxon subsidiary and commanded by Joseph Hazelwood, left the sound's designated shipping lanes and went

hard aground on Bligh Reef, a well-known and well-marked navigational hazard.

The grounding pierced the ship's hull, and best estimates are that 11 million gallons of oil spilled into the pristine waters of Prince William Sound and the Gulf of Alaska. The oil fouled those waters and much of the 1100 miles of adjacent shoreline. In the weeks and months following the spill, Exxon began an extensive campaign to clean up the oiled beaches, which continued through the fall of 1989. In response to public pressure, Exxon resumed cleanup work in the Spring of 1990, and is expected to undertake further cleanup this spring. Exxon reports that so far it has spent more than $2 billion in cleanup activities.

Both the federal government and the State of Alaska have asserted claims against Exxon. Initially, the Justice Department successfully sought the criminal indictment both of Exxon Shipping, the owner of the Exxon Valdez, and the parent Exxon Corporation. We regard the spill as a classic example of culpable corporate management failure. A ten-count indictment was returned in February 1990, including felony charges for knowing violations of the Ports and Waterways Safety Act and the Dangerous Cargoes Act, and misdemeanor counts under the Clean Water Act, the Refuse Act and the Migratory Bird Treaty Act. The criminal charges were scheduled for trial next month.

The federal government also has a number of civil claims, particularly on behalf of those federal agencies that

serve as trustees for natural resource damages under the Clean Water Act and other federal statutes and common law. These claims have been asserted in a complaint that was filed along with the proposed settlement documents last week. The State of Alaska has had civil claims pending since August 1989, when the state filed a complaint in Alaska Superior Court seeking damages under state law.

In support of both the civil and criminal claims, the federal and state governments together have undertaken extensive scientific studies to assess the impact of the spill and the probable damage to natural resources. By June, the two governments will have spent a total of more than $80 million in such studies. This investigation was necessary because the damage issues lie at the frontiers of scientific knowledge concerning the effect of oil spills on marine and coastal resources.

While the spill presents factual issues that lie on the scientific frontier, the case also presents many issues on what can only be described as a legal frontier. Many if not most of the legal issues that would be litigated against Exxon are issues of first impression in the federal courts. By way of example, the Exxon defendants' exposure to criminal fines could range from $600 million to a meager $3 million, depending on whether and how the court were to apply the Alternative Fines Act in this case.

Settlement Objectives

Because of these daunting uncertainties, both the Justice Department and the State of Alaska recognized the desirability of resolving their respective claims that would eliminate the uncertainty and expense of protracted litigation and permit early funding of restoration work for the Sound, but only if Exxon would come to the table ready to recognize its responsibility for the spill and the magnitude of the damage to natural resources in and around Prince William Sound.

Accordingly, the Justice Department and the federal trustees, together with EPA, concluded from the outset that no settlement would be acceptable without three elements: first, there would have to be sufficient recovery of damages for the trustees to undertake a prompt and thorough restoration program for the Sound; second, any settlement would have to be made public and include an appropriate opportunity for public comment; and third, Exxon would have to acknowledge its criminal conduct and pay a substantial criminal penalty that reflects the seriousness of the offenses that led to the spill.

I am happy to report to the subcommittees that all three of these elements have been met by the proposed civil settlement and the criminal plea. A vital impetus for this favorable settlement was the Justice Department's aggressive prosecution of the criminal charges, and early favorable rulings by the court in the criminal case. These established the seriousness with which the government has regarded Exxon's

criminal responsibility for the spill as a binding principle for settlement.

On the civil side of the case, considerable credit also should go to Alaska Governor Hickel's initiative, this past January, for talks between the corporation and the state and federal governments. These talks began with direct bargaining among the principals, involving Exxon Chairman Lawrence Rawl, Governor Hickel and Alaska Attorney General Cole, and the heads of the federal agencies concerned -- the Departments of Agriculture, Interior, and Transportation, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration. NOAA General Counsel Tom Campbell, on behalf of the natural resource trustees, provided crucial leadership in ensuring that these early negotiations forged a suitable framework for an agreement in principle, and I would expect that he will speak directly to that process.

Eight weeks of hard bargaining with Exxon resulted, finally, in the settlement proposed last week. Those negotiations were marked by extraordinary cooperation among Governor Hickel and Attorney General Cole of Alaska, Interior Secretary Lujan, NOAA Administrator Knauss and General Counsel Campbell, EPA Administrator Reilly, Transportation Secretary Skinner, and Agriculture General Counsel Raul. Their collective leadership helped shape a settlement that should be regarded as an unprecedented win for the environment.

Settlement Terms

Under the settlement, Exxon will pay $900 million over ten years to satisfy the state and federal governments' civil damage claims. Exxon also may be liable for an additional $100 million if the future discloses currently unforeseen damage that was not discovered by the extensive damage survey the two governments have undertaken to date. These amounts will be used both to reimburse the state and the federal government for past expenses and restoration costs, and to fund a thorough program to restore Prince William Sound's natural resources. These funds also may be used to fund additional cleanup work by Exxon in 1991. The schedule of payments under the settlement agreement is expected generally to coincide with the future funding needs for restoration work now being planned by the federal trustees.

The settlement also includes a number of releases and covenants by the parties not to bring certain claims. Exxon has agreed not to sue the United States for any claims arising from the spill. The United States and Alaska have agreed not to sue Alyeska Pipeline Service Company for natural resource damages, because the settlement satisfies all of those claims and because Alyeska could seek to recover any liability to the United States for such damage from Exxon. This covenant reasonably protects Exxon from having to pay twice, in effect, for the same claims. In turn, Exxon has agreed to indemnify Alaska and the United States for any claims Alyeska might assert against the two governments. The United States has preserved all other claims

against Alyeska, including potential claims for civil penalties, that do not involve natural resource damages.

Apart from the civil settlement, the two corporate defendants -- and here I mean Exxon Corporation and Exxon Shipping -- have agreed to plead guilty to four serious criminal charges arising from the spill. Exxon shipping will plead guilty to three counts under the Clean Water Act, the Refuse Act, and the Migratory Bird Treaty Act, and Exxon Corporation will plead guilty to one count under the Migratory Bird Treaty Act. Exxon will pay a $100 million fine, half of which will be remitted, and Exxon will pay of $50 million as restitution to the State of Alaska for restoration of damaged natural resources.

These sums -- totalling a billion dollars -- represent the largest environmental liability settlements in history. Based on the survey of damage to natural resources undertaken by the natural resource trustees, this recovery should provide sufficient funds to undertake and complete the needed restoration program for the Sound. And Exxon will have to pay up to $100 million more if future exposure discloses additional damage that cannot be discovered now. More importantly, these funds will be available to the trustees far sooner than would have been possible through protracted and complex litigation that would have taken years.

I am sure the Chairman can appreciate the significance of avoiding years of litigation from the experience of his own district: there, more than seven years of intensive litigation

have been necessary to recover for natural resource damage to New Bedford Harbor from PCB contamination. Restoration there is only now getting substantially underway.

Standing alone, the criminal fine will be the largest ever paid for an environmental crime. This meets our objective of securing a fine that is commensurate with the seriousness of the underlying offenses. When Exxon's past cleanup costs are taken into account, the spill will have cost Exxon considerably more than $3 billion.

Finally, the subcommittees should know that the agreement with Exxon fully meets our objective of having this be a public settlement, one that affords an opportunity for public comment and participation. For the federal government, public participation has been a paramount concern throughout the process of litigation and restoration planning. The civil settlement is conditioned on court approval following a public comment period. Let me emphasize that this step was not required by law; the concerned federal agencies and the State of Alaska have insisted that the settlement be incorporated into a consent decree that will be subject to a thirty day public comment period in federal court. Judge Holland, who oversees our criminal case against Exxon, has said he would follow a similar procedure with respect to the plea agreement.

The United States and the State will have the right to withdraw from the agreement if the public comment period shows that the settlement is inappropriate or inadequate. The State

of Alaska also may withdraw if the Alaska legislature disapproves of the agreement. Exxon does not have a comparable right of withdrawal based on public comment or other information, but may withdraw if the court modifies the agreement.

The federal trustees will seek to provide the subcommittees -- and, ultimately, the public -- with information concerning natural resource damage and restoration costs that should remove any doubt that the settlement meets the objectives that I previously set forth. But there remains the possibility that both the state and federal governments might return to full-scale criminal and civil prosecution of their claims against Exxon if the settlement ultimately is rejected by the court or one of the parties. Both the Justice Department and the trustees, therefore, are constrained not to present any information that might tip the government's hand concerning specific evidence it has against Exxon. After the decree is finalized and scientific studies have undergone peer review, disclosure of most of the resulting information will, of course, be possible.

Finally, I think it important for the subcommittees to understand that despite the federal and state governments' success in meeting the federal government's objectives in this settlement, that success has not been achieved at the expense of any of the many other parties who may have lawsuits pending against Exxon. As the subcommittees are aware, the spill has spawned an immense amount of litigation. Private plaintiffs

ranging from environmental and Native American groups to commercial fishermen and cannery workers have filed suits for damages and/or injunctive relief.

To ensure that the settlement would not prejudice those claims, the settlement specifically provides that it is not intended to affect legally the claims of third parties against Exxon. Paragraph 13 of the proposed consent decree has even more explicit protection for Alaska Native villages to recover natural resource damages, as well as protection for those who hold any property interest affected by the spill.

Administering Settlement Monies

The objectives of thorough natural resource restoration and public participation have been protected not only by the Agreement with Exxon but also in the Agreement between the federal government and the State of Alaska that will govern use of the settlement monies. Under the Agreement, expenditures for restoration must be approved unanimously, and must be for natural resource restoration and enhancement. The Agreement specifically provides that its governance structure, which will be further developed by the trustees, must incorporate procedures for meaningful public participation. Of course the trustees already have been true to this spirit of public involvement by submitting their initial restoration plan for public comment; the plan was published in the Federal Register on March 1, 1991. The trustees

remain committed to sustaining public participation in the restoration planning process.

I would be happy to answer any questions you may have.

TESTIMONY
OF
MR. THOMAS A. CAMPBELL
GENERAL COUNSEL
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
SUBCOMMITTEE ON OCEANOGRAPHY AND GREAT LAKES
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

MARCH 20, 1991

Mr. Chairman and Members of the Subcommittees:

I appreciate the opportunity to participate in this oversight hearing concerning the Exxon VALDEZ settlement. My name is Tom Campbell, and I am the General Counsel of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce. I am representing Dr. John Knauss who is in Paris today for the International Oceanographic Conference. NOAA is the lead Federal trustee for the Exxon VALDEZ damage assessment, and I am here today on behalf of the other Federal trustees - the Department of the Interior and the Department of Agriculture.

Under the Clean Water Act, NOAA, the Department of the Interior and the Department of Agriculture act as stewards for the Nation's natural resources. The spill of 11 million gallons of oil into the pristine environment of the Prince William Sound on a dark night in March 1989, brought our respective trust

responsibilities into sharp focus. For the past year and 11 months, the Federal trustees have done everything in their power to assess the injuries to natural resources and determine the economic damages done to the Sound and other areas of Alaska, and to prepare to present the Federal Government's claim in court.

NOAA first became involved in assessing injuries to marine resources and their habitats with the grounding of the Amoco CADIZ which occurred in 1978. In that case the vessel split in two, spilling 68 million gallons of crude oil on the coast of Brittany, France. Claims arising from this environmental disaster have been in litigation for 13 years. On July 24, 1990, a Federal judge in Chicago ordered Amoco to pay $105 million in damages to the French Government. Amoco has appealed, and the litigation process continues.

Litigation is wasteful and protracted. Litigation is like war and litigation like war should be avoided if reasonably possible. Litigation also represents failure -- failure of one party to properly assess his position in a conflict.

In the fall of 1990, NOAA was made the lead Federal trustee on the Exxon VALDEZ spill. Under the leadership of Administrator Knauss we have tried to act as the "honest broker." Our first responsibility was to fully assess the natural resource injuries and prepare for possible litigation. Our second responsibility was to explore the possibility of an equitable out of court settlement.

It is the Federal trustees' belief that the settlement achieved with Exxon represents a fulfillment of our stewardship responsibility. It provides us with money this year to do necessary restoration instead of 5 to 10 years from now.

As the trustees weighed the benefits of settling with Exxon and grappled with the proper range of negotiating values, we considered a myriad of factors such as the extent of the injury demonstrated thus far, the likelihood of translating those injuries into provable damages, the value of beginning restoration now rather than 5 - 10 years later, and the estimated cost of restoration. The settlement that was announced last week falls well within the range of values estimated by the trustees.

Finally, let us not lose sight of the fact that this represents the largest environmental settlement in the world -- one billion dollars -- ten times that recovered in Amoco CADIZ, a spill that was six times larger. It is a very good deal for Prince William Sound, and it is an outstanding deal for the United States and Alaska. The State of Alaska and the Federal trustees have exercised their trusteeship responsibly and with considerable imagination in bringing these complicated negotiations to fruition.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions concerning the settlement.

Statement for the Record of Martin J. Suuberg
Deputy Solicitor, Department of the Interior
Before the House Subcommittee on Fisheries and Wildlife
Conservation and the Environment
On The Exxon Valdez Oil Spill -- Settlement Agreement with Exxon
March 20, 1991

Mr. Chairman, thank you for the opportunity to testify about the settlement agreement recently entered into between the United States, the State of Alaska, and Exxon Corporation and two of its affiliates. My name is Martin J. Suuberg. I am the Deputy Solicitor, U.S. Department of the Interior. In this capacity, I have advised the Secretary of the Interior with respect to the natural resource damage assessment done in response to the Exxon Valdez Oil Spill and the settlement negotiations with Exxon. As you are aware, the Secretary is designated to act as the trustee on behalf of the public in asserting natural resource damage claims under the Clean Water Act for injuries to natural resources under the Department of the Interior's jurisdiction. These include sea otters, migratory birds, and park and refuge lands and their associated resources.

The Department of the Interior fully endorses the recent settlement of all federal and state claims against Exxon arising out of the Exxon Valdez accident. We do so because we believe that the settlement provides fair compensation to the federal and state natural resource trustees for injuries to the affected resources under their jurisdictions, and allows us to focus our efforts now on restoring those resources and the services that they provide. The alternative, litigation, could mean years of waiting before we had any recoveries in hand with which to fund necessary restoration projects, and the outcome of such litigation would be far less certain than the terms of the settlement agreement. We are satisfied that the settlement arrangement will provide sufficient funds at appropriate intervals to enable us to meet our restoration responsibilities.

The trustees have yet to design the specific organizational structure that will be used to implement the settlement agreement. We are very interested in learning what the public has to say about the terms of the settlement and how they should be carried out. For this reason, the trustees have asked, through notices published yesterday in the Federal Register, the public to review and comment on the settlement agreement and an associated Memorandum of Agreement (MOA) with the State of Alaska. In making those comments, we hope that members of the public will address what types of public participation procedures they would like to see adopted by the trustees for fostering meaningful public involvement in the restoration planning process. The MOA sets forth the basic ground rules under which natural resources damage recoveries will

be administered. Instead of pursuing lengthy litigation with the State of Alaska over which particular trustee has the paramount interest in a particular resource, the two governments decided to treat their trusteeship over the affected resources as co-equal and indivisible. The consequence of this principle is that all decisions concerning the use of natural resource damage recoveries for restoration purposes must be made by the unanimous agreement of the federal and state trustees. We believe that this basic requirement for expending settlement proceeds will ensure that the public interest is met in reaching restoration decisions.

Throughout our negotiation of the settlement agreement and the MOA, we have been very mindful of the Secretary's concern for Alaska Natives who may have been affected by the spill and subsequent cleanup activities. We have been very careful to structure the settlement agreement and the MOA not to affect or impair the rights of Alaska Natives to pursue their own claims for compensation against Exxon. We have also preserved our ability to assist Alaska Natives in ways normally provided by the Bureau of Indian Affairs as a part of its assistance programs. Because the Department is concerned about the views of Alaska Natives, we are in the process of making a special mailing to affected Alaska Native organizations and individuals to invite their comments on the settlement agreement and the MOA.

Statement of Alan Charles Raul
General Counsel
U.S. Department of Agriculture

Subcommittees on Fisheries and Wildlife Conservation and the Environment; Coast Guard and Navigation; and Oceanography, Great Lakes and the Outer Continental Shelf of the Committee on Merchant Marine and Fisheries
U.S. House of Representatives

March 20, 1991

Chairman Studds, Chairman Tauzin, Chairman Hertel, and committee members, thank you for this opportunity to appear before your subcommittees to discuss the recent settlement agreement with the Exxon Corporation regarding the March 24, 1989 tanker accident. My name is Alan Charles Raul, and I am the General Counsel of the Department of Agriculture. The Secretary of Agriculture is a Trustee for natural resources injured in the Exxon Valdez oil spill by virtue of the U.S. Forest Service's management of the Chugach National Forest.

This settlement is an important milestone in the history of the Exxon Valdez disaster. It has been nearly two years since the fateful grounding of the tanker resulted in nearly 11 million gallons of oil spilling into Prince William Sound. Much of the oil washed up on the shoreline of the Chugach National Forest. Approximately 350 miles of the Forest's shoreline were fouled with oil that continues to disrupt the environment despite considerable response mitigation. The Department of Agriculture, through the Forest Service, has spent almost two years preparing to prosecute our claims for damages to natural resources against Exxon. The State of Alaska and federal agencies including the Department of the Interior, NOAA and USDA have spent well over $100 million to assess the spill's damages with an

eye towards restoration as well as litigation. State and federal agencies plan to spend another $35 million in this year alone. This unprecedented scientific effort has resulted in over 70 integrated scientific studies, each concentrating on a different aspect of injury to the Sound. All of these studies have produced preliminary results, and it is these results that have formed the basis for the trustees' decision making.

Most of the lands and natural resources in Prince William Sound are managed by either the federal government or the state of Alaska. Many of those lands are the trustee responsibility of the U.S. Forest Service. In fact, more than 80% of the land in Prince William Sound is managed by the Forest Service. The Forest Service is actively engaged in managing the water, soil, air, mineral and timber resources of the entire area. In addition to its stewardship of natural resources, the Forest Service is committed to protecting the rich cultural heritage of these lands for Alaska natives and preserving their benefits for local residents and tourists.

I would stress, again, that the settlement does not mark the end of our commitment to restoring Prince William Sound's environment. Most of our work is still ahead. It will take the dedication and years of hard work of scientists and Forest Service managers working together to develop restoration options that are ecologically viable and beneficial to the Sound. By ending the significant uncertainty and delays of litigation, this settlement allows us to redouble our efforts towards restoring the environment. It ensures our ability to maintain a long term commitment to the ecology of the Sound. The Forest Service takes its stewardship seriously, and, as mandated by President Bush nearly two years ago, we intend to spare no efforts to restore the Sound fully to its pre-spill condition.

LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM April 9, 1991

SUBJECT: Disclosure of scientific data relating to Exxon Valdez litigation (Work Order No. 7LS1171)

TO: Representative Max Gruenberg, Jr.
Attn: Andy Hemenway

FROM: John B. Gaguine JBG
Legislative Counsel

You have asked whether the attorney general may keep confidential scientific data relating to the Exxon Valdez oil spill, or whether the information is public under AS 09.25.110-09.25.125. If the recent proposed settlement terminated all Exxon Valdez litigation, then I would say that the information probably could not be kept confidential, based on a recent Alaska Supreme Court decision. However, since there is litigation ongoing naming the state as a defendant, I think that the attorney general is probably acting within his authority. The law, though, is not completely clear on either of these points.

First, it seems that the scientific data, absent litigation considerations, clearly would be subject to public disclosure under AS 09.25.110 - 09.25.125. The definition of public records in AS 09.25.220(6) is extremely broad:

> (6) "public records" means books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; "public records" does not include proprietary software programs.

I think that the data plainly falls under this definition.

In Anchorage School District v. Anchorage Daily News, 779 P.2d 1191 (Alaska 1989), the court ruled that a public agency may not circumvent the public records statutes

(AS 09.25.110 - 09.25.125) by agreeing to keep the terms of a lawsuit settlement agreement confidential. Despite the importance of the issue, the court dealt with it quite briefly, thus indicating (in my opinion) that the court found the answer clear:

> The school district argues that it should not be required to produce the settlement documents because the confidentiality agreement was material to the settlement. According to the district, public interest in promoting settlements, coupled with the need for efficiency in conducting government business, outweighs the public interest in disclosure.
>
> Alaska's public records disclosure statutes apply to records maintained by municipalities. In general, they provide broad public access to municipal "books, records, papers, files, accounts, writings and transactions." AS 09.25.110. The question whether a municipality must disclose a particular document is resolved by balancing the fundamental public interest in disclosure against the municipal interest in confidentiality. In recognition of the fundamental nature of the public right to know, the municipality has the burden of proving that the record should not be disclosed. Exceptions to the statutory disclosure requirements are narrowly construed. Doubtful cases are resolved by permitting public inspection.
>
> We recognize the important public policy served by those measures which encourage settlement. We recognize also that some litigants are unwilling to settle unless the terms of settlement remain confidential, and that a municipality's inability to assure confidentiality may, therefore, adversely affect its ability to negotiate a settlement. Nevertheless, the specific statutory provisions upon which the Daily News relies reflect a policy determination favoring disclosure of public records over the general policy of encouraging settlement. The people of this state, through their elected representatives, have stated in the clearest of terms that it is more important that they have access to this type of information than that it remain confidential. Thus, we hold that a public agency may not circumvent the statutory disclosure requirements by agreeing to keep the terms of a settlement agreement confidential. Under Alaska law, a confidentiality provision such as the one in the case at bar is unenforceable because it violates the public records disclosure statutes.

Id. at 1192-93 (citations and footnotes omitted; emphasis in original).

If all Exxon Valdez litigation was concluded, I do not think that the "work product" exception to discovery would have any relevance to post-settlement disclosure of the

data. That exception is intended to prevent a litigant from obtaining access during litigation to documents prepared by his or her adversary for the litigation. While, as discussed below, it may override the public records statutes as long as litigation is ongoing, the exception would seem to have no applicability once the litigation is over.

My thinking on the work product question is based in part on the legislature's enactment of AS 09.25.122 as part of the 1990 overhaul of the public records laws. That statute, which codifies the substance of 6 AAC 95.150 (a section of Governor Hammond's freedom-of-information regulations), provides:

> Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is subject to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency, except that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with applicable court rules. In this section, "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party.

I read this statute as implying that when a person is not involved in litigation with the state, which is everyone after the litigation has been settled, the normal rules of disclosure, i.e., the public records laws, apply, and not the court rules. Since "work product" is a creature of the court rules, it would not seem to apply after a settlement.

A recent Florida case, City of North Miami v. Miami Herald Publishing Co., 468 So.2d 218 (Fla. 1985), supports my conclusion. In that case the court held that communications between the members of a city council and the city's attorney relating to litigation were not exempt from disclosure under the broad Florida public records law. The court held that the law did not incorporate such non-statutory exceptions as attorney-client privilege and attorney work product.[1/] However, the language of the Florida public records law is different from the Alaska law, so that North Miami might not be persuasive to an Alaska court.

It is clear that under federal law the Exxon Valdez scientific data would not be disclosable to the public, even after all litigation is settled. The federal Freedom of Information Act, 5 U.S.C. 552, contains a provision, subsection (b)(5), that exempts from FOIA disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." In Federal

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1/ The court did note, however, that a specific Florida statute authorized the city to withhold disclosure while the litigation was ongoing.

Trade Commission v. Grolier Incorporated, 462 U.S. 19, 76 L.Ed.2d 387 (1983) (copy attached), the U.S. Supreme Court ruled that the (b)(5) exemption applied even when the litigation for which the requested documents had been generated was over.

I think that an Alaska court would not be likely to follow Grolier, both because of the strong presumption of public access to public records (expressed in Anchorage School District, supra), and because of the absence of any language in AS 09.25.110 - 09.25.125 similar to (b)(5).[2] I think that this absence is especially significant because, as noted, the Alaska public records statutes were overhauled in 1990, and a special section, AS 09.25.122 (quoted above), dealt specifically with litigation, without including (b)(5)-type language. Thus, as noted, I believe that an Alaska court would be more inclined to follow North Miami than Grolier. However, both the majority and the concurring opinions in Grolier set out strong policy arguments for exempting "work product" from FOIA disclosure, and an Alaska court might thus choose to follow Grolier notwithstanding the presumption of public access and the absence of (b)(5)-type language in the Alaska statutes.

At any rate, there is litigation ongoing, and so the question of whether an exemption to disclosure applies in the absence of litigation is premature. I believe that the existence of this litigation in my opinion would support the attorney general's non-disclosure decision.

First, I believe that the scientific data constitutes "work product" that is generally not available for discovery under Civil Rule 26(b)(3) - it is my understanding that the data was produced "in anticipation of litigation or for trial", and that the production was coordinated by the attorney general's office.[3] Although the state was primarily producing the data for its litigation against Exxon, it seems obvious that the state was also anticipating use of the data in the suits naming it as a defendant, if those suits were not settled or dismissed. Even if the suits were not filed at the time that the data was produced (and I believe some were; I recall that some suits were filed against Exxon, the state and the federal government almost immediately), it seems that the "work product" exception to discovery would still apply, especially in light of the "anticipation of litigation" language of Rule 26(b)(3). I think it would be impossible to dispute an assertion by the state that it was gathering data not only for

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[2] Some states, such as Maryland and Rhode Island, have adopted language in their public records statutes essentially identical to that in (b)(5). Others have included language that the courts have read as incorporating the (b)(5) principle. See, e.g., Denver Post Corp. v. University of Colorado, 739 P.2d 874, 880 (Colo. App. 1987) (use of term "privileged information" in Colorado public records statute authorizes non-disclosure of attorney litigation work product).

[3] If I am wrong, and the data was produced by the agencies in their normal course of business not specifically for use in litigation, then AS 09.25.122 would clearly make the data public.

litigation then pending, but also for litigation that might be subsequently brought against it.

In Grolier, the Court, interpreting Fed.R.Civ.P. 26(b)(3) (from which the Alaska rule derives), held that the language of the rule "protects materials prepared for any litigation or trial as long as they were prepared by or for a party to the subsequent litigation." 76 L.Ed.2d at 393 (emphasis in original). I see no reason why an Alaska court would not follow Grolier in interpreting Alaska Rule 26(b)(3).

Thus it seems clear that the state may refuse to disclose the data to litigants against it. But what about those plaintiffs who have sued only Exxon, and not the state, or those members of the public who have no interest in any litigation? The answer here is not entirely clear. AS 09.25.122 suggests that such persons would be entitled to inspect the data, as only litigants are bound by the court rules.[4/] But such an interpretation would effectively remove the work product protections for public litigants. I am inclined to think that a court would not support such a reading of the statutes.

As noted, the Florida Supreme Court in North Miami, supra, held, based on a specific statute, that there is no right of public access to a public litigant's work product during the pendency of the litigation.[5/] I am inclined to think that an Alaska court would, as a matter of policy, read the same limitation of access into Alaska law even though no specific statutory limitation exists. However, it is certainly possible that an Alaska court would read the absence of a specific limitation in statute as precluding a court from creating such a limitation, notwithstanding the powerful policy arguments in favor of it. At any rate, it seems clear that, no matter how the courts might finally rule on this question, the attorney general can assert reasonable justifications for his policy; he is not acting in contravention of clearly stated law.

I hope that this memorandum has been of assistance to you. Please feel free to let me know if I can be of further assistance.

JBG:pl:mi
91-239.plm

[4/] However, if such a person were seeking to obtain the data so that he or she could transfer it to a litigant, then the person would be "involved in litigation" within the meaning of AS 09.25.122.

[5/] Note that North Miami, unlike many public access/work product cases (such as Grolier), involved a request by a news organization, rather than by a former litigant.

[462 US 19]

FEDERAL TRADE COMMISSION, et al., Petitioners

v

GROLIER INCORPORATED

462 US 19, 76 L Ed 2d 387, 103 S Ct 2209

[No. 82-372]

Argued March 29, 1983. Decided June 6, 1983.

Decision: Agency attorney work product held exempt from mandatory FOIA disclosure without regard to status of litigation for which it was prepared.

SUMMARY

A corporation filed a request with the Federal Trade Commission for disclosure of documents concerning the investigation of a subsidiary corporation. The Commission had investigated the subsidiary in connection with a civil penalty action but the suit had been dismissed with prejudice. The Commission refused to release some documents on the basis that they were exempt from mandatory disclosure under Exemption 5 of the Freedom of Information Act (5 USCS § 552(b)(5)), which exempts from disclosure interagency or intraagency memorandums or letters which would not be available by law to a party in litigation with the agency. The United States District Court for the District of Columbia held that all the requested documents were exempt from disclosure under Exemption 5. The United States Court of Appeals for the District of Columbia Circuit held that four documents could not be withheld unless the Commission could show that litigation related to the terminated action existed or potentially existed (671 F2d 553).

On certiorari, the United States Supreme Court reversed. In an opinion by WHITE, J., joined by BURGER, Ch. J., and MARSHALL, POWELL, REHNQUIST, STEVENS, and O'CONNOR, JJ., it was held that attorney work product is exempt under Exemption 5 of the Freedom of Information Act from mandatory disclosure without regard to the status of the litigation for which it was prepared.

BRENNAN, J., joined by BLACKMUN, J., concurring in part and concurring

Briefs of Counsel, p 865, infra.

in the judgment, expressed the view that the holding should rest exclusively on a construction of Rule 26(b)(3) of the Federal Rules of Civil Procedure.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Administrative Law § 64 — FOIA — attorney work product exemption

1a–1d. Under Exemption 5 of the Freedom of Information Act (5 USCS § 552(b)(5)), which exempts from disclosure interagency or intraagency memorandums or letters which would not be available by law to a party in litigation with the agency, attorney work product is exempt from mandatory disclosure without regard to the status of the litigation for which it was prepared.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

2 Am Jur 2d, Administrative Law § 232; 66 Am Jur 2d, Records and Recording Laws § 39

15 Federal Procedure, L Ed, Freedom of Information §§ 38:90 et seq.

1 Federal Procedural Forms, L Ed, Administrative Procedure §§ 2:53.3, 2:175, 2:175.5, 2:192

1 Am Jur Pl & Pr Forms (Rev), Administrative Law, Form 54.1

2 Am Jur Trials 409, Locating Public Records

5 USCS § 552

US L Ed Digest, Administrative Law § 64

L Ed Index to Annos, Freedom of Information Act

ALR Quick Index, Freedom of Information Acts

Federal Quick Index, Freedom of Information Act; Work Product Doctrine

Auto-Cite®: Any case citation herein can be checked for form, parallel references, later history and annotation references through the Auto-Cite computer research system.

ANNOTATION REFERENCES

Freedom of Information Act exemption (5 USCS § 552(b)(5)) for interagency and intraagency memorandums or letters as applicable to communications to or from attorneys for the government. 54 ALR Fed 280.

Attorney's work product privilege, under Rule 26(b)(3) of the Federal Rules of Civil Procedure, as applicable to documents prepared in anticipation of terminated litigation. 41 ALR Fed 123.

What are interagency or intraagency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 USCS § 552(b)(5)). 7 ALR Fed 855.

Development, since Hickman v Taylor, of attorney's "work product" doctrine. 35 ALR3d 412.

Depositions and Discovery § 36 — work product — immunity

2. Rule 26(b)(3) of the Federal Rules of Civil Procedure protects materials prepared for any litigation or trial as long as they were prepared by or for a party to the subsequent litigation.

Administrative Law § 64 — FOIA — attorney work product exemption

3. The test under Exemption 5 of the Freedom of Information Act (5 USCS § 552(b)(5)), which exempts from disclosure interagency or intraagency memorandums or letters which would not be available by law to a party in litigation with the agency, is whether the documents would be routinely or normally disclosed upon a showing of relevance.

Administrative Law § 64; Depositions and Discovery § 36 — FOIA — attorney work product exemption

4. Exemption 5 of the Freedom of Information Act (5 USCS § 552(b)(5)), which exempts from disclosure interagency or intraagency memorandums or letters which would not be available by law to a party in litigation with the agency, incorporates the privileges which the government enjoys under the relevant statutory and case law in the pretrial discovery context.

SYLLABUS BY REPORTER OF DECISIONS

Exemption 5 of the Freedom of Information Act (FOIA) exempts from disclosure under the Act "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." Petitioner Federal Trade Commission (FTC) conducted an investigation of a subsidiary of respondent in connection with a civil penalty action against the subsidiary in Federal District Court filed by the Department of Justice. The action was later dismissed with prejudice when the Government declined to comply with a discovery order. Thereafter, respondent filed a request with the FTC for disclosure of certain documents concerning the investigation of the subsidiary, but the FTC denied the request on the ground that the documents were exempt from disclosure under Exemption 5. Respondent then brought suit in Federal District Court to compel release of the documents. The District Court held that the documents were exempt from disclosure under Exemption 5 as, inter alia, attorney work product. The Court of Appeals held that the documents generated during the action against the subsidiary could not be withheld on the basis of the work-product rule unless the FTC could show that "litigation related to the terminated action exists or potentially exists." The court reasoned that the work-product rule encompassed by Exemption 5 was coextensive with the work-product privilege under the Federal Rules of Civil Procedure, and that a requirement that documents must be disclosed in the absence of the existence or potential existence of related litigation best comported with the fact that the work-product privilege is a qualified one.

Held: Under Exemption 5, attorney work product is exempt from mandatory disclosure without regard to the status of the litigation for which it was prepared. By its own terms, Exemption 5 requires reference to whether discovery would normally be required during litigation *with the agency*. Under a literal reading of Federal Rule of Civil Procedure 26(b)(3), the work product of agency attorneys would not be subject to discovery in subsequent litigation unless there was a showing of need and thus would fall within the scope of Exemption 5. But regardless of how Rule 26(b)(3) is construed, the Court of Appeals erred in construing Exemption 5 to protect work-product material only if related litigation exists or potentially exists. The test under Exemption 5 is whether the documents would be "routinely" or "normally" disclosed upon a showing of relevance. The Court of Appeals' determination that its rule concerning related litigation best comported with the qualified nature of the work-product rule is irrelevant in the FOIA context. Whether its

immunity from discovery is absolute or qualified, a protected document cannot be said to be subject to "routine" disclosure. Work-product materials are immune from discovery unless the one seeking discovery can show substantial need in connection with subsequent litigation. Such materials are thus not "routinely" or "normally" available to parties in litigation and hence are exempt under Exemption 5. This result, by establishing a discrete category of exempt information, implements the FOIA's purpose to provide "workable" rules.

217 US App DC 47, 671 F2d 553, reversed.

White, J., delivered the opinion of the Court, in which Burger, C. J., and Marshall, Powell, Rehnquist, Stevens, and O'Connor, JJ., joined. Brennan, J., filed an opinion concurring in part and concurring in the judgment, in which Blackmun, J., joined.

APPEARANCES OF COUNSEL

Kenneth S. Geller argued the cause for petitioners.

Daniel S. Mason argued the cause for respondent.

Briefs of Counsel, p 865, infra.

OPINION OF THE COURT

[462 US 20]

Justice **White** delivered the opinion of the Court.

[1a] The Freedom of Information Act (FOIA), 5 USC § 552 [5 USCS § 552], mandates that the Government make its records available to the public. Section 552(b)(5) exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." It is well established that this exemption was intended to encompass the attorney work-product rule. The question presented in this case is the extent, if any, to which the work-product component of Exemption 5 applies when the litigation for which the requested documents were generated has been terminated.

[462 US 21]

In 1972 the Federal Trade Commission undertook an investigation of Americana Corp., a subsidiary of respondent Grolier Inc. The investigation was conducted in connection with a civil penalty action filed by the Department of Justice.[1] In 1976, the suit against Americana was dismissed with prejudice when the Government declined to comply with a District Court discovery order. In 1978, respondent filed a request with the Commission for disclosure of documents concerning the investigation of Americana.[2] The Commission initially denied the entire request, stat-

1. United States v Americana Corp., Civ No. 388-72 (NJ). Americana was charged with violation of a 1948 cease-and-desist order in making misrepresentations regarding its encyclopedia advertisements and door-to-door sales.

2. By letter to the Commission, respondent requested the following:

"1) All records and documents which refer or relate to a covert investigation of Americana Corporation and/or Grolier Incorporated, which was made in or about April 1973, by a Federal Trade Commission consumer protection specialist named Wendell A. Reid; and

"2) All records and documents which refer or relate to any covert investigation, made by any employee of the Federal Trade Commission, of any of the following companies: [listing 14 companies, including respondent and Americana Corporation].

"3) All records and documents which refer or relate to any covert investigation, made by any employee of the Federal Trade Commission, of any person, company or other entity." App 15–16.

"Covert investigation" was defined by respondent to be "any investigation of which the subject entity was not notified in advance and

tion responsive to some of the items and that the remaining portion of the request was not specific enough to permit the Commission to locate the information without searching millions of documents contained in investigatory files. The Commission refused to release the few items that were responsive to the request on the basis

[462 US 22]

that they were exempt from mandatory disclosure under § 552(b)(5).[3]

Pursuant to the Commission's Rules, respondent appealed to the agency's General Counsel. Following review of respondent's request, and after a considerable process of give and take, the dispute finally centered on seven documents.[4] Following in camera inspection, the District Court determined that all the requested documents were exempt from disclosure under § 552(b)(5), either as attorney work product, as confidential attorney-client communications, or as internal predecisional agency material. On appeal, the Court of Appeals held that four documents generated during the Americana litigation could not be withheld on the basis of the work-

could show that "litigation related to the terminated action exists or potentially exists."[5] 217 US App DC 47, 50, 671 F2d 553, 556 (1982).

The Court of Appeals reasoned that the work-product rule encompassed by § 552(b)(5) was coextensive with the work-product privilege under the Federal Rules of Civil Procedure.

[462 US 23]

A requirement that documents must be disclosed in the absence of the existence or potential existence of related litigation, in the Court of Appeals' view, best comported with the fact that the work-product privilege is a qualified one. We granted the Commission's petition for certiorari, 459 US 986, 74 L Ed 2d 381, 103 S Ct 339 (1982). Because we find that the Court of Appeals erred in its construction of Exemption 5, we reverse.

Section 552(b) lists nine exemptions from the mandatory disclosure requirements that "represen[t] the congressional determination of the types of information that the Executive Branch must have the option to keep confidential, if it so chooses." EPA v Mink, 410 US 73, 80, 35 L Ed 2d 119, 93 S Ct 827 (1973).

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prior to acts taken pursuant to such investigation." Id. at 16. Respondent later abandoned its requests for any documents other than those related to the Americana investigation, defined in the first category of its request.

3. The requested documents are subject to mandatory disclosure as "identifiable records" under § 552(a)(3), unless covered by a specific exemption. In this case, the Commission claims exemption only under § 552(b)(5), which provides:

"This section does not apply to matters that are—

. . . . . .

"(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency . . . ."

4. The Commission released a number of documents after respondent filed this suit. Respondent abandoned its claim for many others. See n 2, supra.

5. Respondent withdrew its claim for disclosure of one of the seven documents. The Court of Appeals affirmed the District Court's judgment that another was exempt as an attorney-client communication, 217 US App DC, at 48, n 3, 671 F2d, at 554, n 3, and held that still another was clearly a predecisional document not subject to disclosure under Exemption 5, id., at 51, 671 F2d, at 557. These rulings are not at issue here.

The primary purpose of one of these, Exemption 5, was to enable the Government to benefit from "frank discussion of legal or policy matters." S Rep No. 813, 89th Cong, 1st Sess, 9 (1965). See HR Rep No. 1497, 89th Cong, 2d Sess, 10 (1966). In keeping with the Act's policy of "the fullest responsible disclosure," S Rep No. 813, at 3, Congress intended Exemption 5 to be "as narro[w] as [is] consistent with efficient Government operation." Id., at 9. See HR Rep No. 1497, at 10.

Both the District Court and the Court of Appeals found that the documents at issue were properly classified as "work product" materials, and there is no serious argument about the correctness of this classification.[6] "It is equally clear that Congress had the attorney's work-product privilege specifically in mind when it adopted Exemption 5," the privilege being that enjoyed in the context of discovery in civil litigation. NLRB v Sears, Roebuck & Co., 421 US 132, 154–155, 44 L Ed 2d 29, 95 S Ct 1504 (1975); HR Rep No. 1497, at 10; S Rep No. 813, at 2.

[462 US 24]

In Hickman v Taylor, 329 US 495, 510, 91 L Ed 451, 67 S Ct 385, 34 Ohio Ops 395 (1947), the Court recognized a qualified immunity from discovery for the "work product of the lawyer"; such material could only be discovered upon a substantial showing of "necessity or justification." An exemption from discovery was necessary because, as the Hickman Court stated:

> "Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served." Id., at 511, 91 L Ed 451, 67 S Ct 385, 34 Ohio Ops 395.

The attorney's work-product immunity is a basic rule in the litigation context, but like many other rules, it is not self-defining and has been the subject of extensive litigation.

Prior to 1970, few District Courts had addressed the question whether the work-product immunity extended beyond the litigation for which the documents at issue were prepared. Those courts considering the issue reached varying results.[7] By 1970, only one Court of Appeals had addressed the issue. In Republic

6. Respondent makes some assertions concerning the ethical conduct of the Commission in continuing its investigations after the Americana suit had been instituted and claims that the work-product rule would not apply to documents containing evidence of unethical conduct. Respondent did not raise this issue before the District Court or the Court of Appeals and we decline to address it.

7. See Honeywell, Inc. v Piper Aircraft Corp., 50 FRD 117 (MD Pa 1970); Bourget v Government Employees Ins. Co. 48 FRD 29 (Conn 1969); Stix Products, Inc. v United Merchants & Mfrs., Inc. 47 FRD 334 (SDNY 1969); LaRocca v State Farm Mutual Automobile Ins. Co. 47 FRD 278 (WD Pa 1969); Kirkland v Morton Salt Co., 46 FRD 28 (ND Ga 1968); Chitty v State Farm Mutual Automobile Ins. Co. 36 FRD 37 (EDSC 1964); Insurance Co. of North America v Union Carbide Corp., 35 FRD 520 (Colo 1964); Hanover Shoe, Inc. v United Shoe Machinery Corp., 207 F Supp 407 (MD Pa 1962); Thompson v Hoitsma, 19 FRD 112 (NJ 1956); Tobacco and Allied Stocks, Inc. v Transamerica Corp., 16 FRD 534 (Del 1954).

... 387, 397 (CA2 1967), the Court of Appeals held that documents prepared in connection with litigation that was on

[462 US 25]

appeal were not subject to discovery in a related case. The court also noted that there was potential for further related litigation. Thus, at the time FOIA was enacted in 1966, other than the general understanding that work-product materials were subject to discovery only upon a showing of need, no consensus one way or the other had developed with respect to the temporal scope of the work-product privilege.

[1b, 2] In 1970, the Federal Rules of Civil Procedure were amended to clarify the extent to which trial preparation materials are discoverable in federal courts. Rule 26(b)(3) provides, in pertinent part:

> "[A] party may obtain discovery of documents and tangible things . . . prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative . . . only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation."

Rule 26(b)(3) does not in so many ... the temporal scope of the work-product immunity and a review of the Advisory Committee's comments reveals no express concern for that issue. Notes of Advisory Committee on 1970 Amendments, 28 USC App, pp 441–442. But the literal language of the Rule protects materials prepared for *any* litigation or trial as long as they were prepared by or for a party to the subsequent litigation. See 8 C. Wright & A. Miller, Federal Practice and Procedure § 2024, p 201 (1970). Whatever problems such a construction of Rule 26(b)(3) may engender in the civil discovery area, see id., at 201–202, it provides a satisfactory resolution to the question whether

[462 US 26]

work-product documents are exempt under the FOIA. By its own terms, Exemption 5 requires reference to whether discovery would normally be required during litigation *with the agency*. Under a literal reading of Rule 26(b)(3), the work product of agency attorneys would not be subject to discovery in subsequent litigation unless there was a showing of need and would thus fall within the scope of Exemption 5.

[3, 4] We need not rely exclusively on any particular construction of Rule 26(b)(3), however, because we find independently that the Court of Appeals erred in construing Exemption 5 to protect work-product materials only if related litigation exists or potentially exists. The test under Exemption 5 is whether the documents would be "routinely" or "normally" disclosed upon a showing of relevance. NLRB v Sears, Roebuck & Co. 421 US, at 148–149, 44 L Ed 2d 29, 95 S Ct 1504. At the time this case came to the Court of Appeals, all of the courts of appeals that

had decided the issue under Rule 26(b)(3) had determined that work-product materials retained their immunity from discovery after termination of the litigation for which the documents were prepared, without regard to whether other related litigation is pending or is contemplated.[8] In addition, an overwhelming majority of the Federal District Courts reporting decisions on the issue under Rule 26(b)(3) were in accord with that view.[9] "Exemption 5 incorporates

[462 US 27]

the privileges which the Government enjoys under the relevant statutory and *case law* in the pre-trial discovery context." Renegotiation Board v Grumman Aircraft Engineering Corp., 421 US 168, 184, 44 L Ed 2d 57, 95 S Ct 1491 (1975) (emphasis added). Under this state of the work-product rule it cannot fairly be said that work-product materials are "routinely" available in subsequent litigation.

The Court of Appeals' determination that a related-litigation test best comported with the qualified nature of the work-product rule in civil discovery—a proposition with which we do not necessarily agree—is irrelevant in the FOIA context. It makes little difference whether a privilege is absolute or qualified in determining how it translates into a discrete category of documents that Congress intended to exempt from disclosure under Exemption 5. Whether its immunity from discovery is absolute or qualified, a protected document cannot be said to be subject to "routine" disclosure.

[1c] Under the current state of the law relating to the privilege, work-product materials are immune from discovery unless the one seeking discovery can show substantial need in connection with subsequent litigation. Such materials are thus not "routinely" or "normally" available to parties in litigation and hence are exempt under Exemption 5. This result, by establishing a discrete category of exempt information, implements the congressional intent to provide "workable" rules. See S Rep No. 813, at 5; HR Rep No. 1497, at 2.

Respondent urges that the meaning of the statutory language is "plain" and that, at least in this case, the requested

[462 US 28]

documents must be disclosed because the same documents were ordered disclosed during discovery in previous litigation. It does not follow, however, from an

8. See In re Murphy, 560 F2d 326, 334 (CA8 1977); United States v Leggett & Platt, Inc., 542 F2d 655 (CA6 1976) cert denied, 430 US 945, 51 L Ed 2d 792 97 S Ct 1579 (1977); Duplan Corp. v Moulinage et Retorderie de Chavanoz, 487 F2d 480, 483–384 (CA4 1973). See also In re Grand Jury Proceedings, 604 F2d 798, 803 (CA3 1979) (work-product privilege continues at least when subsequent litigation is related). Cf. Kent Corp. v NLRB, 530 F2d 612 (CA5) (work-product privilege does not turn on whether litigation actually ensued), cert denied, 429 US 920, 50 L Ed 2d 287, 97 S Ct 316 (1976).

9. See In re Federal Copper of Tennessee, Inc., 19 BR 177 (Bkrtcy MD Tenn 1982); In re International Systems & Controls Corp. Securities Litigation, 91 FRD 552 (SD Tex 1981); United States v Capitol Service, Inc. 89 FRD 578 (ED Wis 1981); In re LTV Securities Litigation, 89 FRD 595 (ND Tex 1981); First Wisconsin Mortgage Trust v First Wisconsin Corp., 86 FRD 160 (ED Wis 1980); Panter v Marshall Field & Co. 80 FRD 718 (ND Ill 1978); United States v O. K. Tire & Rubber Co. 71 FRD 465 (Idaho 1976); SCM Corp. v Xerox Corp. 70 FRD 508 (Conn), appeal dism'd, 534 F2d 1031 (1976); Burlington Industries v Exxon Corp. 65 FRD 26 (Md 1974). See also Hercules, Inc. v Exxon Corp. 434 F Supp 136 (Del 1977) (protected when cases are closely related in parties or subject matter); Ohio-Sealy Mattress Mfg. Co. v Sealy, Inc., 90 FRD 45 (ND Ill 1981) (protected in later related litigation).

ordered disclosure based on a showing of need that such documents are routinely available to litigants. The logical result of respondent's position is that whenever work-product documents would be discoverable in any particular litigation, they must be disclosed to anyone under the FOIA. We have previously rejected that line of analysis. In NLRB v Sears, Roebuck & Co., supra, we construed Exemption 5 to "exempt those documents, and only those documents, *normally* privileged in the civil discovery context." 421 US, at 149, 44 L Ed 2d 29, 95 S Ct 1504. (Emphasis added.) It is not difficult to imagine litigation in which one party's need for otherwise privileged documents would be sufficient to override the privilege but that does not remove the documents from the category of the normally privileged. See id., at 149, n 16, 44 L Ed 2d 29, 95 S Ct 1504.

[1d] Accordingly, we hold that under Exemption 5, attorney work product is exempt from mandatory disclosure without regard to the status of the litigation for which it was prepared. Only by construing the Exemption to provide a categorical rule can the Act's purpose of expediting disclosure by means of workable rules be furthered. The judgment of the Court of Appeals is reversed.

It is so ordered.

SEPARATE OPINION

Justice **Brennan**, with whom Justice **Blackmun** joins, concurring in part and concurring in the judgment.

The Court rests its judgment on two alternative holdings: one a construction of Federal Rule of Civil Procedure 26(b)(3), ante, at 26, 76 L Ed 2d, at 393; the other a more limited holding under Exemption 5 of the Freedom of Information Act (FOIA), 5 USC § 552(b)(5) [5 USCS § 552(b)(5)], ante, at 26, 76 L Ed 2d, at 393. I find the latter holding unpersuasive and accordingly would rest exclusively on the former.

[462 US 29]

I

I agree wholeheartedly with the Court that Rule 26(b)(3) itself does not incorporate any requirement that there be actual or potential related litigation before the protection of the work-product doctrine applies. As the Court notes, "the literal language of the Rule protects materials prepared for *any* litigation or trial as long as they were prepared by or for a party to the subsequent litigation." Ante, at 25, 76 L Ed 2d, at 393. A contrary interpretation such as that adopted by the Court of Appeals would work substantial harm to the policies that the doctrine is designed to serve and protect. We described the reasons for protecting work product from discovery in Hickman v Taylor, 329 US 495, 91 L Ed 451, 67 S Ct 385, 34 Ohio Ops 395 (1947):

"In performing his various duties, . . . it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless

interference . . . . This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways—aptly though roughly termed . . . the 'work product of the lawyer.' Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served." Id., at 510-511, 91 L Ed 451, 67 S Ct 385, 34 Ohio Ops 395.

[462 US 30]

The Court of Appeals is doubtless correct in its view that the need to protect attorney work product is at its greatest when the litigation with regard to which the work product was prepared is still in progress; but it does not follow that the need for protection disappears once that litigation (and any "related" litigation) is over. The invasion of "[a]n attorney's thoughts, heretofore inviolate,"—and the resulting demoralizing effect on the profession, are as great when the invasion takes place later rather than sooner. More concretely, disclosure of work product connected to prior litigation can cause real harm to the interests of the attorney and his client even after the controversy in the prior litigation is resolved. Many Government agencies, for example, deal with hundreds or thousands of essentially similar cases in which they must decide whether and how to conduct enforcement litigation. Few of these cases will be "related" to each other in the sense of involving the same private parties or arising out of the same set of historical facts; yet large classes of them may present recurring, parallel factual settings and identical legal and policy considerations.[1] It would be of substantial benefit to an opposing party (and of corresponding detriment to an agency) if the party could obtain work product generated by the agency in connection with earlier, similar litigation against other persons. He would get the benefit of the agency's legal and factual research and reasoning, enabling him to litigate "on wits borrowed from the adversary."

[462 US 31]

Id., at 516, 91 L Ed 451, 67 S Ct 385, 34 Ohio Ops 395 (Jackson, J., concurring). Worse yet, he could gain insight into the agency's general strategic and tactical approach to deciding when suits are brought, how they are conducted, and on what terms they may be settled. Nor is the problem limited to Government agencies. Any litigants who face litigation of a commonly recurring type—liability insurers, manufacturers of consumer

1. It is possible, I suppose, that such suits might be considered "related" in a very broad reading of the Court of Appeals' "related litigation" test; the courts adopting the test have not had occasion to explore its outer boundaries. But this possibility merely reveals a dilemma: If the test is read so broadly as to classify similar but factually unrelated suits as "related," it is virtually no limitation on the work-product doctrine at all, since almost any work-product document otherwise discoverable under Rule 26(b)(1) will have originated in "related" litigation. But to the extent that the "related" test is read any more narrowly than that, it threatens to cause the harm discussed in text. Hence, the test is either harmful or toothless.

products or machinery, large-scale employers, securities brokers, regulated industries, civil rights or civil liberties organizations, and so on—have an acute interest in keeping private the manner in which they conduct and settle their recurring legal disputes. Counsel for such a client would naturally feel some inhibition in creating and retaining written work product that could later be used by an "unrelated" opponent against him and his client. Counsel for less litigious clients as well might have cause for concern in particular cases; fear of even one future "unrelated" but similar suit might instill an undesirable caution, and neither client nor counsel can always be entirely sure what might lie over the horizon. This is precisely the danger of "[i]nefficiency, unfairness[,] . . . sharp practices" and demoralization that Hickman warned against.[2]

[462 US 32]

I do not understand the Court's holding on this point to be limited to the FOIA context. The Court itself quite accurately characterizes its first holding as a "particular construction of Rule 26(b)(3)." Ante, at 26, 76 L Ed 2d, at 393. Indeed, it could hardly do otherwise, since the plain meaning of Exemption 5 is that the scope of the Exemption is coextensive with the scope of the discovery privileges it incorporates. "Exemption 5 . . . exempt[s] those documents, and only those documents, normally privileged in the civil discovery context." NLRB v Sears, Roebuck & Co., 421 US 132, 149, 44 L Ed 2d 29, 95 S Ct 1504 (1975) (footnote omitted). See also id., at 154–155, 44 L Ed 2d 29, 95 S Ct 1504; Federal Open Market Committee v Merrill, 443 US 340, 353, 61 L Ed 2d 587, 99 S Ct 2800 (1979); Renegotiation Board v Grumman Aircraft Corp., 421 US 168, 184, 44 L Ed 2d 57, 95 S Ct 1491 (1975); EPA v Mink, 410 US 73, 85–86, 91, 35 L Ed 2d 119, 93 S Ct 827 (1973).[3] Thus, nothing in either FOIA or our decisions construing it authorizes us to

2. See generally, e. g., In re Murphy, 560 F2d 326, 333–335 (CA8 1977); United States v Leggett & Platt, Inc., 542 F2d 655, 659–660 (CA6 1976); Duplan Corp. v Moulinage et Retorderie de Chavanoz, 509 F2d 730 (CA4 1974); Duplan Corp. v Moulinage et Retorderie de Chavanoz, 487 F2d 480 (CA4 1973).

The Court of Appeals reasoned that "[e]xtending the work-product protection only to subsequent related cases best comports with the fact that the privilege is qualified, not absolute." 217 US App DC 47, 50, 671 F2d, 553, 556 (1982) (footnote omitted). In my view, this mistakes by 180 degrees the significance of the qualified nature of the privilege. As another Court of Appeals has explained:

"Were the work product doctrine an unpenetrable protection against discovery, we would be less willing to apply it to work produced in anticipation of other litigation. But the work product doctrine provides only a qualified protection against discovery. . . ." Leggett & Platt, supra, at 660.

Indeed, to the extent that the need for protection of work product does decrease after the end of a suit, that fact might in some cases lower the threshold for overcoming the work-product barrier. A party seeking discovery of work product must show that "he is unable without undue hardship to obtain the substantial equivalent of the materials by other means," Rule 26(b)(3). What hardship is "undue" depends on both the alternative means available and the continuing protection from disc[illegible]ht & A. Miller, Federal [illegible]ure § 2024, p 202 (1970

3. But see Feder[illegible]se v Merrill, 443 US, [illegible]99 S Ct 2800: "[I]t is [illegible] 5 was intended to inc[illegible]lege known to civil disco[illegible]it is settled that the Exemption [illegible] incorporate the work-product doctrine. NLRB v Sears, Roebuck & Co., 421 US, at 154–155, 44 L Ed 2d 29, 95 S Ct 1504.

define the coverage of the work-product doctrine under Exemption 5 differently from the definition of its coverage that would obtain under Rule 26(b)(3) in an ordinary lawsuit. If a document is work product under the Rule, and if it is an "inter-agency or intra-agency memoran-du[m] or lette[r]" under the Exemption, it is absolutely exempt.[4]

[462 US 33]

II

Since the Court rejects the "related litigation" test under Rule 26(b)(3), and since that holding necessarily governs the application of the work-product doctrine under Exemption 5, it need go no further. The Court proceeds, however, to put forward a second holding directly under FOIA. It reasons that work product generated in connection with a prior, unrelated litigation would not be "'routinely' available in subsequent litigation," ante, at 27, 76 L Ed 2d, at 394, because at the time of the Court of Appeals' decision in this case a majority of federal courts that had decided the issue had rejected the "related litigation" test. Ante, at 26-27, 76 L Ed 2d, at 393-394. This holding apparently would preclude disclosure under FOIA even in a district or circuit where the precedents under Rule 26(b)(3) *do* incorporate the "related litigation" test, since the "majority view" does not depend on the location of the library in which one reads the cases.[5] I grant that uniformity of statutory interpretation is a good thing as a general matter, but I cannot see taking it this far.

I confess that the source from which the Court draws its reasoning is a mystery to me. I know of no other statutory context in which the test of discoverability (or anything else) is not what the *correct* view of the law is, but what the *current*

[462 US 34]

majority view is.[6] Certainly the plain language of the statute is to the contrary; it directs a court to exempt material "which would not be available *by law* to a party . . . in litigation with the agency." 5 USC § 552(b)(5) [5 USCS § 552(b)(5)] (emphasis added). "By law" presumably means "by the law as correctly con-

4. We held in Sears that Exemption 5 does not apply to "final opinions" explaining agency actions already taken or agency decisions already made. Id., at 150–154, 44 L Ed 2d 29, 95 S Ct 1504. The gist of our holding was that such documents are not within any privilege incorporated into Exemption 5—specifically, that they are not covered by the Government's executive privilege. Ibid. The same would be true of the work-product doctrine; it is difficult to imagine how a final decision could be "prepared in anticipation of litigation or for trial." Rule 26(b)(3). It is also questionable whether such decisions would constitute "inter-agency or intra-agency memorandums or letters," 5 USC § 552(b)(5) [5 USCS § 552(b)(5)].

5. Presumably, this principle would work in reverse as well. That is, if the settled law of a particular district under Rule 26(b)(3) were that a particular type of document (some sort of investigative report, say) is within the work-product doctrine, but a majority of other courts disagreed, the district court entertaining a FOIA suit would be obliged to follow the majority view and grant disclosure, even though the same document would not be "routinely" disclosed in an ordinary lawsuit in that district.

6. One might posit a different sort of incorporation of case law—one in which the relevant law was that in existence in 1966, when FOIA was enacted. The Court wisely declines to adopt this reading. There is nothing in FOIA that indicates that it intended to "freeze" the law that existed in 1966; the phrase "available by law" certainly seems to refer to the law at any given time. Indeed, this reading would preclude recognition of subsequent changes in *statutory* law, such as the adoption of Rule 26(b)(3) in 1970.

strued by the court deciding the case at hand," not "by the law as construed (whether correctly or incorrectly) by a majority of other federal courts." The Court draws the words "routinely" and "normally" from Sears, supra, at 149, and n 16, 44 L Ed 2d 29, 95 S Ct 1504. But as a quick perusal of that case reveals, all we were saying there was that once a privilege is held to apply under Exemption 5, it applies absolutely, without regard to whether a party in ordinary discovery might be able to overcome the privilege by some showing of need (an understanding the Court itself embraces, ante, at 28, 76 L Ed 2d, at 395). Alternatively, the Court cites our statement in Grumman Aircraft, supra, at 184, 44 L Ed 2d 57, 95 S Ct 1491, that "Exemption 5 incorporates the privileges which the Government enjoys under the relevant statutory and *case law* in the pretrial discovery context." Ante, at 26-27, 76 L Ed 2d, at 394 (emphasis by the Court). Again, however, the context of the quoted passage makes clear that it refers simply to the extent to which the correct state of the law with regard to a privilege may be embodied in cases interpreting a statute or erecting a nonstatutory privilege. The scope of the work-product doctrine on a particular disputed point, for example, may be laid out in some binding precedent of the district court entertaining a given FOIA suit, of the court of appeals for that circuit, or of this Court. Absent a controlling

[462 US 35]

precedent, of course, the district court would ordinarily look to the decisions of other courts to inform its own construction of Rule 26(b)(3). But nothing in Exemption 5, Sears, Grumman Aircraft, or anything else of which I am aware authorizes or directs that district court to do anything other than to determine what the legally correct interpretation of the doctrine is, and then to apply it —even if the interpretation it reaches is contrary to that of a majority of other courts. Under the Court's reading of the word "routinely," however, it appears that the district court would be obliged to adhere to the majority view even if there were unmistakable precedent in its circuit construing Rule 26(b)(3) to the contrary. I see no warrant for this astonishing principle. Hence, although I agree with the Court's construction of Rule 26(b)(3), I join only its judgment.

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Attorney for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA Plaintiff, v. EXXON SHIPPING COMPANY and EXXON CORPORATION, Defendants.	)	Case No. A90-015-CR GOVERNMENT'S SUMMARY OF DAMAGE TO NATURAL RESOURCES IN AID OF SENTENCING

The United States, by its attorneys, submits the attached summary of natural resource damage, arising from the Exxon Valdez spill, in order to aid the Court in determining whether the sentence set forth in the plea agreement is appropriate. This summary is based on extensive damage assessments conducted by government scientists and contractors over the past two years.

This Court has ordered the parties to submit memoranda in aid of sentencing by April 16, 1991. The government will file its memorandum on that date, but is submitting the attached summary in advance of that date in order to give the

Court additional time to assess, pursuant to 18 U.S.C. § 3553(a)(2)(A), the seriousness of the offenses to which defendants have entered pleas of guilty and to assist the public in commenting on the proposed plea agreement.

Respectfully submitted this 8th day of April 1991, at Anchorage, Alaska.

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SUMMARY OF EFFECTS OF THE EXXON VALDEZ OIL SPILL ON NATURAL RESOURCES AND ARCHAEOLOGICAL RESOURCES

March 1991

INTRODUCTION

The T/V Exxon Valdez ran aground on Bligh Reef in Prince William Sound on the night of March 23-24, 1989, spilling approximately 11 million gallons of North Slope crude oil, making this the largest oil spill in United States history. The oil spread through Prince William Sound, the Gulf of Alaska, and lower Cook Inlet. More than 1,200 miles of coastline were oiled, including portions of the Chugach National Forest, Alaska Maritime, Kodiak, and Alaska Peninsula/Becharof National Wildlife Refuges, Kenai Fjords National Park, Katmai National Park and Preserve, and Aniakchak National Monument and Preserve. Oil from the T/V Exxon Valdez impacted shorelines nearly 600 miles from Bligh Reef.

The magnitude of efforts of the state and federal governments, the public, and Exxon to contain and clean up the spill, rescue wildlife, and study the effects of the spill is unprecedented. Among those efforts are the state/federal natural resource damage assessment studies designed to measure injuries to natural resources including birds, mammals, fish and other wildlife, and marine and terrestrial habitats. These studies are intended to provide the information necessary for the Trustee agencies to manage and restore injured resources appropriately and to provide necessary documentation to enable the governments to present a claim for damages to the responsible parties. This summary briefly describes the area affected by the spill, the chronology of the spill, and the process developed to implement and manage the injury assessment studies. It focuses, however, on what has been learned over the past two years about the effects of this oil spill on natural resources.

DESCRIPTION OF THE AREA AFFECTED BY THE SPILL

Prince William Sound lies near the top of the Gulf of Alaska (see map), an 850 mile arc extending from the Aleutian Islands on the west to the islands of southeast Alaska. The gulf coast is remote, rugged, and scenic. Its maritime climate nourishes a lush, green landscape in the summer. The area is snow covered in the winter. Bears, whales, bald eagles, puffins, seals, sea lions, and sea otters are among the abundant wildlife of the area. Storms that cross the Gulf drop as much as 300 inches of rain and snow annually in the high coastal mountains. Glaciers descend from permanent ice fields capping these coastal mountain ranges, continuing to carve intricate fjords and send icebergs floating out to sea. These are the largest glaciers outside Antarctica and Greenland.

Prince William Sound is one of the largest relatively undeveloped marine ecosystems in the United States. It has one of the continent's largest tidal estuary systems. Prince William Sound has rich commercial herring and salmon fisheries. The open water of the Sound is about the size of Chesapeake Bay. Its many islands, bays, and fjords give it

more than 2,000 miles of shoreline. Prince William Sound is surrounded by land, most of which is part of Chugach National Forest.

To the southwest of Prince William Sound is the Kenai Peninsula, home of the Kenai Fjords National Park, various units of the Alaska Maritime National Wildlife Refuge, and, among others, the cities of Homer and Seward. Numerous seabird colonies are located along the coast of the Kenai Peninsula, including those most frequently visited by tourists in Alaska. Both Prince William Sound and the Kenai Peninsula are accessible by air, boat, and on a limited basis, by automobile from nearby Anchorage, Alaska's major population center. State ferries that run among the larger communities and many charter boats make it easy for people to visit the heart of the Gulf coast. In recent years, there has been a steady increase in the number of wilderness seekers, kayakers, cruise ship passengers, and other tourists visiting the area.

The Kenai Peninsula points southwest to Shelikof Strait and Kodiak Island. Shelikof Strait lies between Kodiak Island, on the south and the Alaska Peninsula on the north. Shelikof Strait is the source of a very productive commercial pollock fishery. The Kodiak National Wildlife Refuge is located on the Kodiak Archipelago and Katmai National Park and Preserve, Alaska Peninsula/Becharof National Wildlife Refuge, and Aniakchak National Monument and Preserve are located along the coast of the Alaska Peninsula. The Alaska Peninsula tapers, then scatters into the islands of the Aleutian chain.

CHRONOLOGY OF THE EXXON VALDEZ OIL SPILL

For the first three days of the spill, the weather was calm and the slick lengthened and widened amoeba-like and generally stayed in the vicinity of the grounded tanker and off the beaches. Even with these seemingly ideal circumstances for oil recovery, the amount of oil in the water completely overwhelmed efforts to contain and recover the oil. A major windstorm on March 27, 1989, pushed the oil in a southwesterly direction and oiled beaches on Little Smith, Naked, and Knight Islands. The oil continued to spread, contaminating islands, beaches, and bays in Prince William Sound. Four days into the spill, oil began to enter the Gulf of Alaska. The leading edge of the slick reached the Chiswell Islands off the coast of the Kenai Peninsula on April 2, 1989, and the major seabird nesting colonies on the Barren Islands on April 11, 1989, nineteen days into the spill. By May 18, 1989, oil had moved some 470 miles and had fouled shorelines of Prince William Sound, the Kenai Peninsula, the Kodiak Archipelago, and the Alaska Peninsula. Oil subsequently reached shorelines on the Alaska Peninsula nearly 600 miles from Bligh Reef.

During 1989, the response to contain and cleanup the spill and rescue oiled wildlife involved a massive effort. Skimmer ships were sent throughout the spill zone to vacuum oil from the water surface. Booms were positioned to keep oil from reaching important commercial salmon hatcheries in Prince William Sound. A fleet of fishing vessels, known as the "Mosquito Fleet," played an important role in protecting these hatcheries, in corralling oil to assist the skimmer ships, and in capturing oiled wildlife and

transporting these animals to rehabilitation centers. After oil contaminated shorelines, a beach cleanup program was activated. Various local committees, with community and government agency participation, provided recommendations to the U.S. Coast Guard about areas that should receive priority for cleanup. An army of workers cleaned shorelines, using techniques ranging from cleaning rocks by hand to high pressure hot water washing. Fertilizers, sometimes in a chemical base, were applied to some oiled shorelines to increase the activity of oil-metabolizing bacteria, in an experimental procedure known as bioremediation. When deteriorating weather brought an end to cleanup work in the fall of 1989, a great amount of oil remained on the shorelines. Although winter storms proved extremely effective in cleaning many beaches, spring shoreline surveys indicated that much work remained to be done in 1990. Crews operating from boats and helicopters cleaned oiled shorelines in Prince William Sound, along the Kenai and Alaska Peninsulas, and on the Kodiak Archipelago. Manual pick up of remaining oil was the principal method used during 1990, but bioremediation and relocation of oiled berms to the active surf zone were also used in some areas.[1] Another shoreline survey will be conducted during May 1991, to determine the need for additional cleanup work.

INJURY ASSESSMENT PROCESS

The Exxon Valdez oil spill occurred just prior to the most biologically active season of the year in southcentral Alaska. During the two month period after the spill, seaward migrations of salmon fry, major migrations of birds, and the primary reproductive period for most species of birds, mammals, fish, and marine invertebrate species took place. The organisms involved in these critical periods of their life cycles encountered the most concentrated, volatile, and potentially damaging forms of the spilled oil. As will be discussed in this summary, the oil affected different species differently. Whereas, for example, it directly killed large numbers of birds and sea otters that encountered oil on the water surface, it did not prohibit in and out migration and spawning of large schools of salmon and herring.

The state and federal Trustee agencies were forced to mobilize field studies rapidly with little time for planning. Through intensive efforts, studies were designed, administrative processes were accelerated, and 58 field studies were carried out. Additionally, technical services programs were organized to provide hydrocarbon analysis, histopathology, and mapping support for the field studies. Initial decisions on the types and scope of studies conducted were made by agency experts familiar with the resources and the environment. Even with the rapid deployment of studies, however, some opportunities to gather injury data were irretrievably lost during the early weeks of the spill.

A legal framework was subsequently established and studies were reviewed and modified according to their likelihood to document resource injury. Expert peer reviewers were retained and study plans used during 1989 underwent scientific review for possible

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[1]Exxon has represented that it has paid over $2.0 billion to conduct cleanup activities during 1989 and 1990.

modification in 1990. Some studies were discontinued or modified if they were unable to further document resource injury, and some new studies were initiated to fill identified information needs. Status reports prepared in January 1990, were used to guide the development of plans for the second year of studies. Thirty-nine studies and three technical services programs were continued in 1990. Scientific review was again used to plan for the upcoming 1991 field season, during which 29 studies and two technical services programs will be conducted.

This summary of the effects of the Exxon Valdez oil spill on natural resources is preliminary, as studies are still underway and available data are not fully analyzed and interpreted. However, the injuries to natural resources that have been documented to date are summarized herein. This summary also addresses studies that were discontinued. It should be noted that studies were discontinued for a variety of reasons, such as the determination that field work had been completed, that there was no practicable way to measure injury, or that no injury was documented. Even though some studies failed to identify injury and were discontinued, this does not necessarily mean that the resources were not affected by the spill. Certain injuries (if present), such as possible latent or sublethal effects on reproductive or other systems in animals, might not become fully evident for a number of years after the spill. At present there is no significant indication of long-term injury to resources other than those specifically noted below. Although studies indicate that there are continuing injuries to certain resources, natural recovery may also have begun. As petroleum hydrocarbons are broken down in the ecosystem, plant and animal communities begin to reestablish themselves. This recolonization has already been observed in some of the more lightly oiled areas. In the more heavily oiled areas, this natural recovery process is expected to take longer. As this natural recovery occurs, many of the birds and mammals that feed in these areas are expected to begin recovering.

MARINE MAMMALS

Following the spill, studies of humpback whales, Stellers sea lions, sea otters, harbor seals, and killer whales were started. The humpback whale and Stellers sea lion studies were discontinued following the 1990 field season. Humpback whale investigations were limited to photo identification of whales, estimations of reproductive success, and possible relocations of whales. It was not possible to take tissue samples for petroleum hydrocarbon analysis to document exposure. The study did not show direct oil spill mortalities or reproductive failures.

The sea lion study is being completed following the 1990 pup counts. Some tissue samples were analyzed for petroleum hydrocarbon concentrations, and although there was some indication of exposure to oil, it was difficult to determine what populations were affected because of the sea lions' active seasonal movements. Because of an ongoing pre-spill population decline and premature pupping of sea lions, it was not possible to distinguish post- from pre-spill population effects clearly.

Studies of killer whales, based on observations only (because tissue sampling was not an

option), have indicated that killer whales are missing from at least one and possibly two pods in Prince William Sound. Injuries to harbor seals and sea otters have been clearly indicated and studies of these species are continuing.

Sea Otters: The population of sea otters in Prince William Sound before the spill was estimated to have been as high as 10,000. The total sea otter population of the Gulf of Alaska was estimated to be at least 20,000. Statewide, the sea otter population is estimated at 150,000. Sea otters were particularly vulnerable to the spill. As the oil moved through Prince William Sound and the Gulf of Alaska, it covered areas used by large numbers of otters. When sea otters become contaminated by oil, their fur losses its insulating capabilities, leading to death from hypothermia. Sea otters also died as a result of ingestion of oil and perhaps inhalation of toxic aromatic compounds that evaporated from the slick shortly after the spill. The effects of oil were documented by surveys of wild populations; analysis of tissues for petroleum hydrocarbons and indicators of reduced health; by tracking sea otters outfitted with radio transmitters (including those released from rehabilitation centers); and estimating total mortality from the number of sea otters found on beaches. These studies concentrated on developing an estimate of sea otter mortality in Prince William Sound and along the Kenai Peninsula, the population most affected by the spill. During 1989, a total of 1,011 sea otter carcasses were recovered in the spill area, cataloged, and stored in evidence trailers. Of these, 876 were recovered dead from the field and 135 died in rehabilitation centers or other facilities. The total number of sea otters estimated to have been killed directly by the spill ranges from 3,500 to 5,500 animals throughout the spill area.

Initial results indicate significant differences in hematology and blood chemistry parameters between sea otters in oiled and unoiled areas. Greater variation was observed in DNA content of blood lymphocytes of sea otters from oiled areas, but sperm and testicular cells showed no indication of DNA damage resulting from oil exposure. It cannot yet be determined whether these differences affect sea otter health or survival. There are indications that sea otters continue to be exposed to petroleum hydrocarbons in oiled areas. Analysis of blood and fat samples collected from animals during 1990 found elevated concentrations of certain aromatic compounds in sea otters from heavily oiled areas and elevated concentrations of petroleum hydrocarbons continue to be documented in food items eaten by sea otters in oiled areas. Additionally, other damage assessment studies have documented a decreased abundance of mussels in oiled areas, a key prey species for sea otters.

Studies have documented continuing injury to sea otters. Normally, very few prime age sea otters (animals between 2 and 8 years old) die each year and most mortality occurs among very young and old age classes. The high number of prime age sea otter carcasses found during 1990 indicates that the pattern of sea otter mortality in heavily oiled areas continues to be abnormal. Results of boat surveys indicated continued declines in sea otter abundance within oiled habitats in Prince William Sound. Preliminary results indicate that pupping rates in oiled and unoiled areas are not significantly different. However, the first information available for the spring of 1991 shows higher yearling mortality rates in oiled areas than in unoiled areas. Studies of the survival and reproductive success of sea otters released from rehabilitation

centers indicate a high level of mortality of adult animals and significantly lower pupping rates than the pre-spill mortality and pupping rates in Prince William Sound. Of the 193 sea otters released from rehabilitation centers, 45 were fitted with radio transmitters. Sixteen of these animals are still alive, 13 are known to be dead, and 15 are missing. One radio transmitter is known to have failed.

Harbor Seals: There has been no census of harbor seals in Prince William Sound since the mid-1970s when the population was estimated at 3,000 to 5,000 animals. Since that time, the harbor seal population in Prince William Sound and the Gulf of Alaska has declined substantially. A population census of Prince William Sound is planned for the summer of 1991.

Two hundred harbor seals are estimated to have been killed by the spill. Only 19 seal carcasses were recovered following the spill, since seals sink when they die. Population changes were documented by summer and fall aerial surveys of known haulout areas. Toxicological and histopathological analyses were conducted to assess petroleum hydrocarbon accumulation and persistence and to determine toxic injuries to tissues.

Population surveys, which are reliable indicators of population trends, conducted in 1984 and 1988 indicated that harbor seal populations in Prince William Sound had declined prior to the spill, with similar declines in what were subsequently oiled and unoiled areas. From 1988 to 1990, however, the decline at oiled sites (35 percent) was significantly greater than at unoiled sites (13 percent).

Severe debilitating lesions were found in the thalamus of the brain of a heavily oiled seal collected in Herring Bay 36 days after the spill. Similar but milder lesions were found in five other seals collected three or more months after the spill. During 1989, oiled harbor seals behaved abnormally, being lethargic or unwary. Petroleum hydrocarbon concentrations in bile were 5 to 6 times higher in seals from oiled areas one year after the spill. This indicates that seals were still encountering oil in the environment, were metabolizing stored fat reserves that had elevated levels of petroleum hydrocarbons, or both.[2]

Killer Whales: Approximately 182 killer whales forming nine distinct family units or "pods" resided in Prince William Sound before the spill. This count is based on pre-spill documentation. These whales were studied intensively before the spill and their group composition and dynamics are well known. Damage assessment studies of killer whales involved extensive boat-based surveys in Prince William Sound and adjacent waters. Whales were photographed and the photographs were compared to the Alaskan

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[2]Harbor seals are taken in some Alaska villages for subsistence. The State of Alaska conducted a program, separate from the damage assessment program, to test subsistence foods potentially affected by the spill to insure that they were safe for human consumption. The State of Alaska determined that harbor seals in the affected area were safe for people to eat (Oil Spill Health Task Force, July-August 1990 Report and September-October 1990 Report. Alaska Department of Fish and Game, Division of Subsistence).

killer whale photographic database for the years 1977 to 1989 to determine changes in whale abundance, seasonal distribution, pod integrity, and mortality and natality rates.

The AB pod of 36 individual whales was sighted intact in September of 1988. When sighted on March 31, 1989, seven days after the spill, seven individuals were missing. These whales remain absent and six additional whales were missing from the AB pod in 1990. Several of the missing whales are females who left behind calves. It is unprecedented for females to abandon calves, therefore their prolonged absence implies that these adult females are dead. In addition, nine individuals from AT pod were missing in 1990. Explanations for the possible causes of death of these missing whales, including explanations apart from the effects of the spill, are being explored. Killer whale surveys will continue in 1991.

TERRESTRIAL MAMMALS

Studies were conducted on terrestrial mammals that may have been exposed to oil through foraging in intertidal habitats. These species included brown bear, mink, black bear, Sitka black-tailed deer, and river otters.

Brown bears are long-lived animals and forage seasonally in the intertidal and supratidal areas of the Alaska Peninsula and the Kodiak Archipelago. Preliminary analysis of brown bear fecal samples and some tissues show that some brown bears were exposed to petroleum hydrocarbons, but no conclusive injury has been documented. Radio-collared brown bears along the Katmai coast and at a control site on the Alaska Peninsula will continue to be monitored while the transmitters remain active.

Mink and other small mammals that are known to feed and spend part or all of their time in the intertidal zone are difficult to study. They are known to crawl off into burrows or the brush if sick or injured and carcasses are unlikely to be found. Also, information on pre-spill populations of these animals is minimal. Scientists developed a laboratory study to test reproductive effects of oil on ranch-bred mink, in which they were fed food mixed with small, non-lethal amounts of weathered oil. Although changes in reproductive rates or success were not documented, it was found that oil-contaminated food moved through the intestines of the animals at a more rapid rate than did clean food, possibly providing less nutrition to the animals.
No field studies were carried out for black bear due to the difficulty of finding, collaring, or otherwise investigating these animals in the dense underbrush in which they reside. However, a literature search confirmed that these animals do forage in the intertidal zone in the spill area.

The deer study found no evidence of injury based on intensive searches of beaches that revealed no mortality attributable to the spill. However, deer taken for purposes of testing for safety for human consumption (not part of the damage assessment process) found slightly elevated petroleum hydrocarbons in some tissues in deer (which feed on kelp in intertidal areas) but it was determined that the deer were safe to eat.

River Otters: A few river otter carcasses were found by cleanup workers. River otters forage in streams and shallow coastal habitats that were contaminated by the spill. Analysis of river otter bile indicated that petroleum hydrocarbons are being accumulated by this species. Studies of radio tagged animals in Prince William Sound showed that home ranges are larger, movements more erratic, and body weights are lower in oiled habitat. Field work is continuing in 1991 to further assess the status of this species, including analysis of blood samples to measure the health of these animals.

BIRDS

Among the most conspicuous effects of the Exxon Valdez oil spill was the injury to birds. Seabirds are particularly vulnerable to oil as they spend much of their time on the sea surface while foraging. Oiled plumage insulates poorly and loses buoyancy and birds die from hypothermia or drowning. Birds surviving initial acute exposure may then ingest oil by preening. Approximately 36,000 dead birds were recovered after the spill; at least 31,000 of these deaths were attributed to the effects of oil. In addition to the large number of murres, sea ducks, and bald eagles, carcasses of loons, cormorants, pigeon guillemots, grebes, murrelets, and other species were also recovered (see attached comprehensive list of bird carcasses logged into evidence trailers by September 25, 1989). Only a small proportion of the total number of birds estimated to have been killed were recovered, as many undoubtedly floated out to sea, sank, were scavenged, were trapped and hidden in masses of oil and were not visible, were buried under sand and gravel by wave actions, decomposed, or simply beached in an area where they were not found. Additionally, it is known that, in a number of cases, carcasses found shortly after the spill were not turned in to receiving stations. Preliminary analyses provided by computer models that account for some of these variables estimate that the total number of birds killed by the spill ranges from 260,000 to 580,000 with the best approximation that between 350,000 and 390,000 birds died. Following peer review, the model will be run again to provide a more refined estimate of total mortality.

Common and Thick-billed Murres: Murres are the third most abundant seabird in Alaska (after tufted puffins and black-legged kittiwakes). A total of approximately 1,400,000 murres reside in the Gulf of Alaska (Unimak Pass to the Canadian border in southeastern Alaska). The total population of murres in Alaska is approximately 12,000,000. The murre colonies on the Chiswell Islands are the most visited by tourists in Alaska. In 1989 and 1990 murres were the most heavily affected bird species. Murre colonies impacted by the spill lost 60 to 70 percent of breeding birds. Oil in Prince William Sound affected major wintering areas of murres and other species. As oil moved out of Prince William Sound and along the Kenai Peninsula and the Alaska Peninsula, it hit major seabird nesting areas such as the Chiswell and Barren Islands, as well as numerous smaller colonies. The oil hit these areas outside Prince William Sound at the same time that adult murres were congregating on the water near colonies in anticipation of the nesting season. Approximately 22,000 murre carcasses were recovered following the spill. Colony surveys indicate that an estimated minimum of 120,000 to 140,000 breeding adult murres in the major colonies that were surveyed were killed by the spill. Extrapolating this information to other known murre colonies hit by

the spill (but not specifically studied), the mortality of breeding adult murres is estimated to have been 172,000 to 198,000. However, area-wide, including wintering and non-breeding birds, the total mortality of murres is estimated to be about 300,000. Murres exhibit strong fidelity to traditional breeding sites and infrequently immigrate to new colonies.

Normally, murres breed in densely packed colonies on cliff faces. Each murre colony initiates egg laying almost simultaneously. This synchronized breeding behavior helps the birds repel predators such as gulls and ravens. In oiled areas, murre colonies have exhibited a much lower populations than before the spill, breeding is later than normal, and breeding synchrony has been disrupted. These structural and behavioral changes in colonies have caused complete reproductive failure during 1989 and 1990, and thus lost production of at least 215,000 chicks. Murre colonies in unoiled areas displayed none of these injuries and had normal productivity. Monitoring of reproductive success of the colonies will continue in 1991.

Bald Eagles: Of the estimated Alaskan bald eagle population of 30,000 birds (20,000 adults and 10,000 fledglings), an estimated 2,200 reside in Prince William Sound. One hundred forty-four (144) dead bald eagles were found following the spill. Although there is considerable uncertainty regarding the total mortality of bald eagles, it is estimated that several times this amount may have been killed by the initial spill. Approximately 90 percent of radio-tagged bald eagles that died during subsequent studies were not found on the beach but in the brush back from the beachfront. This suggests that most of the eagles that died in the spill would not have been found by surveys typically restricted to beach areas. To assess injuries to bald eagles, helicopter and fixed-wing surveys were flown to estimate populations and productivity. Radio transmitters were attached to bald eagles to estimate survival, distribution, and exposure to oiled areas. Bald eagles in Prince William Sound were most intensively studied. Productivity surveys in 1989 indicate a failure rate of approximately 85 percent for nests on moderately or heavily oiled beaches compared to 55 percent on unoiled or lightly oiled beaches. Bald eagles have a delayed sexual maturity and have a relatively long life span under normal circumstances. Consequently, although reproduction apparently rebounded to more normal levels in 1990, population impacts as a result of poor productivity of nestlings and the death of hundreds of adult eagles in 1989 may not be readily apparent for several years. Fewer bald eagles were sighted in 1990 than in 1989, however this change was within the expected error of the survey method. An additional survey will be conducted in 1991 to see if there is a downward population trend.

Sea Ducks: More than 2,000 sea duck carcasses were recovered after the spill, including more than 200 harlequin ducks. Studies concentrated on harlequins, goldeneyes, and scoters, species that use the intertidal and shallow subtidal habitats most heavily affected by the spill. Harlequins were most affected, consistent with the fact that they feed in the shallow water area of the intertidal zone. This is the only species of sea duck studied that both nests in the spill area and feeds in the shallow intertidal zone. All of these species feed on invertebrates such as mussels and are likely to continue to be exposed to petroleum hydrocarbons through their food. About 33 percent of the harlequins collected in the spill area had poor body condition and about 40 percent had

tissues contaminated with petroleum hydrocarbons. Preliminary surveys also indicate harlequins may have failed to reproduce in the spill zone in Prince William Sound during 1990. These injuries will be investigated further during 1991.

Other Birds: Surveys and studies indicate reduced numbers of black oystercatchers, pigeon guillemots, and marbled murrelets in oiled areas. Black oystercatchers and pigeon guillemots use inshore and intertidal areas for feeding and nesting. Reduced breeding success of black oystercatchers was documented in oiled areas, largely as a result of loss of chicks along oiled beaches. It is estimated that between 1,500 and 3,000 pigeon guillemots were killed by the spill, representing as much as 10 percent of the catalogued population in the Gulf of Alaska. This species is susceptible to continued exposure to petroleum hydrocarbons because it uses intertidal rocks and waters within 200 meters of shore. Petroleum hydrocarbons were found in eggs and tissue in 1989.

Marbled and Kittlitz's murrelets represented a high proportion of the dead birds recovered in oiled areas of Prince William Sound. The reduction in the number of murrelets observed in oiled areas during cleanup in 1989 and the return of many of these birds in 1990 suggest disturbance associated with cleanup activities affected these birds. The extent of injury to certain species, including loons, cormorants, and gulls will probably never be known because pre-spill information on numbers of these birds in the spill area are not available. Data on bird distribution and abundance data gathered during aerial and boat surveys remain to be fully analyzed and interpreted. Boat surveys will continue during 1991. Studies did not document injury to certain bird species such as Peale's peregrine falcons or songbirds.

FISH/SHELLFISH

No massive die-offs of adult fish were found following the spill, and adult salmon, for example, were evidently able to migrate to spawning areas after the spill. However, fish are most vulnerable to oil contamination during the early stages of their life cycles. Accordingly, most fish studies initially focused on this phase of fish life history. During 1991, scientists will begin to be able to assess affects on adult fish such as salmon that would have been exposed to oil as eggs or larvae. Species most often affected by the spill were those that inhabit and spawn in the intertidal zone (salmon) or in the shallow areas next to shore (herring and Dolly Varden).[3] Less than ten dead rockfish were found during the spill and their deaths were attributed to oil. Several species of coastal and offshore fish (pollock, halibut, sablefish, cod, yellowfin and flathead sole, and rockfish) show evidence over a large geographic area of continuing exposure to petroleum hydrocarbons in areas affected by the spill, but significant injury has not yet been documented. Exposure to petroleum hydrocarbons does not necessarily lead to

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[3]The State of Alaska imposed the highest possible standards for commercial fishery openings and for processing plant inspections to insure that all commercially harvested salmon were free from contamination. Salmon subject to commercial harvest in the spill area were rigorously tested to insure that the catch was safe for human consumption.

injury, since many animals have the capability to physiologically "manage" the exposure with no resulting harm. In particular, salmon and other fish can metabolize petroleum hydrocarbons so that these contaminants are unlikely to be found in edible fish tissues. Indicators of exposure among fish include bile metabolites and mixed function oxidases. Since injuries from chronic exposure to oil may not manifest themselves for a number of years, it is premature to conclude that coastal and offshore species were not injured; therefore certain studies are continuing.

Pink Salmon: The full extent of short term injury to pink salmon cannot be assessed until after the 1991 run returns to spawn in the summer. Although the overall catch of pink salmon in Prince William Sound during 1990 was an all-time record (as predicted before the spill), this was primarily due to strong runs of hatchery-produced salmon. Salmon survival associated with the Armin F. Koerning hatchery, located in the middle of a heavily oiled area of the spill zone, was half that of Ester Hatchery, located outside the area of the spill. Wild production of pink salmon did not mirror the record production of hatchery fish.

Seventy-five percent of wild pink salmon spawn in the intertidal portion of streams in Prince William Sound. Wild stock salmon did not shift spawning habitat following the spill and deposited eggs in intertidal areas of oiled streams. Preliminary analyses indicate a 70 percent greater mortality of pink salmon eggs laid in the summer of 1989 and a 50 percent greater mortality in the summer of 1990 in oiled streams as compared to control streams. Larvae from heavily oiled streams showed gross morphological abnormalities, including club fins and curved spines. The pink salmon that returned to Prince William Sound in the summer of 1990 were exposed to oil as larvae as they swam under the slick, but not as eggs which were more directly exposed to oil than the larvae. Fish returning in 1991 will be the first that were exposed to oil as eggs. Eggs and larvae of wild populations continue to be exposed to oil in intertidal gravel in oiled areas.

Sockeye Salmon: Commercial harvest of sockeye salmon was curtailed in portions of Cook Inlet, Chignik, and Kodiak in 1989 because of the spill, resulting in an unusually high number of adults migrating to spawn in certain lake spawning systems (returning adults that arrive at the spawning areas are referred to as the "escapement"). Overly large spawning escapements may result in poor returns in future years by producing more juvenile salmon than can be supported by the nursery lake's productivity. Preliminary data indicate that overescapement degraded rearing habitat in lakes and that sockeye salmon survival and growth rates are lower than usual. Further study is needed before the extent of these injuries can be determined.

Dolly Varden and Cutthroat Trout: Prince William Sound is the northern extreme of the range of cutthroat trout. Both cutthroat trout and Dolly Varden use nearshore and estuari habitat for feeding throughout their lives (in contrast to salmon which migrate out to). The highest concentrations of bile petroleum hydrocarbon metabolites in all fish sampled were found in Dolly Varden. Tagging studies have demonstrated that the annual mortality of adult Dolly Varden was 32 percent greater in oiled areas than in unoiled areas. The larger cutthroat trout showed similar levels of mortality in oiled and unoiled areas. Additionally, cutthroat trout growth rates were reduced in oiled areas.

Studies are continuing to measure impacts on populations of these popular sport fish species.

Pacific Herring: Populations of Pacific herring were spawning in shallow eelgrass and algal beds at the time of the spill. The effects of oil on egg survival, hatching success, larval development, and recruitment to the spawning population were studied. Study results show a large increase in the percentage of abnormal embryos and larvae in oiled areas of Prince William Sound during the 1989 reproductive season. Larvae in oiled areas also had a greater incidence of eye tumors. These effects continued but at somewhat lower rates in 1990. Results also showed greater egg mortality in oiled areas as compared to unoiled areas. Whether the adult population has been affected by these larval injuries will not be determined until the 1989 and 1990 cohorts return to spawn in 1992 and 1993.

COASTAL HABITAT

The coastal tidal zone, commonly known as the "intertidal zone," was the most severely contaminated habitat. Intertidal habitats are highly productive and biologically rich. They are particularly vulnerable to the grounding of oil, its persistence, and effects of associated clean-up activities. An interdisciplinary team with expertise in plant and systems ecology, marine biology, and statistical analysis, was established to conduct field studies to assess the effects of oil on intertidal ecosystems.

Supratidal: Results of studies in the Kodiak/Alaska Peninsula area suggest that oil in the supratidal habitat and beach cleanup disturbance decreased the productivity of grasses and other vegetation including beach rye grass, that help stabilize beach berms. In one instance, cleanup activities completely removed the vegetation. Increased production of supratidal vegetation was found in Prince William Sound in 1989. This finding corresponds with information from other oil spills. It is not known whether this increased production was a result of decreased browsing by terrestrial mammals or a fertilizer effect of the oil.

Intertidal: Natural populations of intertidal organisms were significantly reduced along heavily oiled shorelines such as Herring Bay. Densities of intertidal algae (Fucus), barnacles, limpets, amphipods, isopods, and marine worms were decreased. Although there were increased densities of mussels in oiled areas, they were significantly smaller than mussels in the unoiled areas and the total biomass of mussels was significantly lower. Intertidal organisms continue to be exposed to hydrocarbons from the more heavily oiled sediments. Petroleum hydrocarbon accumulation in filter feeding mussels experimentally placed in oiled areas indicate that oil remains available for uptake by other organisms. Initial findings also indicate that oiled surfaces retarded settlement by juvenile barnacles when compared to unoiled sites. In addition to direct mortality, the reproductive cycle of mussels at oiled sites in the lower Cook Inlet/Kenai Peninsula and Kodiak/Alaska Peninsula regions was delayed by several months.

Intertidal fishes were less abundant in oiled areas than in unoiled areas. In addition, gill

parasitism and respiration rates were significantly higher in fish from oiled sites compared to unoiled sites.

Fucus, the dominant intertidal plant, was severely affected by the oil and subsequent cleanup activities. The percentage of intertidal areas covered by Fucus was reduced following the spill and opportunistic plant species which characteristically flourish in disturbed areas were increased. The average size of Fucus was reduced, the number of reproductive sized plants greatly decreased, and the remaining plants of reproductive size decreased in reproductive potential due to fewer fertile receptacles per plant. There was also reduced recruitment of Fucus at oiled sites.

SUBTIDAL HABITATS

Spilled oil in some areas has migrated to and contaminated the seafloor at depths of up to 100 meters as contaminated sediments moved off beaches during winter storms and cleanup activities. There is evidence that petroleum hydrocarbons have been taken up by animals feeding on the ocean bottom. Petroleum hydrocarbon metabolites have been found in the bile of yellowfin sole, rock sole, rockfish, and pollock. Concentrations of petroleum hydrocarbon metabolites in the bile of yellowfin sole have not declined from 1989 to 1990. This contrasts with Dolly Varden which feed close to shore and where petroleum hydrocarbon metabolites in bile decreased in the same period. The effects of this exposure are still being studied. Many subtidal and intertidal species, particularly fish, have the capability of metabolizing and eliminating petroleum hydrocarbons from their bodies. Clams metabolize hydrocarbons very slowly and consequently accumulated them in high concentrations.

Contaminated clams and other invertebrates are a potential continuing source of petroleum hydrocarbons for sea otters and otherspecies that forage in the shallow subtidal zone. Samples from pollock, which feed in the water column, taken as far away as 200 mile from the wreck site on Bligh Reef, showed elevated petroleum hydrocarbon metabolite concentrations in their bile. This indicates that the water column or food supply was affected at great distances from the spill. Initial 1990 study results show a significant effect on benthic organisms associated with eelgrass beds. These are known to be highly productive habitats. The composition of benthic animal communities on soft-bottom habitats as deep as 40 meters were also significantly altered in oiled areas.

ARCHAEOLOGICAL AND SUBSISTENCE RESOURCES

The spill directly impacted archaeological sites and subsistence resources. Cleanup activities and the associated significant increases in human activity throughout the spill zone resulted in additional injuries to these resources.

Archaeological Resources: Archaeological sites along the shoreline were injured by the

spill. Review of spill response data revealed injuries from oil to a minimum of 26 archaeological sites. Among these are burial sites and home sites. Twenty-one (21) of these sites are on federally-owned land, with the remaining five on State of Alaska and private lands. Of the 21 sites on federal land, 10 are on national parks, six on national wildlife refuges, four within Chugach National Forest, and one on Bureau of Land Management land. While injury to these 26 sites was documented during cleanup, a spill-wide assessment of injuries to archaeological resources has yet to be completed. In addition to oil contamination, increased knowledge of the location of archaeological sites may put them at risk from looting. Loss of rye grass cover may threaten some sites. A comprehensive survey of injuries to archaeological resources on public lands throughout the spill zone will be conducted during 1991.

A study was conducted to determine impacts caused by oil contamination on radiocarbon dating of archaeological resources and to investigate the potential for cleaning artifacts and materials to allow such dating. Preliminary results indicate significant injury to the ability to contextually date artifacts and materials by Carbon 14 analysis. It also appears that these materials cannot be successfully "cleaned" to allow accurate dating.

Subsistence Resources: Surveys undertaken by state researchers before the spill and in 1990 indicated that subsistence harvesters in the area affected by the oil spill significantly reduced their use of subsistence resources after the spill, primarily because of their concerns about possible contamination of these resources. The oil spill disrupted the subsistence lifestyle of some communities that have historically relied upon these resources. Some communities virtually or entirely ceased subsistence harvests in 1989 and have only gradually begun to resume harvests, while other communities continued some reduced level of subsistence harvest in 1989 and thereafter. The attached report (Subsistence Use of Fish and Wildlife in 15 Alutiiq Villages after the Exxon Valdez Oil Spill) details these studies. Warnings were issued by the state in 1989 for people to avoid consumption of intertidal invertebrates (such as mussels and clams, which bioaccumulate petroleum hydrocarbons) found along shorelines contaminated by oil. After the spill, an oil spill health task force was formed, including the state and federal governments, subsistence users, and Exxon. This group helped oversee studies conducted by the state and others in conjunction with FDA and NOAA in 1989 and 1990, on subsistence food resources such as seals, deer, salmon, ducks, clams, and bottomfish. Based upon the test results these resources, with the exception of clams and mussels in certain oiled areas such as Windy Bay, were determined to be safe for human consumption.

CONCLUSION

The federal and state Trustee agencies have now concluded two field seasons of study and are currently preparing to begin a third year of studies to assess injuries to natural resources resulting from the Exxon Valdez oil spill. The information contained in this

summary is based upon the field work and data analysis conducted to date, and is preliminary. Many studies will likely need to continue for additional years before a full understanding of injuries is developed. For example, long-lived species such as bald eagles, murres, and sea otters, may not manifest some effects until a number of years have passed. For other species, such as herring and salmon that return to spawn years after hatching, it is necessary to wait for these key life history events to occur before one can determine the extent to which or if they have been injured. At present there is no indication of long-term injury for species other than those noted in this summary. Although two field seasons of study are complete, only a portion of the data gathered has been fully analyzed and interpreted. As studies and data analysis are completed, some of the information contained in this summary may need to be modified.

For the reasons given above, injury assessment studies will continue in 1991, and thereafter until the process is complete. The need to continue to understand the long-term effects of the spill will be accomplished through monitoring projects that will measure the natural recovery of resources injured by the spill as well as the effectiveness of restoration measures implemented by the Trustee agencies. The information gathered by the injury assessment studies, the restoration monitoring studies, and other studies will be used to develop and implement a restoration program that will accelerate the recovery of injured resources.

Restoration measures will begin in 1991 and are expected to become more comprehensive as the understanding of the effects of the spill improves and as experts and the public provide input on where restoration measures should be concentrated. Wherever possible, restoration will focus on those projects that will provide ecosystem-wide benefits, thereby benefitting a variety of species. These projects may include various initiatives to protect habitat; in other cases it may be necessary to conduct restoration programs that will primarily benefit a particular resource injured by the spill.

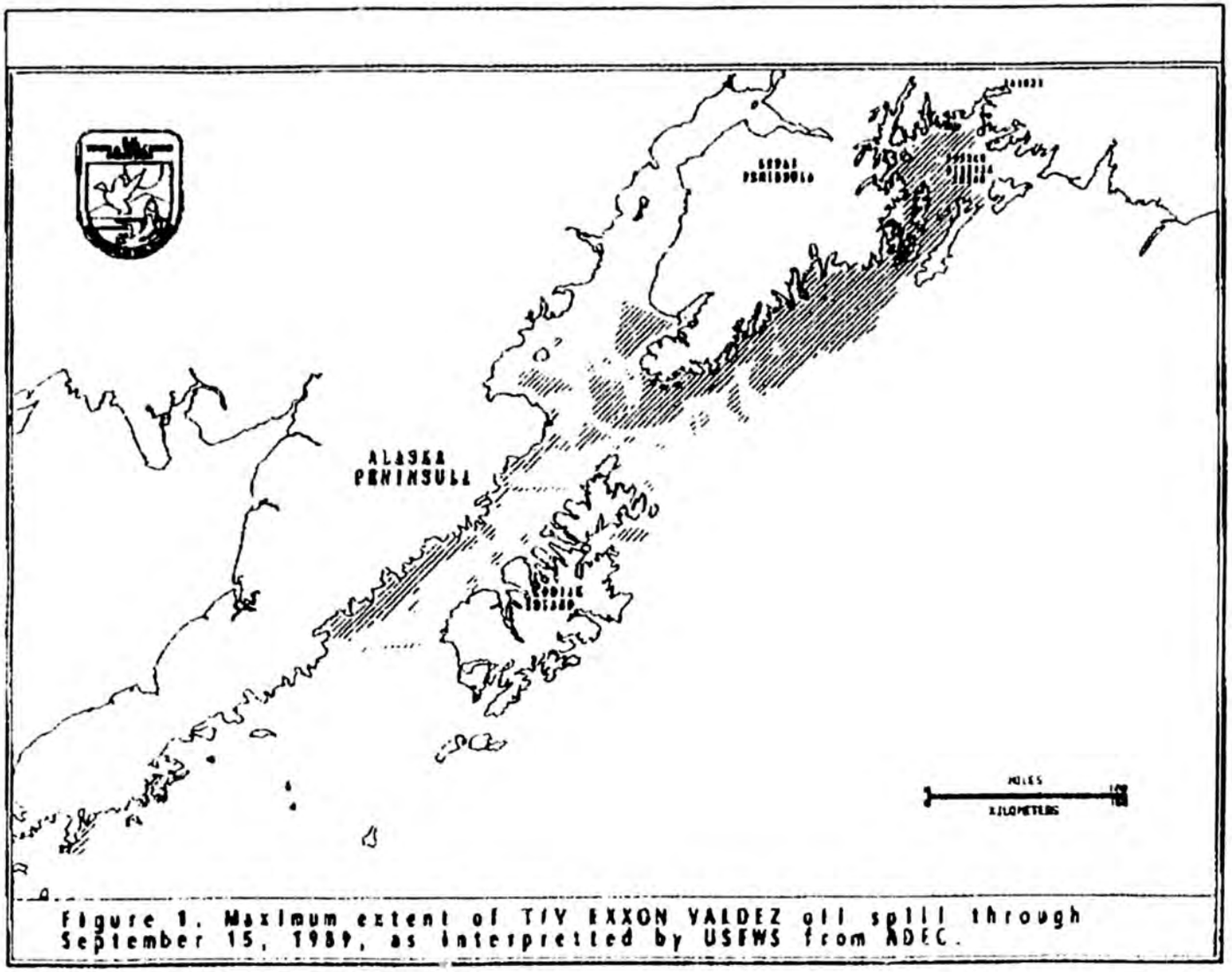

Figure 1. Maximum extent of T/V EXXON VALDEZ oil spill through September 15, 1989, as interpreted by USFWS from ADEC.

Table 1. Species composition and number of birds retrieved from oiled areas and processed at U.S. Fish and Wildlife receiving stations as of 25 September, 1989.

Species	Total	Valdez	Seward	Homer	Kodiak
Total	35,279	3,360	3,503	5,778	22,638
Unidentified bird	2,927	476	414	916	1,121
Unidentified loon	69	27	6	25	11
Common Loon	216	142	23	32	19
Yellow-billed Loon	87	72	5	3	7
Pacific Loon	18	8	5	0	5
Red-throated Loon	5	3	1	1	0
Unidentified grebe	65	27	8	11	19
Red-necked Grebe	120	79	22	12	7
Horned Grebe	277	233	15	22	7
Northern Fulmar	426	0	22	12	115
Unidentified shearwater	579	5	22	14	538
Sooty Shearwater	360	4	80	34	242
Short-tailed Shearwater	2,460	1	84	4	2,371
Unidentified petrel	69	2	24	14	29
Fork-tailed Storm-petrel	363	1	50	19	293
Leach's Storm-petrel	12	0	9	0	3
Unidentified cormorant	219	76	27	56	60
Double-crested Cormorant	38	19	10	0	9
Pelagic Cormorant	418	277	65	29	47
Red-faced Cormorant	161	90	29	9	33
Great Blue Heron	1	1	0	0	0
Unidentified swan	3	0	2	1	0
Emperor Goose	2	0	0	0	2
Canada Goose	1	0	0	1	0
Brant	3	0	1	2	0
Unidentified duck	30	4	6	20	0
Unidentified seaduck	112	63	2	11	36
Mallard	11	2	4	1	4
Northern Pintail	4	0	3	1	0
Green-winged Teal	5	0	5	0	0
Unidentified Scaup	4	1	3	0	0
Greater Scaup	27	2	21	4	0
Lesser Scaup	2	0	2	0	0
Unidentified Goldeneye	25	8	2	14	1
Common Goldeneye	6	3	0	2	1
Barrow's Goldeneye	33	19	9	4	1
Bufflehead	21	17	1	0	3
Oldsquaw	185	131	43	6	5

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Table 1. Species composition and number of birds retrieved from oiled areas and processed at U.S. Fish and Wildlife receiving stations as of 25 September, 1989. (Cont'd)

Species	Total	Valdez	Seward	Homer	Kodiak
Harlequin Duck	213	148	10	35	20
Unidentified Eider	3	0	0	3	0
Stellar's Eider	4	4	0	0	0
Common Eider	17	5	0	2	10
King Eider	9	0	0	0	9
Unidentified Scoter	162	23	17	51	71
White-winged Scoter	342	164	13	137	23
Surf Scoter	175	45	28	9	6
Black Scoter	132	112	4	8	8
Ruddy Duck	1	0	1	0	0
Unidentified merganser	3	1	0	0	2
Common Merganser	2	2	0	0	0
Red-breasted Merganser	33	30	1	1	1
Sandhill Crane	2	1	1	0	0
Black Oystercatcher	9	2	2	0	5
Golden Plover	1	0	0	1	0
Unidentified sandpiper	11	1	5	1	4
Unidentified turnstone	1	0	0	0	1
Common Snipe	1	0	0	1	0
Semipalmated Sandpiper	1	0	1	0	0
Lesser Yellowlegs	2	0	0	2	0
Western Sandpiper	5	0	0	5	0
Baird's Sandpiper	1	0	0	0	1
Least Sandpiper	4	0	2	0	2
Surfbird	3	3	0	0	0
Short-billed Dowitcher	1	0	0	0	1
Red Phalarope	2	0	0	2	0
Red-necked Phalarope	7	1	3	0	3
Long-tailed Jaeger	1	0	0	0	1
Unidentified gull	99	6	34	39	20
Glaucous-winged Gull	555	33	188	28	213
Herring Gull	8	3	5	0	0
Mew Gull	33	0	3	3	27
Black-legged Kittiwake	1,225	8	214	74	929
Arctic Tern	3	1	1	0	1
Aleutian Tern	1	0	0	0	1

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Table 1. Species composition and number of birds retrieved from oiled areas and processed at U.S. Fish and Wildlife receiving stations as of 25 September, 1989. (Cont'd)

Species	Total	Valdez	Seward	Homer	Kodiak
Unidentified alcid	173	24	0	15	134
Unidentified murre	8,851	21	775	2,101	5,954
Common Murre	10,428	399	523	1,353	3,153
Thick-billed Murre	669	16	142	73	438
Pigeon Guillemot	614	136	109	155	214
Unidentified murrelet	413	21	37	121	234
Marbled Murrelet	612	289	97	82	144
Kittlitz's Murrelet	67	23	19	21	4
Ancient Murrelet	311	3	40	73	195
Cassin's Auklet	48	0	36	2	10
Least Auklet	5	0	0	1	4
Parakeet Auklet	31	1	2	1	27
Rhinoceros Auklet	141	0	31	31	79
Unidentified puffin	46	0	7	4	35
Horned Puffin	139	0	32	13	94
Tufted Puffin	361	0	29	15	317
Bald Eagle	125	31	20	15	59
Unidentified raptor	7	1	3	2	1
Peregrine Falcon	2	0	0	0	2
Willow Ptarmigan	1	0	0	0	1
Unidentified owl	1	0	0	1	0
Great-horned Owl	3	0	0	3	0
Unidentified woodpecker	1	0	0	1	0
Cliff Swallow	3	0	3	0	0
Violet-green Swallow	1	0	1	0	0
Unidentified passerine	9	1	7	1	0
Stellar's Jay	1	1	0	0	0
Magpie	7	1	0	0	6
Common Raven	18	1	4	0	13
Northwestern Crow	34	6	3	3	22
American Robin	2	0	2	0	0
Varied Thrush	1	0	0	0	1
Hermit Thrush	1	0	1	0	0
Unidentified warbler	1	0	0	0	1
Yellow Warbler	3	0	3	0	0
Pine Grosbeak	1	0	0	0	1
Unidentified sparrow	15	0	10	2	3
Savannah Sparrow	1	0	1	0	0
Golden-crowned Sparrow	4	0	3	0	1
White-winged Crossbill	8	0	0	6	2

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GEORGE MILLER ←— JEFF
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Oil Officials Ignored Cleanup Deficiencies, Hill Probe Finds

By John Lancaster
Washington Post Staff Writer

A year before the Exxon Valdez oil spill, oil industry officials—who had long pledged to make their shipping operations "the safest in the world"—knew that their spill-fighting capabilities were inadequate but chose not to invest in recommended improvements, a congressional investigation has found.

Alyeska Pipeline Service Co., the oil-industry consortium that oversees the shipping of Alaskan oil, concluded in 1988 that "immediate, fast response" to a spill in the center of Prince William Sound was "not possible with present equipment," according to internal documents obtained by the staff of Rep. George Miller (D-Calif.).

Miller said the documents suggest that approval of last month's settlement in which Exxon Corp., the tanker operator, agreed to pay $1.1 billion should be held up because the terms also call for charges against Alyeska to be dropped.

Contrary to Alyeska's safety pledge, consortium operators rejected their staff's recommendations that they purchase additional spill-fighting equipment, such as a large-capacity oil storage barge, the documents show.

An Alyeska spokeswoman acknowledged yesterday that the consortium had not been adequately prepared to cope with the Exxon Valdez spill but said Alaska officials were well aware of the deficiencies and denied any attempt to deceive the public. "The industry and the state did not plan for [a spill of that] magnitude," said the spokeswoman, Marnie Isaacs.

In a related development, a new assessment by state and federal scientists revealed far greater devastation to some species of marine life and wildlife than previously reported. The latest estimate of deaths to sea otters ranged from 3,500 to 5,500 and seabirds from 260,000 to 580,000.

Last month, the federal government and state of Alaska agreed to drop all criminal claims against Alyeska as part of a proposed settlement agreement with Exxon, a member of the consortium. The settlement must still be approved by the Alaska legislature and a federal judge in Anchorage, H. Russel Holland.

But in a letter yesterday to Holland, Miller, vice chairman of the House Interior and Insular Affairs Committee, said the settlement "fails to hold Alyeska accountable to the public for its wrongdoing" and should be reconsidered.

"This was like the Challenger disaster—the system failed," Miller said in an interview. "These people would tell the state legislature, the government of Alaska, the Alaskan people anything they could to get their way . . . and as a result we had a national tragedy."

A Justice Department spokeswoman said yesterday that government attorneys were "studying" Miller's findings but declined further comment.

Until now, attention has focused largely on Exxon's role in the March 1989 tanker grounding, which dumped nearly 11 million gallons of crude oil into one of the world's richest commercial fisheries. But under agreement with state and federal agencies, Alyeska was to have been the first line of defense against oil spilled by tankers operating out of the port of Valdez. The consortium of seven major oil companies oversees the operation of the trans-Alaska pipeline, which transports oil from Alaska's North Slope to the pipeline terminus in Valdez.

Alyeska officials offered repeated assurances that oil shipping operations would not endanger the environment. In 1971, for example, an Alyeska pollution specialist said in testimony before an Interior Department panel that the consortium would use "the best equipment, materials and expertise" to "make operations at Port Valdez and in Prince William Sound the safest in the world."

Alyeska's oil spill "contingency plan," which was in effect at the time of the spill, promised a "a rapid and effective response to any oil spill emergency" using "state-of-the-art spill cleanup technology." The plan applied to the Port of Valdez and Prince William Sound.

But in April 1988, according to documents obtained by the Interior subcommittee staff, Theo L. Polasek, Alyeska's vice president of operations, offered this warning to consortium operators: "Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement."

Several months later, another consortium official recommended a series of improvements, including purchase of new equipment "for near shore and beach operations" and an oil-skimming barge with a capacity of 50,000 to 100,000 barrels. But Alyeska owners apparently rejected the suggestions, deciding instead to scale back Alyeska's responsibility for cleaning up spills.

"At the owners committee meeting in Phoenix, it was decided that Alyeska would provide immediate response to oil spills in Valdez Arm and Valdez Narrows only," said a document attributed to Stanley Factor, an executive of Arco Marine Inc., one of the owners. "Further efforts in the Prince William Sound would be limited to the use of [chemical] dispersants and any additional effort would be the responsibility of the spiller."

Isaacs, the Alyeska spokeswoman, said the spill contingency plan acknowledged the shortcomings in Alyeska's cleanup capabilities and that the Alaska Department of Environmental Conservation had approved it anyway. Moreover, she denied Miller's suggestion that the consortium "secretly" reneged on commitments, asserting that statements attributed to consortium officials were nothing more than proposals to modify the contingency plan when it came up for renewal in 1990. "It's absolutely incorrect to characterize these discussions as modifying the [existing] plan," she said.

Larger Environmental Toll Revealed in U.S. Report

In the most comprehensive assessment yet of environmental fallout from the Exxon Valdez spill, the Justice Department filed a report in federal district court in Anchorage that revealed injury to species of wildlife not previously known to have suffered and much higher death rates of better known victims, such as otters and seabirds.

The report also said the pollution was causing lasting effects on such newly identified victims as the river otter, which are said to be accumulating petroleum byproducts in their tissues, losing body weight and moving in more erratic patterns.

Of the hardest-hit seabirds, murre colonies lost up to 70 percent of their breeding birds, with at least 120,000 dead. Bald eagles in Prince William Sound failed nearly twice as often to produce offspring in oily areas than in clean ones, according to the report compiled by several state and federal agencies.

Pacific herring populations spawning in shallow waters at the time of the spill recorded abnormally high numbers of abnormal embryos with a high incidence of eye tumors in larvae found in oily areas, the report said.

—Michael Weisskopf

/MONEY/PERSONAL FINANCE

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April 10, 1990
Los Angeles Times

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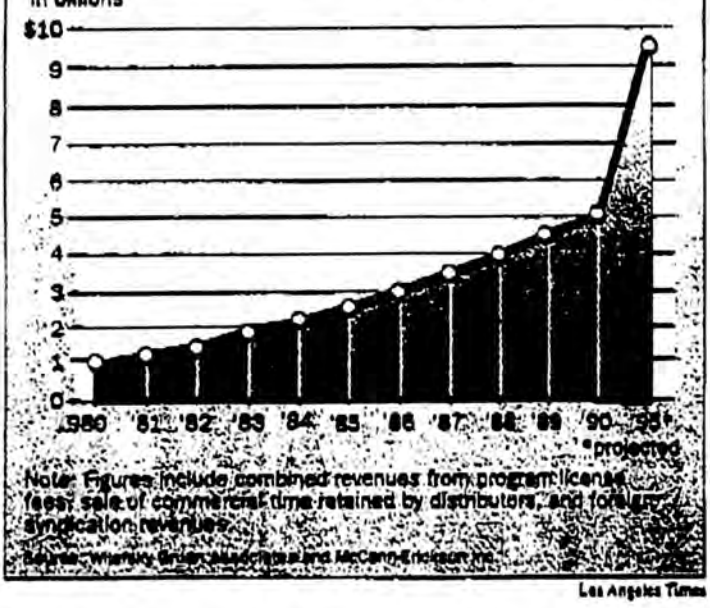
TV SYNDICATION MARKET SOARS

The TV program syndication market, one of the fastest-growing and most lucrative areas of the television business, is projected to reach $9.5 billion in 1995—roughly the size of the combined advertising revenues of ABC, CBS and NBC. The syndication market includes everything from the sale of reruns of old network shows (the most profitable segment) and the sale of so-called first-run shows such as "Wheel of Fortune" and "Oprah Winfrey" to local TV stations. In addition, the market now encompasses the sale of programs to cable TV networks and oversees broadcasters.



Note: Figures include combined revenues from program license fees, sale of commercial time retained by distributors, and foreign syndication revenues.

Source: Warner Bros. Associates and McCann-Erickson Inc.

Los Angeles Times

FCC'S NEW FIN/SYN RULES

■ **Limitation:** The financial interest and syndication rules are eliminated for all parts of the networks' schedule except prime-time entertainment programming.

■ **Outside productions:** A network may acquire a financial interest and rerun syndication rights, both domestic and foreign, in any TV show airing in prime time—provided that the rights are not acquired until 30 days after the network has agreed to a program license fee.

■ **In-house productions:** A network may not fill more than 40% of its schedule with "in-house productions," defined as any program that is produced solely by the network, co-produced with a foreign entity or with an outside producer that initiates the deal.

■ **Off-network syndication:** A network may earn profits in the syndication market from any outside-produced shows, but those shows must be sold through an independent distributor. A network itself, however, can syndicate its in-house productions internationally and, subject to certain safeguards, domestically.

■ **Foreign syndication:** A network may syndicate

Alaska Oil Co-op Accused of Plan to Ignore Spills

■ **Energy:** Rep. George Miller contends that before the Exxon Valdez disaster, the Alyeska pipeline consortium decided against cleaning up slicks. The group denies the charge.

By PATRICK LEE
TIMES STAFF WRITER

A year before the disastrous Exxon Valdez oil spill, a consortium of oil companies secretly decided that it would not respond to spills in Alaska's Prince William Sound as required by a government-approved cleanup plan, according to documents released Tuesday by a leading congressional critic of the oil industry.

Based on an investigation by his subcommittee, Rep. George Miller (D-Martinez) also charged that the consortium—the Alyeska Pipeline Service Co.—knew that it could not respond effectively to such a spill despite previous assurances to the contrary, and that it made little effort to improve its readiness.

"The oil industry betrayed its own promises and deceived the Congress with respect to operations of Alyeska and the Exxon Valdez," Miller wrote in a 12-page letter to federal judges reviewing challenges to the Justice Department's proposed $1.1-billion agreement with Exxon Corp. to settle litigation arising from the spill.

At Anchorage-based Alyeska, spokeswoman Marnie Isaacs vehemently denied Miller's charges, insisting that Alyeska never intended to evade its responsibility

Please see OIL, D5

Greenspan Yields in Spat With Fed

SPILL: Exxon Settlement Being Reviewed

Continued from D1

to clean up spills, to mislead regulators or to break the law.

"Congressman Miller's attention is fairly selective," she said. "He is not acknowledging the present. . . . The standards [for spill response] have escalated enormously, and Alyeska has kept up with the heightened responsibility."

Miller, who opposes the proposed settlement with Exxon, objects to any agreement that would preclude further criminal or civil action against the consortium, which operates the trans-Alaska pipeline and the marine terminal at Valdez, Alaska.

"If after making agreements with the state of Alaska and the United States with respect to their ability to clean up an oil spill, . . . the Alyeska Co. then unilaterally and secretly changed its operations . . . that's a major misrepresentation," Miller, chairman of the House Subcommittee on Water, Power and Offshore Energy Resources, said in an interview.

Justice Department officials declined to comment on Miller's charges.

Alyeska is owned by seven oil companies, including Exxon, British Petroleum and Atlantic Richfield Co. Miller based his allegations on internal Alyeska documents obtained during congressional hearings.

The Exxon Valdez spill, the nation's worst, dumped 11 million gallons of crude oil into Alaskan waters on March 24, 1989. It fouled about 700 miles of Alaska coastline in Prince William Sound, killed as many as 580,000 birds and 5,500 sea otters and polluted tidal zones up to depths of 300 feet, according to a summary of 58 federal and state environmental studies filed late Monday in U.S. District Court. Those estimates are worse than previously believed.

Alyeska came under heavy criticism for its handling of the spill. The U.S. Coast Guard eventually assumed control of cleanup operations, for which Exxon paid $2.2 billion.

On Tuesday, Miller's sharpest accusation concerned an apparently secret 1988 decision by Alyeska's owners not to clean up an oil spill in Prince William Sound, despite their promises to do so in a so-called Oil Spill Contingency Plan.

In the plan, which was approved by regulators as a condition of the permit to operate the 800-mile trans-Alaska pipeline, Alyeska promised that it would assume responsibility for cleaning up spills from tankers operating in Prince William Sound and other areas.

But in a July 6, 1988, telex, Stanley Factor, a vice president at Arco's marine subsidiary, wrote: "At the owners committee meeting in Phoenix, it was decided that Alyeska would provide immediate response to oil spills in Valdez Arm and Valdez Narrows only. Further efforts in the Prince William Sound would be limited to the use of dispersants, and any additional effort would be the responsibility of the spiller."

Alyeska's Isaacs said the telex referred to ongoing discussions about changes in future oil spill contingency plans, not to the existing one. She denied any intent to evade the law.

"That's absolutely false," she said. "[Miller] is basing that conclusion on conversations between Alyeska and our owner companies . . . [that are] a slice of a very long-term give-and-take between Alyeska and the owners on how to craft, design and manage oil spill responsibilities for the 1990 contingency plan," not the plan in effect at the time.

Daniel Weiss, a spokesman for Miller, said, however, that it was clear from the subcommittee's review of Alyeska documents that Factor's comments were part of a discussion about equipment purchases to satisfy the existing contingency plan. None of the documents refers to an update of that plan, he added.

Miller also alleged that Alyeska knew it was ill-prepared to deal with an oil spill—despite assurances otherwise—and that it did little in the years before the Valdez spill to improve its preparedness.

In a 1984 letter obtained by Miller's subcommittee, former Coast Guard Commander James K. Woodle, then Alyeska's marine superintendent at its Valdez terminal, issued a warning to Alyeska President George M. Nelson: "Serious doubt exists that Alyeska would be able to contain and clean up effectively a medium- or large-size oil spill. . . . Response to any spill beyond the limits of Valdez narrows should not be attempted with present equipment and personnel."

Theo Polasek, Alyeska's vice president of operations, said in a 1988 company briefing document, also obtained by the subcommittee: "Immediate, fast response to [the] midpoint of Prince William Sound [is] not possible with [the] present equipment complement."

Yet Alyeska's Oil Spill Contingency Plan assured regulators that the "estimated time of completion of spill cleanup of a 100,000-barrel spill [in Prince William Sound] would be less than 48 hours."

Among other items, Alyeska said equipment, including a barge, would be in place within five hours of a spill.

In fact, Miller's subcommittee found, when the Exxon Valdez ran aground, fewer than 3,000 barrels were recovered in the first 72 hours. And an equipment barge failed to reach the site for more than 14 hours.

Isaacs said she couldn't comment on the documents, other than to say that some equipment was purchased in the years before the Valdez spill.

Tight budgets contributed to the situation, Woodle said in an interview Tuesday.

"It was a cut, cut, cut operation," said Woodle, who left Alyeska in 1984 in a disagreement over the company's spill preparedness. "The bottom line: It was impossible to maintain readiness."

Woodle said Alyeska asked him to sign letters assuring the state of Alaska that the consortium had sufficient manpower, equipment and readiness to comply with the Oil Spill Contingency Plan. He refused. "When I left, I don't know who signed them," Woodle added.

Isaacs said she did not know whether anyone else at Alyeska signed such letters.

It is unclear what effect Miller's allegations will have on the proposed settlement with Exxon. The settlement, which would require Exxon to pay $100 million in criminal fines and up to $1 billion in damages, has drawn criticism from environmentalists and some Alaskans on grounds that it is too easy on the oil company.

Alaska Atty. Gen. Charles Cole said Tuesday that he doubted Miller's concerns would torpedo the settlement.

Cole added that the settlement would preclude further state action against Alyeska only for natural resource damages, not for other damage claims. "And we intend to vigorously continue the prosecution of those claims," he said.

Boeing Parts Center

SEATAC, Wash.—Faced with rising demand for spare parts and highway congestion that is hampering efforts to deliver those parts, Boeing Commercial Airplane Group has broken ground for a $100-million parts distribution center adjacent to SeaTac International Airport.

When completed, the facility will allow BCAC to consolidate spare parts storage and distribution in one building.

COMPUTER

Continued from D4

it as just another confusing
to a crowded alphabet soup.

"A lot of people would lik
a lifesaver tossed from th
ship," said Spencer Leyton,
vice president for business
opment at software develop
land International. "This
either foam or lead, and it
landed yet."

Microsoft's new operatin
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soft's far less powerful DO
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By developing a version
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Congressman Urges Revision Of Exxon Pact

Miller Says Oil Firms Agreed Not to Do Full Cleanup; Damage Estimate Raised

By ALLANNA SULLIVAN
Staff Reporter of THE WALL STREET JOURNAL

Allegations that oil companies had agreed before the 1989 Valdez spill not to attempt a complete cleanup of spills in Prince William Sound could force revisions in—or even scuttle—Exxon Corp.'s proposed settlement of damages stemming from the giant Alaskan oil spill.

The allegations were contained in a letter to U.S. Judge Russel Holland of Anchorage, Alaska, by Rep. George Miller (D., Calif.), who attacked the settlement in part because it would grant indemnification against natural resource damage claims to Alyeska Pipeline Service Co. Alyeska, which is responsible for cleaning up oil spills in Alaskan waters, is owned by a consortium of oil companies, including Exxon. Mr. Miller heads the House Water, Power and Offshore Energy Resources subcommittee, which has broad jurisdiction over Alaska's natural resources.

In addition, a 19-page report filed by the Justice Department in the Anchorage court Monday indicates that damage caused by the Valdez spill may be more extensive than initially believed. The report is a compilation of 570 million of federal and state studies done in preparation for litigation with Exxon. The filing reflects the first time the federal government has attempted to summarize the past two years' worth of studies.

Although the report doesn't assign a dollar amount to the damage done, it does suggest that the damage is continuing. Crude oil from the spill has contaminated the sediment far below the sound's surface and is continuing to affect marine life, the report says.

In light of the new information regarding Alyeska and damages, Mr. Miller is hoping that the settlement process will be slowed down. "We need an independent review of what the Justice Department did or did not know about Alyeska," he said. "And if damages are greater than we thought, then is $1 billion sufficient to rectify those damages?"

The settlement is in a public-comment phase, and Judge Holland is to decide by early next month whether to approve it in its present form. The National Wildlife Federation also yesterday urged Judge Holland to strike the Alyeska indemnification clause from the settlement.

According to a document Mr. Miller subpoenaed from Alyeska, the consortium's owners decided at a regular quarterly meeting in 1988 to scrap plans to aggressively fight oil spills in Prince William Sound. The document is a June 30, 1988, telex from Stanley Factor, vice president of chartering and evaluations for Atlantic Richfield Co., a member of the Alyeska consortium.

The telex says in part: "At the owners committee meeting in Phoenix, it was decided that Alyeska would provide immediate response to oil spills in Valdez Arm and Valdez Narrows only [fjordlike bodies of water which extend about 35 miles out of Valdez Harbor]. Further efforts in the Prince William Sound would be limited to the use of dispersants and any additional effort would be the responsibility of the spiller."

An Alyeska spokeswoman contested Mr. Miller's assertions that officials of Alyeska and its member companies were fully aware of Alyeska's lack of readiness. She said that the documents obtained by Mr. Miller were internal memos issued as part of the planning process for updating the oil-spill contingency plan and didn't pertain to how Alyeska would actually handle a spill. An Arco spokesman said company officials couldn't comment until they examined Mr. Miller's letter.

What's News—
Business and Finance
World-Wide

Harm to Nature From Valdez Spill Is Now Seen as Far Worse by U.S.

NYT 1A

By KEITH SCHNEIDER
Special to The New York Times

4/10/91

WASHINGTON, April 9 — In the most comprehensive account yet made public about the damage caused when oil spilled from the Exxon Valdez two years ago, the Government said today that far more wildlife had been killed and the environmental damage in Alaska's Prince William Sound would persist much longer than scientists had originally thought.

The Government said that populations of sea otters, harbor seals, bald eagles, murres, sea ducks, sleens and seals plummeted after the Exxon Valdez ran aground and spilled nearly 11 million gallons of oil into the Sound. And it said it did not expect the animal populations to recover for years.

The disturbing toll, presented in the Sound, catalogued in an 18-page summary of 36 scientific studies, also includes losses of killer whales, extensive reproductive defects in salmon hatchery fry, and widespread and lingering damage to sea grasses and other plants in tidal zones along 1,200 miles of the western boundary of the Sound and down the coast in the Gulf of Alaska, which were coated by oil for months.

Better Left Alone

Government scientists also said today that efforts to clean 400 hundreds of miles of the Sound's shorelines with pressurized and heated sea water caused more damage to shellfish, sea grasses and other organisms in the tidal zones than if the shorelines had been left alone.

Thomas A. Campbell, general counsel at the National Oceanic and Atmospheric Administration, said the studies were used as the basis for negotiating the deal the Government and the State of Alaska reached last month with the Exxon Corporation. The $1.1 billion agreement would settle civil and criminal claims from the spill, which occurred after midnight on March 24, 1989.

Two Federal judges are reviewing the settlement and their rulings are expected next month. Although Government officials said they were releasing

Continued on Page A18, Column 4

the studies to bolster their assertions that the settlement with Exxon was fair, critics say the same information could be used as evidence that the settlement is not adequate.

Government officials said the assessment of the environmental disaster in the Alaskan Sound matched and, in some cases, exceeded what scientists predicted from the earliest days of the Exxon Valdez disaster. Officials said that the detailed report indeed confirmed that the disaster had taken a heavy toll on wildlife, and would produce environmental damage that, in some cases, would be permanent.

"Exxon has not had time to study the summary in detail," said Karsten P. Redvik, a spokesman for Exxon in Anchorage. "We will withold comment on it until we have had time to do so.

"However," he went on, "we can say that on the basis of our own and published studies and reports that Prince William Sound is an advanced state of recovery. Little oil remains on the shoreline. The water is clean. Fish are abundant and safe to eat and wildlife is thriving. Everything we are seeing suggests the biological community is healthy and thriving."

Shoreline Was Hard Hit

The Government's study said that 250,000 to 300,000 sea birds died after the spill, and that colonies of one of the most abundant species, the common and thick-billed murres, lost 60 to 70 percent of breeding birds. Because the murre colonies live on islands where hydrocarbons and chemicals lingering from the spill are still killing them, and because murres instinctively return to their same breeding sites, scientists fear these colonies could be entirely wiped out.

The habitat most heavily damaged by the oil spill, the study showed, was the shoreline and shallow areas along the western boundaries of Prince William Sound that are affected by the tides. For weeks, tides washed oil in and out of bays and up and down the rocky shores, killing sea grasses, clams, suffocating bay bottoms and playing havoc with almost all the living creatures in the region.

The spill occurred just weeks before spring, when birds, mammals and fish species are giving birth. Scientists found that Pacific herring, which were spawning in the shallow eelgrass and algal beds at the time of the spill, showed large increases in the number of abnormal embryos and larvae. Larvae collected in oil-coated areas had unusual numbers of eye tumors, said one study.

Mussels found in oiled areas were smaller than mussels in unaffected bays, a study said. Scientists also found clams and other shellfish absorbed hydrocarbons from the oil and pose a continuing source of poison to sea otters and other species that forage in the tidal zones. A study also found that pollock, caught 200 miles from Bligh Reef, had elevated levels of hydrocarbons in their bile, evidence that the sea and food supply was affected at great distances from the spill.

Perhaps the most surprising finding was made by the National Oceanic and Atmospheric Administration, which concluded that spraying beaches with highly pressurized hot sea water, which was widely used in the spill, proved to be more destructive than the blanket of oil. Scientists said the hot water sterilized beaches, killed marine life and changed the character of beaches by washing sand and rocks down the beaches into silty sediments in shallow waters.

Scientists with the oceanic administration said today that Exxon came up with the idea of washing beaches with hot sea water and they approved. And the beach washing began within weeks of the spill. In November 1989, the

> The damage to Prince William Sound will last many years.

agency received preliminary evidence from its scientists about the damage caused by the practice and three weeks ago notified the Coast Guard that the washings should be discontinued on nearly all beaches.

"At the time it made sense," said Dr. Sylvia Earle, the chief scientist at the oceanic administration. "You had a great desire to do something. People were running around with towels wiping rocks.

Dr. Earle added: "Sometimes the best and ironically the most difficult thing to do in the face of an ecological disaster is to do nothing. As far as Alaska's shoreline is concerned, the environment would have been better off if there had been less aggressive but watch treatment and we had let nature take its course."

Mr. Campbell of the oceanic administration, who helped to negotiate the settlement with Exxon, said it was in the Government's interest to allow members of the public to gain a partial look at the scientific studies so that they would feel more comfortable about the $1.1 billion settlement. "We put [illegible] because we wanted the public to know what lay beneath the claims of loss," Mr. Campbell said. "If we felt like the settlement was not strong, we wouldn't have put our cards on the table."

May Stir New Concerns

But the new information also could stir new concerns among critics of the settlement, among them Representative George Miller, a California Democrat who is acting chairman of the House Interior Committee.

Mr. Miller today questioned the terms of the settlement, asserting in a letter to Federal District Court judges in Washington and Alaska that the Justice Department had acted improperly in exempting the Alyeska Pipeline Service Company from prosecution and Federal or state damage claims. The protection for Alyeska, which is owned by Exxon and seven other oil companies, was part of the criminal plea agreement that the Justice Department reached with Exxon on March 13.

Mr. Miller said in his letter that his staff had found that 11 months before the Exxon Valdez ran aground, Alyeska's owners met in Bellingham, Wash., and determined that the company was not ready to respond effectively to an oil spill.

But Mr. Miller said the judges in Alaska had told the State of Alaska in its oil spill contingency plan that it was ready to respond to any spill with state-of-the-art equipment and techniques.

The Coast Guard and other agencies have previously criticized Alyeska's performance.

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U.S. House of Representatives
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DANIEL P. BEARD
STAFF DIRECTOR
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GENERAL COUNSEL
DANIEL VAL KISH
REPUBLICAN STAFF DIRECTOR

April 8, 1991

Honorable H. Russel Holland
United States District Judge
U.S. District Court
222 West 7th Avenue No.4
Anchorage, Alaska 99513

Honorable Stanley Sporkin
United States District Judge
U.S. Court House
3rd and Constitution, N.W.
Washington, D.C. 20001

In Re:

United States of America v. Exxon Shipping Company and Exxon Corporation (No. A90-015 CR.) [Criminal Plea Agreement]

United States of America v. Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company, in personam, and the T/V Exxon Valdez, in rem (A91082 Civil) [Agreement and Consent Decree]

State of Alaska v. Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company, in personam, and the T/V Exxon Valdez, in rem (A91083 Civil) [Agreement and Consent Decree]

United States of America v. State of Alaska, and The State of Alaska v. United States of America (A91081 Civil) [Memorandum of Agreement and Consent Decree]

State of Alaska v. Exxon Corporation, et al., (3AN-89-6852 Civil)

The Native Village of Chenega Bay, et al., v. Manuel Lujan, Jr., et al. (91-483 SS Civil) and Chenega Corporation, et al., v. Manuel Lujan, Jr., et al. (91-484 SS Civil)

Gentlemen:

For purposes of your review of the pending cases cited above and other claims arising from the Exxon Valdez oil spill of March 24, 1989, I want to bring to your attention some significant evidence concerning Exxon Corporation's and the Alyeska Pipeline Service Company's culpability.[1]

---

[1]The owner companies of Alyeska Pipeline Service Company ("Alyeska") are B.P. Pipelines Alaska, Inc. (50.01 percent); Exxon Pipeline Company (20.34 percent); Arco

As Chairman of the Subcommittee on Water, Power and Offshore Energy Resources, I have conducted an investigation of matters related to the Exxon Valdez oil spill, including the cleanup response, damage to natural resources, and operation of the Trans-Alaska Pipeline System.[2] The Committee on Interior and Insular Affairs was a principal author of the Trans-Alaska Pipeline Authorization Act (P.L. 93-153) and has broad jurisdiction concerning public lands and natural resources in Alaska and a special interest in issues affecting Alaska Natives.

In the course of this investigation, Alyeska has provided me with documents which indicate that Exxon and the other owner companies which control Alyeska: (1) knew that Alyeska could not effectively respond to an oil spill in Prince William Sound; (2) failed to make necessary improvements in Alyeska's oil spill response capabilities; and, (3) secretly decided that Alyeska would not respond to an oil spill in Prince William Sound in the manner prescribed by Alyeska's Oil Spill Contingency Plan.

Alyeska's Promises

Before the Pipeline Was Approved

In 1971, during the consideration of the trans-Alaska pipeline project, Alyeska's pollution control specialist R.L. Benyon promised the public in testimony before the Department of the Interior that:

> "The contingency plan which will be drawn up will detail methods for dealing promptly and effectively with any spill which may occur, so that its effect on the environment will be minimal. We have adequate knowledge for dealing with oil spills and improvements in techniques and equipment are continuing to become available through world-wide research. The best equipment, materials and expertise which will be made available as part of

---

Pipe Line Co. (20.34 percent); Mobil Alaska Pipeline Co. (4.08 percent); Amerada Hess Pipeline Corp. (1.5 percent); Unocal Pipeline Co. (1.36 percent); and Phillips Alaska Pipeline Corp. (1.36 percent).

[2]"Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska," Oversight Hearings before the Subcommittee on Water, Power and Offshore Energy Resources of the Committee on Interior and Insular Affairs (Serial No. 101-5, Parts I to V) (hereinafter "Investigation of the Exxon Valdez Oil Spill").

> the oil spill contingency plan, will make operations at Port Valdez and in Prince William Sound the safest in the world. [Emphasis added.]"

On April 10, 1973, the President of Alyeska, E.L. Patten, in testimony urging approval of the pipeline project, promised Congress that the very best technology would be in place:

> "In safety [sic] superior American tankers the light traffic between Valdez, Alaska, and the west coast involves hazards of less magnitude than any other tanker run of which I have knowledge. The most modern loading equipment and proposed vessel designs will reduce even these modest risks before pipeline authorization begins."[3]

In the Right-of-Way Agreements

In exchange for the right to build the Trans-Alaska Pipeline System on public lands, Alyeska signed right-of-way agreements with both the United States and the State of Alaska.

In the section on oil spill contingency plans in the right-of-way contract with the United States, Alyeska promised to control and clean up any oil spill:

> "It is the policy of the Department of the Interior that there should be no discharge of Oil or other pollutant into or upon lands or waters. Permittees must therefore recognize their prime responsibility for the protection of the public and environment from effects of spillage.... Permittees shall demonstrate their capability and readiness to execute the [contingency] plans....If during any phase of the construction, operation, maintenance or termination of the Pipeline, any Oil or other pollutant should be discharged from the Pipeline System, the control and total removal, disposal and cleaning up of such Oil or other pollutant, wherever found, shall be the responsibility of Permittees, regardless of fault. [Emphasis added.]"[4]

---

[3] "Oil and Natural Gas Pipeline Rights-of-Way," Hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs (Serial 93-12) at p.526.

[4] Stipulation 2.14 to Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline, January 23, 1974, between United States of America and Alyeska owners. As used in Stipulation 2.14, Oil Spill Control is defined as: (1) detection of the spill; (2) location of the spill; (3) confinement of the spill; and (4) cleanup of the spill.

At the time of the Exxon Valdez spill

According to the "purpose" section of Alyeska's Oil Spill Contingency Plan (the "contingency plan") which was in effect on March 23, 1989, Alyeska promised rapid and effective response to any oil spill using state-of-the-art technology:

> "The objective of the Alyeska Oil Spill Contingency Plan is to minimize damage to the environment...in the event of an oil spill...the resources of [Alyeska] are organized in a preplanned manner to assure rapid and effective response to any oil spill emergency. This manual outlines the techniques which will be in accordance with state-of-the-art oil spill cleanup technology. [Emphasis added.]"[5]

In section 102 of the contingency plan, Alyeska promised that it is the policy of the owner companies to fully comply with the laws and to take "every reasonable action" to minimize environmental damage from oil spills:

> "It is the policy of the eight owner companies, constituting the Permittees under the Federal Right-of-Way Grant and the Lessees under the State Right-of-Way Lease and represented by their agent, Alyeska Pipeline Service Company, to take every reasonable action to prevent oil spills and, if they occur, to minimize environmental damage. Alyeska will comply with the relevant pollution laws for the protection and conservation of environmental resources. [Emphasis added.]"[6]

Alyeska also promised in section 102 of the contingency plan that it will be fully prepared to implement the contingency plan even in the event of a major oil spill:

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[5] Section 101, Alyeska Pipeline Service Company Oil Spill Contingency Plan General Provisions (January, 1987).

[6] The "relevant pollution laws" according to Alyeska are: "Alaska Statute Title 46, and 18 AAC75, and the National Oil and Hazardous Substances Pollution Contingency Plan, and any revisions thereof, as issued by the Council on Environmental Quality (CEQ) under the authority of the Federal Water Control Act [sic], as amended (Public Law 92-500). Alyeska Policy and these plans are intended to be written and executed so as to comply with the Grant and Agreement of Right-of-Way and the Right-of-Way lease with the United States of America and the State of Alaska, respectfully. Alyeska Pipeline Service Company will ensure that the National Contingency Plan is followed during any spill event." p.1-1

> "Regularly scheduled training programs will be conducted....The objectives of this training program are:....To maintain the Plans as fully operable working documents [and] To update the Plans to reflect state-of-the-art capability....Full scale, company-wide field exercises will be held at least once per year to insure overall readiness for response to large scale oil spills.... [Emphasis added."

Alyeska further promised in section 102 of the contingency plan that, as agent for the owner companies, it will effectively direct and conduct cleanup operations, including those related to any spill in Prince William Sound:

> "[C]leanup operations within the areas of liability and responsibility [imposed by law] will be conducted by Alyeska as Agent for the Owner companies and will be conducted in a manner as not to require assumption of control of such cleanup operations by federal or state officials....Alyeska will direct cleanup operations of spills resulting from...[O]peration, involving tankers carrying or destined to carry crude oil transported though the Trans-Alaska Pipeline System, occurring at Valdez terminal, in Port Valdez, Valdez arm or Prince William Sound. [Emphasis added.]"

Promises Versus Performance

In an addendum to its Oil Spill Contingency Plan in 1982, Alyeska informed the Alaska Department of Environmental Conservation that, in the event of a spill in Prince William Sound, the "[e]stimated time of completion of spill cleanup of a 100,000 barrel spill would be less than 48 hours."[7]

At the urging of the State of Alaska's Department of Environmental Conservation, Alyeska reluctantly included a response scenario for a 200,000 barrel spill in the 1987 Oil Spill Contingency Plan for Prince William Sound. "Alyeska believes it is highly unlikely a spill of this magnitude would occur."[8]

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[7]Letter from B.L. Hilliker, manager, environmental protection and government reports, to Alaska Department of Environmental Conservation, dated June 22, 1982, reprinted in "Investigation of the Exxon Valdez Oil Spill," Part I at p. 894.

[8] Oil Spill Contingency Plan Prince William Sound (January 1987), p.3-54. By letter to the Alaska Department of Environmental Conservation dated October 23, 1986, Alyeska predicted that the probability of a 200,000 barrel spill occurring in Prince

This Prince William Sound response scenario assumed that the spill would occur 30 miles from the Valdez terminal and that weather conditions would be conducive to oil spill cleanup. The contingency plan called for equipment, including a barge, to be in place within 5 hours after the spill.

Alyeska's Prince William Sound contingency plan predicted that 35 percent of the oil would be recovered from the water (70,000 barrels), 30 percent recovered from shoreline cleanup, 30 percent to disperse naturally or evaporate, and only 5 percent to remain in the environment.[9]

Yet when the Exxon Valdez spilled some 260,000 barrels on March 23, 1989 the cumulative total of oil recovered within the first 72 hours was less than 3,000 barrels. As one example of the response failure, the equipment barge which the contingency plan relied upon was damaged and unloaded at the time of the spill. The barge did not reach the spill site for more than 14 hours, even though the contingency plan called for it to be on the scene within five hours. Based on my investigation, there were clearly not sufficient quantities of dispersants or application equipment available to make up for the utter failure of the mechanical recovery effort.[10]

Even under extraordinarily good weather conditions for the first three days, Alyeska did not have equipment or resources to contain and collect even a fraction of the amount specified in the contingency plan. The failure of Alyeska's cleanup response in the first 72 hours significantly contributed to the ultimate environmental impacts of the spill, since winds of over 70 miles per hour spread the slick completely out of control (more than 40 miles from Bligh Reef) by the fourth day.

The Exxon Valdez spill would eventually soil over 1,000 miles of Alaska's coastline, inflict one of the worst wildlife disasters in our nation's history, and disrupt the lives of thousands of Alaskans who depend on the natural resources of this region.

William Sound would be once in 241 years. "Investigation of the Exxon Valdez Oil Spill," Part I at p. 834.

[9]Oil Spill Contingency Plan Prince William Sound (January 1987) at p. 3-56.

[10]"Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska", Part I at p. 303.

As the Alaska Oil Spill Commission concluded, "[p]ublic pronouncements by Alyeska and its owners that the company employed the best available technology and committed adequate resources to safety purposes turned out to be false."[11]

Exxon and the Alyeska Owner Companies Knew That Alyeska Was Not Equipped to Effectively Respond To An Oil Spill in Prince William Sound.

My investigation revealed that Alyeska was on notice in 1984 that its own personnel believed they were incapable of effectively responding to an oil spill in Prince William Sound. James K. Woodle, former commander of the U.S. Coast Guard's Marine Safety Office in Valdez, and marine superintendent at the Valdez terminal, informed Alyeska's President George M. Nelson that:

> "Serious doubt exists that Alyeska would be able to contain and clean-up effectively a medium or large size oil spill....Response to any spill beyond the limits of Valdez narrows should not be attempted with present equipment and personnel. [Emphasis added.]"[12]

A series of documents, which I have enclosed, reveal that Alyeska by 1988 -- one year prior to the Exxon Valdez oil spill -- had reached the same conclusion as James K. Woodle: it was seriously unprepared for an oil spill in Prince William Sound.

On April 18, 1988, W.D. Howitt, then Alyeska's Valdez Marine Terminal Superintendent, wrote to the Marine Services Subcommittee -- comprised of representatives of the owner companies, including Harvey Borgan of Exxon Shipping -- to inform them of a meeting in Bellingham, Washington on May 18, 1988. "Oil Spill Response Equipment" was listed on the agenda [Exhibit A].

On April 28, 1988, Howitt wrote to the Marine Services Sub-committee members with additional information for the May 18 meeting [Exhibit B]:

> "The first part of the information package contains the T.L. Polasek briefing that was presented to the Operations Subcommittee on April 6-7, 1988, at the quarterly meeting. The briefing is the result of an action item from January's meeting during which a concern was raised by ARCO on

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[11]Final Report of the Alaska Oil Spill Commission (February 1990) at p.135.

[12]Letter from James K. Woodle dated April 15, 1984 concerning operations of the Marine Department, Alyeska Marine Terminal, Valdez, Alaska, reprinted in "Investigation of the Exxon Valdez Oil Spill," Part 1 at p. 179 and 890.

> Alyeska's capability to respond to oil spills at midpoint of Prince William Sound. [Emphasis added.]"[13]

Theo L. Polasek's (Alyeska's Vice President of Operations) briefing on April 6-7 for the Operations Subcommittee was entitled "Oil Spill Issues -- Status of Action Items from January Owners Meeting." [Exhibit C] The topic of "Alyeska's Response Capability to Spills at midpoint of Prince William Sound" is included under the heading "ARCO/Alyeska Response Equipment Discussions." What follows is a comparison of the equipment available to the "Clean Sound" Cooperative in Puget Sound, Washington. According to the document, Clean Sound's spill cleanup methodology is "immediate, fast response to spill, at any location, with boom to contain, exclude, and/or divert oil."

By contrast to the equipment available to Clean Sound, Polasek's briefing on "Present Alyeska Prince William Sound Capability" notes that "no new skimming vessels purchased since 1977." The list of Alyeska equipment is clearly deficient by comparison to Clean Sound.

Polasek's briefing on Alyeska's Prince William Sound cleanup response equipment includes the following indictment of Alyeska's capability to meet its obligations under its own Oil Spill Contingency Plan:

> "Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement." (emphasis added)

Exxon and the Alyeska Owner Companies Failed to Improve Alyeska's Oil Spill Response Capabilities Before the Exxon Valdez Spill on March 23, 1989.

Theo Polasek's briefings to the owner company representatives in April and May 1988 outlined the deficiencies in Alyeska's equipment including the fact that "no new skimming vessels had been purchased since 1977."

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[13]Howitt's letter also states that purchases of clean-up equipment for Alyeska, as recommended by Jeff Shaw of Arco, would be discussed at the May 18th meeting. In a document with the heading "Alyeska Equipment Project (for oil spill cleanup)" dated March 22, 1988, Jeff Shaw recommends: 1) a large oceangoing skimmer; 2) a 10,000 barrel barge; 3) an adds pack; 4) fast spill response vessels; 5) a destroil skimmer with power pack; and 6) an additional 5,000 feet of sea quality boom. [Exhibit D] In addition, a separate document indicates that the marine subcommittee members discussed an advanced skimmer recovery system which could operate in open waters, the "Dynamic Inclined Plan Oil Vessel." [Exhibit E]

When Polasek testified, under oath, at a hearing I chaired in Valdez on May 7, 1989, he acknowledged that: "the equipment in this plan was similar to the plan in 1977. We increased the amount of boom and take [sic] other actions, but essentially that was the same equipment decided upon."[14]

Polasek's briefing includes a reference to the planned acquisition of a 10,000 barrel tank barge by late 1988. In fact, this oil spill barge -- the "Betty-K" -- was stored in Washington state for the winter of 1989 and was not available in the Exxon Valdez cleanup.

Moreover, Polasek's briefing refers to a "mobile contingency command center with communications repeaters" which would be installed by "mid 1988." In fact, such a system was not in place at the time of the Exxon Valdez spill.

Exxon and the Alyeska Owner Companies Secretly Decided that Alyeska Would Not Respond to an Oil Spill In Prince William Sound in the Manner Prescribed in the Contingency Plan.

According to a June 30, 1988 telex from Roger A. Gale, Manager, Marine Operations, Sohio Oil (now BP) to Polasek of Alyeska, the Marine Services Subcommittee decided to make five recommendations to the Owners Committee as part of an "acceptable compromise" [Exhibit F]:

First, the "current stockpile of clean up equipment is adequate" for spills at the terminal, but "should be maintained to the highest state of readiness."

Second, for spills in Prince William Sound, additional equipment should be purchased of the "type best suited for near shore and beach operations."

Third, a large barge (50-100,000 barrel capacity) equipped with ocean boom and skimmers was needed.

Fourth, a "study of the best and quickest methods of moving the barge around" including predeployment in Prince William Sound.

Fifth, that Alyeska and the owners "press" state and federal officials for "preapproval to use chemicals on a widespread basis."

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[14]"Investigation of the Exxon Valdez Oil Spill, Prince William Sound," Part I at p. 155.

However, on July 6, 1988, Stanley Factor, Vice President, Chartering and Evaluations, Arco Marine, Inc., objected to Roger Gale's recommendations because the owners had already decided that Alyeska would not respond to spills in Prince William Sound in the manner required by the Oil Spill Contingency Plan [Exhibit G]:

> "Arco Marine Inc. does not agree with this telex nor do we concur that this represents the thoughts of the subcommittee.
>
> **"At the owners committee meeting in Phoenix, it was decided that Alyeska would provide immediate response to oil spills in Valdez Arm and Valdez Narrows only. Further efforts in the Prince William Sound would be limited to the use of dispersants and any additional effort would be the responsibility of the spiller.** [Emphasis added.]"[15]

Conclusion

At my subcommittee's hearing on May 7, 1989 in Valdez, Theo Polasek testified under oath on Alyeska's behalf that "[w]e fulfilled our promises in that [oil spill contingency] plan. We have not broken our promises to the people of this State."[16]

But the evidence I have set forth indicates that Alyeska broke the law as well as its promises to the State of Alaska and the Congress.

For example, section 309(c)(4) of the Clean Water Act (33 U.S.C. section 1319(c)(4) provides that substantial criminal penalties may be imposed upon any corporation or responsible corporate official that files information with Federal authorities with knowledge that the documents contain material misstatements.[17] In addition, criminal penalties may be imposed on any person who knowingly submits false information to any agency of the United States under 18 U.S.C. section 1001.[18]

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[15]The Chairman of the Owners Committee at the time was Darrell Warner, President of Exxon Pipeline Company.

[16]"Investigation of the Exxon Valdez Oil Spill," Part I at p. 169.

[17] A fine of up to $10,000, or a prison term of up to two years or both may be imposed under this section.

[18]A fine of up to $10,000, or a prison term of up to five years, or both, may be imposed under this section.

Thus, since Alyeska knew that it could not and would not respond to an oil spill in Prince William Sound as required by its oil spill contingency plans, Alyeska and any responsible officer could be exposed to substantial criminal penalties.

However, the Department of Justice has not even filed any criminal charges against Alyeska or its owner companies other than Exxon. Furthermore, in the proposed Criminal Plea Agreement, the United States would waive its rights not only to pursue any criminal charges against Alyeska and its owner companies, but also waive its rights to pursue civil or administrative penalties against Alyeska and its owner companies.[19]

The proposed Agreement and Consent Decree also provides generous protection for Alyeska. The United States and the State of Alaska both waive their rights to raise claims against Alyeska for natural resource damages in Paragraph 20. In addition, should either government recover any amount from Alyeska for claims of any kind, Exxon is entitled to be reimbursed for 20.34 percent of the governments' recovery (this figure represents the percentage ownership by Exxon of Alyeska). Yet Alyeska, including its shareholders and owner companies other than Exxon Pipeline, expressly reserves their rights to sue the United States or the State of Alaska in Paragraph 19 of the proposed settlement agreement.

In my view, the inclusion of Alyeska in the proposed Criminal Plea Agreement and in the proposed settlement Agreement and Consent Decree is contrary to the public interest. Based on the evidence, it is inconceivable that the Department of Justice would waive its rights to pursue criminal claims, and virtually all civil claims, against Alyeska.

In sum, the proposed Exxon settlement fails to hold Alyeska accountable to the public for its wrongdoing and fails to serve as a deterrent for similar conduct in the future.[20]

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[19] Section III.A. of the Plea Agreement states that "[t]he United States agrees not to seek additional criminal charges or any civil or administrative penalties.... against Alyeska Pipeline Service Company or any of its shareholders or owner companies or present or former shareholder representatives, for any violation of federal law arising out of the grounding of the 'EXXON VALDEZ,' the resulting oil spill, the containment or cleanup of that spill, or its or their conduct in connection with the preparation or submission of oil spill contingency plans or related, by Alyeska Pipeline Service Company to the federal or state government...." p.5.

[20] Under Alaska law, punitive damages are awarded for the public policy reasons of punishment and deterrent when the defendant's conduct was outrageous, reckless, or malicious. In this instance, there is clear and convincing evidence that Alyeska's conduct merits the award of punitive damages.

After extensive debate about the environmental risks, the Trans-Alaska Pipeline System was approved in 1973 by only a one-vote margin in the U.S. Senate. In exchange for access to environmentally sensitive public lands, the Congress was assured by Alyeska and the owner companies that the pipeline system would be operated in a safe and environmentally sound manner, using state-of-the-art technology.

The oil industry betrayed its own promises and deceived the Congress with respect to operations of Alyeska and the Exxon Valdez oil spill. Without a commitment by the Department of Justice to prosecute this intentional deception, how is it that Congress and the people of the State of Alaska can rely on such assurances in the future?

Sincerely yours,

George Miller

GEORGE MILLER
Vice Chairman

cc:

The Honorable Walter J. Hickel, Governor, State of Alaska
The Honorable Ben Grussendorf, Speaker, Alaska House of Representatives
The Honorable Richard Eliason, President, Alaska Senate
The Honorable Senator Ted Stevens
The Honorable Senator Frank Murkowksi
The Honorable Representative Don Young
The Honorable Richard L. Thornburgh, Attorney General, U.S. Department of Justice
The Honorable Manuel Lujan Jr., Secretary, U.S. Department of the Interior
The Honorable Samuel K. Skinner, Secretary, U.S. Department of Transportation
The Honorable Edward R. Madigan, Secretary, U.S. Department of Agriculture
The Honorable William K. Reilly, Administrator, U.S. Environmental Protection Agency
The Honorable John A. Knauss, Undersecretary for Oceans and Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce
Members, Committee on Interior and Insular Affairs

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Attorney for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA Plaintiff, v. EXXON SHIPPING COMPANY and EXXON CORPORATION, Defendants.	)	Case No. A90-015-CR GOVERNMENT'S SUMMARY OF DAMAGE TO NATURAL RESOURCES IN AID OF SENTENCING

The United States, by its attorneys, submits the attached summary of natural resource damage, arising from the Exxon Valdez spill, in order to aid the Court in determining whether the sentence set forth in the plea agreement is appropriate. This summary is based on extensive damage assessments conducted by government scientists and contractors over the past two years.

This Court has ordered the parties to submit memoranda in aid of sentencing by April 16, 1991. The government will file its memorandum on that date, but is submitting the attached summary in advance of that date in order to give the

Court additional time to assess, pursuant to 18 U.S.C. § 3553(a)(2)(A), the seriousness of the offenses to which defendants have entered pleas of guilty and to assist the public in commenting on the proposed plea agreement.

Respectfully submitted this 8th day of April 1991, at Anchorage, Alaska.

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SUMMARY OF EFFECTS OF THE EXXON VALDEZ OIL SPILL ON NATURAL RESOURCES AND ARCHAEOLOGICAL RESOURCES
March 1991

INTRODUCTION

The T/V Exxon Valdez ran aground on Bligh Reef in Prince William Sound on the night of March 23-24, 1989, spilling approximately 11 million gallons of North Slope crude oil, making this the largest oil spill in United States history. The oil spread through Prince William Sound, the Gulf of Alaska, and lower Cook Inlet. More than 1,200 miles of coastline were oiled, including portions of the Chugach National Forest, Alaska Maritime, Kodiak, and Alaska Peninsula/Becharof National Wildlife Refuges, Kenai Fjords National Park, Katmai National Park and Preserve, and Aniakchak National Monument and Preserve. Oil from the T/V Exxon Valdez impacted shorelines nearly 600 miles from Bligh Reef.

The magnitude of efforts of the state and federal governments, the public, and Exxon to contain and clean up the spill, rescue wildlife, and study the effects of the spill is unprecedented. Among those efforts are the state/federal natural resource damage assessment studies designed to measure injuries to natural resources including birds, mammals, fish and other wildlife, and marine and terrestrial habitats. These studies are intended to provide the information necessary for the Trustee agencies to manage and restore injured resources appropriately and to provide necessary documentation to enable the governments to present a claim for damages to the responsible parties. This summary briefly describes the area affected by the spill, the chronology of the spill, and the process developed to implement and manage the injury assessment studies. It focuses, however, on what has been learned over the past two years about the effects of this oil spill on natural resources.

DESCRIPTION OF THE AREA AFFECTED BY THE SPILL

Prince William Sound lies near the top of the Gulf of Alaska (see map), an 850 mile arc extending from the Aleutian Islands on the west to the islands of southeast Alaska. The gulf coast is remote, rugged, and scenic. Its maritime climate nourishes a lush, green landscape in the summer. The area is snow covered in the winter. Bears, whales, bald eagles, puffins, seals, sea lions, and sea otters are among the abundant wildlife of the area. Storms that cross the Gulf drop as much as 300 inches of rain and snow annually in the high coastal mountains. Glaciers descend from permanent ice fields capping these coastal mountain ranges, continuing to carve intricate fjords and send icebergs floating out to sea. These are the largest glaciers outside Antarctica and Greenland.

Prince William Sound is one of the largest relatively undeveloped marine ecosystems in the United States. It has one of the continent's largest tidal estuary systems. Prince William Sound has rich commercial herring and salmon fisheries. The open water of the Sound is about the size of Chesapeake Bay. Its many islands, bays, and fjords give it

more than 2,000 miles of shoreline. Prince William Sound is surrounded by land, most of which is part of Chugach National Forest.

To the southwest of Prince William Sound is the Kenai Peninsula, home of the Kenai Fjords National Park, various units of the Alaska Maritime National Wildlife Refuge, and, among others, the cities of Homer and Seward. Numerous seabird colonies are located along the coast of the Kenai Peninsula, including those most frequently visited by tourists in Alaska. Both Prince William Sound and the Kenai Peninsula are accessible by air, boat, and on a limited basis, by automobile from nearby Anchorage, Alaska's major population center. State ferries that run among the larger communities and many charter boats make it easy for people to visit the heart of the Gulf coast. In recent years, there has been a steady increase in the number of wilderness seekers, kayakers, cruise ship passengers, and other tourists visiting the area.

The Kenai Peninsula points southwest to Shelikof Strait and Kodiak Island. Shelikof Strait lies between Kodiak Island, on the south and the Alaska Peninsula on the north. Shelikof Strait is the source of a very productive commercial pollock fishery. The Kodiak National Wildlife Refuge is located on the Kodiak Archipelago and Katmai National Park and Preserve, Alaska Peninsula/Becharof National Wildlife Refuge, and Aniakchak National Monument and Preserve are located along the coast of the Alaska Peninsula. The Alaska Peninsula tapers, then scatters into the islands of the Aleutian chain.

CHRONOLOGY OF THE EXXON VALDEZ OIL SPILL

For the first three days of the spill, the weather was calm and the slick lengthened and widened amoeba-like and generally stayed in the vicinity of the grounded tanker and off the beaches. Even with these seemingly ideal circumstances for oil recovery, the amount of oil in the water completely overwhelmed efforts to contain and recover the oil. A major windstorm on March 27, 1989, pushed the oil in a southwesterly direction and oiled beaches on Little Smith, Naked, and Knight Islands. The oil continued to spread, contaminating islands, beaches, and bays in Prince William Sound. Four days into the spill, oil began to enter the Gulf of Alaska. The leading edge of the slick reached the Chiswell Islands off the coast of the Kenai Peninsula on April 2, 1989, and the major seabird nesting colonies on the Barren Islands on April 11, 1989, nineteen days into the spill. By May 18, 1989, oil had moved some 470 miles and had fouled shorelines of Prince William Sound, the Kenai Peninsula, the Kodiak Archipelago, and the Alaska Peninsula. Oil subsequently reached shorelines on the Alaska Peninsula nearly 600 miles from Bligh Reef.

During 1989, the response to contain and cleanup the spill and rescue oiled wildlife involved a massive effort. Skimmer ships were sent throughout the spill zone to vacuum oil from the water surface. Booms were positioned to keep oil from reaching important commercial salmon hatcheries in Prince William Sound. A fleet of fishing vessels, known as the "Mosquito Fleet," played an important role in protecting these hatcheries, in corralling oil to assist the skimmer ships, and in capturing oiled wildlife and

transporting these animals to rehabilitation centers. After oil contaminated shorelines, a beach cleanup program was activated. Various local committees, with community and government agency participation, provided recommendations to the U.S. Coast Guard about areas that should receive priority for cleanup. An army of workers cleaned shorelines, using techniques ranging from cleaning rocks by hand to high pressure hot water washing. Fertilizers, sometimes in a chemical base, were applied to some oiled shorelines to increase the activity of oil-metabolizing bacteria, in an experimental procedure known as bioremediation. When deteriorating weather brought an end to cleanup work in the fall of 1989, a great amount of oil remained on the shorelines. Although winter storms proved extremely effective in cleaning many beaches, spring shoreline surveys indicated that much work remained to be done in 1990. Crews operating from boats and helicopters cleaned oiled shorelines in Prince William Sound, along the Kenai and Alaska Peninsulas, and on the Kodiak Archipelago. Manual pick up of remaining oil was the principal method used during 1990, but bioremediation and relocation of oiled berms to the active surf zone were also used in some areas.[1] Another shoreline survey will be conducted during May 1991, to determine the need for additional cleanup work.

INJURY ASSESSMENT PROCESS

The Exxon Valdez oil spill occurred just prior to the most biologically active season of the year in southcentral Alaska. During the two month period after the spill, seaward migrations of salmon fry, major migrations of birds, and the primary reproductive period for most species of birds, mammals, fish, and marine invertebrate species took place. The organisms involved in these critical periods of their life cycles encountered the most concentrated, volatile, and potentially damaging forms of the spilled oil. As will be discussed in this summary, the oil affected different species differently. Whereas, for example, it directly killed large numbers of birds and sea otters that encountered oil on the water surface, it did not prohibit in and out migration and spawning of large schools of salmon and herring.

The state and federal Trustee agencies were forced to mobilize field studies rapidly with little time for planning. Through intensive efforts, studies were designed, administrative processes were accelerated, and 58 field studies were carried out. Additionally, technical services programs were organized to provide hydrocarbon analysis, histopathology, and mapping support for the field studies. Initial decisions on the types and scope of studies conducted were made by agency experts familiar with the resources and the environment. Even with the rapid deployment of studies, however, some opportunities to gather injury data were irretrievably lost during the early weeks of the spill.

A legal framework was subsequently established and studies were reviewed and modified according to their likelihood to document resource injury. Expert peer reviewers were retained and study plans used during 1989 underwent scientific review for possible

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[1]Exxon has represented that it has paid over $2.0 billion to conduct cleanup activities during 1989 and 1990.

modification in 1990. Some studies were discontinued or modified if they were unable to further document resource injury, and some new studies were initiated to fill identified information needs. Status reports prepared in January 1990, were used to guide the development of plans for the second year of studies. Thirty-nine studies and three technical services programs were continued in 1990. Scientific review was again used to plan for the upcoming 1991 field season, during which 29 studies and two technical services programs will be conducted.

This summary of the effects of the Exxon Valdez oil spill on natural resources is preliminary, as studies are still underway and available data are not fully analyzed and interpreted. However, the injuries to natural resources that have been documented to date are summarized herein. This summary also addresses studies that were discontinued. It should be noted that studies were discontinued for a variety of reasons, such as the determination that field work had been completed, that there was no practicable way to measure injury, or that no injury was documented. Even though some studies failed to identify injury and were discontinued, this does not necessarily mean that the resources were not affected by the spill. Certain injuries (if present), such as possible latent or sublethal effects on reproductive or other systems in animals, might not become fully evident for a number of years after the spill. At present there is no significant indication of long-term injury to resources other than those specifically noted below. Although studies indicate that there are continuing injuries to certain resources, natural recovery may also have begun. As petroleum hydrocarbons are broken down in the ecosystem, plant and animal communities begin to reestablish themselves. This recolonization has already been observed in some of the more lightly oiled areas. In the more heavily oiled areas, this natural recovery process is expected to take longer. As this natural recovery occurs, many of the birds and mammals that feed in these areas are expected to begin recovering.

MARINE MAMMALS

Following the spill, studies of humpback whales, Stellers sea lions, sea otters, harbor seals, and killer whales were started. The humpback whale and Stellers sea lion studies were discontinued following the 1990 field season. Humpback whale investigations were limited to photo identification of whales, estimations of reproductive success, and possible relocations of whales. It was not possible to take tissue samples for petroleum hydrocarbon analysis to document exposure. The study did not show direct oil spill mortalities or reproductive failures.

The sea lion study is being completed following the 1990 pup counts. Some tissue samples were analyzed for petroleum hydrocarbon concentrations, and although there was some indication of exposure to oil, it was difficult to determine what populations were affected because of the sea lions' active seasonal movements. Because of an ongoing pre-spill population decline and premature pupping of sea lions, it was not possible to distinguish post- from pre-spill population effects clearly.

Studies of killer whales, based on observations only (because tissue sampling was not an

option), have indicated that killer whales are missing from at least one and possibly two pods in Prince William Sound. Injuries to harbor seals and sea otters have been clearly indicated and studies of these species are continuing.

Sea Otters: The population of sea otters in Prince William Sound before the spill was estimated to have been as high as 10,000. The total sea otter population of the Gulf of Alaska was estimated to be at least 20,000. Statewide, the sea otter population is estimated at 150,000. Sea otters were particularly vulnerable to the spill. As the oil moved through Prince William Sound and the Gulf of Alaska, it covered areas used by large numbers of otters. When sea otters become contaminated by oil, their fur losses its insulating capabilities, leading to death from hypothermia. Sea otters also died as a result of ingestion of oil and perhaps inhalation of toxic aromatic compounds that evaporated from the slick shortly after the spill. The effects of oil were documented by surveys of wild populations; analysis of tissues for petroleum hydrocarbons and indicators of reduced health; by tracking sea otters outfitted with radio transmitters (including those released from rehabilitation centers); and estimating total mortality from the number of sea otters found on beaches. These studies concentrated on developing an estimate of sea otter mortality in Prince William Sound and along the Kenai Peninsula, the population most affected by the spill. During 1989, a total of 1,011 sea otter carcasses were recovered in the spill area, cataloged, and stored in evidence trailers. Of these, 876 were recovered dead from the field and 135 died in rehabilitation centers or other facilities. The total number of sea otters estimated to have been killed directly by the spill ranges from 3,500 to 5,500 animals throughout the spill area.

Initial results indicate significant differences in hematology and blood chemistry parameters between sea otters in oiled and unoiled areas. Greater variation was observed in DNA content of blood lymphocytes of sea otters from oiled areas, but sperm and testicular cells showed no indication of DNA damage resulting from oil exposure. It cannot yet be determined whether these differences affect sea otter health or survival. There are indications that sea otters continue to be exposed to petroleum hydrocarbons in oiled areas. Analysis of blood and fat samples collected from animals during 1990 found elevated concentrations of certain aromatic compounds in sea otters from heavily oiled areas and elevated concentrations of petroleum hydrocarbons continue to be documented in food items eaten by sea otters in oiled areas. Additionally, other damage assessment studies have documented a decreased abundance of mussels in oiled areas, a key prey species for sea otters.

Studies have documented continuing injury to sea otters. Normally, very few prime age sea otters (animals between 2 and 8 years old) die each year and most mortality occurs among very young and old age classes. The high number of prime age sea otter carcasses found during 1990 indicates that the pattern of sea otter mortality in heavily oiled areas continues to be abnormal. Results of boat surveys indicated continued declines in sea otter abundance within oiled habitats in Prince William Sound. Preliminary results indicate that pupping rates in oiled and unoiled areas are not significantly different. However, the first information available for the spring of 1991 shows higher yearling mortality rates in oiled areas than in unoiled areas. Studies of the survival and reproductive success of sea otters released from rehabilitation

centers indicate a high level of mortality of adult animals and significantly lower pupping rates than the pre-spill mortality and pupping rates in Prince William Sound. Of the 193 sea otters released from rehabilitation centers, 45 were fitted with radio transmitters. Sixteen of these animals are still alive, 13 are known to be dead, and 15 are missing. One radio transmitter is known to have failed.

Harbor Seals: There has been no census of harbor seals in Prince William Sound since the mid-1970s when the population was estimated at 3,000 to 5,000 animals. Since that time, the harbor seal population in Prince William Sound and the Gulf of Alaska has declined substantially. A population census of Prince William Sound is planned for the summer of 1991.

Two hundred harbor seals are estimated to have been killed by the spill. Only 19 seal carcasses were recovered following the spill, since seals sink when they die. Population changes were documented by summer and fall aerial surveys of known haulout areas. Toxicological and histopathological analyses were conducted to assess petroleum hydrocarbon accumulation and persistence and to determine toxic injuries to tissues.

Population surveys, which are reliable indicators of population trends, conducted in 1984 and 1988 indicated that harbor seal populations in Prince William Sound had declined prior to the spill, with similar declines in what were subsequently oiled and unoiled areas. From 1988 to 1990, however, the decline at oiled sites (35 percent) was significantly greater than at unoiled sites (13 percent).

Severe debilitating lesions were found in the thalamus of the brain of a heavily oiled seal collected in Herring Bay 36 days after the spill. Similar but milder lesions were found in five other seals collected three or more months after the spill. During 1989, oiled harbor seals behaved abnormally, being lethargic or unwary. Petroleum hydrocarbon concentrations in bile were 5 to 6 times higher in seals from oiled areas one year after the spill. This indicates that seals were still encountering oil in the environment, were metabolizing stored fat reserves that had elevated levels of petroleum hydrocarbons, or both.[2]

Killer Whales: Approximately 182 killer whales forming nine distinct family units or "pods" resided in Prince William Sound before the spill. This count is based on pre-spill documentation. These whales were studied intensively before the spill and their group composition and dynamics are well known. Damage assessment studies of killer whales involved extensive boat-based surveys in Prince William Sound and adjacent waters. Whales were photographed and the photographs were compared to the Alaskan

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[2]Harbor seals are taken in some Alaska villages for subsistence. The State of Alaska conducted a program, separate from the damage assessment program, to test subsistence foods potentially affected by the spill to insure that they were safe for human consumption. The State of Alaska determined that harbor seals in the affected area were safe for people to eat (Oil Spill Health Task Force, July-August 1990 Report and September-October 1990 Report. Alaska Department of Fish and Game, Division of Subsistence).

killer whale photographic database for the years 1977 to 1989 to determine changes in whale abundance, seasonal distribution, pod integrity, and mortality and natality rates.

The AB pod of 36 individual whales was sighted intact in September of 1988. When sighted on March 31, 1989, seven days after the spill, seven individuals were missing. These whales remain absent and six additional whales were missing from the AB pod in 1990. Several of the missing whales are females who left behind calves. It is unprecedented for females to abandon calves, therefore their prolonged absence implies that these adult females are dead. In addition, nine individuals from AT pod were missing in 1990. Explanations for the possible causes of death of these missing whales, including explanations apart from the effects of the spill, are being explored. Killer whale surveys will continue in 1991.

TERRESTRIAL MAMMALS

Studies were conducted on terrestrial mammals that may have been exposed to oil through foraging in intertidal habitats. These species included brown bear, mink, black bear, Sitka black-tailed deer, and river otters.

Brown bears are long-lived animals and forage seasonally in the intertidal and supratidal areas of the Alaska Peninsula and the Kodiak Archipelago. Preliminary analysis of brown bear fecal samples and some tissues show that some brown bears were exposed to petroleum hydrocarbons, but no conclusive injury has been documented. Radio-collared brown bears along the Katmai coast and at a control site on the Alaska Peninsula will continue to be monitored while the transmitters remain active.

Mink and other small mammals that are known to feed and spend part or all of their time in the intertidal zone are difficult to study. They are known to crawl off into burrows or the brush if sick or injured and carcasses are unlikely to be found. Also, information on pre-spill populations of these animals is minimal. Scientists developed a laboratory study to test reproductive effects of oil on ranch-bred mink, in which they were fed food mixed with small, non-lethal amounts of weathered oil. Although changes in reproductive rates or success were not documented, it was found that oil-contaminated food moved through the intestines of the animals at a more rapid rate than did clean food, possibly providing less nutrition to the animals.
No field studies were carried out for black bear due to the difficulty of finding, collaring, or otherwise investigating these animals in the dense underbrush in which they reside. However, a literature search confirmed that these animals do forage in the intertidal zone in the spill area.

The deer study found no evidence of injury based on intensive searches of beaches that revealed no mortality attributable to the spill. However, deer taken for purposes of testing for safety for human consumption (not part of the damage assessment process) found slightly elevated petroleum hydrocarbons in some tissues in deer (which feed on kelp in intertidal areas) but it was determined that the deer were safe to eat.

River Otters: A few river otter carcasses were found by cleanup workers. River otters forage in streams and shallow coastal habitats that were contaminated by the spill. Analysis of river otter bile indicated that petroleum hydrocarbons are being accumulated by this species. Studies of radio tagged animals in Prince William Sound showed that home ranges are larger, movements more erratic, and body weights are lower in oiled habitat. Field work is continuing in 1991 to further assess the status of this species, including analysis of blood samples to measure the health of these animals.

BIRDS

Among the most conspicuous effects of the Exxon Valdez oil spill was the injury to birds. Seabirds are particularly vulnerable to oil as they spend much of their time on the sea surface while foraging. Oiled plumage insulates poorly and loses buoyancy and birds die from hypothermia or drowning. Birds surviving initial acute exposure may then ingest oil by preening. Approximately 36,000 dead birds were recovered after the spill; at least 31,000 of these deaths were attributed to the effects of oil. In addition to the large number of murres, sea ducks, and bald eagles, carcasses of loons, cormorants, pigeon guillemots, grebes, murrelets, and other species were also recovered (see attached comprehensive list of bird carcasses logged into evidence trailers by September 25, 1989). Only a small proportion of the total number of birds estimated to have been killed were recovered, as many undoubtedly floated out to sea, sank, were scavenged, were trapped and hidden in masses of oil and were not visible, were buried under sand and gravel by wave actions, decomposed, or simply beached in an area where they were not found. Additionally, it is known that, in a number of cases, carcasses found shortly after the spill were not turned in to receiving stations. Preliminary analyses provided by computer models that account for some of these variables estimate that the total number of birds killed by the spill ranges from 260,000 to 580,000 with the best approximation that between 350,000 and 390,000 birds died. Following peer review, the model will be run again to provide a more refined estimate of total mortality.

Common and Thick-billed Murres: Murres are the third most abundant seabird in Alaska (after tufted puffins and black-legged kittiwakes). A total of approximately 1,400,000 murres reside in the Gulf of Alaska (Unimak Pass to the Canadian border in southeastern Alaska). The total population of murres in Alaska is approximately 12,000,000. The murre colonies on the Chiswell Islands are the most visited by tourists in Alaska. In 1989 and 1990 murres were the most heavily affected bird species. Murre colonies impacted by the spill lost 60 to 70 percent of breeding birds. Oil in Prince William Sound affected major wintering areas of murres and other species. As oil moved out of Prince William Sound and along the Kenai Peninsula and the Alaska Peninsula, it hit major seabird nesting areas such as the Chiswell and Barren Islands, as well as numerous smaller colonies. The oil hit these areas outside Prince William Sound at the same time that adult murres were congregating on the water near colonies in anticipation of the nesting season. Approximately 22,000 murre carcasses were recovered following the spill. Colony surveys indicate that an estimated minimum of 120,000 to 140,000 breeding adult murres in the major colonies that were surveyed were killed by the spill. Extrapolating this information to other known murre colonies hit by

the spill (but not specifically studied), the mortality of breeding adult murres is estimated to have been 172,000 to 198,000. However, area-wide, including wintering and non-breeding birds, the total mortality of murres is estimated to be about 300,000. Murres exhibit strong fidelity to traditional breeding sites and infrequently immigrate to new colonies.

Normally, murres breed in densely packed colonies on cliff faces. Each murre colony initiates egg laying almost simultaneously. This synchronized breeding behavior helps the birds repel predators such as gulls and ravens. In oiled areas, murre colonies have exhibited a much lower populations than before the spill, breeding is later than normal, and breeding synchrony has been disrupted. These structural and behavioral changes in colonies have caused complete reproductive failure during 1989 and 1990, and thus lost production of at least 215,000 chicks. Murre colonies in unoiled areas displayed none of these injuries and had normal productivity. Monitoring of reproductive success of the colonies will continue in 1991.

Bald Eagles: Of the estimated Alaskan bald eagle population of 30,000 birds (20,000 adults and 10,000 fledglings), an estimated 2,200 reside in Prince William Sound. One hundred forty-four (144) dead bald eagles were found following the spill. Although there is considerable uncertainty regarding the total mortality of bald eagles, it is estimated that several times this amount may have been killed by the initial spill. Approximately 90 percent of radio-tagged bald eagles that died during subsequent studies were not found on the beach but in the brush back from the beachfront. This suggests that most of the eagles that died in the spill would not have been found by surveys typically restricted to beach areas. To assess injuries to bald eagles, helicopter and fixed-wing surveys were flown to estimate populations and productivity. Radio transmitters were attached to bald eagles to estimate survival, distribution, and exposure to oiled areas. Bald eagles in Prince William Sound were most intensively studied. Productivity surveys in 1989 indicate a failure rate of approximately 85 percent for nests on moderately or heavily oiled beaches compared to 55 percent on unoiled or lightly oiled beaches. Bald eagles have a delayed sexual maturity and have a relatively long life span under normal circumstances. Consequently, although reproduction apparently rebounded to more normal levels in 1990, population impacts as a result of poor productivity of nestlings and the death of hundreds of adult eagles in 1989 may not be readily apparent for several years. Fewer bald eagles were sighted in 1990 than in 1989, however this change was within the expected error of the survey method. An additional survey will be conducted in 1991 to see if there is a downward population trend.

Sea Ducks: More than 2,000 sea duck carcasses were recovered after the spill, including more than 200 harlequin ducks. Studies concentrated on harlequins, goldeneyes, and scoters, species that use the intertidal and shallow subtidal habitats most heavily affected by the spill. Harlequins were most affected, consistent with the fact that they feed in the shallow water area of the intertidal zone. This is the only species of sea duck studied that both nests in the spill area and feeds in the shallow intertidal zone. All of these species feed on invertebrates such as mussels and are likely to continue to be exposed to petroleum hydrocarbons through their food. About 33 percent of the harlequins collected in the spill area had poor body condition and about 40 percent had

tissues contaminated with petroleum hydrocarbons. Preliminary surveys also indicate harlequins may have failed to reproduce in the spill zone in Prince William Sound during 1990. These injuries will be investigated further during 1991.

Other Birds: Surveys and studies indicate reduced numbers of black oystercatchers, pigeon guillemots, and marbled murrelets in oiled areas. Black oystercatchers and pigeon guillemots use inshore and intertidal areas for feeding and nesting. Reduced breeding success of black oystercatchers was documented in oiled areas, largely as a result of loss of chicks along oiled beaches. It is estimated that between 1,500 and 3,000 pigeon guillemots were killed by the spill, representing as much as 10 percent of the catalogued population in the Gulf of Alaska. This species is susceptible to continued exposure to petroleum hydrocarbons because it uses intertidal rocks and waters within 200 meters of shore. Petroleum hydrocarbons were found in eggs and tissue in 1989.

Marbled and Kittlitz's murrelets represented a high proportion of the dead birds recovered in oiled areas of Prince William Sound. The reduction in the number of murrelets observed in oiled areas during cleanup in 1989 and the return of many of these birds in 1990 suggest disturbance associated with cleanup activities affected these birds. The extent of injury to certain species, including loons, cormorants, and gulls will probably never be known because pre-spill information on numbers of these birds in the spill area are not available. Data on bird distribution and abundance data gathered during aerial and boat surveys remain to be fully analyzed and interpreted. Boat surveys will continue during 1991. Studies did not document injury to certain bird species such as Peale's peregrine falcons or songbirds.

FISH/SHELLFISH

No massive die-offs of adult fish were found following the spill, and adult salmon, for example, were evidently able to migrate to spawning areas after the spill. However, fish are most vulnerable to oil contamination during the early stages of their life cycles. Accordingly, most fish studies initially focused on this phase of fish life history. During 1991, scientists will begin to be able to assess affects on adult fish such as salmon that would have been exposed to oil as eggs or larvae. Species most often affected by the spill were those that inhabit and spawn in the intertidal zone (salmon) or in the shallow areas next to shore (herring and Dolly Varden).[3] Less than ten dead rockfish were found during the spill and their deaths were attributed to oil. Several species of coastal and offshore fish (pollock, halibut, sablefish, cod, yellowfin and flathead sole, and rockfish) show evidence over a large geographic area of continuing exposure to petroleum hydrocarbons in areas affected by the spill, but significant injury has not yet been documented. Exposure to petroleum hydrocarbons does not necessarily lead to

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[3]The State of Alaska imposed the highest possible standards for commercial fishery openings and for processing plant inspections to insure that all commercially harvested salmon were free from contamination. Salmon subject to commercial harvest in the spill area were rigorously tested to insure that the catch was safe for human consumption.

injury, since many animals have the capability to physiologically "manage" the exposure with no resulting harm. In particular, salmon and other fish can metabolize petroleum hydrocarbons so that these contaminants are unlikely to be found in edible fish tissues. Indicators of exposure among fish include bile metabolites and mixed function oxidases. Since injuries from chronic exposure to oil may not manifest themselves for a number of years, it is premature to conclude that coastal and offshore species were not injured; therefore certain studies are continuing.

Pink Salmon: The full extent of short term injury to pink salmon cannot be assessed until after the 1991 run returns to spawn in the summer. Although the overall catch of pink salmon in Prince William Sound during 1990 was an all-time record (as predicted before the spill), this was primarily due to strong runs of hatchery-produced salmon. Salmon survival associated with the Armin F. Koerning hatchery, located in the middle of a heavily oiled area of the spill zone, was half that of Ester Hatchery, located outside the area of the spill. Wild production of pink salmon did not mirror the record production of hatchery fish.

Seventy-five percent of wild pink salmon spawn in the intertidal portion of streams in Prince William Sound. Wild stock salmon did not shift spawning habitat following the spill and deposited eggs in intertidal areas of oiled streams. Preliminary analyses indicate a 70 percent greater mortality of pink salmon eggs laid in the summer of 1989 and a 50 percent greater mortality in the summer of 1990 in oiled streams as compared to control streams. Larvae from heavily oiled streams showed gross morphological abnormalities, including club fins and curved spines. The pink salmon that returned to Prince William Sound in the summer of 1990 were exposed to oil as larvae as they swam under the slick, but not as eggs which were more directly exposed to oil than the larvae. Fish returning in 1991 will be the first that were exposed to oil as eggs. Eggs and larvae of wild populations continue to be exposed to oil in intertidal gravel in oiled areas.

Sockeye Salmon: Commercial harvest of sockeye salmon was curtailed in portions of Cook Inlet, Chignik, and Kodiak in 1989 because of the spill, resulting in an unusually high number of adults migrating to spawn in certain lake spawning systems (returning adults that arrive at the spawning areas are referred to as the "escapement"). Overly large spawning escapements may result in poor returns in future years by producing more juvenile salmon than can be supported by the nursery lake's productivity. Preliminary data indicate that overescapement degraded rearing habitat in lakes and that sockeye salmon survival and growth rates are lower than usual. Further study is needed before the extent of these injuries can be determined.

Dolly Varden and Cutthroat Trout: Prince William Sound is the northern extreme of the range of cutthroat trout. Both cutthroat trout and Dolly Varden use nearshore and estuarine habitat for feeding throughout their lives (in contrast to salmon which migrate out to sea). The highest concentrations of bile petroleum hydrocarbon metabolites in all fish sampled were found in Dolly Varden. Tagging studies have demonstrated that the annual mortality of adult Dolly Varden was 32 percent greater in oiled areas than in unoiled areas. The larger cutthroat trout showed similar levels of mortality in oiled and unoiled areas. Additionally, cutthroat trout growth rates were reduced in oiled areas.

Studies are continuing to measure impacts on populations of these popular sport fish species.

Pacific Herring: Populations of Pacific herring were spawning in shallow eelgrass and algal beds at the time of the spill. The effects of oil on egg survival, hatching success, larval development, and recruitment to the spawning population were studied. Study results show a large increase in the percentage of abnormal embryos and larvae in oiled areas of Prince William Sound during the 1989 reproductive season. Larvae in oiled areas also had a greater incidence of eye tumors. These effects continued but at somewhat lower rates in 1990. Results also showed greater egg mortality in oiled areas as compared to unoiled areas. Whether the adult population has been affected by these larval injuries will not be determined until the 1989 and 1990 cohorts return to spawn in 1992 and 1993.

COASTAL HABITAT

The coastal tidal zone, commonly known as the "intertidal zone," was the most severely contaminated habitat. Intertidal habitats are highly productive and biologically rich. They are particularly vulnerable to the grounding of oil, its persistence, and effects of associated clean-up activities. An interdisciplinary team with expertise in plant and systems ecology, marine biology, and statistical analysis, was established to conduct field studies to assess the effects of oil on intertidal ecosystems.

Supratidal: Results of studies in the Kodiak/Alaska Peninsula area suggest that oil in the supratidal habitat and beach cleanup disturbance decreased the productivity of grasses and other vegetation including beach rye grass, that help stabilize beach berms. In one instance, cleanup activities completely removed the vegetation. Increased production of supratidal vegetation was found in Prince William Sound in 1989. This finding corresponds with information from other oil spills. It is not known whether this increased production was a result of decreased browsing by terrestrial mammals or a fertilizer effect of the oil.

Intertidal: Natural populations of intertidal organisms were significantly reduced along heavily oiled shorelines such as Herring Bay. Densities of intertidal algae (Fucus), barnacles, limpets, amphipods, isopods, and marine worms were decreased. Although there were increased densities of mussels in oiled areas, they were significantly smaller than mussels in the unoiled areas and the total biomass of mussels was significantly lower. Intertidal organisms continue to be exposed to hydrocarbons from the more heavily oiled sediments. Petroleum hydrocarbon accumulation in filter feeding mussels experimentally placed in oiled areas indicate that oil remains available for uptake by other organisms. Initial findings also indicate that oiled surfaces retarded settlement by juvenile barnacles when compared to unoiled sites. In addition to direct mortality, the reproductive cycle of mussels at oiled sites in the lower Cook Inlet/Kenai Peninsula and Kodiak/Alaska Peninsula regions was delayed by several months.

Intertidal fishes were less abundant in oiled areas than in unoiled areas. In addition, gill

parasitism and respiration rates were significantly higher in fish from oiled sites compared to unoiled sites.

Fucus, the dominant intertidal plant, was severely affected by the oil and subsequent cleanup activities. The percentage of intertidal areas covered by Fucus was reduced following the spill and opportunistic plant species which characteristically flourish in disturbed areas were increased. The average size of Fucus was reduced, the number of reproductive sized plants greatly decreased, and the remaining plants of reproductive size decreased in reproductive potential due to fewer fertile receptacles per plant. There was also reduced recruitment of Fucus at oiled sites.

SUBTIDAL HABITATS

Spilled oil in some areas has migrated to and contaminated the seafloor at depths of up to 100 meters as contaminated sediments moved off beaches during winter storms and cleanup activities. There is evidence that petroleum hydrocarbons have been taken up by animals feeding on the ocean bottom. Petroleum hydrocarbon metabolites have been found in the bile of yellowfin sole, rock sole, rockfish, and pollock. Concentrations of petroleum hydrocarbon metabolites in the bile of yellowfin sole have not declined from 1989 to 1990. This contrasts with Dolly Varden which feed close to shore and where petroleum hydrocarbon metabolites in bile decreased in the same period. The effects of this exposure are still being studied. Many subtidal and intertidal species, particularly fish, have the capability of metabolizing and eliminating petroleum hydrocarbons from their bodies. Clams metabolize hydrocarbons very slowly and consequently accumulated them in high concentrations.

Contaminated clams and other invertebrates are a potential continuing source of petroleum hydrocarbons for sea otters and otherspecies that forage in the shallow subtidal zone. Samples from pollock, which feed in the water column, taken as far away as 200 mile from the wreck site on Bligh Reef, showed elevated petroleum hydrocarbon metabolite concentrations in their bile. This indicates that the water column or food supply was affected at great distances from the spill. Initial 1990 study results show a significant effect on benthic organisms associated with eelgrass beds. These are known to be highly productive habitats. The composition of benthic animal communities on soft-bottom habitats as deep as 40 meters were also significantly altered in oiled areas.

ARCHAEOLOGICAL AND SUBSISTENCE RESOURCES

The spill directly impacted archaeological sites and subsistence resources. Cleanup activities and the associated significant increases in human activity throughout the spill zone resulted in additional injuries to these resources.

Archaeological Resources: Archaeological sites along the shoreline were injured by the

spill. Review of spill response data revealed injuries from oil to a minimum of 26 archaeological sites. Among these are burial sites and home sites. Twenty-one (21) of these sites are on federally-owned land, with the remaining five on State of Alaska and private lands. Of the 21 sites on federal land, 10 are on national parks, six on national wildlife refuges, four within Chugach National Forest, and one on Bureau of Land Management land. While injury to these 26 sites was documented during cleanup, a spill-wide assessment of injuries to archaeological resources has yet to be completed. In addition to oil contamination, increased knowledge of the location of archaeological sites may put them at risk from looting. Loss of rye grass cover may threaten some sites. A comprehensive survey of injuries to archaeological resources on public lands throughout the spill zone will be conducted during 1991.

A study was conducted to determine impacts caused by oil contamination on radiocarbon dating of archaeological resources and to investigate the potential for cleaning artifacts and materials to allow such dating. Preliminary results indicate significant injury to the ability to contextually date artifacts and materials by Carbon 14 analysis. It also appears that these materials cannot be successfully "cleaned" to allow accurate dating.

Subsistence Resources: Surveys undertaken by state researchers before the spill and in 1990 indicated that subsistence harvesters in the area affected by the oil spill significantly reduced their use of subsistence resources after the spill, primarily because of their concerns about possible contamination of these resources. The oil spill disrupted the subsistence lifestyle of some communities that have historically relied upon these resources. Some communities virtually or entirely ceased subsistence harvests in 1989 and have only gradually begun to resume harvests, while other communities continued some reduced level of subsistence harvest in 1989 and thereafter. The attached report (Subsistence Use of Fish and Wildlife in 15 Alutiiq Villages after the Exxon Valdez Oil Spill) details these studies. Warnings were issued by the state in 1989 for people to avoid consumption of intertidal invertebrates (such as mussels and clams, which bioaccumulate petroleum hydrocarbons) found along shorelines contaminated by oil. After the spill, an oil spill health task force was formed, including the state and federal governments, subsistence users, and Exxon. This group helped oversee studies conducted by the state and others in conjunction with FDA and NOAA in 1989 and 1990, on subsistence food resources such as seals, deer, salmon, ducks, clams, and bottomfish. Based upon the test results these resources, with the exception of clams and mussels in certain oiled areas such as Windy Bay, were determined to be safe for human consumption.

CONCLUSION

The federal and state Trustee agencies have now concluded two field seasons of study and are currently preparing to begin a third year of studies to assess injuries to natural resources resulting from the Exxon Valdez oil spill. The information contained in this

summary is based upon the field work and data analysis conducted to date, and is preliminary. Many studies will likely need to continue for additional years before a full understanding of injuries is developed. For example, long-lived species such as bald eagles, murres, and sea otters, may not manifest some effects until a number of years have passed. For other species, such as herring and salmon that return to spawn years after hatching, it is necessary to wait for these key life history events to occur before one can determine the extent to which or if they have been injured. At present there is no indication of long-term injury for species other than those noted in this summary. Although two field seasons of study are complete, only a portion of the data gathered has been fully analyzed and interpreted. As studies and data analysis are completed, some of the information contained in this summary may need to be modified.

For the reasons given above, injury assessment studies will continue in 1991, and thereafter until the process is complete. The need to continue to understand the long-term effects of the spill will be accomplished through monitoring projects that will measure the natural recovery of resources injured by the spill as well as the effectiveness of restoration measures implemented by the Trustee agencies. The information gathered by the injury assessment studies, the restoration monitoring studies, and other studies will be used to develop and implement a restoration program that will accelerate the recovery of injured resources.

Restoration measures will begin in 1991 and are expected to become more comprehensive as the understanding of the effects of the spill improves and as experts and the public provide input on where restoration measures should be concentrated. Wherever possible, restoration will focus on those projects that will provide ecosystem-wide benefits, thereby benefitting a variety of species. These projects may include various initiatives to protect habitat; in other cases it may be necessary to conduct restoration programs that will primarily benefit a particular resource injured by the spill.

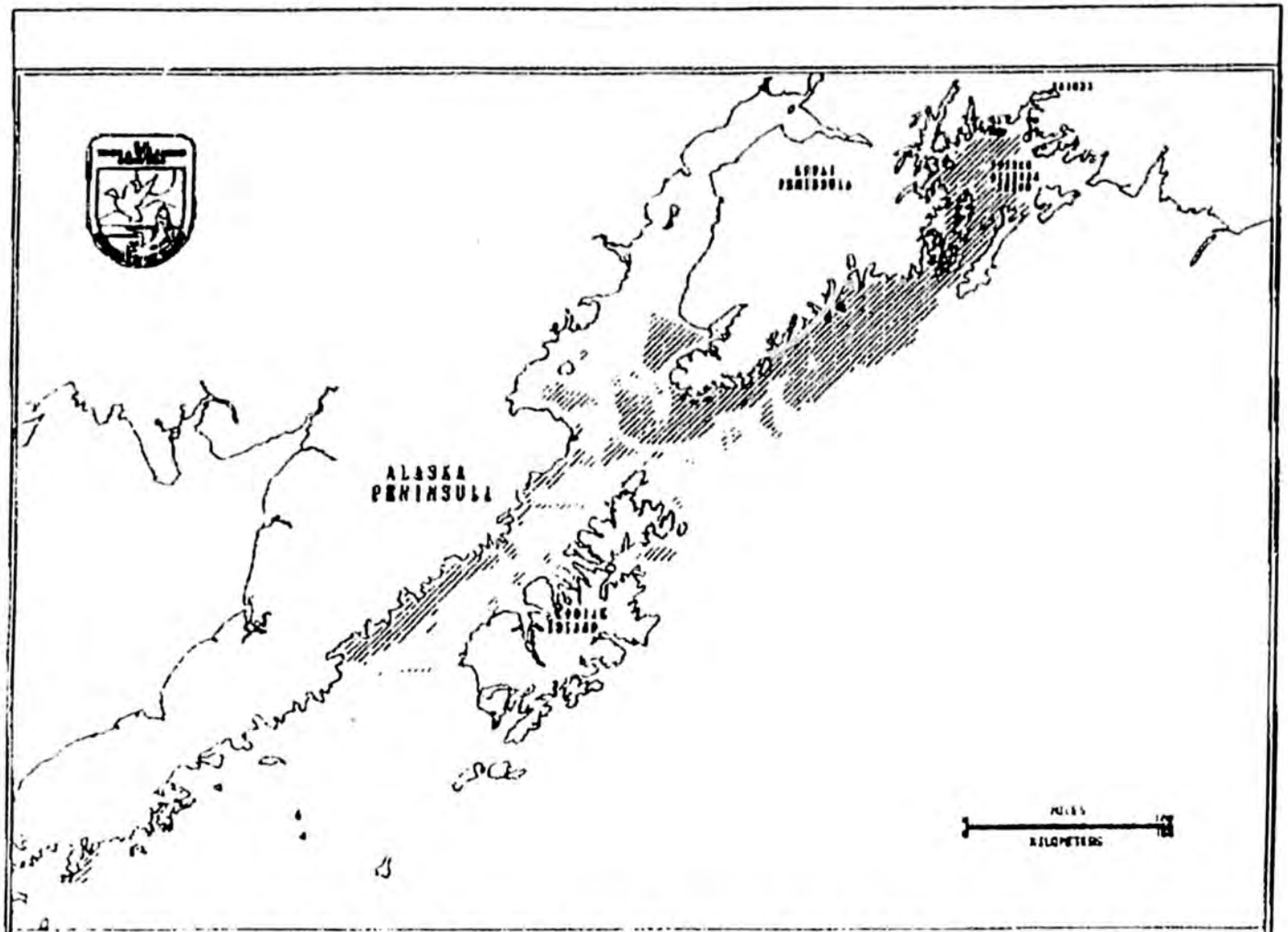

Figure 1. Maximum extent of T/V EXXON VALDEZ oil spill through September 15, 1989, as interpreted by USFWS from ADEC.

Table 1. Species composition and number of birds retrieved from oiled areas and processed at U.S. Fish and Wildlife receiving stations as of 25 September, 1989.

Species	Total	Valdez	Seward	Homer	Kodiak
Total	35,279	3,360	3,503	5,778	22,638
Unidentified bird	2,927	476	414	916	1,121
Unidentified loon	69	27	6	25	11
Common Loon	216	142	23	32	19
Yellow-billed Loon	87	72	5	3	7
Pacific Loon	18	8	5	0	5
Red-throated Loon	5	3	1	1	0
Unidentified grebe	65	27	8	11	19
Red-necked Grebe	120	79	22	12	7
Horned Grebe	277	233	15	22	7
Northern Fulmar	426	0	22	12	115
Unidentified shearwater	579	5	22	14	538
Sooty Shearwater	360	4	80	34	242
Short-tailed Shearwater	2,460	1	84	4	2,371
Unidentified petrel	69	2	24	14	29
Fork-tailed Storm-petrel	363	1	50	19	293
Leach's Storm-petrel	12	0	9	0	3
Unidentified cormorant	219	76	27	56	60
Double-crested Cormorant	38	19	10	0	9
Pelagic Cormorant	418	277	65	29	47
Red-faced Cormorant	161	90	29	9	33
Great Blue Heron	1	1	0	0	0
Unidentified swan	3	0	2	1	0
Emperor Goose	2	0	0	0	2
Canada Goose	1	0	0	1	0
Brant	3	0	1	2	0
Unidentified duck	30	4	6	20	0
Unidentified seaduck	112	63	2	11	36
Mallard	11	2	4	1	4
Northern Pintail	4	0	3	1	0
Green-winged Teal	5	0	5	0	0
Unidentified Scaup	4	1	3	0	0
Greater Scaup	27	2	21	4	0
Lesser Scaup	2	0	2	0	0
Unidentified Goldeneye	25	8	2	14	1
Common Goldeneye	6	3	0	2	1
Barrow's Goldeneye	33	19	9	4	1
Bufflehead	21	17	1	0	3
Oldsquaw	185	131	43	6	5

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Table 1. Species composition and number of birds retrieved from oiled areas and processed at U.S. Fish and Wildlife receiving stations as of 25 September, 1989. (Cont'd)

Species	Total	Valdez	Seward	Homer	Kodiak
Harlequin Duck	213	148	10	35	20
Unidentified Eider	3	0	0	3	0
Stellar's Eider	4	4	0	0	0
Common Eider	17	5	0	2	10
King Eider	9	0	0	0	9
Unidentified Scoter	162	23	17	51	71
White-winged Scoter	342	164	13	137	23
Surf Scoter	175	45	28	9	6
Black Scoter	132	112	4	8	8
Ruddy Duck	1	0	1	0	0
Unidentified merganser	3	1	0	0	2
Common Merganser	2	2	0	0	0
Red-breasted Merganser	33	30	1	1	1
Sandhill Crane	2	1	1	0	0
Black Oystercatcher	9	2	2	0	5
Golden Plover	1	0	0	1	0
Unidentified sandpiper	11	1	5	1	4
Unidentified turnstone	1	0	0	0	1
Common Snipe	1	0	0	1	0
Semipalmated Sandpiper	1	0	1	0	0
Lesser Yellowlegs	2	0	0	2	0
Western Sandpiper	5	0	0	5	0
Baird's Sandpiper	1	0	0	0	1
Least Sandpiper	4	0	2	0	2
Surfbird	3	3	0	0	0
Short-billed Dowitcher	1	0	0	0	1
Red Phalarope	2	0	0	2	0
Red-necked Phalarope	7	1	3	0	3
Long-tailed Jaeger	1	0	0	0	1
Unidentified gull	99	6	34	39	20
Glaucous-winged Gull	555	33	188	28	213
Herring Gull	8	3	5	0	0
Mew Gull	33	0	3	3	27
Black-legged Kittiwake	1,225	8	214	74	929
Arctic Tern	3	1	1	0	1
Aleutian Tern	1	0	0	0	1

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Table 1. Species composition and number of birds retrieved from oiled areas and processed at U.S. Fish and Wildlife receiving stations as of 25 September, 1989. (Cont'd)

Species	Total	Valdez	Seward	Homer	Kodiak
Unidentified alcid	173	24	0	15	134
Unidentified murre	8,851	21	775	2,101	5,954
Common Murre	10,428	399	523	1,353	3,153
Thick-billed Murre	669	16	142	73	438
Pigeon Guillemot	614	136	109	155	214
Unidentified murrelet	413	21	37	121	234
Marbled Murrelet	612	289	97	82	144
Kittlitz's Murrelet	67	23	19	21	4
Ancient Murrelet	311	3	40	73	195
Cassin's Auklet	48	0	36	2	10
Least Auklet	5	0	0	1	4
Parakeet Auklet	31	1	2	1	27
Rhinoceros Auklet	141	0	31	31	79
Unidentified puffin	46	0	7	4	35
Horned Puffin	139	0	32	13	94
Tufted Puffin	361	0	29	15	317
Bald Eagle	125	31	20	15	59
Unidentified raptor	7	1	3	2	1
Peregrine Falcon	2	0	0	0	2
Willow Ptarmigan	1	0	0	0	1
Unidentified owl	1	0	0	1	0
Great-horned Owl	3	0	0	3	0
Unidentified woodpecker	1	0	0	1	0
Cliff Swallow	3	0	3	0	0
Violet-green Swallow	1	0	1	0	0
Unidentified passerine	9	1	7	1	0
Stellar's Jay	1	1	0	0	0
Magpie	7	1	0	0	6
Common Raven	18	1	4	0	13
Northwestern Crow	34	6	3	3	22
American Robin	2	0	2	0	0
Varied Thrush	1	0	0	0	1
Hermit Thrush	1	0	1	0	0
Unidentified warbler	1	0	0	0	1
Yellow Warbler	3	0	3	0	0
Pine Grosbeak	1	0	0	0	1
Unidentified sparrow	15	0	10	2	3
Savannah Sparrow	1	0	1	0	0
Golden-crowned Sparrow	4	0	3	0	1
White-winged Crossbill	8	0	0	6	2

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