

SCOMM

76:28

HOUSE SPECIAL COMMITTEE ON THE EXXON
VALDEZ OIL SPILL SETTLEMENT AGREEMENT

PUBLIC COMMENT LETTERS ADDRESSED TO
JUDGE HOLLAND ON THE CIVIL SETTLEMENT
AGREEMENTS

1

Jerry Celey
6766 Double Tree Court
Anchorage, Ak 99516
(907) 346-2800

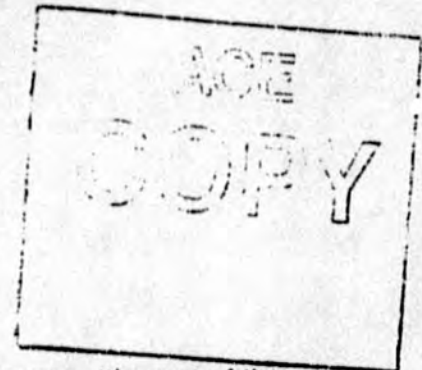
DEPT

'91 MAR 26 1991

ATTORNEY

OFFICE

Thomas Campbell, general counsel
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Room 5816
14th St. and Constitution Ave., N.W.
Washington, D.C., 20230



Dear sir,

I hereby submit my comments concerning the proposed Exxon settlement of the Exxon "Valdez" incident as far as the Federal Government and the State of Alaska are concerned.

As you can see by the attached letter, I have always felt that the State of Alaska was more at fault for the spill damage than Exxon was. The Alaska Department of Environmental Conservation is the State's front line defense against, among other things, oil spills.

This Department, under the direction of Dennis Kelso, bungled their responsibilities so badly that it was pathetic. In turn, the lawsuit against Exxon was so ill prepared that it was embarrassing. If you have never read the lawsuit, you should. It will prove to be very enlightening.

Therefore, based on the present condition of Prince William Sound, and based on the terms of the settlement, I think the State and the Federal Government "made out like bandits", and should grab the money and run.

Very truly yours,

Jerry Celey

cc: Barbara Herman
State of Alaska
Attorney General's Office
1031 W. Fourth Street
Anchorage, Ak 99501

ACE 1821733

3/22/91

AUGUST 15, 1989

GOVERNOR STEVE COWPER
P.O. BOX A
JUNEAU, AK 99811

IN REGARD TO THE LAWSUIT FILED BY THE STATE OF ALASKA TODAY AGAINST ALYESKA ETAL, THIS IS TO ADVISE THAT IT WAS NOT FILED ON MY BEHALF, IT WAS NOT FILED FOR THE GOOD OF ALASKA, IT DOES NOT HAVE ANY LEGAL MERIT AND IT IS A TOTALLY IRRESPONSIBLE ACT DONE IN AN ATTEMPT TO DRAW ATTENTION AWAY FROM THE STATE'S RESPONSIBILITY. BOB LERESCHE'S TERM 'SHAM' WAS CORRECT BUT IT WAS DIRECTED AT THE WRONG SUBJECT. THIS LAWSUIT IS TRULY A 'SHAM' AND I RESENT BEING NAMED A PARTY TO IT EVEN BY INFERENCE AND DEMAND TO BE SPECIFICALLY EXCLUDED.

THEREFORE, MY FAMILY AND I REQUIRE TO BE IMMEDIATELY AND PROPERLY NAMED AS NOT BEING A PARTY TO THIS LAWSUIT.

THE PARTIES SHOULD BE LISTED AS FOLLOWS:

JERRY C. CELEY
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

SANDRA K. CELEY
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

JAMES N. PRICE
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

APRIL R. CELEY
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

SIGNED: _____
JERRY C. CELEY

ACE 1821734

SANDRA K. CELEY

JAMES N. PRICE

APRIL R. CELEY

CC: SEE ATTACHED LIST

ACE 1821735

CC LIST

DOUGLAS B. BAILY, ATTORNEY GENERAL
P.O. BOX K
JUNEAU, AK 99811

STATE OF ALASKA COURT SYSTEM
303 K STREET
ANCHORAGE, AK 99501

HONORABLE TED STEVENS
UNITED STATES SENATE
522 HART BUILDING
WASHINGTON, D.C. 20510

HONORABLE FRANK MURKOWSKI
UNITED STATES SENATE
709 HART BUILDING
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HONORABLE DONALD E. YOUNG
HOUSE OF REPRESENTATIVES
2331 RAYBURN BUILDING
WASHINGTON, D.C. 20515

ANCHORAGE DAILY NEWS
P.O. BOX 14-9001
ANCHORAGE, AK 99514-9001

ANCHORAGE TIMES
P.O. BOX 40
ANCHORAGE, AK 99510-0040

FAIRBANKS DAILY NEWS MINER
P.O. BOX 710
FAIRBANKS, AK 99707

JUNEAU EMPIRE
3100 CHANNEL DRIVE
JUNEAU, AK 99801-7814

COPY

2

ROBERT A. GIGLER
7447 O'Brien Street
Anchorage, Alaska 99507

DEPT

'91 MAR 26 12:54

Dear Member of The Alaska Legislator:

ATTORNEY
ANCHORAGE

OFFICE

On March 15, 1991, I met with Governor Walter Hickel and Special Assistant James Rockwell to discuss public concerns regarding the EXXON Valdez Oil Spill.

Mr. Rockwell said he spoke with the underwater survey company contracted by EXXON to assess vessel damage. He gained information which suggested that the EXXON Valdez struck Bleigh Reef twice. If this is true, the public was misinformed by the initial report released by EXXON's underwater construction company.

Based on their report the following article appeared on Page A-8 of the March 27, 1989 Anchorage Times. The Starboard side of the EXXON Valdez collided with a pinnacle rock following this the tanker turned westward while sliding toward the South. Afterwards it struck the second pinnacle, at midship. Both strikes occurred approximately 2 miles apart. The President of the EXXON Corporation said the tankers speed was unknown at this time. (This is another inconsistent fact).

Page A-10 of the March 27, 1989 Anchorage Daily News, Spill Archives Reference said this collision occurred at 11:50 p.m. and the vessels speed was estimated at 8 knots. The impact ruptured three holes in the starboard side causing the tanker to turn to the west. Inertia kept it moving in the southerly direction of the first Pinnacle. This forced the vessel to travel more than a mile from the shipping lane and ground on the second pinnacle of Bleigh Reef at 12 03 a.m. on March 24, 1989.

ACE 1614971

National Transportation Safety Board hearings on May 16-19, 1989 identified the following. From the Archives of the Anchorage Daily News May 17, 1989, page A-10 included the following comments from the May 1989 NTSP hearing.

The EXXON Valdez left the shipping lanes to allegedly possibly avoid impact with ice bergs. The tanker headed west 200° at 12 knots with speed increasing to 15 knots. The course was changed to 130° and the tanker was placed on auto pilot. Afterwards the Captain left the bridge. At 11:57 p.m. March 23, 1989 Constat calls from New Jersey EXXON Valdez began and continued for 33 minutes. Captain Hazelwood did not report the new heading to the Coast Guard radio operator. After the collision, the vessel's main engine was shut down at approximately 1:45 a.m., according to engine log.

The impact was identified by Gregory Cousins in the National Transportation Safety Board hearing room in his testimony May 17, 1989. Deck watch observed the following: The Busby Island red light was viewed from the dangerous waters of Tatitluk Narrows. The 1st strike was located approximately 4000 yds. northerly from Bleigh Reef. The Loran location at 7960X 14337-7960Y32162. The Loran location was documented by a witness to the grounding in Tatitluk Narrows (Bud Hall) commercial fisherman.

From the evidence shown, we believe the grounding of the EXXON Valdez to be deliberate and intentional.

What is the truth?

Sincerely,

Robert Gigler
Greenpeace Action International

ACE 1614972

March 27, 1991

3

TO: The Honorable Judge H. Russell Holland
U.S. District Court
222 West 7th
Anchorage, Alaska 99513

FROM: Tim Martin
7100 Lake Otis #37
Anchorage, Alaska 99507

SUBJECT: Comments concerning the Exxon Settlement

'91 MAR 28 2:01

ATTN:

Judge Holland:

I was the first caller to talk with Gov Hickel yesterday on the live statewide call in "Live With The Governor", broadcasted on public radio.

I told Gov Hickel that I received his response to my letter from James Rockwell, the governor's special asst., concerning Exxon's settlement with Alaska.

Mr Rockwell's letter to me stated that he talked with the dive supervisor of the local construction company that handled the underwater work for Exxon on the Exxon Valdez. He confirmed my observation that there were two impacts on the Exxon Valdez. The letter went on to state that the ship's inertia caused the second impact. His explanation was that tankers don't stop on demand and the first outcropping wasn't enough to halt forward movement and that the second and final impact did.

At this point I told Gov Hickel that this letter doesn't address my question. Where is the site of the first impact?

I've studied the depth chart and there is no place close by where the Exxon Valdez could have hit on the starboard side. I said, "The first impact caused more damage to the vessel than the grounding, yet the crew acts like they didn't feel it".

I told Gov Hickel that I was under the impression that Caleb Brett Co gauged the Exxon Valdez and that the gauging process was closely monitored by the Coast Guard and the Alaska Department of Conservation, but found out later that Exxon did all the gauging on the Exxon Valdez and that the DEC and Coast Guard did not monitor the gauging process but that the DEC simply took the figures from Exxon.

I told Gov Hickel that I also discovered that Exxon used the wrong process for determining how much oil was on the Exxon Valdez. They used the loadmaster which only shows how much liquid was in the tanks, but this process doesn't show how much of the liquid is oil or water. I said that the proper way to have gauged the tanker is the "paste and ball method", which shows how much water is below the oil. Because the wrong method was used to figure the loss of oil far more spilled from the Exxon Valdez than was reported.

ACE 1287211

At this point my phone line to the governor was cut off.

Gov Hickel went on to say, in effect, that the settlement with Exxon is a done deal.

He wasn't concerned that this settlement is contingent upon a public comment period nor did he care what might be the result of these comments.

Gov Hickel is not representing the interests of Alaskans. He represents the interests of oil.

Though he appears to take a tough stand against the industry, pushing for greater interest penalties on monies owed to the state, his figures don't add up. Gov Hickel said there are monies owed by the industry to the state that go back 14 years and that Alaska could realize hundreds of millions when these debts are paid.

"No Governor, Alaska should see a few billion from past debts owed to the state".

Alaskans have benefited from oil, but where do we draw the line?

If this grounding had been caused by one impact it would have been, literally, impossible to prove that it wasn't accidental. But being that the first impact caused more damage to the tanker than the grounding, and since no one on board seems to have really felt it, the grounding of the Exxon Valdez was intentional and far more oil was lost than was reported.

I'm a 17 year member of the Alaska Piledriver's Union, the Bridge, Dockbuilder's and Diver's Union. I worked on the first piling holes on the first tanker dock at Valdez.

I've talked with divers who worked on the Exxon Valdez. The scrapes on the bottom of the tanker run straight from bow to stern. If the tanker had been in the process of turning these scrapes would have tended to run from port to starboard.

I've also heard from reliable sources that a considerable amount of sea water was pumped off the Exxon Valdez to the on-loading tankers.

Some lawmakers and attorneys have been pushing for Exxon to release data concerning the cause of the spill. Why should they incriminate themselves? If Exxon did release information, could it be trusted?

As a person, not associated with the industry, I believe that I know more about the details of this grounding than anyone.

I could organize a preliminary dive to determine the site of the first impact, on my own, but against industry's efforts to squelch information, how could I reach established channels? Last month's, 'Live With The Governor' was covered in the Anchorage Daily News the next day, but this month's program wasn't covered in either paper. Was it too much truth?

I wrote and had printed a letter in 'Letters to the Editor' in the Anchorage Daily News more than a year ago and had one printed recently, calling for a first impact dive, but no one from the state or media has seen fit to follow it up. Does any of them know where the tanker first hit?

Gregg Erickson, former director of the state's Oil Spill Assessment and Restoration Division was fired from his post on March 1st for making mildly abrasive comments against Exxon, so this is supposed to make him eminently suited for his new position as economist for the House Oil-Spill Settlement Committee that reviews this statement? I agree with Jim Zawacki, R-Girdwood, I don't trust him either. He reminds me of Lee Fisher, Revenue Commissioner, who boldly lashed out at the governor's proposal for collecting oil debts as an "immoral business practice" who announced that he now supports the governor. He's the same person that told me I have no right to oil royalty information.

Though most members of the legislature are beholden to oil, where do they draw the line?

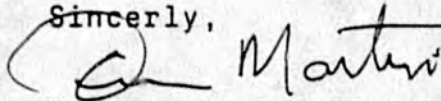
Gov Hickel is no longer pushing his agenda on a few hundred thousand Alaskans. He's now subject to world opinion, as is Alaska's legislature.

If a three day dive will clear up all doubt as to whether or not the grounding was intentional, shouldn't it be performed?

As a certified commercial diver, I want to see for myself the location and take pictures of it. I want to head up this dive.

I'm requesting \$10,000 from the state for divers and the charter of a fully equipped diving vessel with chamber. This amount will also cover a detailed report on the findings of a three day dive. I also extend an offer for Exxon to take part in a coordinated fact finding mission, but they supply their own boat.

Sincerely,


Tim Martin

Inclosures

next page

ACE 1287213

Thomas A. Cambell NOAA

Barbera Herman Attorney General's Office

Nancy Quinto Senate Special Committee on Exxon Settlement

Cheryl Hinkes Tundra Times

Howard Weaver Anchorage Daily News

Dan Lawn Alaska Department of Environmental Conservation

Greg Erikson House Special Committee on Exxon Settlement

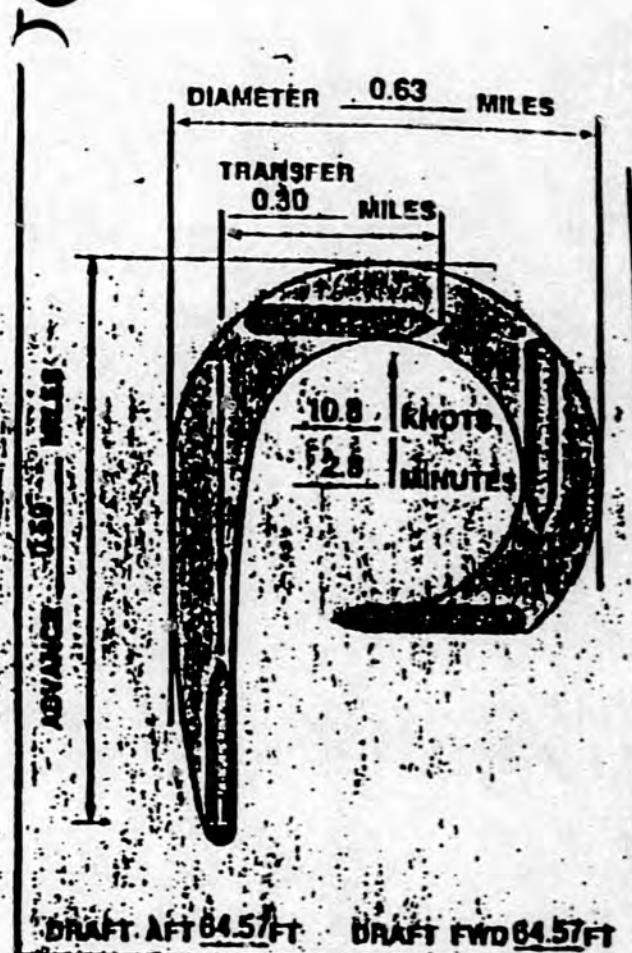
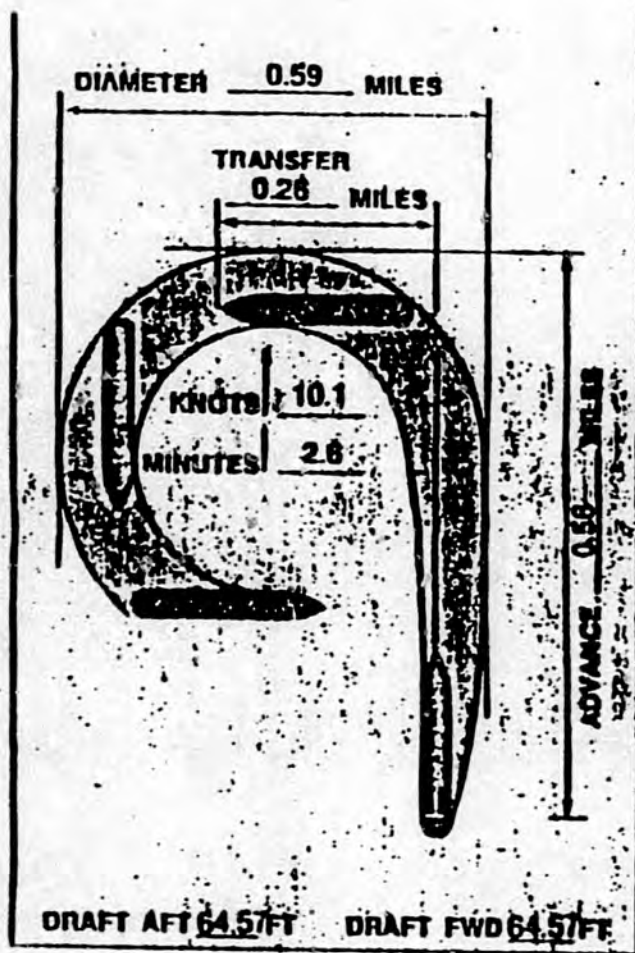
Lawrence G. Rawl Exxon

Walter Hickel Governor's Office

Others

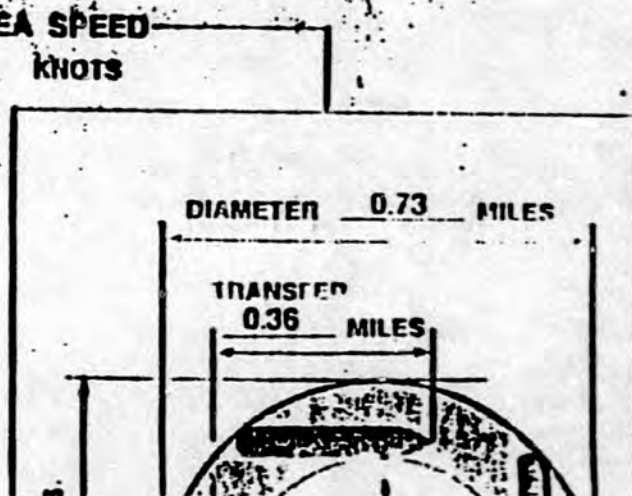
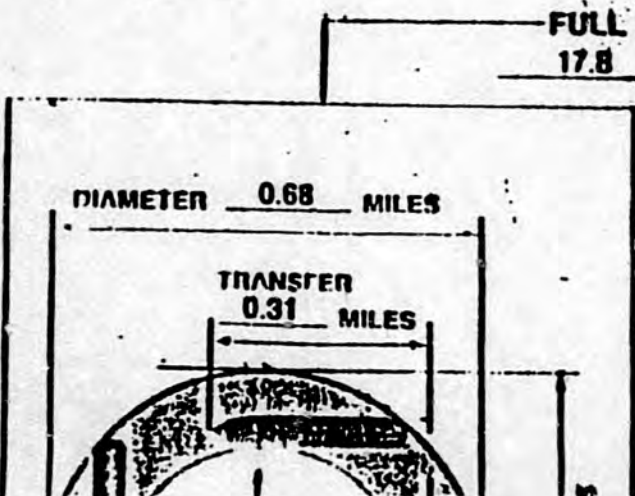
FROM NTS B HEARINGS

ACE 1287215



FULL SEA SPEED
17.8 KNOTS

BALLAST



4
RECEIVED

Department of Law

APR 05 1991

Office of the Attorney General
Anchorage Branch
Attorney General

ral Free Delivery
chitka Island
aska 98796

28 March 1991

Barbara Herman
Alaska Attorney General's Office

Thomas Campbell
U.S. Department of Commerce

Dear Counselors:

I am writing to request that you withdraw from the existing negotiated settlement with Exxon Corporation which is meant to cover their liabilities arising from the "Exxon Valdez" case.

I feel that the sum of money is too small, and that the arrangements do not assure that Alaskans will benefit from the payments.

Current actions by the Federal Reserve virtually guarantee that we will see double-digit inflation in the mid-1990s. Thus, I ask you to re-negotiate a settlement which will assure immediate payment of the entire sum, immediately.

Thank you for your courtesy in receiving my comments.

Sincerely,

Alan Horowitz

Alan Horowitz

ACE 447529

ACE 447530

BARBARA HERMAN
ATTORNEY GENERAL'S OFFICE
SUITE 200
1031 W. FOURTH AVE
ANCHORAGE 99501



5

RECEIVED

Department of Law

APR 05 1991

March 4, 1991 Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Ms. Barbara Herman
Attorney General's Office
State of Alaska
1031 West, 4th Avenue, Suite 200
Anchorage, Alaska, 99501

Dear Ms. Herman:

I have thoroughly read the **Settlement Agreement Concerning the Exxon Valdez Oil Spill Between the United States, the State of Alaska and the Exxon Corporation** as published in the March 19, 1991 federal register and wish to make the following comments:

John Knauss of the National Oceanic and Atmospheric Administration (NOAA) referred to the settlement between the federal government, the state of Alaska and Exxon Corporation as "a good deal for the nation" and Secretary of Transportation Samuel Skinner called it a "tough but fair settlement."

I disagree with them. It is neither good nor fair.

It is neither good nor fair to the citizens of Alaska and the United States directly or indirectly affected by the spill. It is neither good nor fair to the hundreds of thousands of sea birds and the uncountable marine life killed by the oil from the *Exxon Valdez*. It is "tough" but not for Exxon as Skinner implied. Exxon Chairman Lawrence Rawl said that the settlement "will not have a noticeable effect on our financial results." Consequently, it is anything but tough.

There are other problems with this settlement that I wish to outline for you. As an Alaskan affected by the oil spill, it is my hope that you will seriously consider my concerns and persuade the courts that many of the provisions of the settlement are "improper, inadequate and inappropriate."

I have three concerns: money, secrecy of scientific information, and public participation.

ACE 447531

First of all, the money is insufficient. The \$1 billion seems like a lot, but it is reduced by:

- * \$100 million in fines, half of which will be remitted;
- * \$134 million to reimburse the state and the federal governments for clean up costs already incurred;
- * an estimated \$40 million for cleanup by the state in 1991;
- * an unknown amount for cleanup by the federal government in 1991.

That leaves \$726 million for restoration. That figure is further reduced to approximately \$370 million after you take into account the ten year payment schedule (which amounts to an interest-free loan to Exxon). It is unclear how much money it will take to restore the Sound to a near-original state (if that's possible) since the state and federal government have not released scientific studies documenting the damages. Figures quoted in the Anchorage Daily News (March 31, 1991) suggest the cost of restoration could be as high as \$8 billion. Therefore, I feel the financial provisions for restoration as described in the settlement are inadequate and should be increased substantially.

The fines imposed on Exxon are too low also. Since half of the \$100 million is to be remitted, only \$50 million remains as a punishment for crimes committed by a corporation that earns \$177 billion a year. This fine is equivalent to \$34.19 for a person earning \$40,000 a year. That is a flaccid penalty at best. Yet, U.S. Attorney General Dick Thornburgh said the fine "represents a clear and unmistakable signal to those engaged in environmental crime" that they will be punished. Hardly. Because this figure is so low, I feel it is inadequate and inappropriate. The amount of the fine does not match the crime.

To the credit of the architects of the settlement, there is a provision for reopening the settlement in the event of discovery of unknown damages (paragraphs 17 And 18 of the Settlement Agreement). In light of the many ecological and social unknowns related to the spill, this is a very good idea. Unfortunately, the maximum amount is again too low - \$100 million. I believe we should set no limit on the amount of damages that can be recovered in the future. Perhaps a time limit could be set such that after 20 years, for example, Exxon would be no longer responsible for paying damages. This limit as written is improper and inadequate.

If the figure of \$900 million remains as the amount paid to the governments I believe it is best spent completely on restoration, replacement, rehabilitation, and/or enhancement of the damaged or injured natural resources and not on cleanup costs. Better to consider restoration and cleanup as separate actions with separate effects. Cleanup should be thought of as an emergency measure, a bandage to stop the bleeding. Restoration should be thought of as techniques designed to rehabilitate and revive. The governments should be reimbursed for the costs of cleanup, but the reimbursement should be in addition to and separate from restoration money. For this reason, I consider it inadequate and improper.

The second area of concern is the state's unwillingness to release scientific studies documenting the damages to natural resources. Though this situation is not addressed in the settlement, I definitely think it should be. It isn't just a state issue, the secrecy affects everyone. Since the agreement focuses mostly on money matters, all damage information must be available so that we know how and where to spend the money. This is economic common sense. An insurance company would never pay a claim without knowing the damages.

If the studies were released, we'd have a firm idea of how much money is needed for restoration. Instead, we have the figure of \$1 billion which is a fabrication of Governor Hickel's mind. Where did he get that number? On March 13, 1991 he said "I have had a boat down there for 30 years. I know the Sound". That's ludicrous. When we are dealing with large sums, as we are here, we need to have more evidence than one man's memory of water recreation.

There are other reasons to release the information:

- * Taxpayer's money has funded the studies;
- * they concern public resources;
- * other scientists need and want the studies in order to understand the spill;
- * the information could help other Alaskans harmed by the spill to get a fair settlement from Exxon.

One other reason to release the studies: the state should own up to its responsibilities. If it was in error somewhere along the line it should be

held accountable. Withholding the studies is improper and undermines the entire settlement.

The third area of concern is the public participation process. State Attorney General Charlie Cole, referring to what he believes is public disinterest in the spill said "I don't think it's of great consequence to the store owner in Galena how many eagles were killed as a result of the spill". I disagree. The spill hurt people everywhere on this planet, not just fishermen or native subsistence users. I recall a woman from Massachusetts who quit her job and sold her house to come to Alaska to help the injured animals after the spill.

Such a response does not indicate apathy as Cole would like us to believe. Interest in the spill and the settlement is still high and every citizen of the United States, and especially Alaska, should have the opportunity to take part in a complete, well-publicized and effective public participation process. As it is written in the settlement, the public has 30 days to comment (as I am doing here), an insufficient and inadequate amount of time.

Unfortunately, even if there was ample public participation, it would fall on deaf ears. As the settlement is written, there is no wording that forces the governments to respond to the comments, only the courts can force them.

Especially deficient is the wording in paragraph 37 of the settlement agreement concerning the legislature. It reads, in part: "Each Government reserves the right to withdraw its consent to the Agreement within fifteen (15) days following the close of the public comment period... If before the end of that 15 day period, the Alaska State Legislature has not approved the Agreement as written." The operative term here is "reserves the right to withdraw". That does not mean that each government must withdraw. But I think it should. It does mean that either government need not be responsive to the legislature.

The Memorandum of Agreement (MOA) between the United States and Alaska states that "the public will be given meaningful opportunities to participate in the restoration process. Public comment is invited..." I think the opportunities provided thus far are inadequate. I suggest the following:

- * Allow the legislature to approve, disapprove or modify the agreement as if it were any other piece of legislation. The public, then, could comment through elected representatives.
- * Publish all scientific studies. Then provide public workshops and hearings within a 90 day comment period.

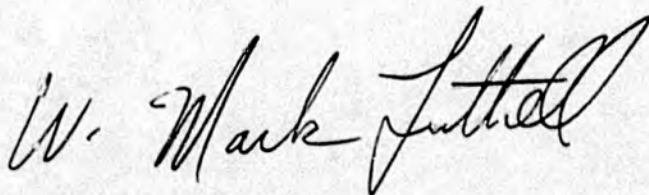
A related concept involves the way in which the money is to be spent if the Agreement is signed off. Within the MOA, it is written that the "Trustees shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group..." I suggest that the wording be changed from "may" to "must" and further that the public advisory group be The Regional Citizens Advisory Council (RCAC).

One last suggestion: I feel that a reopener clause similar to paragraphs 17 and 18 is needed that allows the governments to sue if unknown damages are discovered or criminal or civil evidence arises in the future. It is foolish to think that all is currently known. We need to have the door open if in the future we need it. Without such a reopener clause, the settlement is inadequate.

A settlement is a good idea, but as written, it is inadequate. What's needed is more time for all parties, including the public and third party interests, to work cooperatively on its shortcomings. I urge you to convince the courts to cancel the settlement.

Thank you sincerely for taking the time to read my comments.

With respect,



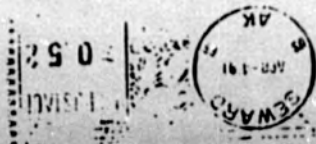
W. Mark Luttrell

Box 511
Seward, Alaska 99664

ACE 447535

Mark L. H. Nell
Box 511
Seward, AK 99664

FIRST CLASS



ACE 447536

Ms. Barbara Herman
Att'y General's Office
1031 W. 4th Ave
Suite 200
Anchorage, AK 99501



AMERICAN INSTITUTE OF PROFESSIONAL GEOLOGISTS

11661 Rockridge Dr. '91 APR -8 19:19
Anchorage, AK. 99516
March 21, 1991

ATTOR:
ANC.

OFFICE

Mr. T. A. Campbell
Gen. Counsel. NOAA
U.S. Dept. Commerce.
16th & Constitution, NW
Washington, DC 20230

Dear Mr. Campbell:

The Alaska Section, American Institute of Professional Geologists, a Certifying organization akin to your ABA, is strongly opposed to one of the conditions of the Federal/State-Exxon Valdez Spill Settlement Agreement, i.e. the provision to not release the scientific studies regarding the spill.

We feel that the spill studies contain extremely valuable data which MUST be available to the public. Some of the data in these studies may be critical in formulating a best response to the inevitable future events in similar environments. Most of the studies were undertaken on the basis of precisely such rationale.

Further, it should be noted that most of the studies were funded or supported by the federal government and as such would be subject to disclosure through the Freedom of Information Act. Others were conducted under NSF and private grants which contractually REQUIRE the publication of results. Finally, in the event of a lawsuit the "Discovery" process should effectively unmask these studies.

Rather than suppressing these studies, NOAA would better serve the worldwide scientific community in sponsoring the dissemination of data gained through these studies. Happily, the U.S. Forest Service has already opened an office for such purpose, and at least one of NOAA's experts is already describing study results on the Lecture Circuit.

Whereas most of the studies involved would be of great value to the scientific community; were conducted with public funding; and would, in any case, eventually become public through various means; we feel that that portion of the settlement be deleted.

Respectfully,

Dr. Robert B. Sanders
Legislative Affairs Committee

Mr. Eric Opstad
President, Alaska Section

CC: Barbara Hermann ✓

ACE 447523



AMERICAN INSTITUTE OF PROFESSIONAL GEOLOGISTS
11601 Rockridge
Anchorage, AK 99516



Barbann Hermann
A.G.'s office
1031 W. 4th Ave
Anchorage, AK 99501

ACE 447524

April 8, 1991

Mr. Thomas Campbell
General Counsel
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
14th St. and Constitution Ave., N.W., Room 5816
Washington D.C. 20230

DE 3210 Wyoming Drive
Anchorage, AK 99517

'91 APR 10 10:24

ATTORNEY OFFICE
ANCHORAGE

Dear Mr. Campbell:

First let me say that I for one appreciate the time and effort State of Alaska Attorney General Cole and Gov. Hickel put in to this deal. It may not be the perfect arrangement for everyone, but I feel its acceptable.

Second, I claim to be no expert on the settlement as the only information I have came from the two newspapers here in Anchorage and from my State Senate representative Sen. Pat Rodey. The newspapers, in particular the California Daily News seemed to be more into "well Mr. Cole said this and the environmentalists/lawyers representing claims say this rather than presenting anything of use to the public. Sen. Rodey cleared some things up.

Basically it sounds like just a few points are a question in peoples minds as to whether this is a good deal and whether we should accept it. The first being whether the State and Federal Governments could get more money by taking EXXON to court for 5-10 years. I'm not a gambler and I'm more tune to a bird in the hand is worth two in the bush. Certainly no jury in the world is going to convict EXXON of bird hunting without a license and fine 'em 100 million so we are ahead there. A billion dollars spaced out over 10 years so people don't waste it stupidly sounds pretty good. Is the damage worth more? Is the new Star Trek better than the old one? Depends on who you ask.

Another point is who spends the settlement. Anybody but the State of Alaska Legislature would be okay with me. I'd rather they didn't have anything to do with it period. My understanding is there would be a committee of 3 State, 3 Federal, and an EXXON Rep. that would decide. I guess I wouldn't mind having a few more folks representing the State but I can accept the committee as is. Just make sure the Legislature doesn't have anything to do with picking out the members. Certainly the residents of Alaska should be able to provide input to the committee.

That's pretty much all I wanted to say. I support the settlement as is and hope it is accepted. It's about time we put this spill behind us. Quite honestly, while its EXXON oil that spilled, I place most of the blame for the environmental damage on the Alaska State Government, and in particular Dennis Kelso and his DEC outfit. By not allowing EXXON to use the approved spill response plan immediately, they could be blamed for much of the damage. I have a feeling a lot of jury's will come to that conclusion too. In summary I say accept the settlement and take the money. Thanks for your time.

Sincerely,



Michael E. Beck

c: Barbara Herman

ACE 1284539

MORRIS K UDALL ARIZONA CHAIRMAN
 GEORGE MILLER CALIFORNIA VICE CHAIRMAN
 PHILIP L. SHARP INDIANA
 EDWARD J. MARKEY MASSACHUSETTS
 JUSTIN J. MURPHY PENNSYLVANIA
 WICK JOE RANALLI II WEST VIRGINIA
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 PAT WILLIAMS MONTANA
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U.S. House of Representatives

Committee on
 Interior and Insular Affairs
 Washington, DC 20515-6230

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DANIEL P. BEARD
 STAFF DIRECTOR
 RICHARD MELTZER
 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

¹The owner companies of Alyeska Pipeline Service Company ("Alyeska") are B.P. Pipelines Alaska, Inc. (50.01 percent); Exxon Pipeline Company (20.34 percent); Arctic Slope Regional Corporation (29.65 percent).

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Honorable H. Russel Holland
Honorable Stanley Sporkin
April 8, 1991
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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:

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

⁷Letter 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.

⁹Oil 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

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

¹²Letter 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 I 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."

¹³Howitt'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 destroy 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."

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

¹⁵The 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

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.

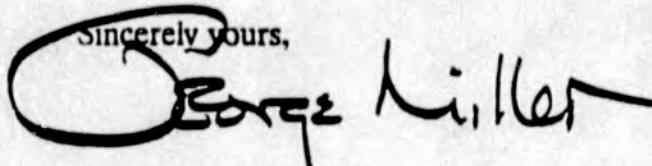
²⁰ Under Alaska law, punitive damages are awarded for the public policy reasons of punishment and deterrent when the defendant's conduct was outrageous, reckless, or malicious. In this instance, there is clear and convincing evidence that Alyeska's conduct merits the award of punitive damages.

Honorable H. Russel Holland
Honorable Stanley Sporkin
April 8, 1991
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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
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 Murkowski
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

ACE 447563

Alyeska pipeline

SERVICE COMPANY

ALASKA MARINE TERMINAL PO BOX 222 VALDEZ ALASKA 99686 TELEPHONE 489-4300 T1.11

April 18, 1988

ATTN: CAPT.
Johnson

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John Weichert
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Seattle, Washington

Theo L. Polasek
Alyeska Pipeline Service Company
1835 South Bragaw
Anchorage, Alaska 99512

Gentlemen:

A meeting of the Marine Services Sub-Committee will be held May 18, 1988, in Bellingham, Washington.

Present agenda items are:

- Oil Spill Response Equipment (including a demonstration of large skimmer vessel by John Weichert of Clean Sound Co-op.)
- Port Information Manual status.
- Berth Equipment and Repair and Upgrade Schedule.

An information package will be mailed to confirmed attendees for review prior to the meeting.

The meeting will be held at Nendel's Hotel in Bellingham, the Compass Room, commencing at 8:00 am. The skimmer demonstration will commence at 1:00 pm, departing from the small boat harbor.

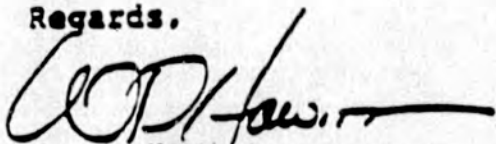
Roger Gale has informed me that there will be a joint meeting of the Operations Sub-Committee and the Marine Services Sub-Committee on the previous day, May 17th, at the same location. The agenda for this meeting will be advised separately.

Rooms have been blocked for May 17th at Nendel's Hotel, (206)671-1011, and must be confirmed by individual attendees. Arrangements have been made for a continental breakfast and luncheon buffet to be served in the meeting room on May 18th.

For travel planning; Bellingham is approximately 2 hours North of Sea-Tac airport by car or is served by commuter airlines, PSA, Horizon Air, and San Juan Air.

Please reply to C. F. (Chuck) O'Donnell (907)835-6526, indicating attendance or additional agenda items.

Regards,



W. D. Howitt
Valdez Marine Terminal Superintendent

Alyeska pipeline

SERVICE COMPANY

April 28, 1988

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West Coast Fleet Office
Exxon Shipping
3400 East Second Avenue
Benicia, CA 94510

Theo L. Polasek
Alyeska Pipeline Service Co
1835 South Bragaw
Anchorage, Alaska 99512

Subject: Meeting Agenda and Information Package

Gentlemen:

As referenced in my April 18, 1988 meeting notification, an information package is enclosed concerning the agenda items for the upcoming Marine Service Subcommittee Meeting in Bellingham, Washington on May 18, 1988.

ACE 447566

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 Alyeska's capability to respond to oil spills at midpoint of Prince William Sound. The specific concern stated was the use of the Terminal tugs for the response effort, thereby directly affecting the Terminal's ability to continue vessel loading operations. Alyeska and ARCO personnel visited the Clean Sound Oil Spill Cooperative because of the similarities/comparability of Puget Sound and Prince William Sound operating environments. The briefing summarizes the group's findings.

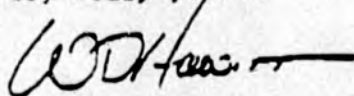
You will note that the briefing makes no recommendations with regard to additional equipment purchases. Mr. Jeff Shaw, ARCO, is prepared to discuss his specific recommendations during the meeting.

The Marine Services Subcommittee has been requested to review the alternatives, and recommend a course of action to the Operations Subcommittee.

The second agenda item covers the present status of the revised Port Information Manual. Enclosed you will find the financial responsibility statements that were presented to the Owners Committee and the Legal Subcommittee for incorporation into the revised manual. A final version of the statement that will be used in the manual will be issued before our meeting, and a distribution schedule of the new manual will be discussed at that time.

The third agenda item covers the Berths and Ballast Water Treatment Plant repair and upgrade schedule for this coming summer. Enclosed you will find a definition of scope and a implementation schedule for each of these projects.

Very truly yours,



W. D. Howitt
Superintendent
Valdez Marine Terminal

CFOD/WDE/pkk

cc: C. F. O'Donnell
L. D. Shier
T. L. Polasek

enclosures

EXHIBIT C

OIL SPILL ISSUES

ACE 447568

T. L. Polasek
April 6-7, 1988

OIL SPILL ISSUES

Status of Action Items from January Owners Meeting

- **Pursue Advance Approval for Dispersant Use**
 - **Regional Response Team (RRT) has issued first Draft of "Prince William Sound Guidelines" for review.**
 - **Most of Port Valdez and all of Tanker Lanes included in "Zone 1" where dispersant is approved for use, with consent of senior Federal official, USCG Captain of Port.**
 - **Follow up meetings scheduled.**

- **Expedite "ADDS Pack" AFE**
 - **AFE sent to Owners on March 4, 1988.**
 - **Approvals received from ARCO, Exxon, and Mobil.**
 - **Procurement package being prepared.**

OIL SPILL ISSUES

- **Conduct Survey of Commercial Ships Available for Oil Spill.**
 - **Preliminary Survey completed.**
 - **Several Hundred fishing vessels, fleet tenders, and supply boats available in Valdez and Cordova (45 ft. to 120 ft. lengths)**
 - **Several "Rig Tender" oil platform supply and service boats available in Kenai/Homer area (18 to 25 hours travel).**
 - **Four tour boats in Valdez (85' to 100') available for personnel support.**
 - **Availability of all dependent on season.**
 - **Private operators.**
 - **Will pursue negotiating rates for "on season" and "off season".**

OIL SPILL ISSUES

- **Desk Top ARCO/Alyeska Drill**
 - **Drill scheduled for May 3 and 4, 1988.**
 - **Located at Valdez Civic Center and other contingency sites in area.**
 - **Federal/State agencies will participate.**
- **Expeditious Clean-up Cost Reimbursement Procedures.**
 - **Proposed language and section revisions to the Port Information Manual sent to Legal Subcommittee.**
- **USCG Spill Take Over if Responsible Party Unwilling.**
 - **Informal discussions held with Valdez Coast Guard.**
 - **Coast Guard has no problem with concept**
 - **Would continue to use Alyeska as prime "Contractor".**
 - **Discussions with Alaska DEC will be necessary and revision to approved contingency Plan may be required.**
- **Discuss Oil Spill Response Equipment List with ARCO.**
 - **Discussions held.**
 - **Joint tour of "Clean Sound" facilities and equipment during March**
 - **Report follows in this presentation.**

**ARCO/Alyeska
Response Equipment Discussions**

ACE 447572

**T. L. Polasek
April 6-7, 1988**

Response Equipment Discussions

- **Alyeska Response Capability to Spills at midpoint of Prince William Sound.**
 - **Amount/Type of containment of boom.**
 - **Oil skimming vessels.**
 - **Fast response boats.**
- **Equipment and Operating Plan Developed by "Clean Sound" Cooperative for Puget Sound.**
- **Similarities/Comparability of Puget Sound and Prince William Sound Operating Environments.**
 - **Weather**
 - **Sea states and currents**
 - **Environmental sensitivity**
 - **Distances and access**
 - **Spill volume history/exposure**

Response Equipment Discussions

Clean Sound

- **Non-profit, unincorporated organization of Oil and Oil Transportation Companies.**
- **All expenditures by Co-op funded wholly by the member companies:**

ARCO	Union	SPC Shipping
Mobil	US Oil & Refining	Olympic Pipeline
Shell	Foss Maritime	Trans-Mountain Pipeline
Texaco	Chevron	Four others
- **Clean Sound owns equipment and employs small staff.**
- **Contractors utilized for equipment maintenance and operation.**
- **Agreements with contractors assure supply of qualified operators and maintenance personnel**
- **Equipment staged at commercial facilities in five locations: Bellingham, Anacortes, Seattle, Port Angeles, and Tacoma.**

Response Equipment Discussions

Clean Sound

- Major Equipment and Materials

- 6 each fast response boats (27' to 34'): Each equipped with 1000 foot "Zoom" Boom, sorbent materials, and radar. May be equipped with small, portable hydraulic skimmers.
- 1 each 42' fast response boat: Equipped with "Destroil" skimming system and 600 gallons recovered oil storage. Has bow door and is capable of beach landing.
- 3 each 30' work boats: Medium speed response with 1000 foot "Zoom" boom and portable disk skimming units.
- 1 each tank barge: 12,000 BBL capacity with 60' reach deck crane, 2 diesel powered pumps and tankerman's office/shelter.
- 10 each highway trailers/vans (32' to 40'): Stocked with booms, sorbents, tools, skimmers, bird scare cannons.
- 1 each Mobil Command Post: 34' Traller with charts, maps, contingency plans and communications equipment.

Response Equipment Discussions

Clean Sound

Major Equipment (continued)

- 3 each "Belt Type" skimmer vessels (34' to 40'): Self-powered, twin hull units rated at 300 to 350 gpm recovery rates.
- 1 each 60' skimmer vessel: Catamaran hull with two each 3 foot belt recovery units rated at 600 gpm total. Designed for all weather operations in all areas of Puget Sound.
- 1 each 75' skimmer vessel: Seagoing vessel designed for sustained operations with minimum crew. Has debris recovery and handling devices. Recovery is 500 gpm with 12,000 gallons on board storage.
- 6000 feet of Kepner "Sea Curtain".
- 30,000 feet of Bennett "Zoom Boom" compactable boom.

Response Equipment Discussions

Clean Sound

- Spill Cleanup Methodology

- Immediate, fast response to spill, at any location, with boom to contain, exclude, and/or divert oil.**
- After boom deployment, immediately begin light skimming operations with small units carried on response boats.**
- Follow up with large, self-propelled, high efficiency skimmers as required.**
- If necessary, deploy land-based support equipment to spill site for continued work.**
- Use contracted helicopters for spill recon and direction of vessel operations.**

Response Equipment Discussions

Present Alyeska Prince William Sound Capability

- All equipment and material staged at Valdez Terminal.
- Alyeska employees are prime operators with back-up manpower from Northland Maintenance.
- Alyeska equipment maintenance contractor performs maintenance.
- Expenditures funded by Owner Companies.
- Mission: To immediately respond and perform initial cleanup of oil spills from vessels in the TAPS trade in Prince William Sound.

Exposure magnitude: Approximately 940 tankers per year, from 30,000 to 265,000 DWT, transiting and loading in a non-congested area with high environmental concern.

Response Equipment Discussions

Present Alyeska Prince William Sound Capability

- No new skimming vessels purchased since 1977.
- Work boat upgrade/replacement program in progress.
- Response Complement:
 - Fast response boats with sorbent boom and light duty skimmers.
 - Medium capacity self-propelled skimmer vessels.
 - Deck barge with sea skimmer and boom.
 - 10,000 BBL tank barge (late 1988)
 - Airborne dispersant delivery (late 1988)
 - Contracted tug boats.
 - Mobile contingency command center with communications repeaters (mid-1988).

Response Equipment Discussions

Alyeska

- **Present Major Equipment and Materials.**
 - **5 each fast response boats (21' to 26'): Equipped with sorbent booms. May be equipped with portable hydraulic skimmers.**
 - **2 each 26' work boats: For support and supply delivery.**
 - **2 each "Belt Type" skimmer vessels (36' and 45'): Self-powered, twin hull units rated at 300 GPM recovery.**
 - **5 each Vikoma Sea Pack units: 8000 total feet inflatable boom. Units must be towed to site by tugs.**
 - **1 each deck barge: 16,000 foot harbor boom packed in containers and Vikoma 240 EBL/hr sea skimmer. Must be towed to site by tugs.**
 - **3 each 19' work platforms: Powered by small outboards for calm water use.**

Response Equipment Discussions

Alyeska

- **Prince William Sound Cleanup Methodology**
 - **Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement.**
 - **Dispatch available aircraft for recon and spill cleanup direction.**
 - **Dispatch equipment sets pulled by Crowley tugs and line boats.**
 - **Obtain additional USCG and commercial resources to continue cleanup and relieve Crowley tugs.**
 - **Turn over spill to responsible party or USCG after initial activities complete.**

ALYESKA EQUIPMENT PROJECT
(for oil spill cleanup)

RECOMMENDED PURCHASES

1. LARGE OCEAN GOING SKIMMER, SIMILAR TO THE CLEAN SOUND VESSEL THE NORTH SOUNDER. THIS VESSEL SHOULD BE LARGE ENOUGH TO KEEP THE CREW OUT OF THE WEATHER. THE VESSEL SHOULD HAVE RADAR, BUNKS, GALLEY AND A HEAD, CAPABLE OF A FEW DAYS OF OPERATION WITHOUT RETURNING TO PORT.

THE NORTH SOUNDER IS A BELT TYPE SKIMMER WHICH EVIDENTLY WORKS WELL, I SUGGEST THE SYSTEM THAT McLORI MAKES BE INVESTIGATED.

2. 10000 BARREL BARGE IS NEEDED TO HANDLE OIL THAT IS PICKED UP DURING A SPILL. A SPILL > 5000 bbls. ADDITIONAL BARGES WOULD BE REQUIRED. THE ADDITIONAL BARGES COULD COME FROM SEATTLE, AND BE ON SCENE IN 96 HOURS.

THE DESIRED BARGE SHOULD HAVE CLEAR WORKING SPACE SIMILAR TO CLEAN SOUNDS, CLEAN ONE. ROOM FOR A HELICOPTER PAD WOULD BE USEFUL. SOME "BUNK HOUSE" SHELTERS WOULD BE HANDY FOR EXTENDED CLEANUPS TO HOUSE THE CREWS.

3. ADDS PACK NEEDED. I UNDERSTAND THAT ALYESKA HAS ALREADY STARTED THIS PURCHASE.
4. FAST SPILL RESPONSE VESSELS ARE NEEDED, SUCH AS SEEN AT THE MUNSON BOAT YARD. ALSO, IT IS IMPORTANT TO HAVE A SHELTERED CABIN AND RADAR.
5. DESTROIL SKIMMER WITH POWER PACK, TO BE ABLE TO QUICKLY GET A SKIMMER ON SCENE OR SET UP IN AREAS WHERE THE VESSEL SKIMMERS CANNOT APPROACH. THIS HAS THE CAPABILITY TO USE FROM THE FAST SPILL RESPONSE VESSELS.
6. ADDITIONAL 5000 FEET OF SEA QUALITY BOOM.

JEFF SHAW 3/22/88

JBF DIP MODEL 5001A

DYNAMIC INCLINED PLANE
OIL RECOVERY VESSEL

ACE 447583

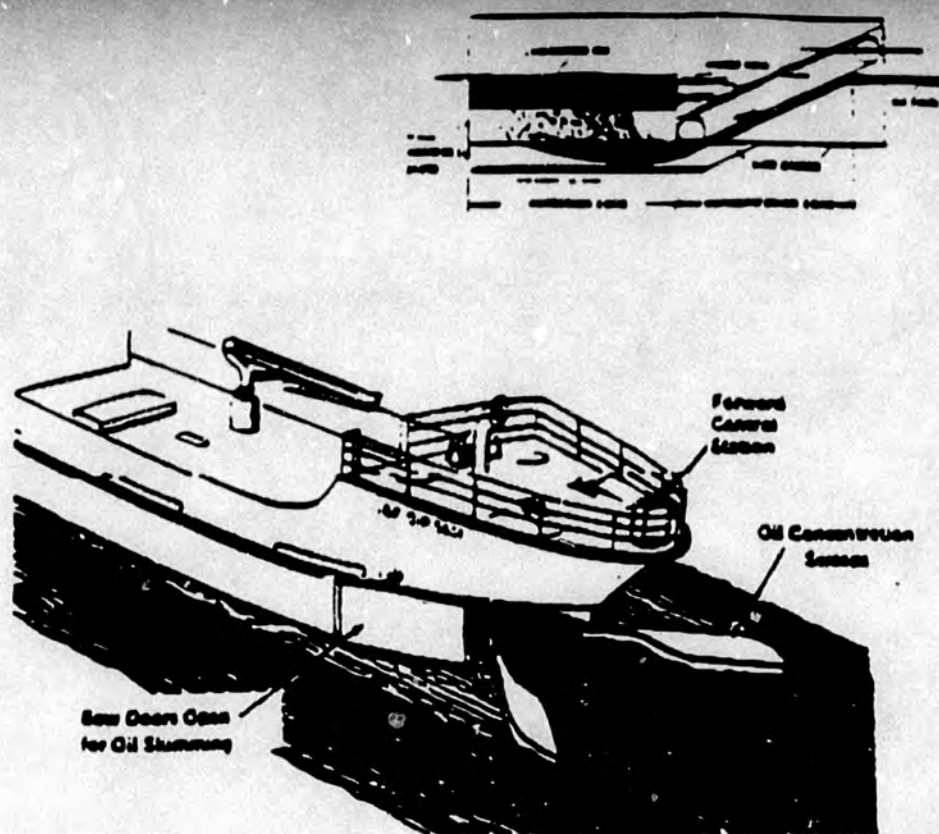


Figure 1-1. JBF DIP Concept and Oil Concentration Sweeps

1-1 PURPOSE OF SYSTEM/DIP CONCEPT

The JBF Model 5001A recovery system is designed to pick up spilled oil and debris from the water's surface. A conveyor forward of the oil recovery system first removes floating debris while water and oil flow through the open-mesh conveyor belt. The oil collection system then collects the oil, separates it from the water, and collected oil can then be pumped into on-board storage tanks from which it can subsequently be pumped to barges or to deckside receiving tanks. The cargo pump and valving system are also designed to allow collected oil to be pumped directly from the collection well to a barge or tank alongside. The vessel is self-propelled and is equipped with a complete and independent power system to drive all collection and pumping systems.

The DIP Model 5001A system is based on the concept (Figure 1-1) of collecting oil under the surface of the water, thus reducing the effect of waves. As the system moves through the water, the oil is forced to follow the surface of a moving inclined plane to a collection well underneath the hull. Buoyant forces cause the oil to surface in the well, forcing water out the bottom. When a sufficiently thick oil layer has collected, it is pumped into storage tanks. Separation occurs automatically and no water is collected.

The vessel can be used in both protected waters and in the more open waters. It can be used in a wide variety of operating modes that require stationary or self-propelled oil-skimming capability. The wide aperture formed by the sweep system makes it extremely effective against oil slicks in open waters. The skimmer can also be used successfully as a link in boom recovering systems or as a means of picking up oil contained within a boomed-off area.

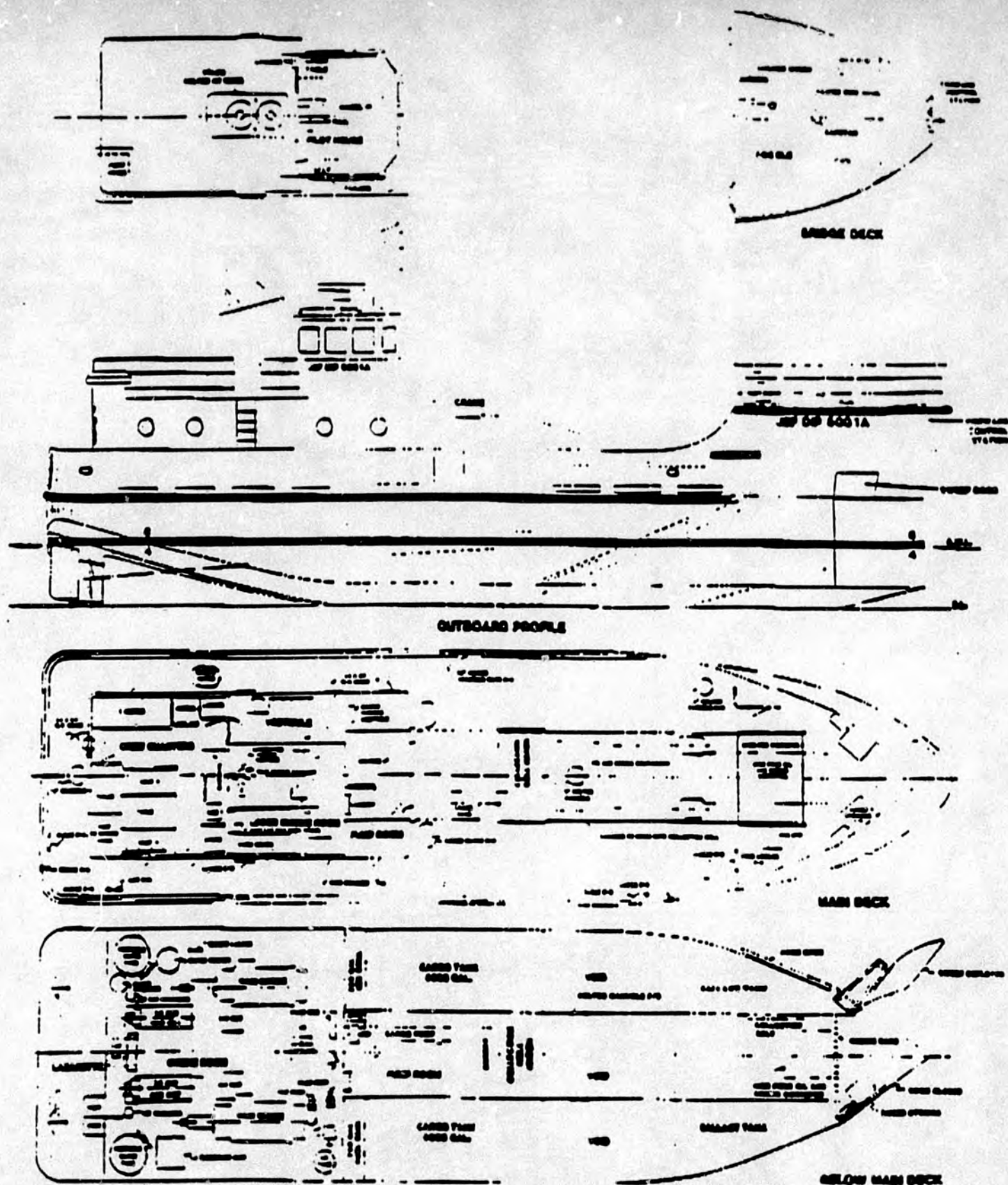


Figure 1-2. DIP 5001A Profile and Arrangements

BT

MR. THEO POLASEK
ALYESKA
ANCHORAGE, ALASKA

RE: ALYESKA OIL SPILL EQUIPMENT

::::::::::::::::::::::::::::

AS YOU KNOW THE MARINE SUBCOMMITTEE WAS ASKED TO PROVIDE THE OWNERS COMMITTEE WITH ITS THOUGHTS AND RECOMMENDATIONS REGARDING THE UPGRADING OF ALYESKA'S OIL SPILL RESPONSE EQUIPMENT FOR USE BOTH AT THE TERMINAL AND IN PRINCE WILLIAM SOUND.

A REVIEW OF THE HISTORY OF OIL SPILLS AT THE VALDEZ TERMINAL LEADS THE COMMITTEE TO THE CONCLUSION THAT THE CURRENT STOCKPILE OF CLEAN UP EQUIPMENT IS ADEQUATE. FROM THAT CONCLUSION, THE MARINE SUBCOMMITTEE'S FIRST RECOMMENDATION, SHOULD BE THAT THE CURRENT STOCKPILE OF EQUIPMENT MUST BE MAINTAINED TO THE HIGHEST STATE OF READINESS, AND SHOULD BE REPLACED WITH SIMILAR EQUIPMENT AS AND WHEN APPROPRIATE, PRIOR TO ANY ACTUAL EQUIPMENT RENEWALS. A CAREFUL REVIEW OF ALL TECHNOLOGICAL IMPROVEMENTS SHOULD BE UNDERTAKEN. APPROPRIATE REPLACEMENT EQUIPMENT SHOULD THEN MEET BEST AVAILABLE TECHNOLOGY STANDARDS.

WHEN CONSIDERING ADDITIONAL EQUIPMENT FOR THE PURPOSES OF IMPROVING SPILL RESPONSE AND RECOVERY IN PRINCE WILLIAM SOUND, THE TOTAL LACK OF PRIOR SPILL EXPERIENCE IN THE SOUND IS BOTH A CURSE AND A BLESSING. WHAT SORT OF CASUALTY AND SIZE OF SPILL SHOULD BE PLANNED FOR? ANY SPILL IN PRINCE WILLIAM SOUND IS MOST LIKELY TO RESULT FROM EITHER A COLLISION OR A STRANDING. THE RELATIVELY LOW LEVEL OF TRAFFIC, THE TRAFFIC SEPARATION SCHEME AND THE U.S. COAST GUARDS VESSEL TRAFFIC SERVICE ALL CONTRIBUTE TOWARD LOWERING THE POSSIBILITY OF A COLLISION. A STRANDING AS A RESULT OF THE TOTAL LOSS OF POWER OR STEERING, IS IN THE COMMITTEE'S VIEW MUCH THE MORE LIKELY EVENT TO TRIGGER A SPILL.

WHILE THE ISSUE OF WHETHER A SPILL IS MORE LIKELY TO OCCUR AS A RESULT OF EITHER A COLLISION OR STRANDING IS A VEXING ONE, IT IS QUITE CLEAR THAT A DIFFERENT TYPE OF CLEAN UP EQUIPMENT WOULD BE REQUIRED IN EITHER CASE.

IT IS NOT UNREASONABLE TO ASSUME THAT ANY COLLISION LIKELY TO RESULT IN AN OIL SPILL WOULD MOST PROBABLY OCCUR IN MID-CHANNEL AND, THEREFORE, BE IN RELATIVELY OPEN WATER. WHEREAS A STRANDING BY DEFINITION WOULD PROBABLY BE ON A LEE SHORE, WHERE EQUIPMENT DESIGNED PRINCIPALLY FOR OPEN WATER WOULD BE OF LIMITED VALUE. THEREFORE, THE MARINE SUBCOMMITTEE'S SECOND RECOMMENDATION SHOULD BE THAT ANY ADDITIONAL EQUIPMENT PURCHASED BY ALYESKA FOR THE PURPOSE OF ENHANCING SPILL RESPONSE AVAILABILITY IN PRINCE WILLIAM SOUND SHOULD BE OF THE TYPE BEST SUITED FOR NEAR SHORE AND BEACH OPERATIONS.

THE MARINE SUBCOMMITTEE'S THIRD RECOMMENDATION SHOULD BE THAT A BARGE (50-100 FEET) OUTFITTED WITH VARIOUS LENGTHS AND TYPE OF BOOM (INCLUDING OPEN WATER BOOM), SKIMMERS (LARGE, SMALL AND VISCOUS), CRANE AND WORKABOUTS BE ACQUIRED. DEPLOYMENT AND/OR PRE-STAGING OF THE BARGE ARE REALLY SEPARATE ISSUES, BUT ISSUES THAT SHOULD BE ADDRESSED AT THIS TIME IF A PURCHASED BARGE IS TO BE EFFECTIVE. OUR FOURTH RECOMMENDATION SHOULD BE THAT ALYESKA UNDERTAKE A STUDY OF THE BEST AND QUICKEST METHODS OF MOVING THE BARGE AROUND AND WHETHER THE BARGE SHOULD BE PRE-DEPLOYED IN A SAFE COVE SOMEWHERE BETWEEN ROCKY POINT AND THE NARROWS. THE STUDY SHOULD ALSO DETERMINE WHETHER OR NOT PERSONNEL FROM MIDDLE ROCK, INC. (THE PILOT BOAT SERVICE) COULD BE EFFECTIVELY AND ECONOMICALLY EMPLOYED IN MAINTAINING THE PRE-DEPLOYED BARGE.

I BELIEVE THE FOREGOING REPRESENTS AN ACCEPTABLE COMPROMISE OF THE SLIGHTLY DIFFERING VIEWS EXPRESSED BY THE TASK GROUP MEMBERS. THE OPERATIONS COMMITTEE IS DUE TO MEET ON JULY 6 AND THEREFORE I WOULD APPRECIATE YOUR ADVISING ME BY TELEX, COPIED TO THEO POLASEK (TELEX: 09025127 -- ANSWER BACK: TRANSPIPEAHG) AT ALYESKA. NO LATER THAN JULY 5 THAT YOUR COMPANY CAN SUPPORT ALL FIVE RECOMMENDATIONS.

CC: F. G. GARIBALDI
J. P. G. CROXSON

TO: JPM | NEW | SUN | ASD | GND
 FROM: [] [] [] [] []
 INFO: [] [] [] [] []
 JUN 20 1988
 T. L. POLANS
 [] [] [] [] []
 [] [] [] [] []

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1515 PDT 07/06/88

ROGER A. GALE
SOMIO OIL.
CLEVELAND, OHIO

MSG NBR 016

EXHIBIT G

REF: YOUR TELEX 8/53/88 - ALYESKA OIL SPILL EQUIPMENT

ARCO MARINE, INC. DOES NOT AGREE WITH THIS TELEX NOR DO WE
CONCUR THAT THIS REPRESENTS THE THOUGHTS OF THE SUB-
COMMITTEE.

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. THE DELAY IN PURCHASING
THE AODS PACK IS INEXCUSABLE; NO FURTHER APPROVAL WAS
REQUIRED.

THE OWNERS ALSO DIRECTED ALYESKA TO REVIEW ITS ADMINIS-
TRATIVE AND EQUIPMENT PLANS TO MEET THE INITIAL RESPONSE.
IN OUR OPINION THE ADMINISTRATIVE PLAN MEETS ALL CRITERIA
FOR A SUCCESSFUL CLEANUP. ON THE OTHER HAND, THE
FINDINGS WERE THAT SOME ADDITIONAL EQUIPMENT WAS NEEDED
TO MEET THE INITIAL NEEDS OF SPILL CLEANUP. IN PARTICULAR
ADDITIONAL LARGER WORK BOATS. ALYESKA HAS REVIEWED THEIR
EQUIPMENT NEEDS AND SUBMITTED A PROPOSAL. ARCO MARINE, INC.
SUPPORTS ALYESKA'S RECOMMENDATION AND NOT THOSE AS
OUTLINED IN THE TELEX.

STANLEY FACTOR,
VICE PRESIDENT, CHARTERING & EVALUATIONS
ARCO MARINE, INC.

CC: THEO POLASEK

ARCOMAR 8-LGB

TRANSP:FE AHG

cc
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NRN						Author
ENR						Copy Enroute Return

ACE 447588

04/11/91 13:23 2307
LLOYD B. HILLER
85527003
9
Native Village of Eyak
Box 1388
Cordova, Alaska 99574
April 11, 1991

Thomas A. Campbell
General Counsel
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Room 5816
14th Street and Constitutional Avenue N. W.
Washington, D. C. 20230

and

Barbara Herman
Attorney General Office
State of Alaska
1031 West 4th Avenue
Suite 200
Anchorage, Alaska 99501

The Native Village of Eyak comments for the record an objection to the proposed settlement between Exxon, et al, and the state and federal governments.

The proposed settlement is inappropriate as it did not allow for the communities directly affected and damaged by the Exxon Valdez Oil Spill an opportunity to assess their damages and to have access to the scientific data.

Individuals have communicated among themselves and to the appropriate agencies concerning the severity of the damages and continued damages to the sound and other oil spill areas. It has been viewed that upon report that the information was ignored, discounted, or lost. It has been a common feeling that the reports of damages would be compiled for public review and comment. It has been commonly understood that the federal and state governments would provide a method to properly and scientifically acquire the data for use in assessing the damage and future health of the sound.

This has not been so. With the proposed settlement the raw data and summary data needs to be fully released. This would confirm that what we saw, what we reported, and what we know has been made available for the public good.

The proposed settlement is improper. To address the affected areas concerning the natural resource damages and to ignore the valuable input from us is in violation of democracy. The fiduciary responsibility that the

governments so often refer to has been ignored for the past twenty years or more. We depended on our elected and appointed officials to protect our resources from exploitation; yet this settlement would imply that the greater offenders were our leadership and their appointed agents.

We believe in the democratic process; the governments are choosing to ignore this in the proposed settlement.

The proposed settlement is inadequate in scope and monetary value. The monies would only aid the tax status of Exxon, et al, and provide an inadequate government-wide source of funds. The oiled areas need specific relief.

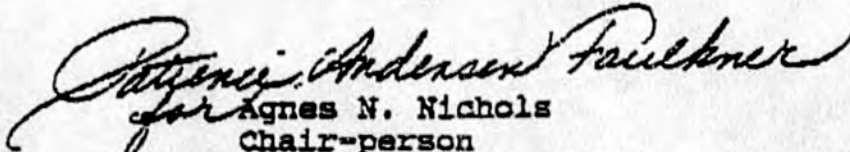
The scope of the proposed settlement is limited; it does not address the social, cultural, and community damages, nor does it recognize the need for remedies.

The natural resource damage value can eventually be quantified; yet the damage to the human element cannot. The disruption to our lives in 1989 is beyond description. It scared us and panicked the entire sound and oiled areas. The reaction of the controlling agencies (Exxon, etc., the state and federal governments) in who whom we'd placed our trust was appalling. They wielded their authority and violated our faith and trust in them. We looked to them for assistance and guidance to help us ease the pain and had discovered that it was only their own self-interests that they were perpetuating.

The agencies continued to abuse our faith in 1990; the 1991 proposed settlement confirms our worst fears: our interests, our lives and our well-being were cast aside in favor of Exxon's, the state and federal governments' economic gain.

We strongly oppose the settlement for the above stated reasons. We request to be part of the negotiating process now and in the future.

Sincerely,


for Agnes N. Nichols
Chair-person
Native Village of Eyak

10

Mary Malchoff
P.O. Box PGM
Port Graham, Alaska 99603

April 9, 1991

Barbara Herman
Oil Spill Litigation
Supervising Attorney
Attorney General's Office
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501

RECEIVED
APR 12 1991

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Dear Ms. Herman,

Why, couldn't have the U.S. Government & State of Alaska stood with us on our lawsuits- or even have come and said to us in open communication and say- We are going for a settlement with Exxon and we are not going to involve you and why? As a resident of Alaska and affected by the Exxon Oil Spill it really makes me wonder who we are and where do we stand, are we a part of the State and U.S. Government?

Oil Spill Settlement Monies:

Will all the monies be spent on studies that they won't released to the public? As a subsistence user we really do wonder if our food is safe if they won't release any studies.

I'm afraid the monies will be used to do studies and nothing will be done to clean the affected areas nor to restore the subsistence fish and foods.

Also something ought to be done to retract the maps that identify archeology sites on Native lands (corporation and allotments).

Will monies be set aside to help the affected areas with coping skills in crisis situations (big corporation takeover). Somehow trust levels need to be worked on.

Any monies that were collected on lands still pending ownership should be put in escrow.

Please don't isolate the villages and village corporations and native allotment owners for we are a part of the U.S. Government and State.

Sincerely,

Mary
Mary Malchoff, Resident

ACE 447739

JOHN D. KNODELL
617 BELLEVUE WAY S.E.
BELLEVUE, WA. 98004

April 9, 1991
RECEIVED
Department of Law

APR 12 1991

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Mr. Thomas A. Campbell
General Counsel, NOAA
Department of Commerce
14th Street + Constitution Avenue, Room 5816
Washington, D.C. 20230

Re: Exxon Settlement

Dear Mr. Campbell:

I retired from Exxon Corporation almost five years ago after 30 years of service. Exxon's immediate acceptance of responsibility for the Valdez spill and the vigorous and uncontrained way in which it undertook clean-up operations and voluntary payment of damages to injured claimants is characteristic of the company. It makes me quite proud that I was once part of the Exxon team.

This settlement is an outrageous response to Exxon's clean-up performance and voluntary settlement of damage claims. The criminal charges are devoid of merit and you and your colleagues know it. They were calculated to coerce Exxon to settle and, of course, they did. This is simply extortion by government, a shameful response to admirable action to rectify the results of human error.

cc: Ms. Barbara Herman
Alaska Attorney General's Office

Sincerely,
John D. Knodell

ACE 447109

12

CHIEF CLERK
PATRICIA S. WILSON
CHIEF CLERK
BARBARA L. CAVAS
JURIST STAFF
DIRECTOR/CHIEF COUNSEL
THOMAS D. HENCE

ALTON S. JONES, NORTH CAROLINA, CHAIRMAN
JERRY E. STUBBS, MASSACHUSETTS
LAWRENCE H. HARRIS, JR., KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
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JAMES M. FORD, MISSISSIPPI
JAMES M. TAYLOR, MISSISSIPPI
WILLIAM J. LUTHER, ALABAMA
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JOHN F. REED, RHODE ISLAND
WILLIAM J. JEFFERSON, LOUISIANA
WILLIAM F. FALCONER, ALABAMA

U.S. House of Representatives
Committee on

Merchant Marine and Fisheries

Room 1334, Longworth House Office Building
Washington, DC 20515-6230

ACE
COPY

April 12, 1991

FOR QUALITY
ORIGINAL

Dear Judge Holland:

We are writing to express our views regarding certain aspects of the proposed settlement of Federal and state civil claims arising from the EXXON VALDEZ oil spill.

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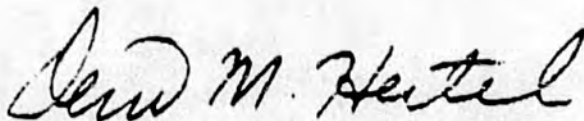
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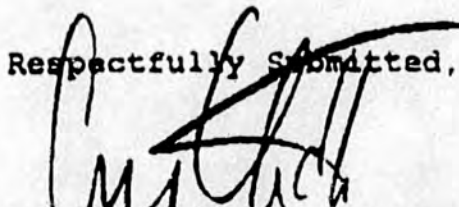
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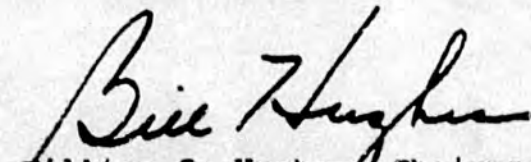
Respectfully Submitted,



Dennis M. Hertel, Chairman
Subcommittee on Oceanography,
Great Lakes and the Outer
Continental Shelf
Committee on Merchant Marine
and Fisheries



Gerry E. Studds, Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment
Committee on Merchant Marine
and Fisheries



William J. Hughes, Chairman
Subcommittee on Intellectual Property
and Judicial Administration
Committee on the Judiciary

The Honorable H. Russel Holland
U.S. District Judge
U.S. District Court
222 West 7th Avenue
Anchorage, Alaska 99513

ACE 1825783

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M. Fitzgerald-Jones
Oil Spill Section
Dept. of Law

1. **Celey, Jerry.** Letter dated 3/22/91. Addressed to Thomas Campbell, NOAA General Counsel, D.C.
2. **Gigler, Robert A.** Letter undated, received 3/26/91. Addressed to the Alaska Legislature.
3. **Martin, Tim.** Letter dated 3/27/91. Addressed to Judge Holland.
4. **Horowitz, Alan.** Letter dated 3/28/91. Addressed to Barbara Herman, Alaska Department of Law, and Thomas Campbell, U.S. Department of Commerce.
5. **Luttrell, W. Mark.** Letter dated 3/4/91. Addressed to Barbara Herman, Alaska Department of Law.
6. **American Institute of Professional Geologists, Dr. Robert B. Sanders, Legislative Affairs Committee, and Eric Opstad, President, Alaska Section.** Letter dated 3/21/91. Addressed to T. A. Campbell, NOAA.
7. **Beck, Michael E.** Letter dated 4/8/91. Addressed to Thomas Campbell, NOAA.
8. **Miller, George. U.S. House of Representatives, Vice Chairman, Committee on Interior and Insular Affairs.** Letter dated 4/8/91. Attached as exhibits: (A) letter dated 4/18/88 from W. D. Howitt, Valdez Marine Terminal Superintendent, Alyeska Pipeline Service Company (Alyeska); (B) letter dated 4/28/88 from W. D. Howitt, Valdez Marine Terminal Superintendent, Alyeska; (C) briefing document dated 4/6-7/88 by Theo L. Polasek, Vice President of Operations, Alyeska; (D) list of Alyeska oil spill cleanup equipment dated 3/22/88 by Jeff Shaw, ARCO; (E) document describing the Dynamic Inclined Plan Oil Vessel; (F) telex dated 6/30/88 to Theo Polasek, Alyeska from Roger A. Gale, Manager, Marine Operations, Sohio Oil, Cleveland; and (G) telex dated 7/6/88 to Roger A. Gale, Sohio Oil from Stanley Factor, Vice President, Chartering & Evaluations, ARCO Marine, Inc.
9. **The Native Village of Eyak. Agnes N. Nichols, Chair-person.** Letter dated 4/11/91. Addressed to Thomas A. Campbell, NOAA and Barbara Herman, Alaska Department of Law.
10. **Malchoff, Mary.** Letter dated 4/9/91. Addressed to Barbara Herman, Alaska Department of Law.
11. **Knodell, John D.** Letter dated 4/9/91. Addressed to Thomas A. Campbell, NOAA.

12. Hertel, Dennis M., Chairman, U.S. House of Representatives Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf, Committee on Merchant Marine and Fisheries; Studds, Gerry E., Chairman, Subcommittee of Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries; Hughes, William J., Chairman, Subcommittee on Intellectual Property and Judicial Administration, Committee on the Judiciary. Letter dated 4/12/91. Addressed to Judge Holland.

13. Parsons, Gail. Letter dated 4/12/91. Addressed to Judge Holland.

14. Comments of the Alaska Native Village Corporations and Regional Corporation Concerning the Proposed Settlement and Plea Agreements by Attorneys for Plaintiffs: Terrence Gargan, Hill Betts & Nash; Kenneth F. McCallion, Bernard Persky, James W. Johnson, Summit Rovins & Feldesman; Christopher B. Kende, Holtzman, Wise & Shepard; Samuel J. Fortier, Fortier & Mikko. Dated 4/12/91. Attached is The New York Times article dated 4/10/91 "U.S. Says Harm From Valdez Spill Is Much Worse Than Was Thought."

15. Viergutz, Herbert A. Letter dated 4/15/91. Addressed to Barbara Herman, Office of the Attorney General.

16. McMullen, Elenore. Chief, Port Graham Native Village Council. Letter dated 4/9/91. Letter addressed to Barbara Herman, Department of Law.

17. Mundy, Dave. Postcard postmarked 4/15/91. Addressed to Barbara Herman, Office of the Attorney General.

18. Werner, Holly L. Letter dated 4/14/91. Addressed to Barbara Herman, Office of the Attorney General.

19. McCowan, Brent W. Letter dated 4/12/91. Addressed to Barbara Herman, Office of the Attorney General.

20. Motion for Reformation and Stay of Implementation of Settlement and Request for Oral Hearing; Memorandum in Support of Motion for Reformation and Stay of Implementation of Settlement; and Proposed Order by attorneys for the native villages of Chenega Bay, Port Graham, English Bay, Larsen Bay and Karluk: Michael D. Hausfeld, Jerry S. Cohen and Gary E. Mason of Cohen, Milstein, Hausfeld & Toll; Lloyd B. Miller, Harry S. Sachse and Donald J. Simon of Sonosky, Chambers, Sasche, Miller & Munson. Dated 4/16/91. Filed in U.S. District Court for the District of Columbia, Civil Action No. 91-0483 SS (The Native Village of Chenega Bay, et al., v. Manuel Lujan, Jr., et al.) and Civil Action No. 91-0484 SS (Chenega Corporation, et al., v. Manuel Lujan, Jr., et al.) Attachments include: Plea Agreement in U.S.

v. Exxon Shipping Company and Exxon Corporation dated 3/13/91 (Exhibit A); Summary of Effects of the Exxon Valdez Oil Spill of Natural Resources and Archaeological Resources; March 1991 (Exhibit B); Subsistence Uses of Fish and Wildlife in 15 Alutiig Villages after the Exxon Valdez Oil Spill by James A. Fall, Division of Subsistence, Alaska Department of Fish and Game dated 3/23/91 (Exhibit C).

21. **Chickaloon Native Village. David Harrison, Tribal Administrator and Chief Fish and Game Officer.** Letter dated 4/15/91. Addressed to Judge Holland.

22. **Moriarty, Michele.** Postcard postmarked 4/15/91. Addressed to Barbara Herman.

23. **Jones, Julie.** Postcard postmarked 4/15/91. Addressed to Barbara Herman.

24. **Wysong, Richard J.** Letter dated 4/9/91. Addressed to Oil Spill Litigation.

25. **Workman, William.** Professor of Anthropology, University of Alaska-Anchorage. Letter dated 4/14/91. Addressed to Barbara Herman, Attorney General's Office.

26. **Janka, David P.** Letter dated 4/16/91. Addressed to Barbara Herman, Office of the Attorney General.

27. **Fortier, Samuel J. Fortier & Mikko, P.C. Attorneys for Chenega Corporation, Port Graham Corporation, and English Bay Corporation.** Letter dated 4/11/91. Addressed to Thomas Campbell, NOAA's Office of General Counsel.

28. **Sonneman, Joseph A. Law Office of Joseph A. Sonneman, Ph.D., Esq.** Letter dated 4/16/91. Addressed to Thomas A. Campbell, NOAA's General Counsel and to Barbara Herman, Attorney General's Office. Attached is A Partial 1991 Chronology of Exxon Settlement Events by Joe Sonneman dated 4/15/91.

29. **Schleich, Ley.** Letter dated 4/18/91. Addressed to Barbara Herman, Office of the Attorney General.

30. **Walker, Tara, Dr. Alaska Pacific University.** Letter dated 4/16/91. Addressed to Barbara Herman.

31. **Fisher, James E.** Letter dated 4/14/91. Addressed to Barbara Herman, Alaska Attorney General.

32. **Holt, Kathleen.** Letter dated 4/15/91. Addressed to Barbara Herman, Office of the Attorney General.

33. **Mobley, Charles M.** Letter dated 4/15/91. Addressed to Barbara Herman, Attorney General's Office.

34. **Pavia, Clare.** Letter dated 4/28/91. Addressed to Barbara Herman.

35. **The Society for American Archaeology. Jeremy A. Sabloff, President and Prudence Rice, President Elect.** Letter dated 4/17/91. Addressed to Thomas Campbell, General Counsel, NOAA.

36. **Alaska Anthropological Association. John P. Cook, President.** Letter dated 4/15/91. Addressed to Thomas Campbell, General Counsel, NOAA.

37. **Raynor, Ted.** Letter and attached petition received 4/18/91. Addressed to Barbara Herman.

38. **Parker, Geoffrey Y., Adler, Jameson & Claraval.** Letter dated 4/18/91. Addressed to Thomas Campbell of NOAA and Barbara Herman. Enclosed is letter dated 4/11/91 to Judge Holland from Parker on behalf of his clients, the Alaska Sport Fishing Association and named individuals who are recreational plaintiffs, the Area Business Class, and approximately 500 other claimants in the oil spill civil litigation.

39. **Comments of the Chenega Corporation, Port Graham Corporation, and English Bay Corporation** by Samuel J. Fortier, Esq., Fortier & Mikko, P.C. Dated 4/16/91. Attachments include numerous letters from individuals in these native corporations.

40. **Oesting, David and Cohen, Jerry, Davis Wright Tremaine.** Letter dated 4/18/91. Addressed to Thomas Campbell, General Counsel, NOAA, and Barbara Herman. Formal comments attached, with four supporting affidavits and letter dated 4/8 from Congressman George Miller to Judges Holland and Sporkin.

41. **Grisco, Mary, Alaska Regional Director, National Parks and Conservation Association.** Letter dated 4/17/91. Addressed to Thomas Campbell, General Counsel, NOAA, with copy to Barbara Herman.

42. **Martin, Tim.** Letter/memorandum dated 4/18/91. Addressed to Judge H. Russel Holland, with copies to Barbara Herman, Dick Eliason, Max Guenberg and "others." Certified copies of Exxon Valdez load summaries and load details attached.

43. **Response of Alyeska Pipeline Service Company to Public Comments of Congressman George Miller** by Charles P. Flynn of Burr, Pease & Kurtz and Ronald L. Olson and Gregory P. Stone of Munger, Tolles & Olson. Filed in U.S. District Court 4/18/91. Served on Barbara Herman for the State of Alaska; Douglas

Serdahely, Bogle & Gates, for Exxon; and Joseph Bottini, U.S. District Attorney.

44. Totemoff, Darrell, Administrator, Chenega Bay I.R.A. Council. Letter dated 4/18/91. Addressed to Barbara Herman.

45. Leghorn, Ken S., Alaska Discovery, Inc. Letter dated 4/19/91. Addressed to Barbara Herman, with copy to Thomas Campbell, NOAA General Counsel.

46. Pesticide Action Network; International Indian Treaty Council; Abalone Alliance; Coalition For Our Earth; West County Toxics Coalition; South and Meso American Indian Center, Alaska Action Group. Comments submitted by fax 4/18/91. Addressed to Judge Holland and Judge Sporkin.

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JUDITH STAFF
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U.S. House of Representatives
Committee on
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Room 1334, Longworth House Office Building
Washington, DC 20515-6230

ACE
COPY

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FOR QUALITY
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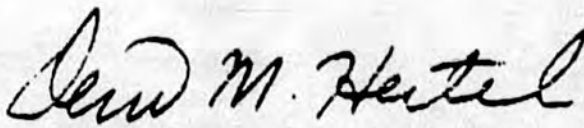
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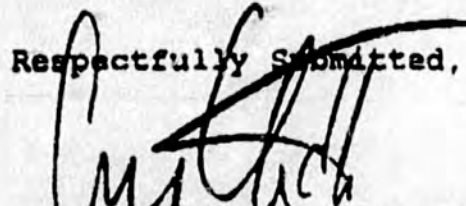
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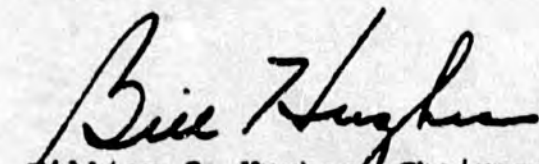
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U.S. District Judge
U.S. District Court
222 West 7th Avenue
Anchorage, Alaska 99513

ACE 1825783

Enclosures

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- ☒ Sarah McCracken (SEM)
- ☒ Les Gara (LSG)
- ☐ Nancy Nolan (NJN)
- ☐ Alex Swiderski (AMS)
- ☐ Kevin McCoy (KFM)
- ☐ Paul Adelman (PIA)
- ☐ Mary Fitzgerald-Jones (MFJ)
- ☐ Bonnie Bucknam (BMB)
- ☐ Deb Small (DGS)
- ☐ Kathy Crawford (KAC)
- ☐ Mary Deaver (MMD)
- ☐ bonita nipper (bkn)

Consulting Attorneys

- ☐ Rob Johnson (RMJ)

Anchorage PTSGE

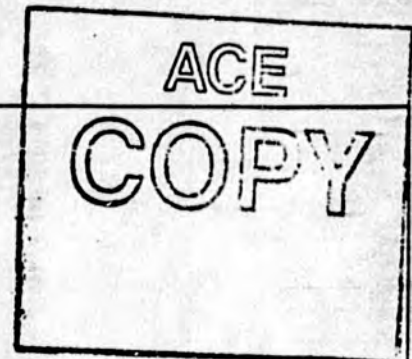
- ☒ Joseph Donohue (JKD)
- ☒ Mark Wittow (MHW)
- ☐ Averil Lerman (AXL)
- ☐ Martha Dawson (MJD)
- ☐ Barbara Hendricksen (BLH)
- ☐ Mariko Yatsu (HMY)
- ☐ Kay Rawlings (KJR)
- ☐ Debbie Hennigh (DKH)
- ☐ Dana Gran (DMG)
- ☐ _____

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- ☐ _____
- ☐ James Sherman (JDS)-Bellevue

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NOTES

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12 April 1991

PO Box 2397
Homer, Alaska 99603

Judge H. Russel Holland
c/o Clerk of the Court
Room 261 U.S. Dist. Court
222 W. 7th Avenue
Anchorage, Alaska

13

RECEIVED

Department of Law

APR 15 1991

Office of the Attorney General

Anchorage

Alaska

Dear Judge Holland:

In the wake of the Exxon Valdez Oil Spill there has been much suffering. This suffering comes in many forms, but it has been here with us every day since that terrible tragedy...that care-less terrible tragedy! The pain of watching so many beautiful creatures endure unspeakable deaths, the anger and frustration of participating in a clean-up effort with no equipment and the fear that our livelihood of fishing has been severely damaged these are but a few of our continuing nightmares.

With these things in mind I request that you suspend a determination until the scientific and economic data has been released and the public and legislature have the opportunity to review it.

This issue is gravely important! I urge you to allow it to be done with great care and consideration.

Sincerely,

Gail Parsons

Gail Parsons

cc: Barbara Herman Office of the Attorney General
Thomas A. Campbell General Council, NOAA
Senator Paul Fischer
Rep. Mike Navarre
Rep. Gail Phillips

ACE 416988

G. Parsons
Box 2397
Homer, AK 99603



Barbara Herman
Office of Attorney General
State of Alaska
1031 W. 4th Ave. #200
Anchorage, AK 99501

ACE 416989

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Professional Corporations

14

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Department of Law

APR 18 1991

April 16, 1991

Office of the Attorney General

DIRECTOR'S OFFICE

ANCHORAGE BRANCH

(212) 702-2328

Thomas A. Campbell, General Counsel
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Room 5816
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

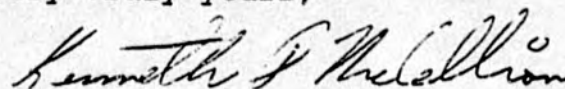
Barbara Herman
Attorney General's Office, State of Alaska
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501

Re: Settlement Agreement Concerning
The Exxon Valdez Oil Spill

Dear Mr. Campbell and Ms. Herman:

Pursuant to 56 Fed. Reg. 11636 (March 19, 1991), enclosed are the comments of Chugach Alaska Corporation, Chenaga Corporation, Port Graham Corporation, English Bay Corporation, Tatitlek Corporation, and The Eyak Corporation concerning the proposed Settlement Agreement.

Very truly yours,



Kenneth F. McCallion

445 Park Avenue
New York 10022-2641
212-702-2200

Facsimile
212-702-2295/2290
Cable LAWPEOPLE
Telex 14-8376

KFM/bp
Enclosures
f:\docs\bp\olotni\exxon.let

ACE 417374

**COMMENTS OF THE ALASKA NATIVE VILLAGE CORPORATIONS
AND REGIONAL CORPORATION CONCERNING
THE PROPOSED SETTLEMENT AND PLEA AGREEMENTS**

The Alaska Native Village Corporations and Regional Corporation listed below, by and through their counsel, submit the following comments concerning the Plea Agreement, Agreement and Consent Decree, and Memorandum of Agreement and Consent Decree, dated March 12, 1991, made and submitted by the United States of America and the State of Alaska (collectively, the "Governments"), Exxon Corporation and Exxon Shipping Company (collectively, "Exxon"), and Exxon Pipeline Company ("Exxon Pipeline") in United States of America v. Exxon Corp. and State of Alaska v. Exxon Corp., Civ. Nos. A91081, A91082 and A91083 (D. Alaska).

These comments are submitted on behalf of the Chugach Alaska Corporation, which is an Alaska Native Regional Corporation, and the Tatitlek Corporation, Chenega Corporation, The Eyak Corporation, Port Graham Corporation, and English Bay Corporation, which are Alaska Native Village Corporations (collectively, the "Alaska Native Corporations"). The Alaska Native Corporations are plaintiffs in federal and state suits against Exxon, Exxon Pipeline and others, resulting from injuries caused by or arising from the grounding of the T/V EXXON VALDEZ on March 23-24, 1989 and discharge of approximately 11 million gallons of crude oil into Prince William Sound (the "Oil Spill"). These Alaska Native Corporations are the largest landowners, apart from the State of Alaska and United States, adversely impacted by the Oil Spill.

The following comments derive from, and are based on, the Alaska Native Corporations' unique property interests in and to lands which have been validly selected by them under the Alaska Native Claims Settlement Act, 43 U.S.C. §1601 et seq. (1990) ("ANCSA"). In connection with the settlement by the Governments, Exxon and Exxon Shipping of claims relating to such lands arising from the Oil Spill, it appears that these parties have purported to encumber, compromise and settle certain of the Alaska Native Corporations' claims, or portions of such claims, arising from the Oil Spill, in direct contravention of federal law and applicable regulations and the United States' representations to Judge Stanley Sporkin of the United States District Court for the District of Columbia.

The unique claims of the Alaska Native Corporations are evidenced by and reflected in: Pub. L. 94-204, 89 Stat. 1146, as amended, which provides that any proceeds of the settlement of claims, including claims arising from trespass and loss of wildlife, related to land withdrawn for selection by Alaska Native Corporations, must be held in escrow by the Secretary of Interior for the Alaska Native Corporations until the land is conveyed to the corporation; Pub. L. 101-380, section 8301, August 18, 1990, 104 Stat. 572, which demonstrates Congress' intent to provide that, for purposes of asserting or recovering for claims arising from the Oil Spill, the Alaska Native Corporations may elect to have all right, title and interest in lands selected by them to be deemed to have been vested in said corporations upon their irrevocable election, whether or not title has passed or the land has been formally conveyed; and 43 C.F.R. §2650, et seq., which provides that the Alaska

Native Corporations' views shall be obtained and considered prior to the execution of any contract, including settlement contracts, relating to such lands.

The following comments seek revisions of or amendments to the settlement agreements in order to cure the violations of federal law and regulations discussed herein.

1. Inclusion of Exxon Pipeline Company

The Agreement and Consent Decree is made and entered into by the Governments and, among others, Exxon Pipeline (Agreement, p. 3). The parties to the Agreement subsequently acknowledge that Exxon Pipeline has a 20.34% participation in Alyeska Pipeline Service Company ("Alyeska") (Agreement ¶ 23, p. 20). However, the Agreement is silent as to what effect, if any, Exxon Pipeline's execution of the settlement will have on Alyeska or on claims against Alyeska in pending lawsuits against Alyeska. Since the Governments excluded Alyeska from the complaint and subsequent plea agreement and settlement papers, the issue merits clarification by the parties.

2. The Definitions of Natural Resources and Natural Resource Damages Encompass Plaintiffs' Claims

The definitions concerning "natural resources" and "natural resource damages" (Agreement ¶ 6(c) and (d), p. 5; MOA ¶ II(F) and (G), p. 6-7) specifically include resources "held in trust by" the Governments, and damages obtained by the Governments in their respective capacity as Trustees of selected lands in interim jurisdiction. For example, the definition clearly encompasses lands heretofore

selected by Port Graham Corporation and English Bay Corporation in the Kenai Fjords and lands selected by Chenega Corporation but not conveyed in the Chugach National Forest. In sum, any natural resource damage recoveries obtained by the Governments relate, in part, to lands and resources legally and equitably owned by the Alaska Native Corporations. Accordingly, contrary to the Governments' repeated representations, the settlement purports to settle claims of the Alaska Native Corporations.

3. The Exclusion of Alaska Native Corporations

Both the Agreement and Memorandum provide that the settlement shall not affect or impair "the rights and obligations, if any, of Alaska Native villages to act as trustees for the purpose of asserting" claims related to natural resource damages to village lands. (Agreement ¶ 13(b), p. 15; MOA ¶ III(c)(1), p. 9). (emphasis added). No explanation is provided as to why the settlement has not similarly excluded the claims of the Alaska Native Corporations. There is a significant legal difference between tribal village organizations and ANCSA Corporations.

Concomitantly, the following subparagraph of the Memorandum (MOA ¶ III(c)(2), p. 9), appears to exclude from the settlement Alaska Native Corporations' claims for natural resources damages for lands not otherwise in interim jurisdiction. However, the Agreement, even if construed most favorably, clearly affects the Alaska Native Corporations' claims for natural resource damages for lands in interim jurisdiction. Simply stated, the Alaskan Villages, as referred to in the Agreement and

MOA, have no legal or other right to act as trustees for natural resource damages to lands in interim jurisdiction; such rights are vested solely in the Alaska Native Corporations created under ANCSA.

Accordingly, the Agreement and MOA must be amended to include a clear statement by the Governments that the natural resource damages claims of the Alaska Native Corporations remain unaffected by this settlement whether or not such claims affect lands in interim jurisdiction.

4. Scientific Studies

The MOA (¶ II, p. 13) provides that the Governments "shall continue to work cooperatively to conduct all appropriate scientific studies relating to the Oil Spill, including specifically the scientific studies approved by the Trustees for the 1991 field season." This language is deficient for two reasons.

First, the Governments should be required to share with the Alaska Native Corporations all scientific and evaluative material that, at minimum, relate to Alaska Native Corporation's lands in the Prince William Sound area. Indeed, the Alaska Native Corporations provided the Governments with access to their lands in order to permit such vital studies affecting their lands to be conducted. Since the Corporations have previously been denied access to this material, they are unable to assess whether or not the settlement contracts with regard to lands, either owned by the Alaska Native Corporations or in interim jurisdiction, are fair and reasonable. For example, chemical fertilizers were used on lands either owned by Chenega Corporation or within the interim jurisdiction of the United States in Prince William

Sound; however, the National Park Service refused to permit bioremediation agents on land still within the interim jurisdiction of the Park Service. Land managers from Port Graham and English Bay were not allowed access for the purposes of the survey and study. There is, therefore, a significant uncertainty as to how the cleanup activities in the past or restoration activities in the future will be handled in the Kenai Fjords selection area. The critical importance to the Alaska Native Corporations of obtaining this information is graphically highlighted by the Government's release of summaries of the findings of these scientific studies on April 9, 1991, as reflected in a front-page article in The New York Times, a copy of which is attached. In addition, the Governments should be required to release this information in fulfillment of their duties and obligations to the Alaska Native Corporations, as set forth in Federal law and regulations, as Trustees of their lands.

Second, this general provision does not explicitly require the Governments to continue funding all scientific studies now underway. Such continuity of funding is important in order to fully assess the extent and nature of damages to the natural resources.

5. Allocation of Settlement Monies in General

The MOA does not require the Governments to allocate the monies relating to Alaska Native Corporations' lands, nor are they obligated to appropriate the monies in any given time period. (MOA ¶ V (D)).

6. Allocation of Monies Held in Trust for the
Native Village and Regional Corporations

The Agreement and MOA provide that the Governments shall jointly use the settlement monies "for purposes of restoring, replacing, enhancing, rehabilitating or otherwise acquiring the equivalent of natural resources injured as a result of this oil spill." (MOA ¶ V(A), p. 12). However, the federal government is purporting to settle rights and interests of the Alaska Native Corporations with regard to natural resources damages with respect to Alaska Native Corporations' lands still in interim jurisdiction without setting up or in any way referring to any escrow provisions. Thus, this portion of the settlement plainly and unmistakably violates 43 CFR 2650.1. See Pub. L. 94-204, as amended by Pub. L. 96-487; Pub. L. 99-396, Sec. 22, and Pub. L. 100-581, which provides, in part:

During the period of withdrawal for selection pursuant to the Settlement Act, any and all proceeds derived from contracts . . . , or from trespass occurring after the date of withdrawal of the lands for selection, pertaining to lands or resources of lands. . . shall be deposited into an escrow account which shall be held by the Secretary until lands selected pursuant to that Act have been conveyed to the selecting Corporation. . . .

Accordingly, the settlement must establish a mechanism pursuant to which portions of the settlement funds to be received shall be allocated to Alaska Native Corporations' lands which have been or will be withdrawn for selection by them. After such funds are allocated, appropriate escrow arrangements, in conformity with applicable federal regulations, should be made for the benefit of the Alaska Native Corporations.

7. Public Participation

The MOA provides that the "Trustees shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group to advise the Trustees with respect to the matters" concerning injury assessment, restoration activities, or other natural resource damage recoveries obtained by the Government. Again, this provision ignores the specific recoveries obtained by the Government as Trustees for the Alaska Native Corporations' lands in interim jurisdiction. Federal law and regulations require the involvement and input of the Alaska Native Corporations in the allocation and use of these recoveries affecting lands in which they have such a vital property interest. Treating them like any other member of the public is not only unfair and unjust, it is patently unlawful.

8. Covenants Not to Sue

The MOA provides, in the provisions concerning Covenants Not to Sue (MOA ¶ VIII(B), p. 14-15), that the State of Alaska acts as trustee of resources of lands in interim jurisdiction. The purported representation violates ANSCA and is otherwise legally unauthorized.

9. Judicial Review Provisions

The MOA provides that it "creates no rights of action on the part of any persons not signatory to this MOA and shall not... be subject to judicial review." (MOA ¶ XII, p. 18). This provision is inappropriate to the extent it purports to bind the Alaska Native Corporations and to foreclose their right to seek appropriate legal

redress, including judicial review. Moreover, since the settlement purports to settle, compromise and otherwise encumber valuable legal rights of non-parties (i.e., the Alaska Native Corporations), it raises serious constitutional questions which amply justify searching judicial scrutiny.

Dated: New York, New York
April 18, 1991

Attorneys for Plaintiffs:

Terence Gargan
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New York, NY 10048

Kenneth F. McCallion
Bernard Persky
James W. Johnson
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New York, NY 10022

Christopher B. Kende
HOLTZMANN, WISE & SHEPARD
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New York, NY 10151

Timothy J. Petumenos
BIRCH, HORTON, BITTNER & CHEROT
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Anchorage, Alaska 99501

Samuel J. Fortier
FORTIER & MIKKO
600 International Airport Rd.
Suite 201
Anchorage, AK 99518

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Barbara Herman
Attorney General's Office, State of
Alaska
1031 West 4th Ave.; Suite 200
Release No. **Anchorage, Alaska 99501**

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DECLARED VALUE																				
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ACE 417384

See Reverse Side For Additional Information

GENEV I ETTEE

15

HERBERT A. VIERGUTZ

Post Office Box 201522
Anchorage, Alaska 99520
(907) 276-8010

DEF

'91 APR 16 12:36

April 15, 1991

ATTORNEY
ANCHORAGE

OFFICE

Barbara Herman
Office of the Attorney General
State of Alaska
1031 W. 4th Avenue # 200
Anchorage, Alaska 99501

Re: Oil Spill Settlement, et al.

Dear Ms. Herman:

It is clearly my position that the legislature should pass a resolution requiring release of the State's economic and scientific data regarding this spill which to date has been held as privileged. We the citizens clearly have a right to such information.

Secondly, the settlement is of no consequence to Exxon financially and is a very poor deal for the State of Alaska. It should be rejected. More monies should be obtained.

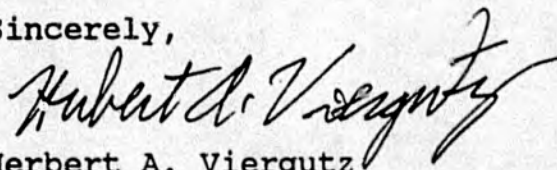
Clear opportunities for public participation in determining how additional settlement monies shall be spent should be offered. A legislatively appointed public advisory group with members from the environmental community and spill affected communities should participate.

Additionally, money should be spent on:

1. Buy back of timber rights along spill affected coast lines to prevent further damage;
2. Restoration activities; and,
3. Ongoing studies in the Sound.

Thank you for taking the time to consider this matter.

Sincerely,



Herbert A. Viergutz

HAV/njd

ACE 447131



BARBARA HERMAN
OFFICE OF THE ATTY GENERAL
STATE OF ALASKA
1031 W 4TH AVE #200
ANCHORAGE AK 99501

ACE 447132

16
Elenore McMullen, Chief
Port Graham Village Council
P.O. Box PGM
Port Graham, Alaska 99603

DEPT. OF THE INTERIOR
ALASKA

April 9, 1991

'91 APR 16 PM 2:31

ATTORNEY GENERAL'S OFFICE
ANCHORAGE, ALASKA

Barbara Herman
Oil Spill Litigation
Supervising Attorney
Attorney General's Office
1031 W. 4th Avenue Suite 200
Anchorage, Alaska 99501

Dear Ms. Herman,

The Village Council members made up of five (5) Alaskan Natives who are subsistence users and represent all the Native subsistence users of our village.

We're concerned about the inadequacy of the \$900 million when paid over time, we're also concerned about the lack of public disclosure of the scientific data and economic studies to help us and help the judge determine the fairness of the settlement.

We as native subsistence users who were impacted by the disaster are not guaranteed involvement in the restoration efforts which will affect the villages more than anyone else.

The Federal Government has horribly failed us as Native Americans. The Federal Government as our trustee has not protected our interests by failing to include us in the settlement process. The State has also let us down by not protecting the victims of the Exxon Oil Spill.

The unnecessary criticism by the State & Federal Governments in the consent decree of our legal right to sue for natural resource damages should be taken out. Also we are concerned the settlement is really "hush money" if all scientific studies are held back and the true facts hidden for many years from us and the public, if not forever.

The lack of any due process protection in decisions regarding how restoration funds are spent such as notice and comment rules and the lack of any clear mechanism for members of the public to appeal the six trustees' restoration decisions is another major problem.

We object to the inadequacy of the 100 million dollars reopener provision to cover damages discovered years from now.

We feel very strongly that we as subsistence Alaskan natives have been purposely omitted and neglected by our trustees in protecting our interests. Sincerely hoping reconsideration will be made.

Yours Truly,

Elenore McMullen
Elenore McMullen, Chief



Port Graham Village Council

PORT GRAHAM, ALASKA 99803

907-284-2227

Barba
Oil S
Super
Attor
1031
Ancho

CERTIFIED

P 991 804 634

MAIL



ra Herman
pill Litigation
vising Attorney
nev General's Office
W. 4th Avenue., Suite 200
rage, Alaska 99501

ACE 447130

Dear Ms. Herman,

I am writing to you concerning the proposed settlement over the Exxon Valdez oil spill. I am outraged that the spill data has not been released. The Legislature must pass a resolution requiring release of the state's economic and scientific data. There must also be clear opportunities for public participation in determining how settlement monies should be spent. This should include a legislative appointed public advisory group with members from the environmental community and spill affected communities whose comments legally bind the Trustees Council. The money should be spent on: buy back of timber rights along spill affected coastlines to prevent further damage; restoration activities; and ongoing studies in the Sound.

Judge Holland should suspend a determination on the settlement until the scientific data has been released and the public and the legislature have had opportunity to review it.

ACE 447127

Sincerely,



DAVE MUNDY
MC 64 Box 26
COOPER LANDING, AK
99572



Barbara Herman
Office of the Attorney General
State of Alaska
1031 W. 4th Ave.
Anchorage, AK 99501

APR 16 AM 45

DEPARTMENT OF LAW

1ACE 447128

18

April 14, 1991

DEF

W

'91 APR 16 P12:42

Ms. Barbara Herman
Office of the Attorney General
State of Alaska
1031 West 4th Avenue #200
Anchorage, AK 99501

ATTORNEY GENERAL'S OFFICE
ANCHORAGE

RE: Exxon Valdez Settlement

Dear Ms. Herman:

I have respectfully submitted a request to Judge Russell Holland asking for consideration in suspending a determination on the Exxon Valdez Settlement until scientific and economic data has been released and the public and the legislature have had an opportunity to review it. I am not at all convinced that the acceptance of this settlement will benefit the state and people of Alaska.

This is a precedent setting case and we the people need time to make the right decision. With all the catastrophic pollution problems today, a message needs to be sent to the polluters to clean up their act and prevent spills.

Sincerely,

Holly L. Warner

Holly L. Warner

1500 Russian Jack Dr. #40
Anchorage, AK 99508



Ms. Barbara Hernan
Office of the Attorney General
State of Alaska
1031 W. 4th Ave. #200
Anchorage AK 99501

ACE 1286642

Brent W. McCowan
560 N. Gower St.
Los Angeles, CA 90004

April 12, 1991

Barbara Herman
Office of the Attorney General
State of Alaska
1031 W. 4th Ave #200
Anchorage, Alaska 99501

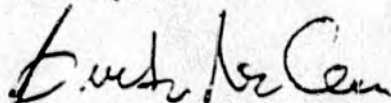
Dear Office of the Attorney General,

I understand that the state of Alaska has refused to release scientific and economic damage information regarding the Exxon oil spill in Prince William Sound which would provide key answers for a comprehensive public evaluation of the problem. The withholding of any information to the concerned public about a public matter is not only unwise, but irresponsible if that matter were to have public repercussions in the future. It remains good business and political sense to involve well-informed public participation in such grave and far reaching matters.

Therefore I call for a public advisory group with members from the environmental community and spill affected communities to participate in discussions with the proposed Trustees Council to insure the proper spending of settlement monies. It is important that any determination on the settlement be suspended until the scientific data has been released and the public and the legislature have had adequate time to review it.

You have an opportunity to insure that the state of Alaska does not fall victim to the same downturns that have affected other states in the lower forty-eight. Please take the time to make the right decisions.

Sincerely,



Brent W. McCowan

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'91 APR 17 A9:41

ATTORNEY GENERAL'S OFFICE
ANCHORAGE, ALASKA

ROCKET HOUSE

Barbara Herman
Office of the
Attorney General
State of Alaska

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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APR 17 1991

THE NATIVE VILLAGE OF
CHENEGA BAY, et al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et al.,

Defendants.

Civil Action No. 91-0483 SS

Office of the Attorney General
Anchorage, Alaska
Anchorage, Alaska

CHENEGA CORPORATION, et al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et al.,

Defendants.

Civil Action No. 91-0484 SS

MOTION FOR REFORMATION AND STAY
OF IMPLEMENTATION OF SETTLEMENT
AND REQUEST FOR ORAL HEARING

Plaintiffs The Native Villages of Chenega Bay, Port Graham, English Bay, Larsen Bay and Karluk (the "Alaska Native Class"), by their undersigned counsel, hereby move for reformation and stay of implementation of the settlement between the United States, the State of Alaska, Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company in connection with natural resource damages claims arising from the Exxon Valdez oil spill.

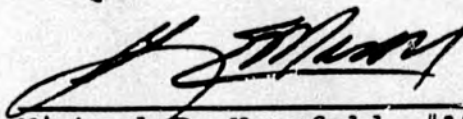
In support of its motion, the Alaska Native Class states that the Defendants United States and State of Alaska have failed

to adhere to representations given to the Court that the settlement would not impair plaintiffs' right to subsistence and their ability to prosecute fully their lawsuits against Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company and Alyeska Pipeline Service Company.

This motion is based upon the annexed Memorandum In Support Of Motion For Reformation And Stay Of Implementation Of Settlement.

Pursuant to Local Rule 108(f), the Alaska Native Class requests an oral hearing on this motion.

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Native Class

DATED: April 16, 1991
Washington, D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NATIVE VILLAGE OF
CHENEGA BAY, et al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et al.,

Defendants.

Civil Action No. 91-0483 SS

CHENEGA CORPORATION, et al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et al.,

Defendants.

Civil Action No. 91-0484 SS

MEMORANDUM IN SUPPORT OF MOTION FOR
REFORMATION AND STAY OF IMPLEMENTATION OF SETTLEMENT

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I. INTRODUCTION

On March 12, 1991, the United States and the State of Alaska settled their claims for natural resource damages against Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company (collectively, "Exxon"). The settlement has three components. First, the State and the United States entered into an Agreement and Consent Decree ("Agreement") with Exxon whereby the governments would receive payments totalling \$900,000,000 for settlement of civil claims for damages to natural resources caused by the Exxon Valdez oil spill. Second, the United States and the State entered into a separate settlement in connection with natural resource damages, embodied in a proposed Memorandum of Agreement and Consent Decree ("MOA").¹ Third, the United States entered into a Plea Agreement with Exxon Corporation and Exxon Shipping Company whereby the defendants were fined \$100 million.²

Plaintiffs The Native Villages of Chenega Bay, Port Graham, English Bay, Larsen Bay and Karluk (hereinafter referred to as "Alaska Native Class," "Alaska Natives," or "Native Villages") do not bring this Motion to upset the settlements between the United States, Alaska and Exxon. The Alaska Native Class seeks only to ensure that the proposed settlement, as reduced to writing in the

¹The Agreement and the MOA are attached to federal defendants' Motion To Transfer as Exh. 3 and 5, respectively.

²The Plea Agreement is attached hereto as Exh. A.

Agreement and MOA,³ does not conflict with or contradict the rights of the Alaska Natives to subsistence.⁴

II. PROCEDURAL BACKGROUND

On March 5, 1991, the Alaska Native Class filed suit seeking to enjoin the defendants from entering into any agreement with Exxon and Alyeska Pipeline Service Company resolving civil claims arising from the Exxon Valdez oil spill. The suit sought to enjoin defendants from in any way encumbering or disposing of the Alaska Natives' claims arising from the oil spill.⁵ On March 7, 1991, the Alaska Natives filed an amended complaint which made clear that the plaintiffs in this matter are the Alaska Native Class certified by the Superior Court for the State of Alaska by Judge Brian Shortell on February 14, 1991, in Pretrial Order No. 22, Exxon Valdez Exxon Valdez Oil Spill Litigation, Case No. 3AN-89-25333 Civil (Consolidated) (Alaska Sup. Ct.) (see ¶16 of

³The Alaska Native Class will submit this Memorandum as a public comment to both the Agreement and the MOA in accordance with 56 Fed. Reg. 11,636 (Mar. 19, 1991) and 56 Fed. Reg. 11,642 (Mar. 19, 1991).

⁴As used herein, the word "subsistence" refers to the hunting, fishing and gathering-based culture upon which the Alaska Native Class has survived for thousands of years.

⁵On March 6, 1991, Plaintiffs Chenega Corporation and other native corporations ("Native Corporations") filed suit seeking the same preliminary injunctive relief. This Motion, however, is made solely on behalf of the Alaska Native Class.

Amended Complaint).⁶

On March 11, 1991, Judge Sporkin granted the Alaska Natives' motion for a temporary restraining order. On March 12, 1991, the Court dissolved the temporary restraining order and denied plaintiffs' motions for a preliminary injunction. The Court based its decision upon the defendants' representation that "resolution of [the United States'] natural resource damages should not impair rights or claims of third parties," which the Court took to mean that:

after the settlement agreement has been executed, the plaintiffs will be able to prosecute fully the suits they have initiated against Exxon and Alyeska just as if no settlement agreement existed-[and] that Exxon and Alyeska may be liable to the plaintiffs for damages to natural resources and/or lands they have an interest in, even if it is claimed the same natural resource and/or lands are covered by the settlement agreement among the defendants and Exxon and Alyeska.

March 12 Order at 2. The Court retained jurisdiction over this litigation "to ensure that the defendants' representations are carried out so that plaintiffs' rights are protected." *Id.* at 3.

Now that the settlement has been reduced to writing, it is evident that the United States and Alaska's settlement with Exxon and the United States and Alaska's settlement with each other do impair the rights of the Alaska Natives and their ability to litigate or settle their claims. The language of the settlement papers, when read as a whole, violates the defendants'

⁶The District Court for the District of Alaska has decided not to certify any classes at this time and has directed all action to first proceed as claims against the Trans-Alaska Pipeline System Liability Fund.

representations. The papers are replete with language that will most certainly be relied upon by Exxon to argue denial of the Alaska Native Class's right to damages to their subsistence way of life based on the natural resource devastation wrought by the oil spill. Accordingly, the Court should order reformation of the settlement agreement and stay its implementation.

III. ARGUMENT

The proposed settlement impairs the rights of the Alaska Native Class in at least four ways. First, the Agreement is inconsistent with and contradictory to the rights of the Alaska Native Class to recover subsistence natural resource damages. Second, the Plea Agreement impairs the Alaska Native Class and denies it of an opportunity for necessary and immediate restitution. Third, the Agreement, even if considered to be neutral on its face, significantly impairs the rights of the Alaska Native Class by permitting a partial settlement of an indivisible injury and thereby, in practical terms, "binds everybody and [leaves] these people . . . out in the cold." Transcript of Status Call (Mar. 12, 1991), at 35. Fourth, and finally, the settlement impairs the rights of the Alaska Natives to be treated as a co-equal to the United States and Alaska with respect to natural resources.

A. The Language of The Agreement Is Inconsistent With
And Contradictory To The Rights Of The Alaska Natives

The language of the Agreement appears to be drafted to afford Exxon every opportunity to argue that no one other than the United States and Alaska has a right to recover for damages to natural resources. In the Introduction section of the Agreement, the parties make clear that the United States and Alaska are the sole entities having any natural resource rights:

The United States and the State represent that it is their legal position that only officials of the United States . . . and state officials . . . are entitled to act on behalf of the public as trustees of Natural Resources to recover damages for injury to Natural Resources arising from the Oil Spill under Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321 (f).

Agreement, Introduction, at 3 (emphasis added). Such claims of exclusivity directly undermine the very right of the Alaska Native Class to protect their way of life and the natural resources upon which their existence depends.⁷ The language has

⁷The actual language of Section 311(f)(5) does not use the limiting word only or otherwise expressly state that entities other than the United States can never act as trustees for natural resources. Section 311(f)(5) provides that the "President, or the authorized representative of any state, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resource."

It is thus no surprise that in Paragraph 13(c) the drafters of the Agreement state that:

. . .nothing in this Agreement shall affect or impair. . . the rights and obligations, if any, of legal entities or persons other than the Governments who are holders of any present right, title, or interest in land or other property interest affected by the Oil Spill.

been apparently inserted at the outset of the Agreement with the forethought that its qualifying nature will eliminate all competing and complimentary claims for natural resource injury caused by the Exxon Valdez oil spill.

Paragraph 32 of the Agreement, rather than adopt clear language protective of plaintiffs' rights as suggested by the Court, contains only a half-hearted assurance that "[n]othing in this Agreement . . . is intended to affect legally the claims, if any, of any person or entity not a Party to this Agreement." Agreement, ¶32, at 24. This is precisely the kind of "wishy-washy" language the Court cautioned the United States to avoid. Transcript of Status Call (Mar. 12, 1991), at 8. Were the defendants not attempting to whittle away at plaintiffs' claims, they would have stated that the Agreement shall not affect the legal claims of the Alaska Native Class.

Paragraph 13, the sole provision purporting to protect the rights of the Alaska Natives, affords no meaningful protection. The paragraph provides that:

. . . nothing in this Agreement, shall affect or impair . . .
. the rights and obligation, if any, of Alaska Native villages to act as trustees for the purpose of asserting and compromising claims for injury to, destruction of, or loss

Agreement, ¶13(c), at 15. The word "present" is used intentionally in this provision to provide Exxon with an argument that the Natives have no claim to damages to natural resources that are not in existence at this time, such as subsistence damages caused by injuries to future generations of marine life (and that similarly the Native Corporations cannot bring claims in the future on lands which have been selected but not transferred pursuant to the Native lands selection program, 43 C.F.R. subpart 2650).

of natural resources, if any, belonging to, managed by, controlled by or appertaining to such villages

Agreement, ¶ 13(b) (emphasis added). This language falls far short of the defendants' promise that the Agreement will not in any way impair the rights of the Alaska Native Class. First, as if to emphasize the Agreement's implicit position that the Alaska Natives have no right to subsistence and no claims to natural resource damage, references to the Native Villages' claims are modified by the phrase "if any."⁸ Second, this language casts doubt upon the fact that the Alaska Natives suffered damages to natural resources used for subsistence. This is an especially untenable suggestion in light of the United States' post-settlement disclosure that the most severe damage to natural resources occurred in the subtidal habitats relied upon by the Alaska Natives for subsistence.

A summary report released by the United States on April 9, 1991, nearly one month after entering into the Agreement and two days prior to the close of the comment period on the Plea Agreement, provides overwhelming evidence that the coastal tidal zone, the region most heavily exploited for subsistence purposes, "was the most severely contaminated habitat." See "Summary Of Effects Of The Exxon Valdez Oil Spill On Natural Resources And Archaeological Resources" (Mar. 1991), at 12 (hereinafter "Summary") (Attached hereto as Exh. B). It further finds that

⁸The phrase "if any" is used repeatedly throughout the settlement papers. See Agreement, ¶13(c), at 15, ¶32, at 24; MOA, ¶III.C., at 9.

intertidal organisms such as mussels, clams, certain species of fish, and kelp (the dominant intertidal plant) continue to be exposed to hydrocarbons, are less abundant, and were severely affected by the oil spill and subsequent cleanup activities. Id. at 12-13. The Summary admits that "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." Id., at 14.

Further, a study of subsistence conducted by the Alaska Department of Fish & Game, which is referenced in the Summary, concludes that "until [environmental danger] signs disappear and people are able to place confidence in their own abilities to again interpret and understand their environment, recovery from this disaster will likely remain incomplete." Fall, "Subsistence Uses of Fish and Wildlife in 15 Alutiq Villages After the Exxon Valdez Oil Spill," at 9 (Attached hereto as Exh. C) (second emphasis added).⁹

While acknowledging and even documenting the essential shortcoming of their natural resource settlement and Alaska Native subsistence damage, the United States and Alaska crafted an agreement which does its utmost to deny a right of recovery to

⁹Studies have found that the decrease in subsistence activities had the effect of increasing hardship and stress in the villages. Continuation of the contamination raises serious questions as to the very viability and survivability of the Native subsistence way of life. See Fall, supra, at 8-9.

Alaska Natives. Accordingly, plaintiffs request the court stay execution of the settlement and order that the Agreement be reformed so that, at a minimum, the word "only" be stricken from the preface to the Agreement, the word "present" be stricken from §13(b) of the Agreement, the phrase "intended to affect" be replaced with "shall" in §32, the phrase "if any" be stricken wherever it is used in connection with plaintiffs' claims, and order such other reformation the Court deems appropriate to ensure that the settlement in no way impairs the subsistence rights and claims of the Alaska Native Class.

B. The Plea Agreement Denies The Alaska Native's An Opportunity For Immediate And Necessary Restitution

The plea provisions which allow criminal fines to remitted is intended to provide an incentive to the wrongdoer to make restitution to crime victims by permitting the United States to reduce a criminal fine if payments to victims have been made. Under the Plea Agreement, the United States has agreed to remit 50 percent of the \$100 million criminal fine imposed upon Exxon and Exxon Shipping because the defendants "have paid in excess of \$300 million to claimants allegedly injured by the oil spill." Plea Agreement, §III.C(c), at 7. None of these payments, however, were made upon the claims of the Alaska Natives. No restitution funds are provided for in the civil settlement.

The United States has breached its trustee obligation towards the Alaska Natives by costing them their best opportunity

for an early settlement of their own claims.¹⁰ The failure to insist upon restitution to the Alaska Natives is difficult to understand given that the United States has documented that the most severe impacts were sustained to those natural resources upon which the Alaska Natives depend for their existence and it leaves the victims who most directly depend upon renewable uncontaminated natural resources for their very existence without relief. The Alaska Natives need to undertake immediate restoration of their subsistence natural resource areas. By failing to provide for immediate and necessary relief, the parties to the settlement have in effect contributed to the continued erosion of the subsistence way of life.

The failure to insist that restitution be made to the Alaska Natives before civil settlement was finalized and the criminal

¹⁰The United States clearly has a trust responsibility towards the Alaska Natives. This has been recognized over and over both by the United States and by the State of Alaska, and is probably shown most clearly in the numerous statutes and international conventions protecting the subsistence way of life of Native Alaskans, and in the yearly programs (including fish and game programs) funded for the Natives by the United States. In reviewing many of these provisions protective of Alaska Native subsistence rights, the Federal District Court in People of Toqiak v. United States, 470 F. Supp. 423, 428 (D.D.C. 1979) stated the situation clearly:

These various responsibilities impose fiduciary duties upon the United States including the duties so to regulate as to protect the subsistence resources of Indian communities and to preserve such communities as distinct cultural entities. . . .

470 F. Supp. at 428 (citations omitted); see also North Slope Borough v. Andrus, 486 F. Supp 332, 344 (D.D.C), aff'd, 642 F.2d 589, 612 (D.C. Cir. 1980).

penalty set directly impairs the rights and claims of the Alaska Native Class.

C. The Agreement, Even If Neutral On Its Face,
Impairs The Rights of the Alaska Native Class

The Agreement, even if considered to be neutral on its face, significantly impairs the rights of the Alaska Native Class by permitting a partial settlement of what is, practically speaking, an indivisible natural resource injury. Contrary to this Court's warning that the document be neutral in its effect, the Alaska Natives are no longer in the same position as if the United States and Alaska had not settled their claims.

There are three entities that have a priority interest in the affected natural resources -- the United States, the State of Alaska and the Alaska Native Class. The injury to natural resources cannot be segmented. A partial settlement by two of the priority interested parties of something less than the whole of an indivisible injury clearly impacts and impairs the rights and claims of the remaining party to that injury.¹¹

That which appears neutral on its face may in fact have a discriminatory impact. Prior to settlement the alignment of the United States and the State of Alaska with the Alaska Natives on the issue of natural resource damages gave greater strength to

¹¹That the injury is indivisible is perhaps best evidenced by the MOA, under which the federal and state governments forego their own disagreements over their respective shares in favor of a joint management regime.

the ability of each to prove, in combination, the fact, nature and extent of that injury. The benefits of this synergism were evidenced by the undertakings of the United States and Alaska regarding basic scientific evaluations which included the identification of subsistence natural resource injury. With a partial settlement by the United States and Alaska alone, these benefits are lost and the conduct of future necessary evaluations is now in question.¹²

The settlement of natural resource claims by the United States and Alaska, without the Alaska Natives, leaves the Alaska Native Class in the position of facing Exxon and Alyeska alone on this issue. The isolation is compounded by the position that settlement has created with respect to Exxon and Alyeska. The prevailing attitude is that the governments' natural resource settlement has put this issue to rest for all parties. It is now virtually guaranteed that the Alaska Native Class's natural resource claims will not be resolved by anything short of full litigation.

The adverse impact of this partial settlement can best be viewed if the agreement were analyzed as an attempted class settlement. Suppose, for example, that a subset of a class in an antitrust price fixing conspiracy attempted to settle the injury caused by the conspiracy for their interests alone. In a

¹²The MOA anticipates that the manner in which monies received by Exxon are spent will be the subject of dispute. It is doubtful that in the tug-of-war between these governments either will respond to the needs of the Alaska Native Class.

traditional settlement of this type of injury, no court would permit any subset of the class to settle for either the entire injury or anything less than the whole injury and no class counsel would permit such segmentation of the injury. This does not mean that the amount offered to settle the interests of the subsets of the class is automatically unfair or inadequate. What it does mean is that the remaining party, with similar interests in the same injury, should be afforded an opportunity to settle on a proportionate basis for itself.

Here, the United States and the State of Alaska were able to settle for less than the whole injury only because there was no court, prior to the filing of this action, which had jurisdiction over both of these entities. Recognizing this void, the federal and state governments were able to settle out what was essentially a class claim without the inclusion of all similarly situated class members.

In the absence of an opportunity to settle on a proportionate basis for itself, the rights of the remaining subset of the class -- the Alaska Natives -- are impaired by the other class members' settlement. To rectify this impairment, the settlement should be stayed pending negotiations and the allocation of some portion of the settlement fund to the Alaska Native Class for restoration and rehabilitation of natural resources appertaining to the class.

D. The Settlement Impairs The Rights Of The Alaska Natives As A Co-Equal With The United States And Alaska With Respect To Natural Resources

The MOA is intended to provide a "framework" for "the state and federal trustees to cooperate with each other in carrying out their responsibilities for natural resources." MOA, at 2. In establishing this framework, the defendants looked to a variety of environmental laws: Section 107 of CERCLA, 42 U.S.C. §9607; the National Contingency Plan, 40 C.F.R. §300.615(a); and the Natural Resource Damage Assessment Regulations, 43 C.F.R. §11.32(a)(1)(ii). Interestingly, each of these sources of law contemplates that Indian tribes, like the Native Villages, may act as co-trustees for natural resources. See 42 U.S.C. §9607(f)(1) (Indian tribes have an interest in natural resource appertaining to them); 40 C.F.R. §§300.610, .615 (designating Indian tribes as trustees for natural resources appertaining to such Indian tribes and stating that where there are multiple trustees because of coexisting or contingent natural resources they should coordinate and cooperate in carrying out these responsibilities); 43 C.F.R. § 11.32 (prior to developing an assessment plan "authorized officials from . . . Indian tribes are encouraged to cooperate and coordinate any assessments that involve coexisting and contiguous natural resources or concurrent jurisdictions").

The legal framework relied upon by the defendants in reaching an agreement would have readily accommodated inclusion

of the Native Villages as a co-trustee. By failing to include the Native Villages in the MOA, defendants have left plaintiffs without any mechanism through which to coordinate with defendants for the assessment and restoration of natural resources used for subsistence.

The MOA does not provide the Native Villages with any assurances that any portion of the settlement fund (or for that matter the monies which will be paid by Exxon to the United States as criminal penalties) will be used to assess the Native Villages injuries or to restore, replace, rehabilitate or enhance those natural resources used by them for subsistence purposes. Indeed, simple cost-benefit analysis suggests that the limited funds available will go towards highly-visible projects, such as restoration of beaches in popular national parks, and not towards the low-profile restoration programs sought by the Alaska Natives.

Further, the MOA does not contemplate any coordination with the Native Villages in the event that they do, upon settlement or judgment, receive payments from Exxon or Alyeska for damages caused to natural resources appertaining to them.

The failure of the MOA to treat the Native Villages as co-trustees, either from the Agreement's effective date or at any time in the future, impairs their right to recover damages to natural resources used for subsistence, for it unnecessarily places obstacles in the way of full resource recovery. The Court should therefore stay the Agreement pending the inclusion of

provisions for the coordination of the Native Villages as a co-trustee.

CONCLUSION

For all of the foregoing reasons, Plaintiffs Alaska Native Class requests that the Court stay implementation of the Agreement and the MOA for 90 days, order that the Alaska Native Class, through its counsel, be included in further settlement negotiations so that all claims to natural resource damages can be settled efficiently and equitably, and order that such reformation of the settlement papers be made as deemed appropriate.

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Dated: April 16, 1991
Washington, D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NATIVE VILLAGE OF
CHENEGA BAY, et al.,
Plaintiffs,

v.

MANUEL LUJAN, JR., et al.,
Defendants.

Civil Action No. 91-0483 SS

CHENEGA CORPORATION, et al.,
Plaintiffs,

v.

MANUEL LUJAN, JR., et al.,
Defendants.

Civil Action No. 91-0484 SS

[PROPOSED] ORDER

Upon motion of Plaintiffs The Native Villages of Chenega Bay, Port Graham, English Bay, Larsen Bay and Karluk ("Alaska Native Class"), the Court having considered the Motion For Reformation And Stay Of Implementation Of Settlement, Plaintiffs' Memorandum In Support thereof, and all other matters presented to it, and it appearing that Defendants United States and State of Alaska have failed to adhere to the representations given to the Court and have thereby impaired the rights of the Alaska Native Class to subsistence and their ability to prosecute fully their lawsuits against Exxon Corporation, Exxon Shipping Company and Alyeska Pipeline Service Company, it is hereby

ORDERED that:

1. The Agreement and Consent Decree ("Agreement"), executed by the United States, the State of Alaska, Exxon Corporation, Exxon Pipeline Company and Exxon Shipping Company on March 12, 1991, and the Memorandum of Agreement and Consent Decree ("MOA"), executed by the United States and the State of Alaska on March 12, 1991, are both stayed for ninety (90) days pending reformation and the Court's approval thereof.

2. The Alaska Native Class, through its counsel, shall be included in further settlement negotiations in connection with natural resource damages claims brought by the United States and the State of Alaska against Exxon Corporation, Exxon Pipeline Company, Exxon Shipping Company, and Alyeska Pipeline Service Company.

3. The reformation must at a minimum include the following:

(a) The phrase "if any" shall be stricken wherever it is used in connection with plaintiffs' claims;

(b) The phrase "intended to affect" shall be replaced with the word "shall" in ¶32;

(c) The word "only" shall be stricken from the preface to the Agreement;

(d) The word "present" shall be stricken from ¶13(b) of the Agreement; and

(e) The MOA shall be reformed to allow for the participation of the Alaska Native Class as a co-trustee for the

damaged natural resources used by members of the class for
subsistence purposes.

DATED: _____

UNITED STATES DISTRICT COURT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA	)	
	)	No. A90-015 CR.
Plaintiff,	)	
	)	
v.	)	
	)	
EXXON SHIPPING COMPANY	)	<u>PLEA AGREEMENT</u>
	)	
and	)	
	)	
EXXON CORPORATION,	)	
	)	
<u>Defendants.</u>	)	

I. INTRODUCTION

This document contains the complete plea agreement between the United States of America, plaintiff in the above-captioned action, and the defendants, EXXON SHIPPING COMPANY ("EXXON SHIPPING") and EXXON CORPORATION ("EXXON").

A. The defendant, EXXON SHIPPING, is charged in Counts One, Two and Three of an indictment filed in the District of Alaska with violations of the Clean Water Act, Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A); the Refuse

Act, Title 33, United States Code, Sections 407 and 411; and the Migratory Bird Treaty Act, Title 16, United States Code, Sections 703 and 707(a).

B. The defendant, EXXON, is charged in Count Three of an indictment filed in the District of Alaska with a violation of the Migratory Bird Treaty Act, Title 16, United States Code, Sections 703 and 707(a).

C. The defendant, EXXON SHIPPING, agrees to enter a plea of guilty to the Counts in paragraph IA.

D. The defendant EXXON agrees to enter a plea of guilty to the Count in paragraph IB, subject to the factual basis for the plea being that it was oil owned by EXXON, and transported under contract with EXXON SHIPPING, that killed migratory birds, for which EXXON had no permit.

II. DEFENDANTS' AGREEMENT AND UNDERSTANDING

The defendant, EXXON SHIPPING, is represented by James F. Neal, Esq., James F. Sanders, Esq., E. Edward Bruce, Esq., and Robert C. Bundy, Esq. The defendant EXXON, is represented by Patrick Lynch, Esq., Edward J. Lynch, Esq., and John F. Clough, III, Esq. The defendants acknowledge that their attorneys have explained all of the elements of each offense charged against them.

A. If EXXON SHIPPING pled not guilty, the United States would have to prove beyond a reasonable doubt each and every one of the following charges to the unanimous satisfaction of a jury:

1. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant, EXXON SHIPPING, did negligently cause the discharge of pollutants, namely more than ten million gallons of crude oil, from a point source, namely the tank vessel "EXXON VALDEZ," into Prince William Sound, a navigable water of the United States, without a permit, all of which is in violation of and contrary to Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A).

2. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant EXXON SHIPPING unlawfully did throw, discharge and deposit, and did cause, suffer, and procure to be thrown, discharged and deposited, refuse matter, namely more than ten million gallons of crude oil, from a ship, namely the "EXXON VALDEZ," into Prince William Sound, a navigable water of the United States, without a permit, all in violation of and contrary to Title 33, United States Code, Sections 407 and 411.

3. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant, EXXON SHIPPING, without being permitted to do so by regulation as required by law, did kill migratory birds in violation of Title 16, United States Code, Sections 703 and 707(a) and Title 50, Code of Federal Regulations, Section 21.11.

B. If EXXON pled not guilty, the United States would have to prove the following charge to the unanimous satisfaction of a jury beyond a reasonable doubt:

That on or about March 24, 1989, in the District of Alaska, the defendant EXXON, without being permitted to do so by regulation as required by law, did kill migratory birds in violation of Title 16, United States Code, Sections 703 and 707(a) and Title 50, Code of Federal Regulations, Section 21.11.

C. Legal Basis for the Fines and Restitution Payment

1. The defendants, EXXON SHIPPING and EXXON, agree, solely for the purpose of this plea agreement and for no other purpose, that there is a legal basis with respect to the offenses charged in the indictment for the Court to impose the fines agreed to in paragraph IIIC.

2. The defendants, EXXON SHIPPING and EXXON, agree, solely for the purpose of this plea agreement and for no other purpose, that there is a legal basis for the Court to impose the payment agreed to in paragraph IV as damages recoverable for compensatory and remedial purposes by the State of Alaska.

D. Consequences of the Plea

1. EXXON SHIPPING understands that by pleading guilty to the Counts under paragraph IC, it is admitting the essential elements of the charges in those Counts.

2. EXXON understands that by pleading guilty to the Count under paragraph ID, it is admitting the essential elements of the charge in that Count on the factual basis set forth in paragraph ID.

3. Each defendant understands that by pleading guilty, it gives up the following rights:

- a. The right to be tried by jury;
- b. The right to challenge and object to the composition or procedures of the grand jury; and
- c. The right to confront and cross-examine witnesses.

E. Upon acceptance of the pleas and imposition of sentence by the Court, the United States will immediately move to dismiss Counts 4 and 5 as to EXXON SHIPPING and Counts 1, 2, 4, and 5 as to EXXON.

III. AGREEMENT OF THE PARTIES REGARDING IMPOSITION OF SENTENCE

A. The United States agrees not to seek additional criminal charges or any civil or administrative penalties, except as provided in paragraph IIIB below, against the defendant EXXON, or any of its present or former officers, directors or employees, or any of its wholly-owned subsidiaries, their present or former officers, directors or employees, or 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 documents,

by Alyeska Pipeline Service Company to the federal or state government.

B. The parties agree that nothing in this plea agreement limits the right of any agency of the United States, other than the Department of Justice, to seek and take civil or administrative action against EXXON SHIPPING, EXXON, or any other EXXON subsidiaries, or their employees, or against Alyeska Pipeline Service Company, or any of its shareholders or owner companies or present or former shareholder representatives, including any such action relating to suspension or debarment or listing, but not including the civil or administrative penalties referred to in paragraph IIIA.

C. The parties agree, following the entry of pleas by EXXON SHIPPING and EXXON, and the acceptance by the Court thereof, that the defendants shall be sentenced in accordance with the provisions of Rule 11(e)(1)(C), Fed. R. Crim. P., and that under that procedure the appropriate disposition at the time of sentence is the imposition of fines which total \$100 million, as follows:

1. With respect to EXXON SHIPPING, the fine shall be \$75 million.
2. With respect to EXXON, the fine shall be \$25 million.
3. With respect to EXXON SHIPPING, \$37.5 million shall be remitted, and with respect to EXXON, \$12.5 million

shall be remitted. The remission of these amounts is appropriate in view of the following facts:

(a) The defendants recognized their responsibilities with respect to the grounding of the "EXXON VALDEZ" and the resulting oil spill;

(b) The defendants have expended in excess of \$2 billion in response to and clean up of the oil spill in Prince William Sound and its environs;

(c) The defendants have paid in excess of \$300 million to claimants allegedly injured by the oil spill; and

(d) The defendants cooperated in the federal criminal investigation of the grounding of the "EXXON VALDEZ" and the resulting oil spill.

D. The parties agree that the fines described in paragraph IIIC represent the full extent of the criminal sanctions to be imposed upon the defendants pursuant to this agreement; and are in full satisfaction of the criminal charges referred to in the indictment and all criminal charges or claims for civil or administrative penalties referred to in Paragraph IIIA. The payment of \$37.5 million by EXXON SHIPPING and \$12.5 million by EXXON shall fully discharge the criminal sanctions to be imposed pursuant to this agreement.

IV. AGREEMENT OF THE PARTIES REGARDING RESTITUTIONARY PAYMENTS

A. The defendants, EXXON SHIPPING and EXXON, agree to make payments to the State of Alaska which total \$50 million

within 30 days of the acceptance of this plea agreement by the Court. All monies paid by EXXON SHIPPING and EXXON under this paragraph IVA are remedial and compensatory payments. Such monies are to be used by the State of Alaska exclusively for restoration projects relating to the "EXXON VALDEZ" oil spill. Restoration includes restoration, replacement and enhancement of affected resources, acquisition of equivalent resources and services, and long-term environmental monitoring and research programs directed to the prevention, containment, cleanup and amelioration of oil spills.

B. The parties agree that the administration of the monies to be paid under paragraph IVA shall be under the control of the State of Alaska and that upon payment, such monies and any interest which accrues thereon shall be available for use by the State of Alaska for the purposes described in paragraph IVA without objection, challenge, or judicial or administrative review.

C. The parties agree that all payments made under paragraph IVA represent compensation for harm or injury to the State of Alaska. Such payments are intended by the parties to be exclusively remedial, compensatory, and non-punitive and are intended to be separate and distinct from the fines described in paragraph IIIC and from any other criminal, civil, or administrative penalties that could have been imposed upon the defendants.

V. GENERAL PROVISIONS

A. EXXON guarantees payment of the fine imposed on EXXON SHIPPING under this plea agreement. In the event that defendant EXXON SHIPPING fails to make timely payment of the fine, EXXON shall, within thirty (30) days of the date of demand, make payment in EXXON SHIPPING's stead.

B. The defendants, EXXON SHIPPING and EXXON, understand that the Court has discretion to accept or reject this plea agreement, and that if the Court rejects the plea agreement or does not dismiss the charges referred to in paragraph IIE, each defendant will be permitted to withdraw its plea of guilty.

C. The parties agree, subject to the decision of the Court, that there is in the record information sufficient to enable the meaningful exercise of sentencing authority, pursuant to Rule 32(c) F.R. Cr. P., and agree that waiver of a presentence investigation and report would be appropriate.

The above-stated terms and conditions comprise the entire plea agreement between the United States of America, defendant EXXON SHIPPING and defendant EXXON, and there are no other terms or conditions, express or implied.

FOR THE UNITED STATES
OF AMERICA:

/s/ Joseph G. Block

JOSEPH G. BLOCK
Chief
Environmental Crimes Section
Environment and Natural
Resources Division
U.S. Department of Justice

/s/ Charles A. De Monaco

CHARLES A. De MONACO
Assistant Chief

/s/ Eric W. Nagle

ERIC W. NAGLE
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/s/ Mark R. Davis

MARK R. DAVIS
Special Assistant U.S.
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/s/ Mark B. Harmon

MARK B. HARMON
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FOR THE DEFENDANTS:

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JAMES F. NEAL
Counsel for Exxon Shipping

/s/ E. Edward Bruce

E. EDWARD BRUCE
Counsel for Exxon Shipping

/s/ Robert C. Bundy

ROBERT C. BUNDY
Counsel for Exxon Shipping

/s/ Edward J. Lynch

EDWARD J. LYNCH
Counsel for Exxon
Corporation

/s/ John F. Clough, III

JOHN F. CLOUGH, III
Counsel for Exxon
Corporation

DATED THIS 13th day of March, 1991

**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, Kachemak Bay 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 these 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/Bozharof 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

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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. 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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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 loses 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 12 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.

Killer Whales: Approximately 32 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

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).

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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 supralittoral 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 Kachemak 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.

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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 unoled 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 unoled 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 Kittitz'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 effects 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

³The 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.

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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. Koernig 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.

Suprandal: Results of studies in the Kodiak/Alaska Peninsula area suggest that oil in the suprandal habitat and beach cleanup disturbance decreased the productivity of grasses and other vegetation including beach rye grass, that help stabilize beach dunes. In one instance, cleanup activities completely removed the vegetation. Increased production of suprandal 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

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

Eucalyptus, the dominant intertidal plant, was severely affected by the oil and subsequent cleanup activities. The percentage of intertidal areas covered by Eucalyptus was reduced following the spill and opportunistic plant species which characteristically flourish in disturbed areas were increased. The average size of Eucalyptus 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 Eucalyptus 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 500 miles 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 house sites. Twenty-one (21) of these sites are on federally-owned land, with the remaining five on State or 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 Alutiq 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

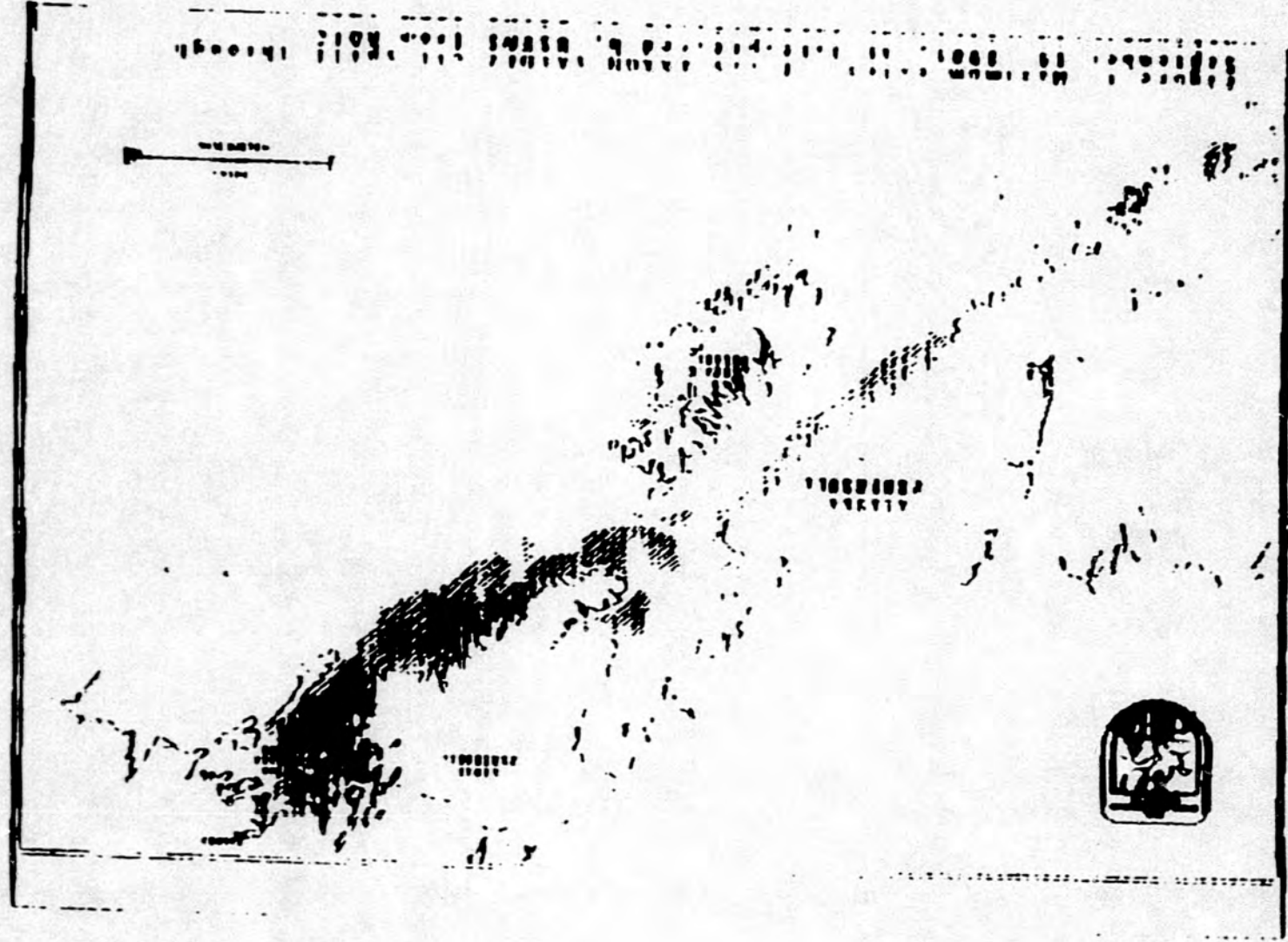
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summary is based upon the field work and data analysis conducted to date, and is preliminary. Many studies will likely need to continue for additional years before a full understanding of injuries is developed. For example, long-lived species such as bald eagles, marlins, 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. Whenever possible, restoration will focus on those projects that will provide ecosystem-wide benefits, thereby benefiting a variety of species. These projects may include various initiatives to protect habitats; in other cases it may be necessary to conduct restoration programs that will primarily benefit a particular resource injured by the spill.

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

Species	Total	Walden	Sewards	Other	Unkown
Total	18,279	1,280	1,332	1,177	11,890
Unidentified bird	2,927	176	414	112	1,225
Unidentified loon	49	27	7	3	12
Common Loon	228	42	10	1	175
Yellow-billed Loon	87	12	1	1	73
Pacific Loon	13	3	3	1	6
Red-throated Loon	5	1	1	1	2
Unidentified grebe	53	17	1	1	34
Red-necked Grebe	120	9	1	1	109
Horned Grebe	177	135	1	1	40
Northern Fulmar	426	1	1	1	423
Unidentified shearwater	379	3	1	1	374
Sooty Shearwater	163	1	1	1	160
Short-tailed Shearwater	1,161	1	1	1	1,158
Unidentified petrel	39	1	1	1	36
Fork-tailed Storm-petrel	131	1	1	1	128
Leach's Storm-petrel	10	1	1	1	7
Unidentified cormorant	120	1	1	1	117
Double-crested Cormorant	10	1	1	1	7
Pelagic Cormorant	11	1	1	1	8
Red-faced Cormorant	11	1	1	1	8
Great Blue Heron	1	1	1	1	0
Unidentified swan	1	1	1	1	0
Empire Goose	1	1	1	1	0
Canada Goose	1	1	1	1	0
Brant	1	1	1	1	0
Unidentified duck	10	1	1	1	7
Unidentified muskrat	110	1	1	1	107
Mallard	11	1	1	1	8
Northern Pintail	4	1	1	1	1
Green-winged Teal	1	1	1	1	0
Unidentified Scaup	1	1	1	1	0
Greater Scaup	27	1	1	1	24
Lesser Scaup	1	1	1	1	0
Unidentified Goldeneye	23	1	1	1	20
Common Goldeneye	4	1	1	1	2
Barrow's Goldeneye	19	1	1	1	16
Muskrat	11	1	1	1	8
Oldsquaw	125	111	43	1	70

Table 1. Species composition and number of birds retrieved from oiled areas and processed at U.S. Fish and Wildlife receiving stations as of 23 September, 1989. (Cont'd)

Species	Total	Valdez	Barrow	Other	Unk.
Harlequin Duck	112	110	2	0	0
Unidentified Eider	1	1	0	0	0
Stellar's Eider	1	1	0	0	0
Common Eider	1	1	0	0	0
King Eider	1	1	0	0	0
Unidentified Scoter	102	102	0	0	0
White-winged Scoter	142	134	8	0	0
Surf Scoter	177	165	12	0	0
Black Scoter	100	100	0	0	0
Ruddy Duck	1	1	0	0	0
Unidentified Merganser	1	1	0	0	0
Common Merganser	1	1	0	0	0
Red-breasted Merganser	1	1	0	0	0
Sandhill Crane	1	1	0	0	0
Black Oystercatcher	1	1	0	0	0
Golden Plover	1	1	0	0	0
Unidentified sandpiper	1	1	0	0	0
Unidentified turnstone	1	1	0	0	0
Common Snipe	1	1	0	0	0
Semipalmated sandpiper	1	1	0	0	0
Lesser Yellowlegs	1	1	0	0	0
Western Sandpiper	1	1	0	0	0
Saint's Sandpiper	1	1	0	0	0
Least Sandpiper	1	1	0	0	0
Dowitcher	1	1	0	0	0
Short-billed Dowitcher	1	1	0	0	0
Red Phalarope	1	1	0	0	0
Red-necked Phalarope	1	1	0	0	0
Long-tailed Jaeger	1	1	0	0	0
Unidentified gull	29	29	0	0	0
Clay-colored-winged Gull	155	155	0	0	0
Merring Gull	1	1	0	0	0
New Gull	1	1	0	0	0
Black-legged Kittiwake	1,000	1,000	0	0	0
Arctic Tern	1	1	0	0	0
Alaskan Tern	1	1	0	0	0

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	Sevens	McKer	Alaska
Unidentified alcid	173	24	1	12	136
Unidentified murre	3,351	72	1	1	3,354
Common Murre	10,428	199	200	1	10,628
Thick-billed Murre	469	16	142	1	618
Pigeon Guillemot	614	135	109	12	870
Unidentified murrelet	412	22	17	122	671
Margined Murrelet	312	139	37	12	500
Kittiwake's Murrelet	37	13	1	1	52
Ancient Murrelet	121	1	1	1	124
Cassin's Auklet	46	1	1	1	49
Least Auklet	1	1	1	1	4
Parakeet Auklet	1	1	1	1	4
Rhinoceros Auklet	1	1	1	1	4
Unidentified puffin	46	1	1	1	50
Horned Puffin	139	1	1	1	142
Tufted Puffin	141	1	1	1	144
Bald Eagle	120	1	1	1	123
Unidentified raptor	1	1	1	1	4
Peregrine Falcon	1	1	1	1	4
Willow Ptarmigan	1	1	1	1	4
Unidentified owl	1	1	1	1	4
Great-horned Owl	1	1	1	1	4
Unidentified Woodpecker	1	1	1	1	4
White Swallow	1	1	1	1	4
Violet-green Swallow	1	1	1	1	4
Unidentified passerine	1	1	1	1	4
Stellar's Jay	1	1	1	1	4
Magpie	1	1	1	1	4
Common Raven	18	1	1	1	21
Northwestern Crow	14	1	1	1	17
American Robin	1	1	1	1	4
Varied Thrush	1	1	1	1	4
Hermit Thrush	1	1	1	1	4
Unidentified warbler	1	1	1	1	4
Yellow Warbler	1	1	1	1	4
Pine Grosbeak	1	1	1	1	4
Unidentified sparrow	15	1	1	1	18
Savannah Sparrow	1	1	1	1	4
Golden-crowned Sparrow	4	1	1	1	7
White-winged Crossbill	3	1	1	1	6

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**SUBSISTENCE USES OF FISH AND WILDLIFE IN 15 ALUTIQ VILLAGES
AFTER THE *EXXON VALDEZ* OIL SPILL**

by

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Please note that this paper contains preliminary data. Thus the paper should not be quoted without the permission of the author. Contact the Division of Subsistence at the above address for copies of the final reports for this project.

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March 23, 1991

EXHIBIT C

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ABSTRACT

The paper discusses some of the results of research on subsistence uses of fish and wildlife in 15 Alutiq villages affected by the Exxon Valdez Oil Spill of March 1989. The research was conducted by the Division of Subsistence of the Alaska Department of Fish and Game. The study communities included Tatitlek and Chenega Bay in Prince William Sound; English Bay and Port Graham in lower Cook Inlet; Akhiok, Karluk, Larsen Bay, Old Harbor, Ouzinkie, and Port Lions in the Kodiak Island Borough; and Chignik, Chignik Lagoon, Chignik Lake, Ivanof Bay, and Perryville on the Alaska Peninsula. The primary data collection method was a systematic survey administered to representatives of 403 households. The research documented substantial declines in subsistence harvests and uses in 10 study communities in the year following the spill. For example, subsistence harvests at Tatitlek and Chenega Bay were down about 57 percent from pre-spill averages. The paper describes these changes and discusses reasons for the declines, especially concerns about hydrocarbon contamination of resources harvested for subsistence use.

INTRODUCTION¹

At last year's annual meeting of the Alaska Anthropological Association (aaa) in Fairbanks, I described the division's "oil spill response program" (Fall 1990a). Particularly, I focused on the issue of possible hydrocarbon contamination of subsistence foods, including the role of the Oil Spill Health Task Force and the subsistence resource collection and testing program. The division also presented another overview at the Conference on Hunting and Gathering Societies (CHAGS) in Fairbanks in May 1990 (cf. Smith 1991). As mentioned in those earlier presentations, another goal of the division's program was to understand changes to subsistence harvest and use patterns in the spill-affected communities. I presented preliminary findings of that aspect of our research at the annual meeting of the American Anthropological Association (AAA) in New Orleans last November (Fall 1990b). This present paper is an abridged version of the AAA paper and is, essentially, "part two" of my presentation at last year's aaa.²

As all of us well remember, two years ago tomorrow (March 24, 1989), the tanker Exxon Valdez ran around off Bligh Reef and dumped almost 11 million of gallons of crude oil into Prince William Sound. The currents and tides eventually carried oil, mousse, sheen, and tar balls more than 580 miles along Alaska's southern coast. Soon, images of oiled seabirds, dead and dying sea otters, and miles of ravaged coastline filled television screens and newspapers around the world.

As shown in Figure 1, the oil also fouled waters and beaches used for subsistence hunting, fishing, and gathering by 15 Alutiq villages with about 2,200 people. For at least 7,000 years, Alaska Native people

¹ **Acknowledgments.** This paper is based on research by the following Division of Subsistence staff: Janet Cohen, Philipa Colley, Rita Miraglia, Craig Mishler, Deborah Robinson, Lisa Hutchinson-Scarborough, Ron Stanek, and Lee Stratton. Data management support has been provided by Louis Brown, Gretchen Jennings, Cheryl Scott, Sandy Skaggs, Robert Walker, and Charles Utermohle of the Division of Subsistence. Carol Barnhill, Division of Habitat, prepared the maps. Assistance in research design and data analysis was provided by division research director Robert Wolfe. Also, 23 village residents were especially helpful in a variety of ways, including conducting interviews, translating, and introducing the project in their communities (see Fall 1990b). Especially, we thank the governments of each village for granting us permission to conduct this research in their communities and the hundreds of people who took the time to participate in the project.

² Another version of this paper was presented by Craig Mishler at the 50th Annual meeting of the Society for Applied Anthropology in Charleston, South Carolina, on March 16, 1991 (Fall and Mishler 1991).

have depended upon these lands and waters for survival (Clark 1984a, 1984b). This survival has also depended upon the people's knowledge about and observations of the natural world around them.

One of the first signs that people in Tatitlek, the community closest to Bligh Reef, used to warn them that something terrible might be happening to the fish and wildlife of Prince William Sound as a result of the spill was a report of a dead starfish that washed up on the beach near the village. Hundreds of miles away, news spread of a dead whale washed up at Cape Karluk, and everyone in Karluk suddenly stopped fishing (Craig Mishler, personal communication). Starfish are not eaten and whales are no longer hunted, but they, like other creatures, may act as signs or omens of unseen dangers throughout the ecosystem. Furthermore, as residents of these and the other villages traveled in their traditional harvest areas and worked on the spill clean-up, they experienced the spill's damages first-hand.

But, the effects of the spill were discontinuous. Some beaches were heavily oiled, other were not. Some animals, such as sea otters and sea ducks, were very vulnerable to oiling, but salmon and deer showed no outer signs of exposure to the oil. Thus, the major question for the villagers became: are our subsistence foods still safe to eat? If some beaches, waters, and animals were oiled, were any safe to use? Were there links between what the villagers could observe and what they could not see? Accordingly, when health officials advised villagers that if resources did not smell or taste oily, they were 'almost certainly safe to eat' (ADHSS 1989), villagers responded with skepticism and disbelief. As the oil spread and wildlife died, anxiety over the safety of eating traditional foods grew to the point where subsistence harvests in some villages virtually ceased. As a village official at Ouzinkie put it in June 1989, "No one's eating anything out of the ocean anymore."

By August 1989, some preliminary findings from studies to test the safety of subsistence foods were available. In the following months, there were health bulletins, village meetings, newsletters, and videos reporting study findings, all with basically the same message. No fish tested were unsafe to eat. Most shellfish tested were also safe, but people should avoid using shellfish from oil contaminated beaches. Later tests on marine mammals, deer, and ducks, and additional testing of fish and shellfish in

1990, supported these conclusions.³ Nevertheless, after months of observing the spill's effects first-hand, for many people, doubts remained.

The remainder of the paper will compare measures of subsistence harvests for the year after the spill with pre-spill measurements. It will then explore the assessments people themselves gave of subsistence harvests and the reasons they provided to explain differences. It will conclude with some observations about subsistence uses since our 1990 field interviews were completed.

DATA GATHERING METHODS

The primary method for gathering information about subsistence uses in the 15 Alutiq oil spill villages was a household survey administered in person in each village. The questionnaire was modeled after other division survey instruments that had been administered at least once before in all 15 communities. For the 12 smaller communities, we tried to interview knowledgeable representatives of every household, while in the three larger villages of Port Lions, Old Harbor, and Ouzinkie, we chose 50 percent random samples. In total, from January to April 1990 we interviewed 403 households, for 88.2 percent rate of achievement of our goal (Table 1). Survey data were coded for computer entry and analysis with the SPSS program. Harvest quantities in numbers of animals or fish were converted into pounds edible weight using standard factors. Final study findings will be reported in a series of technical papers now in preparation (Fall et al. 1991; Mishler and Cohen 1991; Stanek 1991; Stratton and Colley 1991).

SUBSISTENCE AFTER THE SPILL

As reported in Table 2 and Figure 2, the subsistence harvests in the study communities in the year after the spill ranged from a low of 89 pounds per person in Ouzinkie to a high of 490 pounds at Ivanof

³ For summaries of these programs and findings see Fall (1990a, 1990b), Varanasi et al. 1990, Walker and Field 1991, and the newsletters produced by the division for the Oil Spill Health Task Force (ADF&G 1990).

Bay.⁴ As shown in Figure 3, of the 10 study communities in Prince William Sound, lower Cook Inlet, and the Kodiak Island Borough, eight had lower harvest levels during the study year than in the closest previous year for which data are available. This includes all four Prince William Sound and Lower Cook Inlet villages, and four of the six in the Kodiak Island Borough. In contrast, four Alaska Peninsula villages showed higher harvests, while the other (Chignik Lagoon) was only slightly lower than the previous measurement.

Table 2 and Figure 4 compare the relative changes in subsistence harvests for each community across study years. Where two pre-spill measurements were available, they were averaged for this comparison. The comparison shows startling declines for all but the Alaska Peninsula villages. The Prince William Sound communities were down markedly in 1989-90, Chenega Bay by 56.9 percent and Tatitlek by 56.7 percent. The lower Cook Inlet communities also exhibited sharp declines of 51.3 percent for English Bay and 46.5 percent for Port Graham. Every Kodiak community also reported lower harvests in the study year compared to the average of previous measurements, ranging from 76.6 percent lower for Ouzinkie (the largest relative decline for any village) to 14.5 percent lower at Akhiok. With the exception of Karluk, the relative decline in harvests in the Kodiak Island Borough decreased as the community's distance from the source of the spill increased. Again in contrast, subsistence harvests in four of the five Alaska Peninsula communities were relatively stable. The exception was Chignik Lake, which showed a 60.1 percent increase in harvests compared to 1984. This community's harvest of 447.6 pounds per person was similar to that of Ivanof Bay, Perryville, and similar communities of the Alaska Peninsula such as Port Heiden, Pilot Point, and Egegik (Walker et al. 1998).

ASSESSMENT OF CHANGES AND REASONS FOR CHANGE

During household interviews, respondents were asked to compare their uses of particular categories of wild resources during the post-spill study year with those of previous years. If they noted a difference, they were asked for reasons why the differences had occurred. Assessments of change were

⁴ Please note that these are preliminary data and will undergo minor changes before the final project reports are published.

requested for salmon, other fish, marine invertebrates, deer (Prince William Sound and Kodiak only), marine mammals, and waterfowl, as well as harvests overall.⁵ As shown in Table 3 (cf. Figure 5), only 2 percent of the households reported higher levels of use in the year following the spill, while 61 percent of the households said uses were lower overall than in previous years. About a third of the households said that subsistence uses had stayed about the same.

There were notable differences in these assessments between subregions. For lower Cook Inlet and Prince William Sound, most respondents said that lower harvests had occurred (93 percent and 87 percent, respectively). Over half (58 percent) of the households from Kodiak Island Borough indicated lower harvests as well. This percentage was lowest among Alaska Peninsula households, 38 percent of all households. The communities with the largest percentage of households reporting lower harvests were English Bay (97 percent), Port Graham (90 percent), Chenega Bay (89 percent), Tatliuk (85 percent) and Ouzinkie (77 percent).

As also shown in Table 3 (cf. Figure 5), most respondents reported that lower subsistence uses during the study year were due to the effects of the Exxon Valdez oil spill. Overall, 80 percent of the households which reported lower harvests cited the spill as the cause of the decline, while 11 percent cited non-spill reasons. Respondents attributed lower levels of subsistence use to the spill in at least 97 percent of the households with declines in Prince William Sound, 91 percent in lower Cook Inlet, 71 percent in the Kodiak Island Borough, and 64 percent in the Alaska Peninsula.

More specifically, as reported in Table 4 (cf. Figure 5), fear of contamination of subsistence foods by the oil was the most common reason cited for lower levels of subsistence harvests. Of the 189 households which specified oil spill reasons for lower harvests, 68 percent said that fear of oil-contaminated foods reduced their harvests or uses.⁶ This was a major concern in all the subregions, but highest in Prince William Sound (78 percent of households), followed by lower Cook Inlet (75 percent), Alaska Peninsula (61 percent), and the Kodiak Island Borough (58 percent).

⁵ The discussion here focuses on the overall assessment, but important differences between assessments for particular resource categories will be discussed in subsequent reports.

⁶ Households could cite more than one reason for the change.

Here are some representative statements from survey respondents about their concerns about oil contamination of their traditional food supply.

We saw too much oil, and we didn't want nothing to do with [fish]. I guess if you didn't see the oil you wouldn't mind. We don't want to eat them until we find out what's really going on.

- Chenega Bay, April 1990

I didn't go to the same places [as usual] to hunt because of oil on the beach. I've seen deer eating kelp. I don't want to shoot [a] deer and then find out it has been eating oil.

- Tatitlek, April 1990

There is still lots of oil on Elizabeth Island and Anderson Beach. In some places, there is lots of oil. I think people will wait a couple years before going out [to those places] again because they just don't trust it.

- English Bay, January 1990

I can't go out and get what I want off my beach just to eat without worrying if it is contaminated or I'll get poisoned. . . That's why I don't eat nothing off the beach. I don't eat clams no more.

- Ouzinkie, January 1990

We won't touch clams after that oil was floating around. Not our family anyway.

-Chignik Lake, January 1990

The other major oil spill-related reasons for lower harvests were the time spent on oil spill clean up (at least 43 percent of the households), and the perception that less resources were available because of spill-induced mortality (at least 6 percent of the households). Regarding the latter, here are two statements from Tatitlek:

There are usually hundreds of black ducks [scooters] around here, [but] this year there's not. [There's] nothing around to hunt. There are areas around here [usually] loaded with ducks. Last year, there were none.

I've hunted seal for years and years. All my life. This year, [there's] none around. [It's a] poor year for seal. Some trips I go out, [there's] not a one.

FOLLOW-UP INTERVIEWS

As reported in another paper (Fall and Mishler 1991:8-9), between September 1990 and March 1991 the division conducted 88 follow-up interviews with household heads who had earlier reported decreased subsistence harvests because of concerns about hydrocarbon contamination. We found that the closer the community was to the origin of the spill, the higher the level of concern remained. This was especially clear regarding salmon and shellfish. For salmon, concern remained high at Chenega Bay and Tatitlek, but dropped off sharply past Uziunkia. We found higher levels of concern remaining about oil-contaminated shellfish especially in communities such as Chenega Bay and English Bay. Overall, the follow-up interviews showed that for many households in some communities, especially those where the oil hit the hardest, questions remain about the damages that the spill might have caused to subsistence foods.

OBSERVATIONS AND CONCLUSIONS

This paper has provided an comparison overview of the size of subsistence harvests after the Exxon Valdez oil spill in 15 Alaska Native communities whose harvest areas were affected by the spill. The research found that in 10 of the communities, these harvests were substantially lower than in previous years. Especially, subsistence harvests in villages of Prince William Sound, lower Cook Inlet, and some in the Kodiak Island Borough showed stark declines. In contrast, subsistence production in five Alaska Peninsula villages was relatively similar to earlier measurements or higher.

When asked to assess differences in their subsistence uses in the study year compared with other years, most households confirmed that harvests were down (61 percent). In 80 percent of the cases, the oil spill was cited as the reason for the decline. The dominant oil spill-related reason for lower harvests was fear that subsistence foods had been contaminated by the oil. The majority of the households in most of 15 communities had direct contact with the effects of the spill through their employment on oil clean up jobs, as well as during other travel through their traditional use areas. They saw oil on the beaches, in the

water, and on certain animals and birds. Others suspected oiling when they inspected resources they had harvested or had been given. In addition, reports of dead wildlife and other signs warning of danger led many people to doubt that their traditional harvest areas were safe to use and traditional foods were safe to eat.

By the time reliable information based on tests of resources from specific traditional sites was available to these communities, all of the spring and most of the summer opportunities for subsistence harvesting in 1989 had passed. Furthermore, after months of observing the danger caused by the spill, many villagers were skeptical that foods could be safe. They demanded more tests from more places on a wider range of species. With oil still present, they argued that the tests should continue and be expanded.

Follow-up interviews suggested that respondents in most communities had returned to eating fish again in 1990, but many still distrust the safety of shellfish and deer. Overall, those communities closest to the source of the spill are most likely to express continuing concerns about resource contamination.

Indeed, it appears that as long as residents of the Native communities of the areas affected by the Exxon Valdez oil spill believe that oil remains in their environment, many will continue to refrain from using subsistence foods. The following report appeared from Chenega Bay in October 1990, more than 18 months after the spill (Evanoff 1990). The report indicated that the people of the village

Have eaten only a small fraction of the foods they ordinarily live on daily. They reported that indications from wildlife around them make the people very uncomfortable, and they are afraid to harvest subsistence food. An abnormal seal liver, ordinarily firm, was soft and runny. The arm of a starfish fell apart when pulled from the rocks. They have reported several dead eagles and sea gulls, a dead bear and a blind sea lion found during the past month, highly unusual occurrences prior to the spill.

In February 1991, several more dead and sick bald eagles were observed near Chenega Bay. The villagers captured one alive and turned it over to the U.S. Fish and Wildlife Service for treatment. In the same month, the villagers harvested chitons which, after cooking, were noticed to have strange white sores.

For a people whose survival has long relied upon their observations of the natural environment, such signs continue to warn of danger. And people have continued to respond in a culturally appropriate manner - with caution. Our analysis of data about subsistence uses in Alutiq communities following the

Exxon Valdez oil spill suggests that while these signs have persisted, certain traditional foods have been avoided by many households. Until such signs disappear and people are able place confidence in their own abilities to again interpret and understand their environment, recovery from this disaster will likely remain incomplete.

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TABLE 1. SAMPLE SIZES, OIL SPILL AREA HARVEST SURVEY, 1990

<u>Community</u>	<u>Number of Households</u>			
	<u>Target</u>	<u>Completed</u>	<u>Refusals</u>	<u>No contact</u>
<i>Prince William Sound Subarea</i>				
Chenega Bay	21	18 (85.7%)	1	2
Tatitlek	28	22 (78.6%)	3	3
	—	—	—	—
Subtotal	49	40 (81.6%)	4	5
<i>Lower Cook Inlet Area</i>				
English Bay	41	33 (80.5%)	6	2
Port Graham	61	48 (78.7%)	9	4
	—	—	—	—
Subtotal	102	81 (79.4%)	15	6
<i>Kodiak Island Borough</i>				
Akhiok	13	10 (76.9%)	2	1
Karluk	17	14 (82.4%)	1	2
Larsen Bay	39	34 (87.2%)	4	1
Old Harbor	46 (50%) ^a	48 (104.3%)	2	NA
Ouzinkie	35 (50%) ^a	35 (100%)	5	NA
Port Lions	38 (50%) ^a	38 (100%)	5	NA
	—	—	—	—
Subtotal	188	177 (93.2%)	19	4
<i>Alaska Peninsula Area</i>				
Chignik Bay	39	35 (89.7%)	2	2
Chignik Lagoon	15	15 (100%)	0	0
Chignik Lake	28	21 (75.0%)	0	7
Ivanof Bay	7	7 (100%)	0	0
Perryville	31	27 (87.1%)	2	2
	—	—	—	—
Subtotal	120	105 (87.5%)	4	11
	—	—	—	—
TOTAL	457	403 (88.2%)	42	28

^a Target was a 50 percent random sample of year-round households.

TABLE 2. ANNUAL SUBSISTENCE HARVESTS, POUNDS USEABLE WEIGHT PER PERSON, STUDY COMMUNITIES AND PERCENT INCREASE OR DECREASE DURING THE YEAR FOLLOWING THE EDON VALDEZ OIL SPILL

Community	Year One	Year Two	Oil Spill Year ^a	Percentage of decrease/increase in harvests during the year of the spill	
				Most recent previous year	Average of all previous years
Chenega Bay	308.8 ^b	377.7	148.1	-60.8%	-56.9%
Tatitlek	351.7	641.5	214.8	-66.5%	-56.7%
English Bay	288.8		140.6	c	-51.3%
Port Graham	227.2		121.6	c	-46.5%
Akhlok	517.9 ^b	158.2 ^b	289.0	+82.7%	-14.5%
Karluk	832.1 ^b	380.8 ^b	250.7	-34.2%	-58.7%
Larsen Bay	388.3 ^b	204.7 ^b	212.1	+3.6%	-26.5%
Old Harbor	465.5 ^b	419.0 ^b	260.0	-37.9%	-41.2%
Ouzinkie	358.3 ^b	401.1 ^b	89.0	-77.8%	-76.6%
Port Lions	266.9 ^b	323.0 ^b	146.7	-54.6%	-50.3%
Chignik Bay	187.7		208.6	c	+11.1%
Chignik Lagoon	219.5		211.4	c	-3.7%
Chignik Lake	279.6		447.6	c	+60.1%
Ivanof Bay	451.8		489.8	c	+8.4%
Perryville	390.4		394.2	c	+1.0%

^a For Prince William Sound and Kodiak communities, two pre-spill measurements are available. Pre-spill study years are as follows: Tatitlek, 1987-88 and 1988-89; Chenega Bay, 1984-85 and 1985-86; English Bay and Port Graham, 1987; Kodiak Island Borough, 1983-83 and 1986; Alaska Peninsula, 1984. The 'spill year' is 1989 for all communities but Chenega Bay and Tatitlek, for which it is April 1989 - March 1990.

^b Factors for converting numbers of animals or fish to pounds useable weight were revised slightly for the current study. We are presently recalculating earlier per capita harvest estimates using the revised conversion factors so that the data are comparable. This recalculation is incomplete. Those figures noted with a "b" have not yet been recalculated.

^c Only one previous measurement.

Please note that these data are preliminary and might change. Consult the final reports in the division's technical paper series for final data and analysis.

Table 3
Overall Assessment of Harvest/Use, Post-Spill Study Year

REGION Community	Households Surveyed*	CHANGE IN HARVEST/USE								REASONS FOR LESS					
		No Response		Higher		Same		Less		Non Spill		Oil Spill		No Response	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
PRINCE WILLIAM SOUND	38	1	2.6%	0	0.0%	4	10.5%	33	86.8%	1	3.0%	32	87.0%	0	0.0%
Tatishuk	20	0	0.0%		0.0%	3	15.0%	17	85.0%	1	5.0%	18	94.1%	0	0.0%
Chenega Bay	18	1	5.6%		0.0%	1	5.6%	16	88.9%		0.0%	18	100.0%	0	0.0%
LOWER COOK INLET	81	1	1.2%	1	1.2%	4	4.9%	75	92.8%	7	8.3%	68	90.7%	0	0.0%
English Bay	33	0	0.0%		0.0%	1	3.0%	32	97.0%	2	6.3%	30	93.8%	0	0.0%
Port Graham	48	1	2.1%	1	2.1%	3	6.3%	43	89.6%	5	11.6%	38	88.4%	0	0.0%
KODIAK ISLAND	168	12	7.2%	0	3.6%	55	33.1%	83	56.0%	7	7.5%	68	71.0%	20	21.5%
Quiltsie	31	2	6.5%		0.0%	5	16.1%	24	77.4%		0.0%	18	75.0%	6	25.0%
Port Lions	36	6	17.1%		0.0%	11	31.4%	18	51.4%	1	5.6%	15	83.3%	2	11.1%
Old Harbor	45	3	6.7%	2	4.4%	23	51.1%	17	37.8%	4	23.5%	8	47.1%	5	29.4%
Larsen Bay	31	1	3.2%	2	6.5%	7	22.6%	21	67.7%	1	4.8%	15	71.4%	5	23.8%
Kachik	14	0	0.0%	1	7.1%	4	28.6%	9	64.3%		0.0%	7	77.8%	2	22.2%
Aldrich	10	0	0.0%	1	10.0%	5	50.0%	4	40.0%	1	25.0%	3	75.0%	0	0.0%
ALASKA PENINSULA	101	1	1.0%	0	0.0%	64	63.4%	36	35.6%	12	33.3%	23	63.9%	1	2.8%
Chignik Bay	31	0	0.0%		0.0%	24	77.4%	7	22.6%	2	26.6%	5	71.4%	0	0.0%
Chignik Lagoon	18	0	0.0%		0.0%	7	48.7%	8	53.3%	1	12.5%	7	87.5%	0	0.0%
Chignik Lake	21	0	0.0%		0.0%	16	76.2%	5	23.8%	1	20.0%	4	80.0%	0	0.0%
Perryville	27	0	0.0%		0.0%	18	66.8%	12	44.4%	7	58.3%	4	33.3%	1	8.3%
Ivanof Bay	7	1	14.3%		0.0%	2	28.6%	4	57.1%	1	25.0%	3	75.0%	0	0.0%
TOTAL	388	16	3.9%	7	1.8%	127	32.8%	237	61.4%	27	11.4%	188	78.7%	21	8.6%

* Households not present during the pre-spill period were removed from analysis. These include two households from Tatishuk, three from Larsen Bay, three from Old Harbor, one from Port Lions, and four from Chignik Bay.

Table 4
Oil Spill-Related Reasons for Reduction in Overall Subsistence Harvest/Use, Post-Spill Study Year

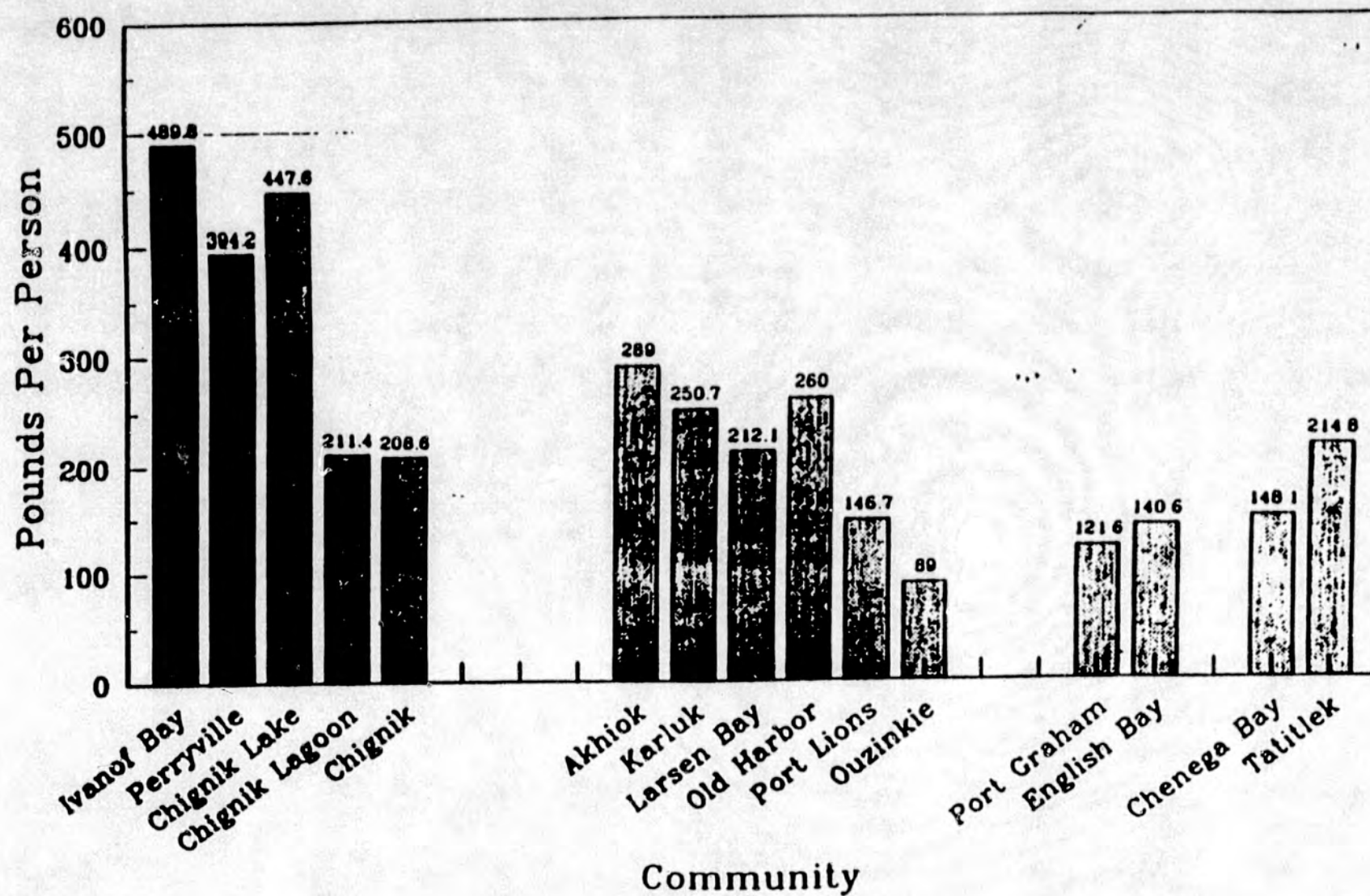
REGION Community	Households Surveyed*	Households Specifying Spill-Related Reductions		Loss Resources Around Due to Spill		Fear of Contamination		Too Busy Working to Obtain Sub. Food		Other Spill-Related Reasons		No Specific Reason Given	
		Number	Percent**	Number	Percent***	Number	Percent	Number	Percent	Number	Percent	Number	Percent
PRINCE WILLIAM SOUND	28	22	84.2%	4	12.5%	26	78.1%	4	12.5%	4	12.5%	6	18.8%
Tatlesh	20	16	80.0%	1	6.3%	13	61.3%	3	18.8%	2	12.5%	2	12.5%
Chonaga Bay	18	16	88.9%	3	18.8%	12	75.0%	1	6.3%	2	12.5%	3	18.8%
LOWER COOK INLET	81	68	84.0%	8	0.0%	81	75.0%	48	72.1%	28	41.2%	8	8.8%
English Bay	33	30	90.9%		0.0%	22	73.3%	24	80.0%	14	46.7%		0.0%
Port Graham	48	38	79.2%		0.0%	29	76.3%	25	65.8%	14	36.8%		0.0%
KODIAK ISLAND	188	88	38.8%	8	0.0%	38	57.8%	25	37.8%	3	4.5%	11	16.7%
Quiklik	31	18	58.1%		0.0%	13	72.2%	3	16.7%	1	5.8%	3	16.7%
Port Lions	35	15	42.9%		0.0%	8	53.3%	6	40.0%		0.0%	4	28.7%
Old Harbor	46	8	17.8%		0.0%	4	50.0%	2	25.0%		0.0%	2	25.0%
Larsen Bay	31	15	48.4%		0.0%	8	80.0%	6	40.0%	2	13.3%	2	13.3%
Kashik	14	7	50.0%		0.0%	4	57.1%	5	71.4%		0.0%		0.0%
Aldrich	10	3	30.0%		0.0%		0.0%	3	100.0%		0.0%		0.0%
ALASKA PENINSULA	101	23	22.8%	7	30.4%	14	60.9%	4	17.4%	7	30.4%	8	8.8%
Chignik Bay	31	6	16.1%	2	40.0%	3	60.0%	1	20.0%	3	60.0%		0.0%
Chignik Lagoon	15	7	46.7%	2	28.6%	2	28.6%	2	28.6%	4	57.1%		0.0%
Chignik Lake	21	4	19.0%		0.0%	3	75.0%		0.0%		0.0%		0.0%
Perryville	27	4	14.8%	3	75.0%	3	75.0%	1	25.0%		0.0%		0.0%
Island Bay	7	3	42.9%		0.0%	3	100.0%		0.0%		0.0%		0.0%
TOTAL	388	188	48.8%	11	5.8%	128	67.7%	82	43.4%	42	22.2%	18	8.8%

* Households not present during the pre-spill period were removed from analysis. These include two households from Tatlesh, three from Larsen Bay, three from Old Harbor, one from Port Lions, and four from Chignik Bay.

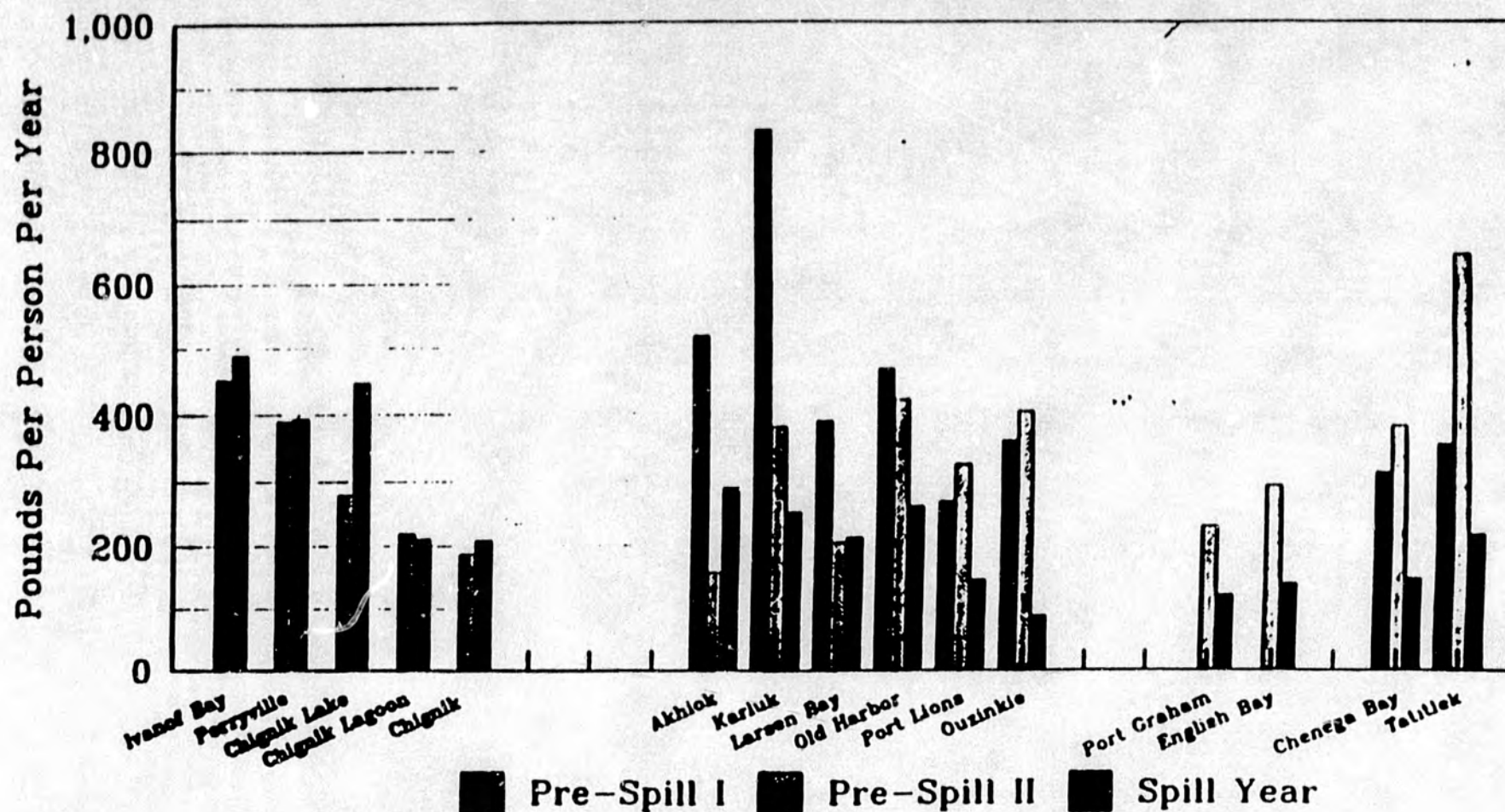
** Percentage based upon number of households surveyed.

*** Percentage based upon number of households specifying spill-related harvest reductions. As multiple responses are possible, percentages across reasons will not equal 100%.

**Figure 2. Per Capita Subsistence Harvests
In the year following the
EXXON VALDEZ oil spill**



**Figure 3. Per Capita Subsistence Harvests
Oil Spill Study Communities, 1980's**



Two previous study years exist for Kodiak and Prince Wm. Sound. One previous study year exists for AK. Peninsula and I. Cook Inlet

Figure 4. Comparison of Subsistence Harvests
Pounds per person, per year
Before and after the EXXON VALDEZ oil spill

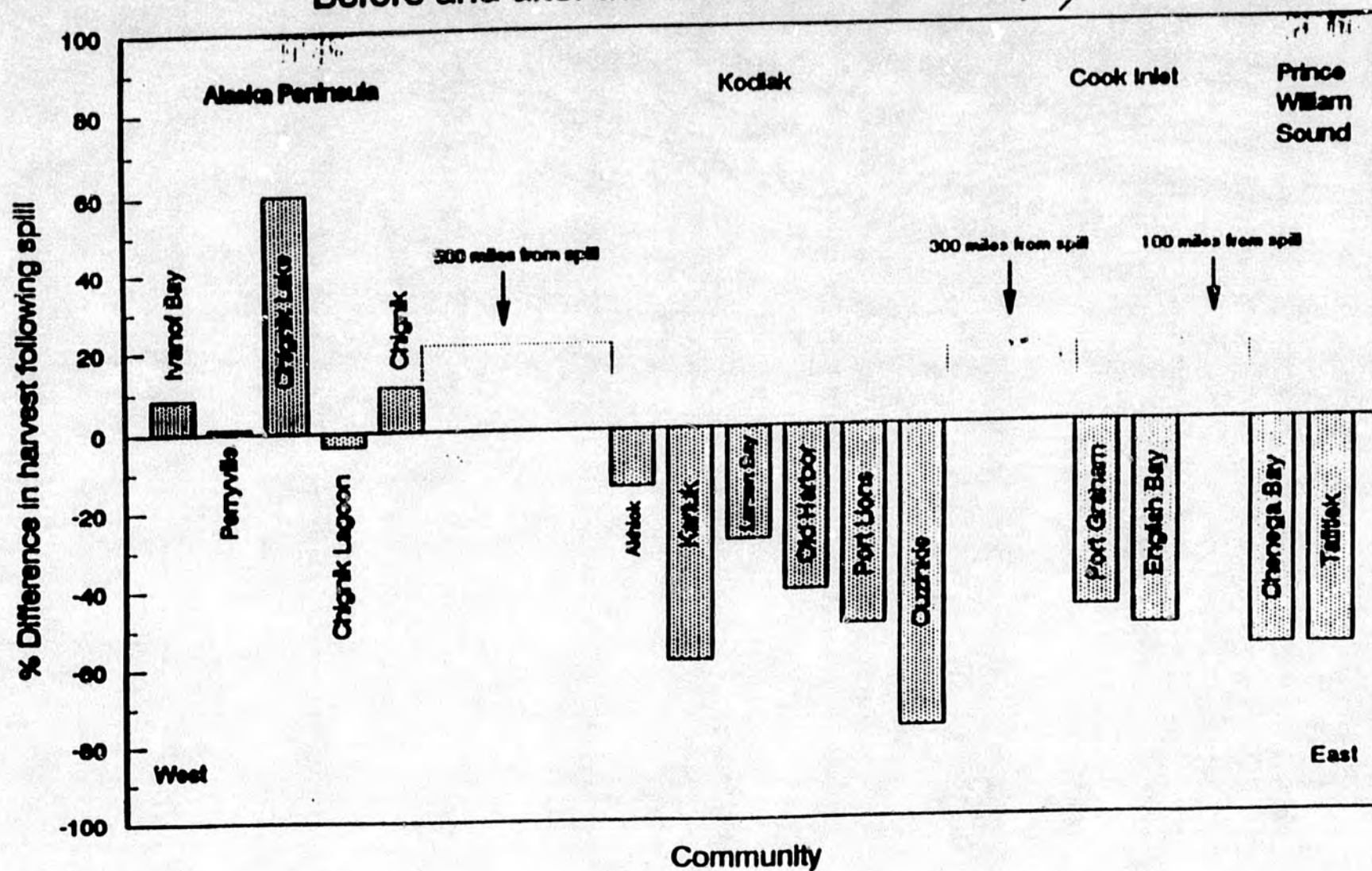
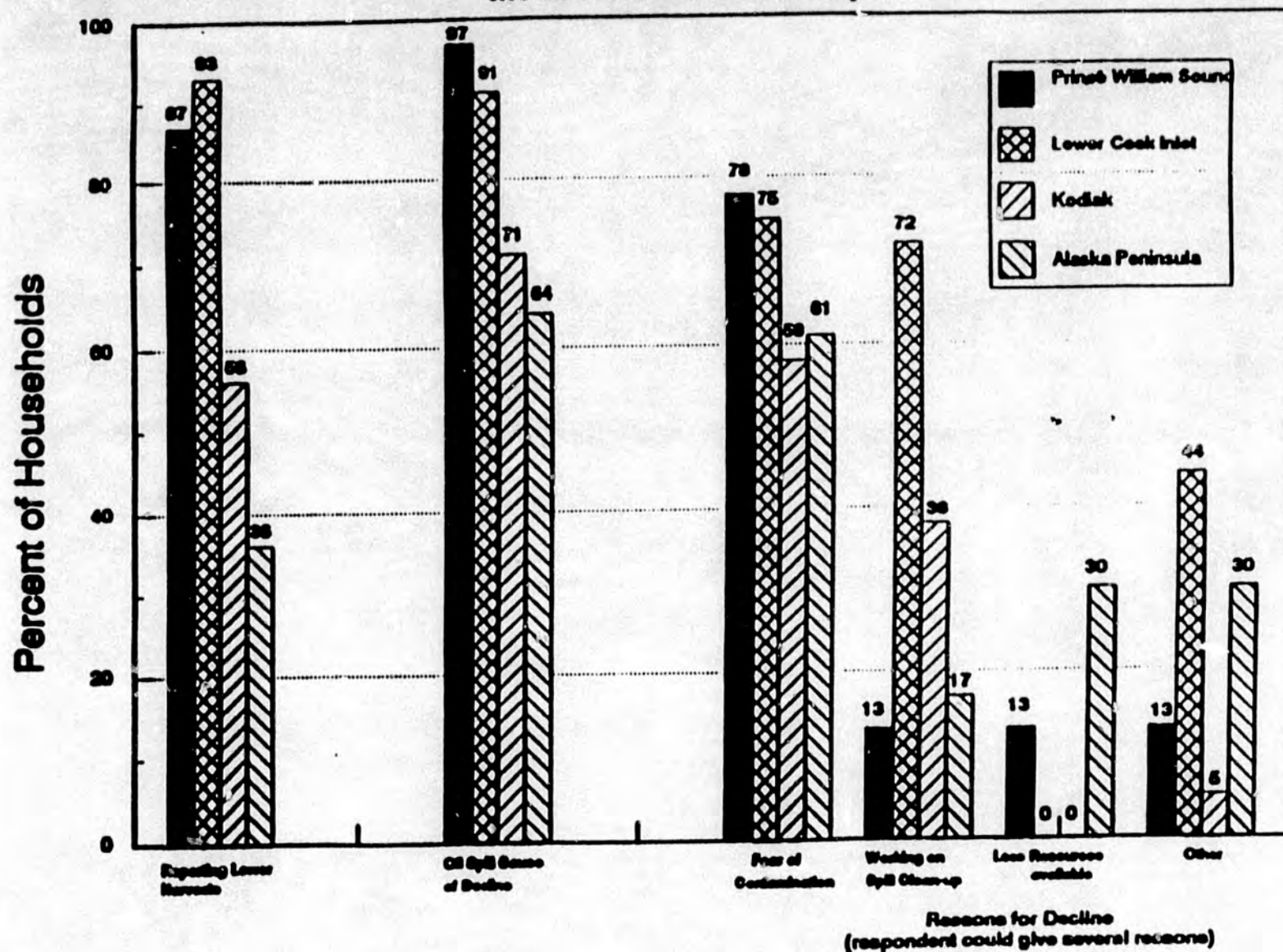


Figure 5. Assessments of Subsistence Harvests in the year following the EXXON VALDEZ Oil Spill



NAMES OF PERSONS TO BE SERVED

Pursuant to Local Rule 108(k), Plaintiffs hereby state that the following attorneys are entitled to be notified of the entry of the attached proposed Order:

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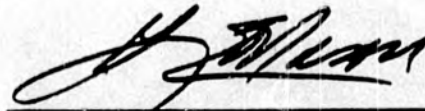
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DATED: April 16, 1991
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CERTIFICATE OF SERVICE

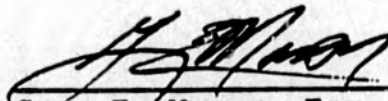
I HEREBY CERTIFY that on April 16, 1991, I caused a copy of
the foregoing to be served by hand-delivery upon:

Richard B. Stewart
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Environmental and Natural Resources Division
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A copy has
been forwarded
to Thomas
Campbell, also.

CHICKALOON VILLAGE
CHICKALOON VILLAGE FISH AND GAME
CONSERVATION COUNCIL
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(907) 745-0505

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Department of Law

APR 17 1991

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

April 15, 1991

Hon. Judge H. Russel Holland
U.S. Federal District Court
Anchorage, AK

Hon. Judge Holland,

In the letter you received from Chickaloon Village dated April 11, 1991, we went on record as opposing the proposed oil spill settlement with the Exxon corporation regarding the criminal charges and damages. At this time Chickaloon Village would also like to go on record as opposing the currently proposed settlement pertaining to civil charges and damages against Exxon.

The reasons behind our opposition are basically the same as we outlined in our April 11th letter to you, specifically: the lack of federally-mandated participation in the negotiations by the Traditional Tribal governments of Alaska; the withholding from the public (Native and non-native) of information gathered to date regarding the documented extent of damage caused by the spill; the low amount of the proposed settlement, given Exxon's huge profits; and the lack of information regarding the long-term effects on the environment, the health of the people or the subsistence activities and culture of the Alaska Native People who depend upon these resources for our survival.

Chickaloon Village, like a great many villages not located directly on the Sound, has nevertheless suffered from the Exxon Valdez spill, as the subsistence resources in our traditional jurisdictional and subsistence use areas have been affected, and will be affected into the future.

To date the Chickaloon Village Traditional Council has not received the documents pertaining to the spill's (currently known) effects which are now in the hands of various corporate and governmental bodies. We officially request that all such pertinent documents be submitted to us within 30 days of the receipt of this letter. Chickaloon Village officially reserves the right to initiate legal action against the responsible parties in tribal court at some point in the future, after our Traditional Tribal Council and the appropriate other tribal officials have had the opportunity to fully study and consider the implications of these documents and any other relevant information that becomes available to us.

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ACE 417354

APR 16 1991

We may also wish to enter a claim, either singly or in conjunction with other Traditional Tribal governments, in either state or federal court, and reserve the right to do so after full consideration of all existing relevant information by our Tribal officials.

Sincerely,

David Harrison
Tribal Administrator,
Chief Fish and Game Officer
Chickaloon Native Village

cc: Mr. Rick Davidage
State of Alaska Subsistence Council

ACE 417355

UNITED STATES DISTRICT COURT

District of Alaska

H. Russel Holland
Chief Judge

222 West 7th Avenue - No. 54
Anchorage, Alaska 99513-7545

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Barbara Herman
Attorney General's Office
State of Alaska

1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501

ACE 417356

Dear Ms. Herman,

I am writing to you concerning the proposed settlement over the Exxon Valdez oil spill. I am outraged that the spill data has not been released. The Legislature must pass a resolution requiring release of the state's economic and scientific data. There must also be clear opportunities for public participation in determining how settlement monies should be spent. This should include a legislative appointed public advisory group with members from the environmental community and spill affected communities whose comments legally bind the Trustees Council. The money should be spent on: buy back of timber rights along spill affected coastlines to prevent further damage; restoration activities; and ongoing studies in the Sound.

Judge Holland should suspend a determination on the settlement until the scientific data has been released and the public and the legislature have had opportunity to review it.

ACE 417370

Sincerely,

Nicholas Morantz

MICHELE MORIARTY
H.C. 64 BOX 26
COOPER LANDING, AK
99572



Barbara Herman
Office of the Attorney General
State of Alaska
1031 W. 4th Ave #200
Anchorage, AK 99501

RECEIVED
Department of Law

APR 17 1991

ACE 417371

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska



Dear Ms. Herman,

I am writing to you concerning the proposed settlement over the Exxon Valdez oil spill. I am outraged that the spill data has not been released. The Legislature must pass a resolution requiring release of the state's economic and scientific data. There must also be clear opportunities for public participation in determining how settlement monies should be spent. This should include a legislative appointed public advisory group with members from the environmental community and spill affected communities whose comments legally bind the Trustees Council. The money should be spent on: buy back of timber rights along spill affected coastlines to prevent further damage; restoration activities; and ongoing studies in the Sound.

Judge Holland should suspend a determination on the settlement until the scientific data has been released and the public and the legislature have had opportunity to review it.

ACE 417372

Sincerely,

Julie Jones

MICHELE MORIARTY
H.C. 64 BOX 26
COOPER LANDING, AK
99572



Barbara Herman
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State of Alaska
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Anchorage, AK 99501

RECEIVED

Department of Law

APR 17 1991

ACE 417371

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska



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CEP

'91 APR 17 M155

ATTORNEY
AND

OFFICE

April 9, 1991

Dear Sir,

My response to the proposed deal between Exxon and the state of Alaska is that it is an injustice to the people and the land beyond my description in words.

There are no points which call for its passage except greed and ignorance. The last thing we need to do is to 'get this behind us' as our governor (a slime ball if there ever was one) puts it. It must be in front of us if it is our children rather than ourselves we care for.

It is obvious that this state is a prostitute for business and is a business itself. The perfect example of which is the sexual intercourse between the state government of Alaska and Exxon.

The secrecy with which this deal was struck and the state holding information it gathered for the people from the people is only one example that this government is not good now nor will it be good for the future of the people or the land in which we live.

As a first step toward some resemblance of truth and justice for all, this bargain between the state and Exxon must be rejected.

Sincerely,

Richard J. Wysong
P.O. Box 992
Girdwood, Ak. 99587
907-783-3413

ACE 417342

Richard J. Wysong
P.O. Box 992
Girdwood, Alaska
99587



APR 12 1991

OIL SPILL LITIGATION
1031 W 4th
SUITE 200
ANCH, AK. 99501

ACE 417343

DAVID P. JANKA
P.O. Box 1022
VALDEZ, ALASKA 99686

4-16-91

LETTERS,

I AM A 15 YEAR RESIDENT OF PRINCE WILLIAM SOUND, ALASKA. I HAVE KAYAKED, SAILED, POWER BOATED, FLOWN, RESEARCHED, HIKED, WORKED, ENJOYED AND AM RAISING A FAMILY HERE.

I HAVE BEEN INVOLVED AT TIMES WITH OIL SPILL RESPONSE AND HAVE FOLLOWED ALASKA LEGISLATIVE HEARINGS RELATED TO THE EXXON VALDEZ SETTLEMENT.

I DO NOT FEEL THIS SETTLEMENT IS IN THE PUBLIC INTEREST OR DOES IT EVEN MEET THE NON-PUBLIC INTERESTS. IT IS CLOSE TO BEING A GOOD SETTLEMENT THOUGH! THE CONCERNS RAISED OVER THESE PAST WEEKS COULD BE SATISFIED WITHIN A SHORT PERIOD OF TIME (< 1 YEAR I BELIEVE) WITH A REWORKED SETTLEMENT.

PLEASE WITHDRAW FROM/OPOSE THIS SETTLEMENT AND COME BACK TOGETHER WITH A COMMITMENT TO WORK OUT A GOOD, WELL REPRESENTED SETTLEMENT BASED IN REALITY WITH PUBLIC AND LEGISLATIVE PARTICIPATION THROUGHOUT THE PROCESS.

THANK YOU FOR ALLOWING US TO COMMENT. I ONLY WISH WE WERE BROUGHT INTO THE PROCESS EARLIER.

D.P.J.

CC: BARBARA HERMAN - ST. OF ALASKA
THOMAS A. CAMPBELL - NOAA WASH. D.C.
H. RUSSEL HOLLAND - US DIST. COURT AK.
EUGENE KUBINA - AK. LEGISLATURE
KURT MENARD - AK. LEGISLATURE
JIM KERTUJILA - AK. LEGISLATURE
CHARLES COLE - ATTORNEY GENERAL, ALASKA
WAITER HICKEL - GOVERNOR, ALASKA

ACE 417357

JAN 14
POB 1022
13 DEC 2. ALASKA 99501

BARBARA HERMAN
OFFICE of the ATTY GENERAL
STATE of ALASKA
1031 W. 4TH AVE. # 200
ANCHORAGE, ALASKA 99501



ACE 417358

FORTIER & MIKKO
A PROFESSIONAL CORPORATION

Attorneys at Law

DENALI TOWERS NORTH
2550 DENALI STREET
SUITE 804
ANCHORAGE, ALASKA 99503

27
SAMUEL J. FORTIER
DAGMAR C. MIKKO
CARLENE M. FAITHFUL
TELEPHONE (907) 277-4222
FAX LINE (907) 277-4221

April 11, 1991

Mr. Thomas Campbell
General Counsel
National Oceanic and Atmospheric Administration
Department of Commerce
14th and Constitution Avenue N.W.
Washington D.C. 20230

Dear Mr. Campbell:

We have been directed to you by the Department of Interior to consider and obtain the views of Chenega Corporation, Port Graham Corporation and English Bay Corporation, with regard to the settlement agreement between the governments and Exxon Corporation. This settlement agreement is stated at 56 Fed. Reg. 11636 - 11642, and the MOA is stated at 56 Fed. Reg. 11642 - 11646.

First, we object to the United States Department of Interior delegating its duty to consult with the village corporations, and consider their views to the NOAA. We also object to the federal government, through the Department of the Interior, entering into the settlement agreement before it has considered our clients' views. Further, the Department of the Interior's failure to involve the village corporations in settlement discussions concerning lands within interim jurisdiction as well as natural resources damaged by Exxon is violative of the following federal laws, particularly 45 CFR 2650.1 and Public Law 94-204, as amended by Public Law 96-47, Public Law 99-396, Sec. 22 and Public Law 100-581. We object to the State of Alaska's involvement in the allocation of the limited resources recovered in the settlement. We also object to the State of Alaska's involvement in the settlement process, where our clients

requested to be kept advised as to the progress of the settlement as early as February 1991, and we were ignored until the settlement was completed.

Second, our clients are unable to determine whether the sums recovered are sufficient to deal with the compensatory and remedial relief necessary to compensate for loss, injury, impairment, damage, or destruction of the natural resources, whether or not said loss is temporary or permanent, and whether the ecosystems polluted by the Exxon Valdez oil spill are able to recover, and if so, over what period of time. The consultation is inadequate because it did not include any scientific studies or assessments concerning these issues.

Third, it is our clients' view that the Attorney General for the State of Alaska has a conflict of interest, in that he has an ongoing business relationship with one or more defendants in the settlement and may stand to gain monetarily as a result of the settlement. In short, it is our clients' view that the appearance of impropriety on the part of Mr. Cole is so great as to cast grave doubt on the adequacy of the settlement, and the ability of the State of Alaska to act fairly and impartially, as a trustee in the allocation of resources, which impact lands conveyed to our clients or are within the interim jurisdiction of the United States, by and through its Secretary of Interior, and its Secretary of Agriculture.

Fourth, it is our clients' view that the agreement and consent decree at paragraph 13(c) does in fact compromise the rights and claims of the village corporations in effect, by ignoring the obligations of the federal government to our clients. We believe, at a minimum, that paragraph 13(c) must be amended to read:

(c) rights, obligations, and claims, if any, of legal entities, include village corporations created pursuant to the Alaska Native Claims Settlement Act (ANCSA) or persons other than the governments who are holders of any present right, including lands, or resources of lands, selected but not yet conveyed to ANCSA corporations by the United States Government, or title or interest in land or other property interests, including Natural Resources, and ecosystems affected by the oil spill.

Fifth, the limitations stated at paragraph 13(b), (56 Fed. Reg. 11639) are too narrowly defined. In this regard, the village corporations which we represent are holders of the

surface estate, and are concerned with preserving the use of the lands in accordance with traditional local lifestyles and subsistence economies. See 4.R. Rep. No. 729, 94th Cong., 1st Sess. 26-27 (1979) reprinted in 1975 United States Code, Congressional and Administrative News 2376, 2393. See also Ahtna, Inc. 107 IBLA. 266, 269, 270 (1989):

[Section 14(f) of ANCSA] provides protection to villages from a precipitant decision by Regional Corporations to develop the subsurface estate. This provision seeks to avoid potential conflicts between villages which are holders of the surface estate and which may be concerned with preserving the use of the land in accordance with the traditional local lifestyle and subsistence economy. . . .

It is their traditional lifestyle and subsistence economy which our clients are undertaking to protect, in this case, not against the regional corporation's potential development of mining activities, but rather, with regard to devastation on account of the Exxon Valdez and its aftermath. For more information, please see Exhibit 1, a report by the State of Alaska specifically discussing Chenega, Port Graham and English Bay.

It is our position that ANCSA Section 14(f), with the 1976 amendment must be construed to place in the village corporation, as a holder of the surface estate, the right to preserve the use of the land and its resources for traditional lifestyles and subsistence economy. See also 16 U.S.C. Sec. 3111(4), which demonstrates Congress' overriding concern to protect Native cultures. Congress expressed its intent to protect Natives "physical, economic, traditional and cultural existence. . . ." Pursuant to ANCSA and ANILCA, the authority to preserve subsistence activities and the traditional local lifestyle was vested in the village corporations, as owners of the surface estate of once public, and now private or selected but not yet conveyed lands. Alaskan IRAs and Traditional Councils possess authority concurrently with the village corporations. See 25 U.S.C. Sec. 461-495, wherein the Indian Reorganization Act of 1934 was amended and applied by Congress in 1936 to Alaskan Native villages.

The goal of tribal cultural autonomy that Congress expressed in the Indian Civil Rights Act is also expressed in ANCSA and ANILCA, with the duty of the village corporations to protect Native subsistence lifestyles. Cf. McCurdy v. Steele, 353 F. Supp. 629, 633 (1973). Pursuant to the 1976 amendment to ANCSA Sec. 14(f), Congress has voiced the concern for tribal cultural economies by expressly granting

the right to shape cultural development or preserve cultural economy to village corporations concerned with preserving lands uses and the resources thereon, based upon their special standards and obligations to protect traditional lifestyles and the subsistence economy. This right or power is a concurrent power shared with the I.R.A. or Traditional Councils.

Here, the village corporations of Chenega, Port Graham and English Bay, have suffered enormous losses. 70% of Chenega Corporation's coastline is oiled, and highly toxic oiling occurred on Port Graham and English Bay conveyed lands. Moreover, the purpose of ANCSA was to resolve aboriginal land claims by providing a land resource base. Although Congress did not expressly address Native subsistence, it was and continues to be a Congressional expectation that the Secretary of Interior would protect subsistence users under their existing authority. See Note, The Alaska National Interest Lands Conservation Act: Striking the Balance in favor of customary and traditional subsistence use by Alaska Natives, 27 Natural Resources Journal 421, 425 (1987). Thus, In People of Gambell v. Clark, 746 F.2d 572, 575, (9th Cir. 1984), the 9th Circuit noted:

The needs of the Natives for subsistence hunting and fishing were considered in determining the amount of land granted the Natives, See e.g. H.R. Rep. No. 523, 92nd Cong. 1st Sess. 5, Reprinted in 1971 U.S. Code Congressional and Administrative News, 2192, 2195; the land was granted, in part, in lieu of subsistence hunting and fishing rights. . . . 117 Cong. Records 36864 (1971) (Rep. McClur).

Based upon the foregoing, we believe that paragraph 13(b) of the Settlement Agreement, in order to conform with ANCSA and ANILCA, must be amended to read as follows:

(b) the rights and obligations, if any, of Alaska Native villages to act as trustees, and Alaska village corporations to exercise their legal rights and obligations, both for the purposes of asserting and compromising claims for injury to, destruction of, or loss of Natural Resources, and affected ecosystems if any, belonging to, managed by, controlled, selected by, or appertaining to such villages and village corporations.

Sixth, it is our clients' view that the inclusion of Exxon

Pipeline Company, and in the agreement's apparent exclusion of Alyeska, which is owned in part by Exxon Pipeline Company, is not clear and must be amplified before we can offer you a view as to this portion of the agreement.

Seventh, we believe the definitions concerning Natural Resources and Natural Resource Damages (Agreement paragraph 6(c) and (d), page 5; MOA paragraph II (F) and (G) pages 6 through 7) specifically include lands and resources held by the United States in interim jurisdiction, the same constitute selected lands under ANCSA.

"Natural Resources", within its definition also includes resources which are appurtenant to lands selected by the village corporations, which resources the village corporations have a direct interest under ANILCA. See, for example, AMOCO Production Company v. Village of Gambell, 107 Sup. Ct. 1396, 1397 (1987) (applicability of ANILCA includes coastal waters to a point 3 miles from the coastline). The village corporations' restoration claims based upon subsistence use under ANILCA extends to 3 miles from the coastline. Scientific studies and assessments are essential to ascertain the extent of those damages, because village corporations have an obligation under ANCSA and ANILCA to protect the subsistence lifestyle, which extends to the use of marine resources.

The scientific studies and assessments which the Governments undertook earlier are coming to an end, according to news reports. As mentioned earlier, those studies and assessments have not heretofore been made available to the village corporations, either with regard to conveyed lands or selected but not yet conveyed lands. However, the State of Alaska has informed the village corporations that it will not be undertaking any further oil removal work after this season, which means that resource restoration must depend upon species hardy enough to withstand the effects of oil pollution. It is our clients' common view that said substitute resources are unacceptable. That the damaged or destroyed ecosystems appurtenant to the village corporations' property interests render their ability to safeguard subsistence lifestyles and economies and the cultural values thereto unperformable.

Thus, even if the settlement pays lip service not to compromising, the village corporations' claim and rights, as well as these obligations, it is clear that the practical application results in prohibition against the performance and enjoyment of legal obligations and rights.

Eighth, the agreement fails to address the federal government's obligation with regard to escrow of damages money, and does not provide any methodology for restoration with regard to lands and resources in its interim

jurisdiction, except in conjunction with the State, which has become increasingly adverse to oil reclamation and preservation of Native lifestyles.

Ninth, there is no meaningful participation on the part of the village corporations with regard to either their present or future rights and legal obligations.

Tenth, the State of Alaska cannot act as a trustee with regard to resources on lands selected but not conveyed to the village corporations.

Eleventh, both the settlement agreement and the MOA ignore the clear requirements pursuant to CERCLA at 42 U.S.C. Sec. 9651 as it relates to the Clean Water Act, recovering compensation for loss, injury, impairment, and damage or destruction or the ability of polluted ecosystems to recover. . . ." Page 5 of the agreement and consent decree, at paragraph 6(c) and paragraph II (F) of the MOA should be corrected to include this important provision.

Similarly, the MOA, at page 7, paragraph G, fails to address the duties of the federal and state trustees to settle claims for "impacted ecosystems".

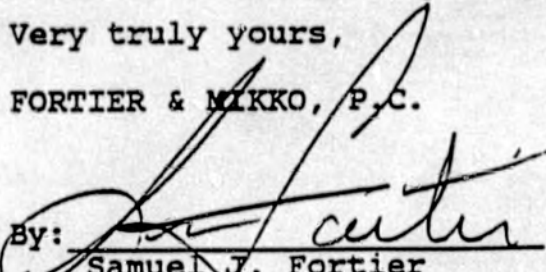
See also MOA at paragraph II (J), (definition of restore or restoration) but fails to address the damage to the ecosystems.

Based upon the foregoing, it is our clients' common view that the Department of the Interior should not enter into the settlement agreement until adequate consultation has occurred. It is Chenega's view that the Department of Agriculture in its capacity as a holder of interim

jurisdiction lands and resources selected by Chenega Corporation has failed to even so much as acknowledge Chenega's letter, and has not sought Chenega's views nor consulted with Chenega Corporation.

Very truly yours,

FORTIER & MIKKO, P.C.

By: 

Samuel J. Fortier

SJF:jmb (ltr-488/204.210.288)

cc: Chenega Corporation
Port Graham Corporation
English Bay Corporation
Kenneth McCallion, Esq.
Christopher Kende, Esq.
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ACE 417351

General Counsel Thomas A. Campbell
National Oceanographic and Atmospheric Administration
Department of Commerce
14th & Constitution, N.W., Rm. 5814
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✓ Barbara Herman
Attorney General's Office
State of Alaska
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501

COPY WITH ORIGINAL SIGNATURE

16 APRIL 91

Dear Mr. Campbell and Ms. Herman: re: Exxon VALDEZ Settlement

Following are my comments on the proposed settlement.

Credentials and Disclaimer:

I earned an M.A. and Ph.D in Government at Claremont Graduate School and a J.D. (cum laude) at Georgetown. I passed bar exams in Alaska, Massachusetts, Hawaii, and New York and hold membership in the bars of Alaska and Massachusetts [only paperwork pending in the other states]. I came to Alaska to live in 1971.

However, I am representing only myself and, hopefully, the public interest here and am representing no other client. I am a pro se plaintiff in public interest litigation against the State of Alaska on a Marine Highways case involving the dedicated funds question.

I have been working as a reporter for five small Alaskan weekly newspapers, which is how and why I happen to have attended many of the Exxon VALDEZ settlement events. I am not representing any newspaper in this letter or in prior testimony.

I am a member of the Juneau Democratic Precinct Committee and chair a Democratic luncheon speakers' club, the Bill Egan Forum, but represent neither the Precinct nor the Forum here. In fact, I discussed and sought approval for my letter and testimony with no one else. So I am representing no one else, other than myself and the public interest, in these comments.

Not in Public Interest: One Branch of Government Intent

The settlement is not in the public interest because it intentionally creates or tends to create a one-branch form of government in which only the Executive has power, even though both State and Federal governments have a tripartite form of government.

The settlement in fact creates a one-branch form of government because only Trustees, who are appointed Executive branch officials, will control the spending of the bulk of the money recovered under

the settlement, because both Legislative branches--Congress and the Legislature--are removed from the appropriation, allocation function despite constitutional and court requirements that all money bills originate with the Legislative branch only, and because the settlement avoids the Judicial branch decision, except as a rubber stamp upon the Executive branch settlement itself and not upon the merits of the case.

This emphasis upon and factual creation of one-branch government is intentional and not accidental, as shown by the following direct and circumstantial evidence.

1. In late January or early February, Governor Hickel, responding to my report to him of a common legislative saying about all governors, that "a governor can cut, but he cannot add" [meaning that Alaska's governor has a line-item veto but only the Legislature can put items into the budget], said that he would try to find a way "to multiply." He made this comment in his offices in Juneau during a 'meet the press' session, but no one other than I heard the Governor's remark. Still, I did hear it.

The settlement, by creating a \$1 billion money pot administered by Executive branch officials not subject to Legislative branch oversight and direction, does 'multiply' Hickel's powers as Governor.

2. Attorney General [AG] Charles Cole, testifying to the Alaska House Judiciary Committee March 7,

a. when asked if his repeated failure to answer Committee questions about the settlement, on deadlines he chose, was an attempt to stall the Committee until after he had completed the settlement negotiations, said, "What difference would that make?"

b. said that legislative involvement in the negotiation process or in settlement approval would be "highly ill-advised public policy."

3. AG Cole also told the House Judiciary Committee that there were negotiators who did not want the Legislature to have the ability to make appropriations for any purpose. [Alaska's Constitution prohibits "dedicated funds" in order to let the Legislature make unrestricted judgment calls about each year's budget.]

4. AG Cole told the House Settlement Review Committee on April 5 that some settlement negotiators "who shall remain nameless" did not want Congress to control settlement funds.

5. AG Cole told Rep. Hudson and the House Settlement Review Committee April 5 that the Legislature could not have "advise and consent" powers over Trustee spending, but could be advisory only.

6. AG Cole admitted to the House Settlement Review Committee

that he had had no discussion with U.S. Assistant Attorney General [?title?] Richard Stewart over the possible division of natural resource damage claims between the State and the Federal government. [Remember this one; we come back to it later].

This is significant, because, if the governments had reached agreement on this division, then the State could have pursued its own claims in State court and any damages it won there clearly would have been General Fund monies clearly subject to the plenary power of the Legislature to appropriate as it saw fit. By failing even to have such a discussion, AG Cole acted consistently with an intent to withhold from the Legislature even the chance that it could exercise its constitutional power over appropriations.

7. AG Cole admitted to the Senate Settlement Review Committee that, even though regulations promulgated under the Clean Water Act required the deposit into the Federal Treasury of all damages recovered under the Act, "the Governor and I were unwilling to permit that deposit into the Federal Treasury," in part, because "it takes an Act of Congress to get money out of the Federal Treasury."

This is significant, because it shows both a willingness to violate Federal regulations, agreed to by both State and Federal negotiators, and an intentional effort to avoid Congressional control of settlement monies Exxon paid.

8. Alaska Representative Niilo Koponen said that the Hickel Administration "was relying on the settlement as a way of keeping payments out of the Legislature's hands." April 6-9 period.

While Koponen's saying so does not make it so, the fact that he said so means that I am not the only person to think it so.

9. On April 12, at a press conference that I did not attend but an uncut videotape of which I watched later, another reporter asked Governor Hickel a question I had not 'planted', namely, was it Hickel's intent to shift the balance of power from the Legislature to the Executive. Governor Hickel answered that he did have such an intent, that he was doing his accustomed role of giving increased Executive direction, that it was a counter to Legislative control during the late '70's, and that he expected to be at least partly successful at encouraging that shift that was trying to happen.

This is significant because now the Governor's intent to increase Executive branch control was made public--not just confided in me--and not at my instigation or suggestion.

So, therefore, the settlement is not in the public interest because Governor Hickel and others actively intended to--and did act to accomplish their intention to--create a large sum of money subject only to Executive branch control, taking acts both of commission and omission to accomplish this improper end.

Illusory Benefits of Settlement

The settlement is not in the public interest because it does not end litigation the way a properly-structured settlement would do. Because ending litigation is the primary advantage of a settlement, the continued existence of outstanding litigation means that the proposed settlement does not achieve the ends for which it was created. That is, the benefits of settlement are illusory.

1. Settlement benefits are illusory, according to former AG Doug Baily, because now individuals who sued Exxon will also have to sue the State of Alaska. Thus, said both Baily and Assistant Revisor of Statutes Pamela Findley to the Juneau Bar Association luncheon April 12, Alaskans will be suing Alaska, leading in Baily's words to "legal civil war." Findley and Baily foresaw difficult political decisions for legislators who would be asked to fund litigation against their own constituents.

2. Settlement benefits are also illusory, because public interest litigants [who need not pay their governmental opponents' costs, because under Alaska law it is in the public interest to get public answers to public interest questions] have, under Alaska's Constitution, a right to a legislature which itself exercises its sole right to make appropriations.. See Kenai Lumber.

3. Settlement benefits are also illusory, because under Alaskan law, citizens can intervene in a government case merely by showing that possible non-feasance occurred. see McCormick v. Smith, a 1989 Alaskan case in two parts [see both].

NOW go back to the AG's failure even to ask Richard Stewart about the division of natural resource damage claims between the two governments. Because Cole failed even to ask that question, the legislature was excluded even from the chance of getting the appropriation power due it under Alaska's constitution.

And that "possible non-feasance" is enough to permit intervention of right by a public interest litigant(s) who want to enforce their constitutional right to a Legislature that makes appropriations.

Alyeska Received Too Great a Release from Liability

1. AG Cole for the first time testified April 13 in Kodiak that Exxon had insisted that Alyeska be released from liability, because, Cole said, Exxon did not want to settle ITS claim only later to become liable for Alyeska, which it partly owns.

2. But, said Cole, that release was so broad that Alyeska was also released from liability to Alaska for natural resource damages even if Alyeska had either acted independently from Exxon or acted on behalf of another 3rd party, most likely another owner.

3. And, given Congressman Miller's letter showing that Alyeska and its owner companies most likely in fact intentionally violated promises to Congress, there would be reasons for someone to bring suit against Alyeska.

So, for these three reasons good and true, I urge you to "just say 'no'" to the settlement.

Violating State Right to Appropriate Funds Without Restriction

Once again, however, let me explain, adopting Rep. Ramona Barnes' analysis, the argument for State control of some portion of Exxon payments.

1. Although it may be difficult to draw the line exactly which separates Federal from State natural resources damaged, nevertheless it is a virtual certainty that there are some damaged natural resources that would belong to the State; i.e., that are State assets.

2. If there are even any State assets, then the part of the recovery which applies to those State assets is itself in reality a State asset, albeit in financial rather than in natural resource form, and however differently denominated. But, thought the form may differ, nevertheless the recovery from Exxon is to that degree a State asset.

3. Alaska's constitution and court cases here give ONLY to the Legislature the right to make appropriations of State assets.

4. The Alaska Constitution further prohibits "dedicated funds," i.e., funds spent for a special purpose. Therefore, funds in the General Fund are subject to the general appropriation power of the Hickel Administration.

5. So, therefore, the Legislature is intended by the constitution specifically to consider all possible State needs, not just natural resource damage restoration needs. Alaska has an abysmal infant mortality rate and some of the nation's worst per-capita rates for alcoholism, drug abuse, homicide, suicide, accidental death. The U.S. may differ; still, that is Alaska's view: the legislature should be able to balance needs for one more deer along the north slope against needs for a clean water drinking system in a rural area.

I hope this all makes sense. I am including a fact sheet and calendar or diary of Settlement talk events.

Sincerely & cordially

Joseph A. Sonneman

ACE 417363

GOVERNOR MEETS PRESS, Jan-Feb. ?

Responding to 2nd floor saying that "a governor can cut, but he can't add," Gov. Hickel says perhaps he can find a way to "multiply."

HOUSE JUDICIARY, February dates

AG repeatedly refuses to answer Committee questions about settlement progress and clauses, alleging incomplete answer-preparation process.

HOUSE JUDICIARY, 3/7

Asked if his repeated failure to answer Committee questions, on deadlines he chose, was an effort to stall the Committee until after the settlement was complete, the AG says "What difference would that make?"

AG says legislative involvement in negotiation process or settlement approval would be "highly ill-advised public policy."

HOUSE JUDICIARY, Feb-March??

AG says some settlement negotiators do not want Legislature to be able to appropriate to any purpose.

HOUSE SETTLEMENT REVIEW COMM., ??

AG says negotiators had "no substantive discussion" of Legislature's power to appropriate.

AG does not answer Rep. Gruenberg question re: any discussion of dividing the damaged resources between Alaska and U.S. governments. Gruenberg asks again if "any discussion." AG then says he did not discuss that with U.S. Asst. AG Stewart.

AG says Hickel got idea for \$1.2 billion figure from "intuition."

SENATE SETTLEMENT REVIEW COMM. ??

AG says Hickel got idea for \$1.2 billion figure from analysis.

HOUSE SETTLEMENT REVIEW COMM, 4/5

AG says some settlement negotiators "who shall remain nameless" do not want Congress to control funds.

AG tells Rep. Hudson that the Legislature can not have "advise and consent" power over Trustee spending, but may have advisory-only role.

Rep. Barnes says that some damaged natural resources were State assets, that money recovery for that damage must thus also be a State asset even if not so called, and that only the Legislature can appropriate State assets. "So I have a constitu-

by Joe Sonneman

tional problem" with the proposed settlement's Executive branch trustee control of most settlement money.

SENATE SETTLEMENT REVIEW COMM., 4/6

AG says he considered alternative, that Legislature might want to fund restoration, would need half of Exxon money and Legislature might want to spend it on education.

Private lawyer questions settlement amount as inadequate, especially upset that no trial means no chance of punitive damages.

AG says he would consider releasing data if Legislature asked him to do so by a joint resolution. Sen. Eliason asks why the Legislature would want to take Cole off the hook and put themselves on it.

CONG. MILLER LETTER, 4/8

U.S. Rep. George Miller writes Judges Holland & Sporkin 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."

Cong. Miller includes photocopy telex evidence as proof, asks the judges not to accept plea bargain.

SENATE MEMORANDUM, 4/8

Findley writes that possible constitutional issues exist, both as to dedicated funds--because settlement receipts mostly for special purposes, though "federal programs" exception may apply--and as to the power only of the Legislature to appropriate--because Trustees, not Legislature, disburse Exxon settlement payments.

FEDS RELEASE STUDY SUMMARY, 4/9

U.S. Govt. releases summary of scientific studies, showing spill damage as reportedly twice the level previously known.

LEGISLATOR COMMENTS, 4/6-9

Rep. Sharp observes that if State & Federal trustees are not unanimous, a single Federal judge

POST OFFICE TO ADDRESSEE

EXPRESS MAIL
NEXT DAY SERVICE



A8113071255

ORIGIN		Date In: 4/16/91	Postage \$1.15
Post Office ZIP Code 11551	Time In: 11:15 AM	Return Receipt \$2.00	
Initials of Receiving Clerk J	Weight lbs 3 oz		
ACCEPTANCE			
☒ Next Day Delivery or ☐ Second Day Delivery ☐ By 10:00 AM or ☐ By 3:00 PM ☐ Registered Mail ☐ International Express Mail ☐ Military Service ☐ Country Code			
Express Mail Corporate Account No.		Federal Agency Account No.	

DESTINATION	Date of Delivery 4/17/91	Time of Delivery 10:40 AM
X Signature of Addressee Agent [Signature]		
DELIVERY WAS ATTEMPTED		
Signature of Delivery Employee [Signature]		
Waiver of Signature and Indemnity (Domestic Only) I wish delivery to be made without obtaining the signature of the addressee or the addressee's agent (if in the judgment of the delivery employee, the article can be left in a secure location) and I authorize the delivery employee to sign that the shipment was delivered and understand that the signature of the delivery employee will constitute valid proof of delivery. SIGNED:		

FROM:

the contractor
324 Wilcox St
Juneau, AK 99801

ADDRESSEE'S COPY

TO: Telephone Number: _____

BARBARA ALERBY
ATTORNEY GENERAL OFFICE
STATE OF ALASKA
1031 WEST 4TH AVENUE
ANCHORAGE, AK 99501

ACE 417366

29

Ley Schleich
P. O. Box 874216
Wasilla, AK 99687

RECEIVED
DEPARTMENT OF LAW

'91 APR 18 P1:03

April 17, 1991

Barbara Herman
Office of the Attny. General
State of Alaska
1031 W. 4th Ave. #200
Anchorage, AK 99501

ATTORNEY GENERAL'S OFFICE
ANCHORAGE, ALASKA

Dear Ms. Herman,

As a thoughtful citizen, I would like to take this opportunity to express my deep concern over the Exxon Valdez Oil Spill Settlement plans. I urge you to immediately request Judge Holland to suspend a determination on the settlement due to lack of adequate opportunity for public study and input. Secondly, I urge you to work toward bringing about the release of all the state's economic and scientific data related to the spill and establishing better methods for public participation in decision-making related to how the settlement money will be spent.

My reasons for this request have to do with my perception that the current settlement plan is not in the best interest of all Alaskans. First, the monetary amount does not appear to be large enough to cover public costs already spent on the spill clean-up and litigation activities, plus further clean-up and research costs, plus compensation costs, plus an adequate penalty on the corporation. While Exxon is not the sole culprit in the tragedy and should not bear the full burden of paying for it, the terms of the \$900 million settlement seem far from a fair and just payment.

Second, I am uncomfortable with the settlement plan's process for deciding on how the money will be spent. The Trustees Council, as designed, excludes adequate public participation, especially by the communities most affected by the spill and by environmentalists. It allows too much power to be placed in the hands of political appointees who in all likelihood will be more sympathetic to corporate / oil / development interests than to the public at large.

I was in Seward, Cordova, Chenega Bay and Tatitlek three weeks after the spill, and observed directly the impact of the spill on the environment and the local residents. I believe that we all share a part of the responsibility for the spill to the extent that we all are consumers of energy and petroleum products and therefore perpetuate dependence on oil and, perhaps indirectly, lenient environmental protection laws. However, I feel that we can learn from our past mistakes and try to establish mechanisms to avoid

ACE 459981

another disaster. I do not believe that the current settlement plan does this, and urge you to influence the process in such a way as to build in greater environmental protection and true democratic input.

Thank you for your consideration of this matter.

Sincerely,

Ley Schleich
Ley Schleich

Lay Schleich
P.O. Box 874218
Wasilla, AK 99687-4218

ACE 459983



Barbara Herman
Office of the Attny General
State of Alaska
1031 W. 4th Ave. #200
Anchorage, AK 99501

30

RECEIVED

Department of Law

APR 18 1991

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

April 16, 1991



Dear Ms. Herman,

As a concerned Alaskan citizen, I am shocked over the proposed oil spill settlement. Is it true that ~~translates~~ to relative amounts, it's the same as fining a person earning 40,000 a year \$39 a year (max.) for 10 years? That's the statistic we hear.

I don't agree that there has been meaningful public participation in the assessment of injuries, and discussion of restoration. The meetings have been private, and the scientific data has not been released by the state. I care - I want to be able to access and study this information. I want to be informed of what our state is

and economic data released. I want an opportunity to participate in the use of the settlement money. This spill has been a part of my life since its occurrence, and like so many other Alaskans - both old and young - I need and deserve to know what is the outcome. I feel personally cheated by such a puny settlement. What message is that for our oil companies? We must become more serious about protecting our environment - it's urgent in the 1990's.

Please do what you can, in your position of power, to represent us in demanding release of the information, public access, and also some opportunities for public input on spending the money environmentally.

Thank you -

Dr. Tara Walker, ELI
Alaska Pacific University
4101 University Drive



Alaska Pacific University
4101 University Drive • Anchorage, Alaska 99508-4672



Barbara Herman
Office of the Atty General
State of AK.
1031 W. 4th Ave, #208
Anch AK 99501

ACE 459986

A New Universe • New World

31

RECEIVED
Department of Law

APR 18 1991

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

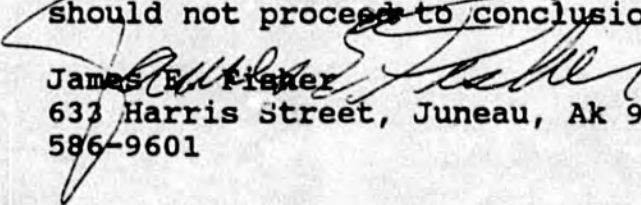
4/14/91

Alaska Attorney General
1031 West 4th Ave., Suite 200
Anchorage, AK 99501Attn: AAG Barbara Herman
RE: EXXON VALDEZ proposed settlement

The proposed settlement of the EXXON VALDEZ case appears to have deficiencies harmful to Alaska and Alaskans, as follows:

1. The settlement doesn't seem to provide enough money in a timely fashion.
2. Since the settlement is not global in scope, it appears Alaska could be sued much more than it has been to date, therefore being unable to "put the matter behind us". In this event wouldn't legal expenses be as much or more than litigating the case to a judicial conclusion?
3. Is the case to be actually settled, or will Alaska be converted from a plaintiff to a defendant?
4. Would a proceeding under Alaska law permit attorney's fees, full costs and prejudgment interest so a sum closer to actual damages be secured rather than under the Clean Water Act in the Federal Court?
5. Isn't there some hazard of releasing Alyeska from its liability for resource damage?
6. The settlement appears to be poor public policy in so far as it would leave individually damaged Alaskan communities and people to fend for themselves against the enormous resources of Exxon.
7. In view of the continuing control over the settlement proceeds, it would seem the Federal agencies are much more advantageously treated than the State? Another aspect is the constitutional problems with the proceeds going to a trust fund, and not being subject to the appropriation process of the Legislature.

From the foregoing very brief summary, it seems the settlement should not proceed to conclusion.


James E. Fisher
633 Harris Street, Juneau, Ak 99801
586-9601

ACE 459987

633 Harris Street
Juneau, AK 99801

ACE 459988



32

P.O. Box 794
Kasilof, Ak. 99610
April 15, 1991

Barbara Herman
Office of Atty. General
State of Alaska
1031 W. 4th Av. #200
Anchorage, Ak. 99501

RECEIVED
Department of Law

APR 18 1991

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Dear Ms. Herman,

I am aghast & appalled at the \$1 billion settlement Gov. Hickel + Mr. Cole made with Exxon. Why didn't our state officials make public first the results of economic studies that were made to establish, to some degree, the financial damages done to Prince William Sound?

Of course the damages are priceless. Of course no one has or will be able to clean up the Sound. Of course the Sound cannot be "restored" by money or by ANYTHING people can do.

ACE 459989

What is important is that this NEVER HAPPENS AGAIN. I believe this spill could have been avoided if Exxon and the Alyeska Pipeline Service Co. had not become complacent with costs and been negligent.

Exxon needs a whopping fine to give them and other oil companies the incentive to be responsible.

\$1 billion to Exxon is peanuts to them.

\$1 billion out of \$117 billion??!!?

Proportionally, I get fined more for speeding!

The fine needs to hurt Exxon, not us. We have been hurting enough.

- To give you another smaller scale example: Commercial fishermen (I know - I am one) have learned that if they fish outside the law just a "little bit" that they can make

sometimes thousands of dollars in a relatively short time. Many have learned that the fines are only a few hundred dollars - if they get caught at all. So, of course, they are out there next opening fishing illegally again. The few hundred dollars are nothing - no incentive whatever - to encourage compliance with the law.

So, I believe it's the same with this proposed settlement. The unlawful fishermen laugh and so is Exxon.

Please think this over again

Thanks for listening,
Kathleen Holt

Kathleen & Bill Holt
P. O. Box 794
Kasilof, AK 99610

ACE 459992



Barbara Herman
Office of the Atty General
State of Alaska
1031 W. 4th Ave. #200
Anchorage, Ak. -
99501

Clare Pavia
Box 2251
Valdez Ak 99686

34

April 18, 1991

Barbara Herman
Assistant Attorney General
State of Alaska
1031 W 4 th
Anchorage, Ak 99501

Dear Ms. Herman,

I am writing in response to the Exxon Valdez Settlement. The settlement is not in the best interests of Prince William Sound and the communities of this region. One of my major concerns is that the amount of money may not be sufficient to pay for the necessary cleanup, restoration and continued studies of the impacts caused by the spill.

Without the availability of data from the economical and scientific studies performed it is impossible to judge what amount is sufficient. The knowledge that can be had from these studies will also be beneficial to the people and resources of Prince William Sound as well as industry, government, and researchers.

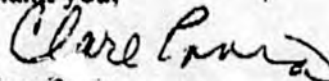
People living in and near Prince William Sound should not have to doubt the quality of the food they gather from this region now and in the future. Data from studies performed could help people make informed judgements about the quality of the food. Alaska needs to learn from this disaster in order to protect the land, water, and air from future harm. Industry, government and researchers need this information to restore the sound and to clean up future spills in Alaska and the world.

The ecological balance in areas touched by the oil has been greatly disrupted. I have been on many beaches in Prince William Sound, Homer, Kodiak, and Seward effected by this spill. The damage caused by the oil and clean up is substantial. Many beaches were sterilized by cleaning, leaving no sign of life. Organisms are returning and regenerating but the disruption to the natural cycle could leave an effect for years to come. It may take years to realize all the problems associated with the spill and clean up. For this reason the data collected thus far needs to be available to evaluate and studies need to continue to monitor the health of the sound.

Violators of Federal and State laws are to be held accountable. We are sending the wrong message if corporations are able to cause damage to the environment, economy, and people's mental health without being fully penalized. Industry in Alaska needs to be aware that government and the public want them to be fully responsible for the prevention and clean up of all spills, big or small.

The public needs to have data available in order to judge if this settlement is reasonable. Public participation is essential, meetings related to this case should not be behind closed doors. A public advisory group should be formed in order to advise the trustees how to structure the decision making tree and the budget. Money received should be spent on restoration, land acquisitions, buying development rights, and to support on going studies. Money should not be spent on clean up or government expenses incurred. Exxon should continue to pay those expenses out right.

Thank you,



Clare Pavia

Thomas A Campbell, NOAA
Gene Kubina, State Legislature
Kurt Menard, State Legislature
H. Russell Holland, Court Clerk

ACE 460001

ATTN: Barbara
Herman
1031 with RM-200
Anch. AK. 99501

31

Barbara,

I regret that I started this petition for too late and had no time to commit to it. For the past 2 weekends I have been out in Prince William sound digging around in oil. Lots of oil remain in our beaches. I urge all involved not to be too hasty to settle this thing.

Best wishes,

Ted Raynor.

Ted Raynor



See Spill Action
hand. delivered
llw

ACE 417506

To whom it may concern:

We oppose the proposed settlement between EXXON and the State of Alaska regarding the EXXON Valdez oil spill for the following reasons:

- o The amount of the settlement is not a deterrent to polluters. EXXON and their stockholders have indicated that the amount and terms of the settlement will not have any noticable impact on them. A sliding scale needs to be established whereby fines are based on a corporation's ability to pay as well as on the amount of damage.
- o The state studies should be released. Alaskans paid for the studies and they need the information to make informed decisions on the settlement.
- o The recently released summary of the federal study indicates that damage is far worse than previously believed. For example, hundreds of thousands more birds were killed than most Alaskans had been led to believe. It is too soon to know what the long term impact will be. EXXON should be required to cover these damages as they become known.
- o EXXON profited during the spill, they didn't finish cleaning up the spill, and now it appears that they will not be prosecuted for their crimes.
- o Future cleanup costs should not come out of the settlement money.
- o New revelations about Alyeska Pipeline confirm the suspicions of many that neither Alyeska nor the owners. (including EXXON) planned to clean up a large spill beyond the Valdez area.
- o Attorney General Charles Cole has a conflict of interest and should not have negotiated the settlement.

We feel that \$1 billion is probably not enough to cover the long term damage to Prince William Sound, let alone Kenai Fjords, the Katmai coastline, Shuyak, Afognak, Kodiak, Barren Islands Maritime NWR, the Kachamak Bay State Park and hundreds of miles of once pristine coastline. Moreover, how can you put any dollar value on the wildlife and natural beauty of that area?

It is our opinion that the Hickel Administration is so bent on gaining access to the Arctic National Wildlife Refuge they are willing to mislead the public into thinking that Prince William Sound and the Gulf of Alaska have recovered, while in fact, there is extensive and continuing damage.

Name	Signature	Address
PATRICE POIROT	Patrice Poirot	Box 770 GIRDWOOD AK 99587
Ted Raynor	Ted Raynor	13801 Schubert Circle Anchorage, Ak. 99516
Steve Poirot	Steve Poirot	P.O.B. 770 Girdwood AK 99587
Tom Rausett	Tom Rausett	HCO2 7669 Palmer 99664

ACE 417507

DAN FARKWEST	<i>Dan Farkwest</i>	1425 GARDEN ST. 99508
JONATHAN K. ROME	Jonathan K. Rome	1977 1/2 Hillcrest Rd., L.A., Cal. 90065
VERENA DAY	<i>VT Day</i>	8212 Seaclyff. Anch. AK 99502
Robert A. Day	<i>Robert A. Day</i>	8212 Seaclyff Anch AK 9950.
Sue Libenson	<i>Sue Libenson</i>	1306 W 6th #10 Anch AK 99501
Karen Wood	<i>Karen Wood</i>	1237 W. 11th Ave Anch AK 9950
Cliff Eames	<i>Cliff Eames</i>	2613 W. 33rd, #2, Anch, AK 995
Ruth Wood	<i>Ruth Wood</i>	540 L St, #307, Anch, AK 995
Peter Montesano	<i>Peter Montesano</i>	1808 Arctic Anch. 9950
KAREN JETTNER	<i>Karen Jettner</i>	618 W. 14th Ave Anchorage AK 99501
CAROLE LAWSON	<i>Carole Lawson</i>	2400 FORAKER, ANCHORAGE 99517
Bob Childers	<i>Bob Childers</i>	1231 W. 7th Ave Anchorage AK 99501
HAROLD HENRY	<i>Harold Henry</i>	1401 W. 25th #2 Anch 99503
Shera Canady	<i>Shera Canady</i>	430 W. 7th Ave Anch AK 9950
SHERYL DEAN	<i>Sheryl Dean</i>	430 W 7th Ave Anch AK 99501
Deane Raynor	<i>Diane Raynor</i>	5132 W. 72nd Anch AK 9950
MONTY SARGENT	<i>Monty Sargent</i>	2007 ARCTIC BLVD #13 ANCH AK. 99503

ADLER, JAMESON & CLARAVAL

Attorneys at Law

38

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April 18, 1991

Thomas A. Campbell, Esq.
General Counsel, NOAA
U.S. Department of Commerce,
Room 5818
14th & Constitution Avenue, N.W.
Washington D.C., 20230

VIA FACSIMILE

Barbara Herman, Esq.
Office of the Attorney General
State of Alaska
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501

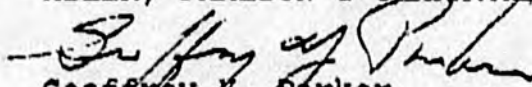
Dear Mr. Campbell and Ms. Herman:

Enclosed are my comments to Judge Holland regarding the Exxon Valdez criminal plea and civil settlement. Our clients are opposed to this settlement for numerous reasons. These reasons are explained in the enclosure, but several are worth summarizing.

First, both the criminal plea and the civil damage settlement are grossly insufficient. Second, the settlement fails to make clear its relationship to or protect third-party claims, particularly claims for loss of non-market use value asserted by private litigants under theories other than the Clean Water Act. Third, because the injuries resulting from the spill are greatest to the public, the governments should have provided an opportunity for public interest litigants to participate in this settlement. By not doing so, the Trustees have greatly eroded the public trust in this settlement, as is evident from the overwhelming opposition to it. Fourth, by seeking to maintain a lid of silence on the damage calculation and injury studies, the government provides no mechanism for either assisting private plaintiffs or restoring the public confidence that is needed.

Sincerely,

ADLER, JAMESON & CLARAVAL


Geoffrey N. Parker

GYP/myg/1266#7

Enclosure - My comments to Judge Holland regarding the Exxon Valdez criminal plea and civil settlement

ACE 417512

ADLER, JAMESON & CLARAVAL

Attorneys at Law

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Telephone (907) 424-7410
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April 11, 1991

Honorable H. Russell Holland
United States District Judge
U.S. Courthouse
Anchorage, Alaska 99501

Re: Comments on Criminal Plea Agreement in United States of America v. Exxon Corporation and Exxon Shipping Company, No. A90-015 CR

Dear Judge Holland:

These comments in opposition to the proposed criminal plea and settlement are submitted in behalf of our clients, the Alaska Sport Fishing Association and named individuals who are recreational plaintiffs, the Area Business Class, and approximately 500 other claimants in the civil litigation arising from the Exxon Valdez oil spill. Those plaintiffs represent a variety of recreational, commercial, subsistence and other pursuits involving consumptive and nonconsumptive use of the fish, wildlife, lands and waters affected by the spill. The Association is the largest fishery conservation organization in Alaska and has through political, legislative, administrative, and litigatory efforts achieved conservation of more than a dozen areas, totalling nearly 7 million acres of fish and wildlife habitat in Alaska since the enactment of ANILCA in 1980.

Because the Association and these class and individual plaintiffs are concerned for the conservation of fish and wildlife habitat, and because the monies from this plea and settlement may be used for such purposes, the criminal plea and settlement are of particular concern. The proposed fine is inordinately low, particularly when combined with the inordinately low settlement of civil damages. The manner with which they were reached erodes confidence.

A. This Court Should Not Allow the Governments to Settle Without Encouraging the Governments to Provide an Opportunity for Public Interest Litigants, and Probably Also Private Class Litigants, to Participate in Settlement of Negotiations.

Fundamentally, this is a political case that goes to the heart of how our judicial, executive, and legislative branches of government, as well as our corporate institutions, deal with environmental injuries of great magnitude that affect natural resources and the public in innumerable and complex ways. Here, the executive branch has chosen to operate and settle in isolation, without any opportunity for public interest litigants and private interest litigants to participate.

In a case of this nature, where the science, injuries and damages involve complex relationships between public and private claims, that should not be encouraged. It erodes confidence in the settlement, our corporate institutions and government in general. The importance of such confidence reaches far beyond this spill. By allowing public comment, this court has commendably sought to allow the public to be heard. But informed comment has been thwarted by the long silence on science and the continued silence on damage calculations. That history of silence, isolation and the need for confidence warrants rejection of this settlement. That is essentially the point reached by Congressman George Miller, when he concludes that without

confidence in the Department of Justice, "how is it that Congress and the people . . . can rely on (governmental or corporate) assurances in the future?"

B. This Court Should Apply the Alternative Fines Act, 18 USC Section 3571(d).

In imposing sentence, this court should apply the Alternative Fines Act for purposes of determining the appropriate criminal penalty. The Act provides that the court may impose up to twice the pecuniary loss resulting from the offense. In this case, the defendants have already paid out approximately \$300 million in damages for pecuniary losses occurring in just 1989 and for the most part to just the commercial fishing industry. There are as yet outstanding in excess of \$56 billion in claims filed against the TAPS Fund, much of which is for pecuniary loss. This court should not hesitate to conclude that the pecuniary losses resulting from this spill vastly exceed the \$300 million already paid out.

Therefore, this court is faced with the problem determining an appropriate fine based on only partially determined pecuniary losses. These plaintiffs urge this court to impose a fine as follows: \$600 million (for twice the pecuniary losses already determined) plus \$400 million (not twice, but to address pecuniary losses yet to be determined) with a remittance of any portion of the latter that is not determined.

C. The Court Should Not Accept the Plea Agreement Until the Court Has Received a Summary of the Damage Calculation Studies, and Acceptance of the Plea Agreement Should Be Contingent Upon Scientific and Economic Studies Being Made Public and Being Continued.

It has been impractical for the public, this court, or state and federal officials and legislators to evaluate this settlement or the criminal plea without scientific and economic data being available. While the recent federal release of scientific information shows the injuries to be long lasting and worse than Exxon claims, more importantly, the release shows that the entire ecosystem has been attacked from the lowest to the highest trophic levels.

The signs of this are: (1) the decline in species diversity, abundance and recruitment of benthic organisms that are important to predator-prey relationships and the food chain, (2) the widespread loss of kelp, which has been conservatively documented in similar Alaskan ecosystems to provide 58.3 percent of the organic carbon load into the environment (see Attachment A), and (3) the widespread incidence across many higher trophic species of continuing lethal and sublethal effects such as lost reproductivity, debilitating lesions, mutagenic effects, MFO induction (multi-function oxidases which attack testosterone and estrogen), behavioral and territorial disruptions, low body weight, and decreased growth rates. In general, these are the types of (post-initial mortality) injuries to be expected at higher trophic levels when the lower trophic levels are severely disrupted by oil spill contaminants. Furthermore, these injuries are most prevalent among organisms that more often than not have non-market (and often nonconsumptive) use and intrinsic value, such as marine birds, harlequin ducks, eagles, sea otters, dolly varden, killer whales, harbor seals, and intertidal benthic life, as well as among marketed and non-marketed harvested species such as salmon and shellfish.

Of greater importance are the damage calculation studies. Neither the state or federal governments has released the studies that measure the value of market and non-market losses, including commercial, subsistence, recreational, and intrinsic losses. Various reports in the press, based on interviews with economic experts, have placed the natural resources damages at multiple billions of dollars. A range of \$3 - 10 billion has been mentioned in several recent reports as

coming from economic studies conducted by the State of Alaska that were designed to measure the non-use and intrinsic values associated with the injured natural resources.

To reach a reasonable decision on this settlement, this court needs those studies, particularly the intrinsic value study, every bit as much as it needs the scientific summary. To obtain a summary of the intrinsic value damage study, this court should subpoena the testimony and any summaries prepared by the following experts who, by information and belief, were retained as expert witnesses by the Alaska Department of Law and performed the intrinsic value study: Dr. Richard Carson, Associate Professor of Economics, University of California, San Diego; Dr. Robert Mitchell, Professor of Sociology, Clark University, Worcester MA; Dr. Michael Hanemann, Associate Professor of Agricultural & Resource Economics, University of California, Berkeley; and Dr. Raymond Kopp, Director, Quality of the Environment Division, Resources for the Future, Inc. Washington, D.C. In addition, this court should subpoena Dr. Norman Meade, Chief Economist in the NOAA Damage Assessment Branch, Rockville, MD, who managed the federal studies of recreation damages and intrinsic values, and the following experts who, by information and belief, were retained as expert witnesses by the U.S. Department of Justice to perform those studies: Dr. Alan Randall, Professor of Agricultural Economics, The Ohio State University, Columbus; Dr. John Hoehn, Assistant Professor of Agricultural Economics, Michigan State University, East Lansing; and Drs. Nancy Bockstael, Kenneth McConnell and Ivar Strand, Professors of Agricultural & Resource Economics at the University of Maryland, College Park.

The federal and state studies of intrinsic value employed the contingent valuation approach that was recently upheld by the U.S. Court of Appeals for the District of Columbia Circuit. By information and belief, these studies had been under way for a period of about eighteen months at the time the settlement was submitted to this court and they had reached preliminary conclusions indicating a range of \$3 - 10 billion for the non-use component of the natural resources damages. The range arises from the fact that, by design, the studies sought only a lower bound on the damages and reflects differences due to the use of willingness to pay versus willingness to accept, differences in the payment vehicle and the period of time over which payments would be made, and -- most importantly -- differences in the extent and duration of the natural resources injuries. In the light of the scientific information concerning these injuries that has just been released by the federal government, it is more than likely that a final analysis of the contingent valuation data will place the value of the non-use damages near the high end of the \$3 - 10 billion range.

We urge this court not to accept this settlement and plea agreement until such information is before it and that any acceptance be contingent on release and continued assessment of damages for loss of commercial, subsistence and recreational use of natural resources, as required by 43 C.F.R. 11.83. By information and belief, including statements of Attorney General Cole at the April 6 legislative hearing, we believe those studies are not complete and that the governments have effectively turned their backs on their citizens.

D. The Settlement Represents a Gross Violation of the State and Federal Governments' Fiduciary Obligations as Trustees for the Natural Resources Injured by the Oil Spill.

From numerous press accounts of the settlement, it is abundantly clear that it was a political decision on the part of a few key players in the state and federal governments who bypassed the entire natural resource damage assessment process. By information and belief, the amount of the settlement was in no way grounded in the information developed by the scientists and economists working on the damage assessment. The idea of settling for around one billion dollars originated with Governor Hickel a few weeks after the election, if not earlier -- well before he had taken office or had obtained access to the information developed by the damage assessment.

At the federal level, the settlement was promoted by Secretary of Transportation Skinner, who is not a trustee and who, by his own account, was not conversant with the findings of the damage assessment.

The final agreement calls for payment of \$900 million for natural resource damages over a period of more than 10 years without interest. The trustees' decision to forego interest on the natural resource damages violates the decision of the DC Circuit Court of Appeals upholding payment of interest at a rate of 10%, and reduces the costs of conducting the damage assessment and the costs of restoration, which would be fully recoverable with interest accruing from the time that they were incurred. When these costs are subtracted from the amount of the settlement and the remainder is converted to present value terms, recognizing the time value of money, the settlement for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent and related natural resource values amounts, at best, to about \$450 million.

By information and belief, this trifling sum is grotesquely out of proportion to any reasonable estimate of these damages and bears no relation whatsoever to the information developed by the state and federal damage assessment teams. Indeed, the trustees would have reached a figure considerably larger than \$450 million if they had merely taken the estimated kill of fish and wildlife immediately after the spill and multiplied this by replacement cost figures that have been used in earlier cases to value a very limited set of natural resources damages.

For example, in the case of the T/V Puerto Rican oil spill off the coast of San Francisco in 1984, NOAA published a damage assessment report in 1986 valuing the birds killed in the incident at from \$575,000 to \$1,528,000 using the replacement cost method, based on estimates from zoological institutions and supply houses of what it would cost to obtain replacement specimens of the birds affected. (See Attachment B.) This case was subsequently settled for about \$750,000. The Exxon Valdez spill involves many of the same species of birds. NOAA's estimate of the replacement cost for these birds was from \$200 to \$500 per bird at 1986 prices. When these replacement costs are applied to the estimates of bird losses just released by the federal government for the Exxon Valdez spill, and when similar replacement costs are applied to the many other wildlife and fish losses and the injuries to land, it is evident that a damage estimate of well over \$1 billion would be obtained for just initial effects.

It is widely recognized, including by the NOAA Attachment, that estimates of replacement cost from supply houses significantly understate the true cost of replacing of wildlife, quite possibly by an order of magnitude because it is impossible to buy a half million wild birds, let alone other wildlife. Furthermore, because of delays before restoration can be effected, there are additional, interim, losses to the fish and wildlife populations that would have to be added to this \$1 billion of damages. One would also have to add the loss of recreation and other use values. The resulting total damage would be compounded at 10% interest from the time the damage occurred until the time that payment was received by the trustees. All of this is added to the state and federal governments' other expenses for damage assessments, cleanup and restoration that are fully recoverable under existing law.

By settling for an amount that is so much lower in present value terms, and by failing to provide a credible explanation of the settlement or to relate it in a meaningful way to any theory of damage valuation, the trustees have cast aside their fiduciary obligations to determine the magnitude of natural resources damages and account for them to the general public. If this court does not intervene, it will send a signal that such wanton misconduct by trustees can become the norm in all future natural resource damages cases.

Furthermore, the gross imbalance between the actual settlement of \$450 million for natural resource damages and any reasonable accounting of such damages makes a mockery of the re-opener clause. Under this clause, an amount no more than \$100 million is payable in 2002 for injuries that could not reasonably have been known at the present time. According to press reports, William Reilly, the Administrator of the EPA had recommended that \$300 million be set aside for this purpose. When viewed as a proportion of the likely natural resource damages that already are known to the trustees --if they choose to consult their damage assessment -- even this amount seems small. By failing to provide any rationale for capping the re-opener at \$100 million, the trustees have violated their fiduciary obligations and set a bad precedent for future natural resource damages cases.

E. This Court Should Strike the Prohibition on Judicial and Administrative Review in Paragraph IV B.

Paragraph IV B provides that the State of Alaska may spend monies from the criminal plea without public objection, challenge, or judicial or administrative review. This prohibition is unconscionable. It allows the State of Alaska to spend in any manner whatsoever and should be stricken from the agreement.

F. Alyeska Should Not be Excused From Criminal Liability.

Congressman Miller has described Alyeska's broken promises regarding its ability to prevent or respond to a spill of this magnitude. The merits of any criminal case or civil penalties against Alyeska cannot be determined without court proceedings, but to foreclose that possibility erodes confidence that government diligently prosecutes major corporate perpetrators of environmental crimes. The exculpation of Alyeska should be stricken.

CONCLUSION

The political nature of this highly public case demands that the court scrutinize carefully the secretive process and evidence behind this settlement. Private litigants, particularly public interest litigants, should not have been foreclosed from that process. This court can redress that process by rejecting this criminal settlement and effectively urging the governments to pursue a more open settlement of civil aspects of this case brought by both governments and numerous public interest and class litigants. By so doing, this court will be sensitive to its own vital role in sustaining public confidence in public institutions.

Respectfully submitted,

ADLER, JAMESON & CLARAVAL



Geoffrey Y. Parker

to 32%. K_2O = 8 to 9%, and CO_2 = 27 to 32% (3-5, 15). Analyses of fresh samples, which were sealed before complete cooling, indicate that the 1988 lavas were almost water-free. The volatile contents of F (2.5 to 4.6%), Cl (3.5 to 5%), and SO_2 (4 to 5.5%) are higher than reported previously for the 1960 lavas (15). Such high volatile concentrations no doubt contributed to the lower solidus temperature of the lava of Oldoinyo Lengai compared with that of the synthetic system studied by Cooper *et al.* (13).

The temperature measurements on natural lava flows are in good agreement with experimental melting-temperature determinations carried out on samples from the same flows. The rock powder of the natural lava melted easily at temperatures of 500° to 550°C. The melting temperature at 1 atm was determined by differential thermal analysis (DTA) and differential thermal gravimetry (DTG). A pronounced DTA endotherm, representing the onset of melting, began at 490°C ($\pm 5^\circ$) and had its maximum at 510° to 520°C. This range (490° to 520°C) is similar to the range of the temperature measurements of the lava flows. Dissociation of CO_2 from the carbonate melt began at 660°C.

The observed temperatures are several hundred degrees lower than the lowest 1-atm temperatures of silicate lavas. Significant cooling must have occurred from temperatures of possible partial melting in the mantle (6). Concomitant crystallization can account for the distinctly fractionated composition of nanocarbonates (5, 6, 15).

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Knosmographisches Institut, University of Zurich. V. Kramer is thanked for his help. We thank the members of the expedition, K. Kruth, C. Hug, C. Hug-Fock, and A. Dommen for assistance. We also thank the Peterson family, Anshu, and our local porters for their help in the field.

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Magnification of Secondary Production by Kelp Detritus in Coastal Marine Ecosystems

D. O. DUGGINS, C. A. SIMENSTAD, J. A. ESTES

Kelps are highly productive seaweeds found along most temperate latitude coastlines but the fate and importance of kelp production to nearshore ecosystems are largely unknown. The trophic role of kelp-derived carbon in a wide range of marine organisms was assessed by a natural experiment. Growth rates of benthic suspension feeders were greatly increased in the presence of organic detritus (particulate and dissolved) originating from large benthic seaweeds (kelps). Stable carbon isotope analysis confirmed that kelp-derived carbon is found throughout the nearshore food web.

ALTHOUGH PHYTOPLANKTON is undoubtedly the primary source of organic carbon in much of the world's oceans, benthic plants are thought to be important contributors to food webs in estuarine and coral reef habitats (1). In the early 1970s, Mann and others (2-4) showed exceptionally high productivity in benthic macrophytes belonging to the order Laminales (kelps) and inferred that kelp-derived organic carbon could play a significant role in temperate coastal (nearshore) secondary production. We assessed the significance of kelp-derived organic carbon to secondary production by a natural experiment involving islands in the Aleutian archipelago (Alaska) with and without sea otters, and thus with and without extensive kelp forests (5). We show that growth rates of benthic suspension feeders are two to five times as high at kelp-dominated islands as at those without kelp beds. Stable carbon isotope ($\delta^{13}C$) analyses show that kelp-derived carbon contributes significantly to the carbon assimilated by secondary consumers at these islands.

Kelps are a dominant feature of many exposed and semiclosed temperate coastlines, where they frequently form dense stands from the low intertidal zone to depths approaching 40 m. Individual kelps can achieve large biomass and rapid growth even at high density, thus forming one of the world's most productive habitats (3, 6). Benthic marine herbivores such as sea urchins (Echinoidea) can retard the growth of kelp populations and occasionally decimate extant populations, but most kelp biomass is not consumed directly (7). This has led to

speculation that kelp biomass enters the nearshore food web through indirect (detrital) routes. By releasing particulate as well as dissolved organic matter (POM and DOM respectively) as they grow and senesce, kelps could provide a significant organic carbon source for the diverse and abundant assemblages of nearshore suspension feeders, pelagic as well as benthic. Even the considerable quantity of kelp biomass deposited on beaches adjacent to kelp stands ultimately may reenter the nearshore food web as POM and DOM after decomposition.

The reestablishment of sea otters in the Aleutians after their near extinction in the 19th century and the subsequent resurgence of otter predation upon sea urchins allow us to compare secondary production between areas that differ greatly in kelp biomass but are otherwise similar. Oceanographic data indicate that the pervasive influence of the westward-flowing Alaskan Stream accounts for relatively uniform physical conditions among the central and western Aleutian Islands (8). Neither the few prior studies nor our surveys provide evidence for significant differences in species composition (including phytoplankton) along this segment of the archipelago (9).

The mid- and low-intertidal zones throughout the Aleutian Islands are dominated by kelps belonging to the genera

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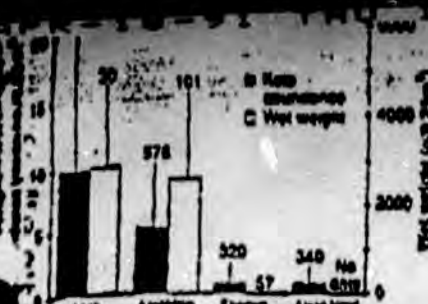


Fig. 1. Kelp abundance and wet weight (means and 1 SD of quadrat counts and sample weights) for four islands with sea urchins (Adak and Amchitka) and without urchins (Shemya and Alaid-Nizki). Wet weight at Shemya = 0. Sample size is given above each error bar.

Laminaria and *Alaria*, which exist in a refuge above the foraging range of sea urchins. Rocky subtidal habitats at islands with sea urchins are characterized by low urchin biomass and large stands of both understory and surface canopy kelps; however, islands where sea urchins have not become reestablished are characterized by large urchin biomass and few kelps (5). This nearshore community variation allowed us to assess (by comparison) the importance of kelp production to the production of nearshore communities. Between 1985 and 1987 we conducted benthic surveys, experiments, and analyses at Adak and Amchitka Islands (kelp abundant) and at Shemya and Alaid-Nizki Islands (no sea urchins) to determine whether growth (as an indicator of production) and $\delta^{13}\text{C}$ of consumer organisms were related positively to kelp bio-

production. Benthic surveys verified differences in kelp abundance and biomass between islands. At each island, transects were established at 16 to 80 randomly selected sites along the 6-m contour. All sites were on the Bering Sea side of each island and were judged subjectively to be of similar exposure. Along each transect, 20 randomly selected 0.25-m² quadrats were centered by divers for kelp abundance. The resulting data (Fig. 1) show orders of magnitude differences in subtidal kelp abundance and biomass between islands with and without sea urchins. Although abundance and biomass are not synonymous with production, research on similar kelp assemblages suggests that benthic production should be very different among these islands (2, 10). If kelp-derived organic carbon is available to nearshore suspension feeders, detritivores, and (indirectly) their predators, and if phytoplankton alone is a limiting resource, then secondary production should be significantly different between island groups. We used two analyses to determine

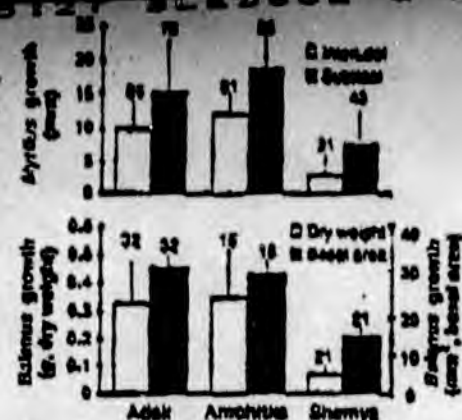


Fig. 2. Results of translocation experiments: means and 1 SD of growth in length (mussels, *Mytilus*) or dry weight and basal area (barnacles, *Balanus*). Sample size is given above each error bar.

grow faster in kelp-dominated than in urchin-dominated environments. First, we translocated two species of suspension feeders (the mussel *Mytilus edulis* and the barnacle *Balanus glandula*) from a common source (Puger Sound, Washington) into cages at six intertidal and six subtidal sites at Adak, Amchitka, and Shemya islands. Mussels were translocated in 1985 and 1986 and barnacles in 1986. Mussels were individually tagged and measured (maximum valve length) (12); barnacles were allowed to settle on fiberglass plates, thinned to minimize competition, and measured in four dimensions (length and width of operculum and base). Barnacle locations were mapped for individual identification and the plates were placed in the same cages with the mussels. All animals were remeasured after 1 year. Mussel valve elongation, barnacle final dry weight (13), and change in barnacle basal plate area were the parameters used to compare growth among islands.

Growth rates were significantly different (14) among islands. Mussels in kelp-dominated habitats (Adak and Amchitka) grew approximately two (subtidal) to four (intertidal) times as fast as mussels in urchin-dominated habitats (Fig. 2). Likewise, barnacles (intertidal) grew up to five times as

fast in kelp-dominated environments (Fig. 2) (barnacles from subtidal cages did not survive).

As a second, independent verification of the translocation data, age-size relations were analyzed for intertidal mussels collected from six sites at each of four islands (15). Mussel valves were sectioned and age determined by the methods of Lutz (16). For year classes 2 to 5, mussels were significantly larger at islands with substantial subtidal kelp forests (Fig. 3) (17).

Our results do not exclude the possibility that a carbon source other than that derived from kelps accounted for differences in mussel and barnacle growth among islands. We employed $\delta^{13}\text{C}$ analyses to determine the extent to which consumers were using kelp-derived organic carbon and if such use differed among islands as predicted (18). The Aleutian nearshore food web lends itself well to such analyses for several reasons. Unlike other habitats such as estuaries where diverse autotrophs (phytoplankton, benthic algae, and marine and terrestrial angiosperms), each with a distinctive $\delta^{13}\text{C}$ signature, contribute POM and DOM to nearshore waters, the Aleutians have only two principal sources of organic carbon: benthic algae and phytoplankton (19). Furthermore, at high latitudes, phytoplankton is more depleted in ^{13}C than at low latitudes (20) and thus the difference in signatures between kelps and phytoplankton is large, leading to less ambiguous interpretation of the origins of organic carbon in nearshore consumers. In addition, because islands differ greatly in the potential input of kelp carbon, we could incorporate the measured consumer $\delta^{13}\text{C}$ enrichment at kelp-dominated islands in a simple mixing model to assess quantitatively the magnitude of kelp carbon input to the nearshore food web.

To characterize predominant carbon sources, $\delta^{13}\text{C}$ was determined from samples of the dominant kelps (*Laminaria groenlandica*, *L. longipes*, and *Alaria fistulosa*) collected at Adak and Amchitka islands. Six suspension feeders, two detritivores, and three

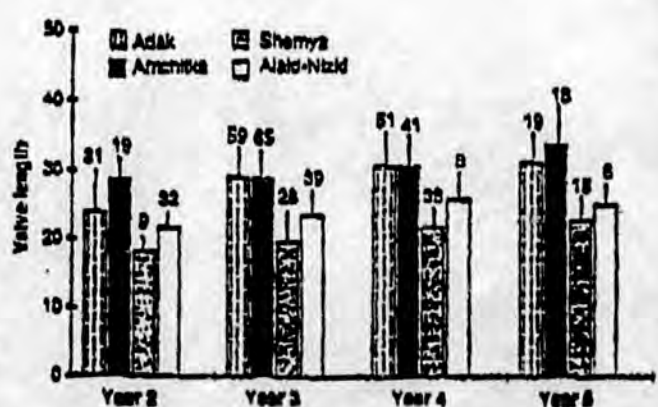


Fig. 3. Age-size relations for *Mytilus edulis* at four Aleutian Islands; means and 1 SD of valve length. Sample size is given above each error bar.

predator taxa were collected at each island as indicators of the islands' nearshore consumers (21). Phytoplankton isotopic values were derived from cultures incubated on board the R.V. *Alpha Helix*. Cultures inoculated from ambient seawater were used rather than net tow samples because of the inevitable problem of contamination by non-phytoplankton carbon in plankton net tows. These cultures were made up primarily of *Chaetoceros* and *Thalassiosira*, which were the dominant genera in net tows at all islands as well as the most common genera reported for the region (9). The mean phytoplankton isotopic value (-24.0 per mil ± 1.0 SD, $n = 5$) corresponds with published values (-22.9 to -24.4 per mil) for this region and surface water temperatures. Kelps were considerably enriched in ^{13}C relative to phytoplankton, and values were relatively consistent among taxa and islands (overall mean of -17.7 per mil ± 2.3 SD, $n = 162$).

Differences in consumer $\delta^{13}\text{C}$ between kelp-dominated islands and urchin-dominated islands support the hypothesis that carbon fixed by kelp is found throughout the nearshore food web and may even be consequential at islands with comparatively low kelp abundance. For each of 11 consumers tested, with the single exception of *Mytilus edulis* (22), mean $\delta^{13}\text{C}$ values for animals from kelp-dominated islands (Adak and Amchitka pooled) were more enriched than mean values for animals from islands without kelps (Shemya and Alaid-Nizki pooled)

(25). On the basis of a simple mixing model (24), primary consumers at kelp-dominated islands average, conservatively, 58.3% kelp-derived carbon (Fig. 4), whereas at urchin-dominated islands they average only 32.0%. This was the case despite all consumers being collected in midsummer during periods of peak phytoplankton abundance, when $\delta^{13}\text{C}$ values should be indicative of maximum phytoplankton influence. The moderate percentage of kelp-derived carbon in consumers at urchin-dominated islands is probably the result of input from intertidal kelps and kelps existing in subtidal refuges from urchin grazing. The relatively consistent enrichment of consumers at Adak and Amchitka, regardless of feeding type or trophic level, argues for the pervasive occurrence throughout the nearshore food web of organic carbon originally derived from kelp photosynthesis.

Both the transplant translocation experiments and age-size analysis show that suspension feeders grew at a significantly higher rate at islands with extensive subtidal kelp forests than at those without. The $\delta^{13}\text{C}$ data indicate that this difference in growth rate most likely results from the use of organic carbon photosynthesized by kelps, rather than from differences among islands in phytoplankton production or some other variable. Isotopically enriched signatures of organisms such as mysids, rock greenling, and pelagic cormorants at kelp-dominated islands further indicate that use of kelp-de-

rived organic carbon is not restricted to benthic organisms.

The ecological role of kelps in the nearshore region is multifaceted. Strong evidence exists that they provide habitat (stratum and canopy) for a wide range of benthic, epibenthic, and pelagic organisms and alter the hydrodynamic environment of the nearshore region (25). Here we report a strong trophic link between kelps and a wide range of organisms of varied feeding strategies and trophic levels, extending beyond the obvious kelp-grazer-predator chain. The common occurrence of extensive highly productive kelp forests along temperate to subpolar coastlines suggests that our results are not specific to the Aleutian Islands. The relative trophic contributions of kelp detritus and phytoplankton may vary with latitude, habitat, or season, particularly given the punctuated nature of phytoplankton production. The role of kelp production may actually be greatest in winter, when phytoplankton production is at a minimum, and kelp standing stock is declining (annual species) or being physically degraded during storms (annual and perennial species).

Our data support quantitatively the suggestions of Mann (2, 5) and others that kelps contribute significantly to coastal secondary production, perhaps ultimately establishing limits to the abundances of food-limited populations. Factors affecting kelp occurrence and production such as the recolonization or extinction of sea otters, sea urchin disease, catastrophic storms, nutrient depletion during El Niño events, or oil spills and other pollution are thus likely to have wide-ranging and often long-lasting influences on the productivity of coastal ecosystems.

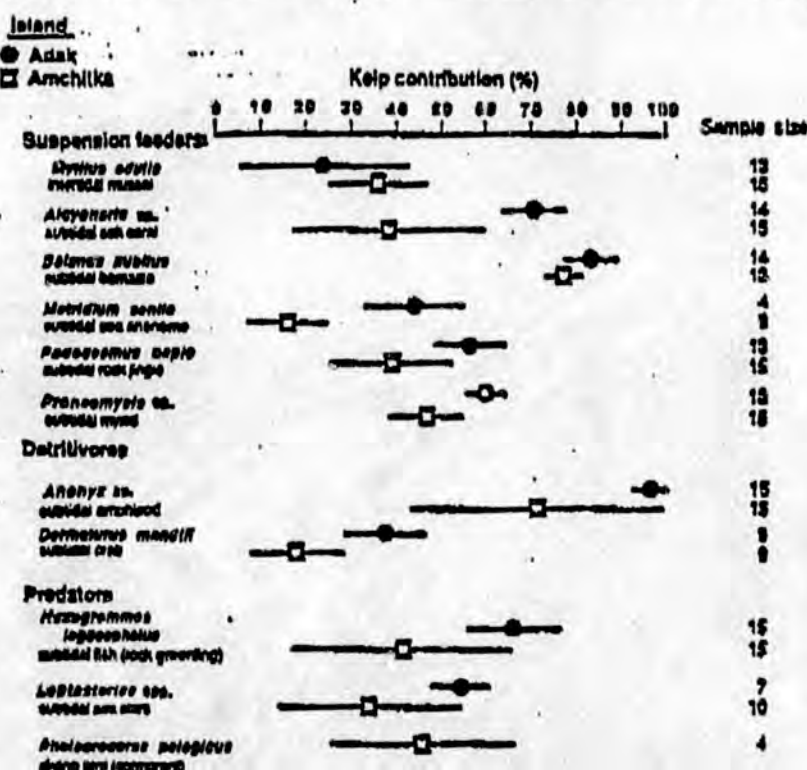


Fig. 4. Percentage of carbon photosynthesized by kelps found in tissues of consumers at islands with extensive subtidal kelp beds. Values are means and 1 SD. Three to five samples were collected and analyzed from each of three sites at each island.

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Phytosynthesis production in the Aleutians is approximately low (38 to 243 mg of carbon per square meter per day) concentrated during a relatively short growing season and probably restricted to bays rather than the exposed coast with vertical water turbidity (9).

Islands were usually of equal size and were assigned to cages randomly. We could not replicate the "no kelp" treatment of this experiment because we were unable to visit Alaid-Nazki Island until the summer of 1987.

All barnacles remained in the settling plates within a span of several weeks and were of similar size. Barnacle physical dimensions were measured within 48 hours of placement in cages; at that time there was no statistically significant difference in mean basal plate area among islands ($n = 4$) for those individuals that survived to the experiment's conclusion (Kruskal-Wallis, $P > 0.1$). Final dry weight was measured on animals removed from the plates and dried at 50°C for 24 hours.

Kruskal-Wallis ANOVA on mean growth of individuals at a site (cage) were mixed intertidal, $\chi^2(2) = 19.3$, $P < 0.0001$; mixed subtidal, $\chi^2(2) = 17.2$, $P < 0.0002$; barnacle dry weight, $\chi^2(2) = 6.4$, $P < 0.05$; barnacle basal plate area, $\chi^2(2) = 6.2$, $P < 0.05$.

Islands were collected from equivalent tidal heights at pairs of equivalent wave exposure. Spatially isolated islands were chosen to reduce the possible confounding consequences of intraspecific competition.

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Complex random block ANOVA for age-size analysis with age (2 to 6 years) as the blocking factor ($F(1,11) = 202$, $P < 0.001$). Such a random block analysis allows us to examine island effects (kelp-assisted compared to unmanipulated) for all age-size classes simultaneously.

W. A. Fry and E. B. Sbrer (*Canad. Mar. Sci.* 27, 15 (1970)) for comprehensive discussion and critique of the application of $\delta^{13}C$ techniques to ecological studies. The ratio of ^{13}C to ^{12}C is fixed at the time (and according to the pathway) of photosynthesis. With minor modification (± 0.5 to ± 1.5 per mil per trophic level), this ratio is maintained through consumer trophic levels. Thus consumer signatures reflect those of key primary producers.

Isotopic input of organic matter to seabirds coastal waters was presumed to be insignificant primarily because most terrestrial vegetation is marine kinds of grasses and lichens, which degrade in time; there is no woody vegetation that would produce large amounts of exposable detrital matter.

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Five whole (above holdfast) kelp specimens per species were collected at each of three randomly selected sites at each island and subsampled systematically by taking a number of plugs uniformly along the length of the blade. Three to five specimens of each consumer species were collected at the same sites as the kelps and were used whole (mytilid, amphipod, etc.) or subsampled (mussel tissue of other).

The single exception to the pattern of greater consumer enrichment at islands with kelp was *Mytilus* adults, which was the only consumer we collected from the intertidal zone, where kelps are abundant at all four islands. *Mytilus* $\delta^{13}C$ values showed no pattern between kelp and no kelp islands.

Differences between kelp and no kelp islands were significant in a random-block ANOVA (with species as blocks, thus allowing analysis of all species simultaneously) considering all subtidal consumers pooled ($F(1,27) = 7.96$, $P < 0.0001$) or only suspension feeders ($F(1,14) = 11.64$, $P < 0.005$). A simple mixing model based upon that of T.

263 (1979)) was possible because of the two-source source known. Percentage contribution from kelp is calculated as $(\delta^{13}C_{\text{sample}} - \delta^{13}C_{\text{phytoplankton}}) / (\delta^{13}C_{\text{kelp}} - \delta^{13}C_{\text{phytoplankton}}) \times 100$, where 1 represents a pure-photosynthetic source fractionation and was essentially derived for each species by calculating the difference in $\delta^{13}C$ between the most depleted sample of that species ("pure" phytoplankton diet) and the mean phytoplankton value (-24.0). In cases where the most $\delta^{13}C$ depleted value for a species was less than our phytoplankton value, the mean of our measured phytoplankton values (2.5 per mil per trophic level) was used. This method makes our model conservative in favor of phytoplankton (reducing the percentage of carbon from kelp) in that our calculations indicate that even the most isotopically depleted consumers incorporate

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29. Supported by NSF grant DTT-8421342. We are grateful to the participants and comments of our colleagues M. Duggins, S. Fry, T. Michener, and G. VanBlaricom, and the assistance provided by a small army of divers plus the U.S. Coast Guard (17th District), the U.S. Navy (Admiral Naval Station), the U.S. Air Force (Naval Air Force Base), and the U.S. Fish and Wildlife Service (Alaska Marine Refuge), during our surveys, collections, and experiments in the Aleutians. We thank P. Hansen, L. Johnson, A. Sewell, and J. Watson who were particularly helpful in the field or laboratory.

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A 48-Million-Year-Old Aphid-Host Plant Association and Complex Life Cycle: Biogeographic Evidence

NANCY A. MORAN

Biogeographical and paleobotanical evidence suggests that the aphid subtribe Melaphidina has been associated with its sumac host plant since the early Eocene when these plants were continuously distributed across the Bering land bridge. Transfer experiments indicate that the American species, *Melaphis rhois*, shows an unusual complex life cycle, similar to that known in Chinese melaphidines, with some generations feeding on mosses as alternate host plants. As with the association with sumac, this complex life cycle may have been established in the melaphidine lineage before the southward retreat of sumac from Alaska 48 million years ago. This example suggests that the interactions and life histories shown by modern populations may be determined, in large part, by evolutionary commitments made in the distant past.

DESPITE THE LARGE AMOUNT OF attention paid to possible coevolutionary interactions between herbivorous insects and their host plants, the ages of interactions between specific insect and plant lineages have been estimated in only a few cases (1, 2). These ages are difficult to obtain from fossils of damaged plant tissues since the damage must be distinctive enough to be definitely associated with a modern insect group. The ages of life cycle phenomena observed in modern animal species are even more difficult to establish, because these are rarely documented by any fossil evidence. I have used biogeographic evidence to establish the antiquity of an association between an aphid and a plant lineage and of a peculiar complex life cycle.

The aphid subtribe Melaphidina (Homoptera: Aphididae: Pemphiginae: Fordini) consists of four Asian genera and a monospecific American genus (3, 4). All known species form galls on sumac species [Anacardiaceae, *Rhus* L., subgenus *Rhus* (3, 4)]. These galls are induced by aphid feeding and are inhabited by three generations of parthenogenetic females. Galls are closed, sac-like structures with a structure and composition very different from leaves from

which they are derived (5). Ecdysis of the final winged emigrant generation is synchronized with opening of gall exit slits. Although this level of intricacy suggests that a sumac-Melaphidina association is ancient, more definite evidence concerning the age of the interaction is provided by biogeographic considerations.

The current distribution of the Melaphidina implies that use of sumac was established before the geographic separation of the ancestors of modern hosts in Asia and America. The occurrence of the subgenus *Rhus* in both the Old and New Worlds is attributed to dispersal across the Bering land bridge during or before the early Eocene, an explanation strongly supported by fossil evidence (6) (Fig. 1). The vicariance between Asian and American plant lineages resulted when climatic changes pushed plant distributions southward during the Tertiary (7). For sumac, this occurred about 48 million years ago, as judged by the distribution of leaf fossils in Alaskan Tertiary floras (6, 8). The sumac-Melaphidina association must be

Department of Entomology and Department of Ecology and Evolutionary Biology, University of Arizona, Tucson, AZ 85721.

commercial fishery of the area depends. Thus, not only would many of the larvae have been valuable in themselves if they had lived to become adults, but the entire commercial fishery would have been more productive. Unfortunately, current ecological theory will not support an estimate of the total injury done to the commercial fishery as a result of the destruction of a part of the food chain upon which it depends.

Replacement Costs

222 A replacement cost approach can avoid many of the problems involved in attempting to estimate the use value of biological resources. Under the replacement cost approach the resource is valued at what it would cost to replace it. If the resource is replaced, the problems of identifying all its uses, the monetary value of these uses, and the users affected by the resource loss are eliminated, except for the period between the initial loss and the replacement.

223 Twenty-three institutions were asked to estimate the cost of obtaining specimens of the birds killed in the Puerto Rican oil spill, or the price at which they would be willing to sell members of each species (Sterling Hobe Corporation 1985; and California Department of Fish and Game 1985). Nine institutions responded and their estimates are shown in Figure 23.

224 One problem with most of these estimates is that they are not true replacement costs, but rather the cost of collecting already existing specimens from the wild and redistributing them to the Gulf of the Farallones area. This does not represent true replacement, since true replacement requires a complete recovery of the species population. This can be most clearly assured by using only captive breeding programs for replacement.

FIGURE 25

ESTIMATES OF SEABIRD SPECIES VALUE/PRICE FROM VARIOUS SOURCES

(in dollars per one specimen)

SPECIES	SOURCE								
	Seattle Aquarium	Sea World	Los Angeles Zoo	Myrtle Marine Life Aquarium	New York Zoological Park	Brook Gardens	International Zoological Distributors	International Animal Exchange	Boston Zoological Gardens
Common Loon		200	300		1500		200	800	250
Arctic Loon		200	500		1500		500	800	250
Red-throated Loon		200	500		1500		500	800	250
Loon spp.		200			1500			800	250
Western Grebe	75	200	250		1000		25	800	250
Red-necked Grebe	75	200	300		1000		25	800	250
Horned Grebe	75	200	300		1000		25	800	250
Eared Grebe	75	200	250		1000			800	250
Grebe spp.					1000			800	250
Northern Fulmar					500			800	250
Sooty Shearwater		100	200		500			800	250
Brandt's Cormorant			75	200		500			800
Pelagic Cormorant		75	200		500			800	250
Cormorant spp.		75	200		500			800	
Northern Pintail	20			50	200	35	15	800	50
Ruddy Duck	150	75		90	300	75	90	800	200
Greater Scaup		37	150		100	50	15	800	50
Scaup spp.			150		100			800	
Black Scoter					500		150	800	250
Surf Scoter	228	1000	700		500		150	800	250
White-winged Scoter	228	1000	100		500		150	350	800
Scoter spp.					500			800	
American Coot			30		300		10	800	50
Red Phalarope		50	100		150			800	150
Western Gull			50		50			800	50
Common Murre	228	100	200		500			800	250
Pigeon Guillemot	228	100	250		500			800	250
Cassin's Auklet	228	100	250		500			800	250
Mottled Murrelet	228	100	250		500			800	250
Rhinoceros Auklet	228	100	200		500			250	800
Ancient Murrelet									
Auklet spp.		100	200		500			800	
Red-tailed Hawk	50				500		150	800	100

Source: Sterling Hobe Corporation 1985

ACE 417523

APR-18-91 THU 15:32 BLEDSOE & KUTSON

However, most of the species in this list are not and probably cannot be bred in captivity (Briggs, pers. comm.). Therefore, true replacement from captive breeding is probably impossible. It is absurd to value them at 0 since they cannot be replaced. Therefore, this section presents some calculations on the assumption that they could be redistributed or replaced.

225

Figure 24 presents a range of calculations, multiplying the number of dead birds times the second lowest and the second highest replacement costs given in Figure 23. The second lowest and highest costs were selected in order to eliminate extreme values. Using this approach, the total replacement costs for the birds estimated to have been killed in the Puerto Rican incident amount from \$574,692 to \$1,528,050.

226

An alternative approach to estimating replacement costs is to estimate the cost of creating new habitat or enhancing existing habitat to support enough nesting pairs of each species to replenish the population. Again, to represent true replacement costs, this should be new or enhanced habitat, not just the cost of acquiring already existing habitat. Research on estimating replacement costs based on this alternative approach is currently being conducted and will be concluded within the next several months. Upon completion of this research, the estimates of habitat replacement or enhancement will be included in a supplement to this report.

227

If replacement of the birds were attempted, it would take several years to accomplish. In the interim, there would be a loss of use which would have to be included to derive the total cost of a replacement strategy. Most of the birds destroyed in the Puerto Rican incident require three to twelve years to mature. Assuming no natural regeneration and that the replacement effort began immediately after the spill and all the replacement birds were released three years later, there would be three years lost use in addition to the

FIGURE 24

REPLACEMENT COST FOR MARINE BIRDS

SPECIES	TOTAL DEAD BIRDS *	LOW ESTIMATE		HIGH ESTIMATE	
		Cost/Bird	Total Cost	Cost/Bird	Total Cost
Common Loon	19	200	3,800	800	15,200
Arctic Loon	178	250	44,000	800	140,800
Red-throated Loon	6	250	1,500	800	4,800
Loon spp.	-	-	-	-	-
Western Grebe	109	75	8,175	800	87,200
Red-necked Grebe	2	75	150	800	1,600
Horned Grebe	7	75	525	800	5,600
Eared Grebe	25	200	5,000	800	20,000
Grebe spp.	1	75	75	800	800
Northern Fulmar	-	500	-	500	-
Sooty Shearwater	3	200	600	500	1,500
Brandt's Cormorant	2	200	400	500	1,000
Pelagic Cormorant	3	150	450	500	1,500
Cormorant spp.	2	150	300	500	1,000
Northern Pintail	1	20	20	200	200
Ruddy Duck	5	75	375	300	1,500
Greater Scaup	2	37	74	150	300
Scaup spp.	-	-	-	-	-
Black Scoter	-	250	-	500	-
Surf Scoter	25	228	5,700	800	20,000
White-winged Scoter	10	228	2,280	800	8,000
Scoter spp.	-	-	-	-	-
American Coot	13	30	390	300	3,900
Red Phalarope	10	100	1,000	150	1,500
Western Gull	33	50	1,650	50	1,650
Common Murre	1856	200	371,200	500	928,000
Pigeon Guillemot	2	228	456	500	1,000
Cassin's Auklet	548	228	124,944	500	274,000
Marbled Murrelet	1	228	228	500	500
Rhinoceros Auklet	4	200	800	500	2,000
Ancient Murrelet	1	200	200	500	500
Alcid spp.	7	200	1,400	500	3,500
Red-tailed Hawk	1	100	100	500	500
TOTALS	2874		\$575,792		1,528,050

* November 20, 1984 to May 30, 1985

ADLER, JAMESON & CLARAVAL

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FACSIMILE COVER SHEET

DATE: 4/18/91

FILE NO.: 1266.1

TO: Barbara Herman

COMPANY: _____

PHONE NUMBER: _____

FACSIMILE NUMBER: 278-7022

RE: Exxon Settlement

FROM: Gloff Parker

NUMBER OF PAGES (INCLUDING COVER SHEET): 15

COMMENTS: _____

OPERATOR: [Signature]

IF YOU DO NOT RECEIVE ALL OF THE ABOVE STATED PAGES,
PLEASE CALL (907) 272-5200 IMMEDIATELY.

39

Samuel J. Fortier, Esq.
FORTIER & MIKKO, P.C.
2550 Denali Street, Suite 604
Anchorage, AK 99503
907-277-4222

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APR 13 1991

Office of the Attorney General
Anchorage branch
Anchorage, Alaska

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

EXXON CORPORATION, EXXON SHIPPING COMPANY,
EXXON PIPELINE COMPANY, In personam,

Plaintiffs,

v.

T/V EXXON VALDEZ, In rem,

Defendants.

Civil Action No.

THE STATE OF ALASKA,

Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING COMPANY,
and EXXON PIPELINE COMPANY, In personam,
and the T/V EXXON VALDEZ, In rem,

Defendants.

Civil Action No.

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALASKA,

Defendant

Civil Action No.

204/210/288 (4/15.4:CC4)
NOTICE OF SUBMITTAL PAGE 1

ACE 417434

STATE OF ALASKA,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Civil Action No.

IN RE: EXXON VALDEZ LITIGATION
UNITED STATES DISTRICT COURT
CASE NO.

COMMENTS OF THE
CHENEGA CORPORATION,
PORT GRAHAM
CORPORATION, AND
ENGLISH BAY
CORPORATION

56 Fed. Reg. 11636

COMES NOW Chenega Corporation and its subsidiary, CHN, Inc., Port Graham Corporation and its subsidiary Port Graham Development Corporation, and English Bay Corporation, by and through counsel and hereby submit comments pursuant to 56 Fed. Reg. 11636 (March 19, 1991) and 56 Fed. Reg. 11642 (March 19, 1991) and hereby submit comments to the proposed consent decree and settlement agreement and memorandum of understanding, respectively, as follows:

1. NOAA and The State are improper parties to receive comments concerning interim jurisdiction lands. The National Oceanic and Atmospheric Administration, by and through the Secretary of Commerce, and the State of Alaska, by and through its Attorney General's office, are not proper parties to consider comments from affected Village Corporations with regard to land and resources within interim jurisdiction. See 43 CFR 2650.1.

See also Pub. L. 94-204, as amended by Pub. L. 96-487; Pub. L. 99-396, Sec. 22 and Pub. L. 100-581. See Exhibit 1 hereto, letter from commenting Village Corporations to Secretary Lujan and Secretary Yeutter. See Exhibit 2, letter dated March 4, 1991 from attorneys for commenting Village Corporation. See Exhibit 3, letter from attorneys for commenting Village Corporations. See also Exhibit 4, letter from Fortier & Mikko, P.C. to Thomas Campbell, General Counsel, N.O.A.A.

Both the Consent Decree and MOA affect the rights and obligations of the Village Corporations, in direct contravention to the order of Judge Stanley Sporkin entered March 12, 1990 in Washington D.C., in a case captioned Chenega Corporation v. Lujan; case No. 91-484 SS. See Exhibit 5 (order of Judge Sporkin; an original is on file with the court). See also Exhibit 4, supra. The balance of the comments herein will describe how plaintiffs' rights are being compromised.

2. Paragraph 13(C) of the Consent Decree and MOA, III (C) must be reworded as follows:

(C) rights, obligations, and claims, ~~if any~~, of legal entities including Villages Corporations created pursuant to the Alaska Native Claims Settlement Act (ANCSA) or persons other than the government who are holders of any ~~present~~ right, including lands, or resources of lands selected but not yet conveyed to

ANCSA Corporations by the United States Government or title or interests in land or other property interests, including Natural Resources, and ecosystems affected by the oil spill.

The limitations stated in paragraph 13(B) are too narrowly defined. See Consent Decree at 13(B). See also MOA at paragraph III C, paragraphs 1-3. There is no reason to use the "if any" language with regard to rights and obligations of the entities discussed. The literal effect is to reduce rights and obligations to a matter of proof from a matter of law, and shift the burden to the Villages.

3. Paragraph 13(B): The Consent Decree at paragraph 13(B) and the MOA at paragraph IIIC1 should be restated by striking the "if any" where it appears and in addition by inserting the following rewrite:

The rights and obligations of Alaskan Native Villages to act as trustees and Alaska Village Corporations to exercise their legal rights and obligations, both for the purposes of asserting and compromising claims for injury to, destruction of, or loss of natural resources, and affected ecosystems belonging to, managed by, controlled, selected by or appurtenant to such Villages and Village Corporations.

See discussion at Exhibit 4, pages 2 - 4.

Alyeska

4. Why is Alyeska Pipeline Service Company receiving such preferential treatment and Exxon Pipeline Company receiving such

benefits as are stated at Consent Decree, Paragraphs 14, 15, 16, 20 and Paragraphs 22 - 24?

Natural Resources

5. Definitions concerning "Natural Resources" and "Natural Resource Damage" (Consent Decree at Para. 6(C) and 6(D); MOA at Para. II F and G), take into the sweep of those definitions rights and interests belonging to the Village Corporations. See Exhibit 4, at pages 4 - 5.

Escrow

6. The Consent Decree and MOA are silent on the Federal Government's obligation with regard to escrow of damages proceeds. See Exhibit 4, pages 5 - 6.

There is no meaningful participation on the part of Village Corporations with regard to either the present or future rights and the legal obligations owed them by the United States Government.

The State of Alaska cannot act as Trustee with regard to resources or lands selected but not yet conveyed to the Village Corporations.

The Consent Decree and MOA ignore the statutory requirements pursuant to CERCLA, 42 USC 9651, and the Clean Water Act, regarding the ability of polluted ecosystems to recover. The Consent Decree at Para. 6(C) and the MOA at Paragraph II F must be corrected to include this provision. See also MOA, page 7, Paragraph G and Paragraph 2(J).

General Comments

A. Both the Consent Decree and MOA permit concealment of science and assessments necessary for private litigants to adequately prosecute their cases;

B. The Settlement Agreement, while paying lip service to "present rights", fails to address future rights and interests as well as damages which will occur and reoccur in the future, and therefore compromises the rights of the responding Village Corporations;

C. The Agreements fail to provide for the continuation of scientific and assessment studies, and fail to require the release of studies and assessments already completed, or data acquired and withheld.

D. The Agreement shifts the burden to user groups to establish that the Settlement Agreement did not dispose of their claims, and provides a powerful weapon for delay purposes by Exxon et. al. against private litigants, including the Village Corporations.

E. The Settlement Agreement fails to provide for a common settlement fund.

F. The Settlement Agreement fails to provide any objective methods for determining a reopener.

G. Without the Science and Assessment work already completed, the Village Corporations, as well as other litigants, lack sufficient information to determine whether the funds recovered are fair and reasonable, adequate, or, the net proceeds, after deductions for this year's operations, will be sufficient.

H. We are attaching the following written Testimonies to the Alaska Legislature:

1. Exhibit 6, Port Graham Corporation

- a. Testimony of Patrick Norman, President, 4/13/91.
- b. Testimony of Mary Malchoff, Chairperson, 4/13/91.

2. Exhibit 7, Chenega Corporation

- a. Testimony of Charles W. Totemoff, President, Seward 4/12/91.
- b. Testimony of Philip Totemoff, Secretary/Tresurer, Seward 4/12/91.
- c. Testimony of Paul Kompkoff, Director, Seward 4/12/91.
- d. Testimony of Charles W. Totemoff, President, Juneau 4/15/91.
- e. Testimony of Paul Kompkoff, Director, Juneau 4/15/91.
- f. Testimony of Gail Evanoff, Vice President Operations, Juneau 4/15/91.
- g. Chenega Resolution #91-09

3. Exhibit 8, English Bay Corporation and its
Shareholders, 12 pages of comments provided by:

Pauline Dunces
Kathy Brewster
Tessie Moonin
John Kvasnikoff
Vincent Kvasnikoff, Director
Helen Ukatish
Gus Ukatish
Alma Kvasnikoff
Robert Kvasnikoff, Director
Roberta Kvasnikoff
James Kvasnikoff
Virginia Moonin
Ephim Moonin, Sr.
Mack and Rose Ukutish
Herman Tamape
Anne Tamape
Frank Hetrick
Martha Hetrick
Becky Kvasnikoff
Seraphim Ukatish, Sr.
Irene Ukatish
Dan Anahanok, Jr.

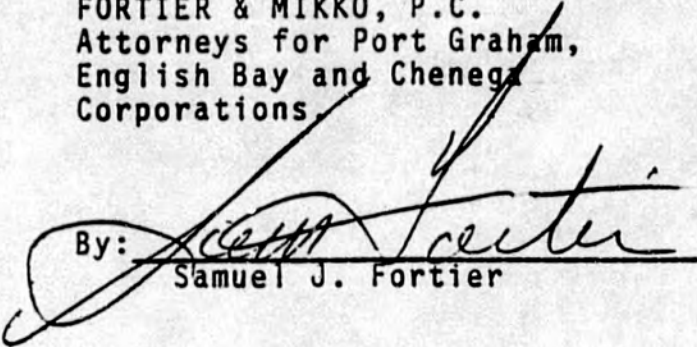
Anita Evans
Sperry Ash
Nancy Yeaton
Roy Evans, Jr.
Carol Mattsan
Nick Tanape
Susan Tanape
Eloise Meganick
Kathy Evans
Leo Ash
Dale Pease
Wally Kvasnikoff, Director
Nina Kvasnikoff
Sarjus Kvasnikoff
Mack Kvasnifoff

I. We join in the Comments presented on behalf of the Regional and Village Corporations, a copy of which is attached as Exhibit 9.

Based upon all of the foregoing, you are requested to withdraw from the Agreement within the fifteen (15) day period following the close of public comments until we renegotiate the Agreement so as not to compromise in any fashion the rights and claims of the commenting Village Corporations.

Respectfully submitted this 16th day of April, 1991.

FORTIER & MIKKO, P.C.
Attorneys for Port Graham,
English Bay and Chenega
Corporations

By: 

Samuel J. Fortier

Samuel J. Fortier, Esq.
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APR 13 1991

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

EXXON CORPORATION, EXXON SHIPPING COMPANY,
EXXON PIPELINE COMPANY, In personam,

Plaintiffs,

v.

T/V EXXON VALDEZ, In rem,

Defendants.

Civil Action No.

THE STATE OF ALASKA,

Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING COMPANY,
and EXXON PIPELINE COMPANY, In personam,
and the T/V EXXON VALDEZ, In rem,

Defendants.

Civil Action No.

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALASKA,

Defendant

Civil Action No.

AFFIDAVIT OF MAILING
PAGE 1 (4/16.2)(cc4)

ACE 417445

STATE OF ALASKA,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

IN RE: EXXON VALDEZ LITIGATION
UNITED STATES DISTRICT COURT
CASE NO.

Civil Action No.

COMMENTS OF THE
CHENEGA CORPORATION,
PORT GRAHAM
CORPORATION, AND
ENGLISH BAY
CORPORATION

56 Fed. Reg. 11636

AFFIDAVIT OF MAILING

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

}
} ss

I, Cynthia Barnett-Stephens, being first duly sworn, upon oath, depose and say:

That I am employed in the law office of FORTIER & MIKKO, A Professional Corporation; that on April 16, 1991, I served a copy of COMMENTS OF THE CHENEGA CORPORATION, PORT GRAHAM CORPORATION, AND ENGLISH BAY CORPORATION, to the following as listed below:

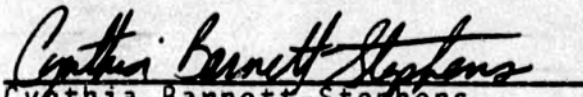
Thomas A. Campbell, General Counsel NOAA, U.S. Department of Commerce Room 5816, 14th Street and Constitution Ave. N.W., Washington, D.C. 20230; on behalf of the Administrator of NOAA, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Transportation, the Administrator of the

AFFIDAVIT OF MAILING
PAGE 2 (4/16.2)(cc4)

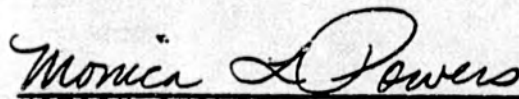
ACE 417446

Environmental Protection Agency and the United States Attorney General; by DHL Carrier.

And Barbara Herman, Attorney Generals Office, State of Alaska, 1031 W. 4th Avenue, Suite 200, Anchorage, Alaska 99501; by the U.S. Postal Department.


Cynthia Barnett-Stephens

SUBSCRIBED AND SWORN to before me this 16th day of April, 1991.


NOTARY PUBLIC in and for Alaska
My Commission Expires: 10-10-94

CHENEGA CORP.
P.O. BOX 60
CHENEGA BAY, AK
99574

PORT GRAHAM CORP.
P.O. BOX PGM
PORT GRAHAM, AK
99601-8998

ENGLISH BAY CORP.
1637 STANTON AVE.
ANCHORAGE, AK
99508

February 18, 1991

Honorable Manuel Lujan,
Secretary of Interior
1800 C Street, Suite N.W.
Washington, D.C. 20240

Honorable Clayton Yeutter
Secretary of Agriculture
14th Street and Independence Avenue S.W.
Old Executive Office Building
Washington, D.C. 20501

RE: Settlement of Claims on Native Lands Arising from
EXXON VALDEZ oil spill.

Dear Secretaries Lujan and Yeutter:

We understand that you are currently participating in discussions with the State of Alaska and Exxon Company U.S.A. to settle claims arising from the Exxon Valdez oil spill.

The undersigned village corporations are writing to express their concerns that none of their rights be compromised in your negotiations. Port Graham Corporation and English Bay Corporation have selected many thousands of acres in the Kenai Fjords National Park under the Alaska Native Claims Settlement Act ("ANCSA"). Those lands remain withdrawn pending final conveyance by your Department in satisfaction of our entitlements under that Act.

Chenega Corporation has selected but not yet received conveyance to approximately 3000 acres in the Chugach National Forest. The lands selected but not yet conveyed include lands at Jack Pot Lake and Jack Pot Bay in Prince William Sound. Those lands were also selected under ANCSA.

ACE 417448

Honorable Manuel Lujan
Honorable Clayton Yeutter
Page 2

By law, we understand you may continue to administer the lands withdrawn for our selections. However, by law, you are also required to obtain and consider our views prior to making any contract affecting these lands. See 43 CFR 2650.1.

This is, therefore, our formal request that you advise us of the terms of the proposed settlement with Exxon as it affects lands withdrawn for our selection so that we may, in turn, provide you with our informed advice as required by law.

Very truly yours,

CHENEGA CORPORATION

By: Charles W. Totamoff
Charles W. Totamoff, President

PORT GRAHAM CORPORATION

By: Patrick Norman
Patrick Norman, President

ENGLISH BAY CORPORATION

By: Donald Emmal
Donald Emmal, President

CT:dea:500ltr

cc: Honorable Wally Hickel, Governor
Honorable Charles Cole, Attorney General

ACE 417449

FORTIER & MIKKO
A PROFESSIONAL CORPORATION
Attorneys at Law

DENALI TOWERS NORTH
2550 DENALI STREET
SUITE 604
ANCHORAGE, ALASKA 99503

SAMUEL J. FORTIER
DAGMAR C. MIKKO
CARLENE M. FAITHFUL
TELEPHONE (907) 277-4222
FAX LINE (907) 277-4221

March 4, 1991

Honorable Manuel Lujan
Secretary of Interior
1800 C Street, Suite N.W.
Washington D.C. 20240

Honorable Clayton Yeutter
Secretary of Agriculture
14th Street and Independence Avenue S.W.
Old Executive Office Building
Washington D.C. 20501

RE: In re Exxon Valdez Litigation

Dear Secretaries Lujan and Yeutter:

Several weeks ago, the village corporations of Chenega, Port Graham and English Bay sent you a letter bringing to your attention your responsibilities to obtain their views and consider those views prior to entering into a settlement agreement with the State of Alaska and Exxon, concerning damages arising from the 1989 Exxon Valdez oil spill. A copy of that letter is attached. We understand that you have not yet responded to our clients' common concerns.

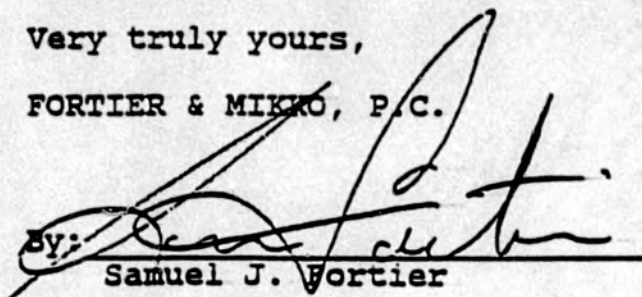
This letter is to inform you that the village corporations of Chenega, Port Graham and English Bay are now considering pursuing injunctive relief to prevent you from concluding the settlement agreement without obtaining their views and considering those views.

ACE 417450

You are respectfully requested to respond, preferably directly through us, with regard to the village corporations' letter dated February 18. Please assure us that you will not enter into a settlement without first complying with the requirements stated at 43 CFR 2650.1.

Very truly yours,

FORTIER & MIKHO, P.C.

By: 
Samuel J. Fortier

SJF:jmb (Ltr-449.doc)

cc: Chenega Corporation
Port Graham Corporation
English Bay Corporation
Honorable Charles Cole, Esq.
James Stevens, Esq.

ACE 417451

FORTIER & MIKKO
A PROFESSIONAL CORPORATION
Attorneys at Law

DENALI TOWERS NORTH
2550 DENALI STREET
SUITE 804
ANCHORAGE, ALASKA 99503

SAMUEL J. FORTIER
DAGMAR C. MIKKO
CARLENE M. FAITHFUL
TELEPHONE (907) 277-4222
FAX LINE (907) 277-4231

April 11, 1991

Mr. Martin J. Suuberg
Deputy Solicitor
United States Department of the Interior
Offices of the Solicitor
Washington, D.C. 20240

Dear Mr. Suuberg:

We represent Chenega Corporation and Port Graham Corporation as general counsel, and we also represent those corporations and English Bay Corporation as special counsel in the Exxon Valdez litigation. We have been requested to respond to your letter dated March 29, 1991, and received April 2, 1991, which was in response to the letters from Chenega Corporation and Port Graham Corporation dated February 18, 1991.

We are concerned that your department has entered into the settlement agreement before considering our clients' view on this agreement. In addition, we are concerned that there is no provision for escrow, and that your department is acting as a co-trustee with the State of Alaska concerning interim jurisdiction land over which the State of Alaska has no interest; our clients have vested interests. Our clients have not been involved in key decision-making, nor is there an escrow to protect their interests, although the agreement clearly affects each village corporation's rights.

We do not believe that your department can delegate its statutory duties to the National Oceanic and Atmospheric Administration (NOAA), nor for that matter, its Indian trust duties, which are separate and independent from your public trust duties. Without waiving any rights to demand that you obtain and consider the views of the affected village corporations before entering into the agreement, we are proceeding as you requested, and addressing our comments to Mr. Campbell of NOAA with a copy to Ms. Herman. We are also attaching a copy of our response to this letter.

ACE 417452

In summary, because your department has not adequately responded to and advised our clients, they lack sufficient information upon which to form an opinion as to whether or not the settlement agreement contains sufficient monetary remuneration with regard to costs of damage assessment: compensation for losses, injury, impairment, damage or destruction of the natural resources, including lands in interim jurisdiction affected by this settlement and damages from trespass pertaining to the lands or resources of the lands, and also the ability of the polluted ecosystems to recover are essential items to consider of damages sustained by our clients.

Further, because the Native corporations are not directly involved in determining the allocation of the compensation recovered, the village corporations object to decisions being made which appear to impact directly their interests in the diminution of natural resources still within interim jurisdiction, as well as natural resources appurtenant or those natural resources, including lands, already conveyed to the village corporations.

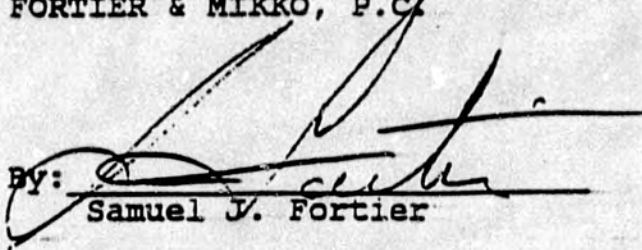
We do not believe that you have complied with the requirements under 43 CFR 2650.1, which require your department to obtain the views of our clients, to consider our clients' views and to not delegate that regulatory duty to another department. Your department is required to perform by law these duties in good faith, including providing our clients with sufficient information to make informed decisions.

In short, your department has failed to comply with its legal duties. We suggest that the government seek an additional 120 days, so that the Department of the Interior can adequately consult with the affected villages, including supplying the villages with scientific studies and

assessments sufficient to enable them to determine whether the natural resources and the damaged ecosystem are likely to recover, and when.

Very truly yours,

FORTIER & MIKKO, P.C.

By: 
Samuel J. Fortier

SJF:jmb (ltr-488/204.210.288)

cc: Chenega Corporation
Port Graham Corporation
English Bay Corporation
Ken McCallion, Esq.
Timothy Petumenos, Esq.
Bill Horn, Esq.
Terance Gargan, Esq.
Christopher Kende, Esq.

ACE 417454

FORTIER & MIKKO
A PROFESSIONAL CORPORATION
Attorneys at Law

DENALI TOWERS NORTH
2550 DENALI STREET
SUITE 804
ANCHORAGE, ALASKA 99503

SAMUEL J. FORTIER
DAGMAR C. MIKKO
CARLENE M. FAITHFUL

TELEPHONE (907) 277-4222
FAX LINE (907) 277-4221

RECEIVED

Department of Law

April 11, 1991

APR 13 1991

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Mr. Thomas Campbell
General Counsel
National Oceanic and Atmospheric Administration
Department of Commerce
14th and Constitution Avenue N.W.
Washington D.C. 20230

Dear Mr. Campbell:

We have been directed to you by the Department of Interior to consider and obtain the views of Chenega Corporation, Port Graham Corporation and English Bay Corporation, with regard to the settlement agreement between the governments and Exxon Corporation. This settlement agreement is stated at 56 Fed. Reg. 11636 - 11642, and the MOA is stated at 56 Fed. Reg. 11642 - 11646.

First, we object to the United States Department of Interior delegating its duty to consult with the village corporations, and consider their views to the NOAA. We also object to the federal government, through the Department of the Interior, entering into the settlement agreement before it has considered our clients' views. Further, the Department of the Interior's failure to involve the village corporations in settlement discussions concerning lands within interim jurisdiction as well as natural resources damaged by Exxon is violative of the following federal laws, particularly 45 CFR 2650.1 and Public Law 94-204, as amended by Public Law 96-47, Public Law 99-396, Sec. 22 and Public Law 100-581. We object to the State of Alaska's involvement in the allocation of the limited resources recovered in the settlement. We also object to the State of Alaska's involvement in the settlement process, where our clients

ACE 417455

requested to be kept advised as to the progress of the settlement as early as February 1991, and we were ignored until the settlement was completed.

Second, our clients are unable to determine whether the sums recovered are sufficient to deal with the compensatory and remedial relief necessary to compensate for loss, injury, impairment, damage, or destruction of the natural resources, whether or not said loss is temporary or permanent, and whether the ecosystems polluted by the Exxon Valdez oil spill are able to recover, and if so, over what period of time. The consultation is inadequate because it did not include any scientific studies or assessments concerning these issues.

Third, it is our clients' view that the Attorney General for the State of Alaska has a conflict of interest, in that he has an ongoing business relationship with one or more defendants in the settlement and may stand to gain monetarily as a result of the settlement. In short, it is our clients' view that the appearance of impropriety on the part of Mr. Cole is so great as to cast grave doubt on the adequacy of the settlement, and the ability of the State of Alaska to act fairly and impartially, as a trustee in the allocation of resources, which impact lands conveyed to our clients or are within the interim jurisdiction of the United States, by and through its Secretary of Interior, and its Secretary of Agriculture.

Fourth, it is our clients' view that the agreement and consent decree at paragraph 13(c) does in fact compromise the rights and claims of the village corporations in effect, by ignoring the obligations of the federal government to our clients. We believe, at a minimum, that paragraph 13(c) must be amended to read:

(c) rights, obligations, and claims, if any, of legal entities, include village corporations created pursuant to the Alaska Native Claims Settlement Act (ANCSA) or persons other than the governments who are holders of any present right, including lands, or resources of lands, selected but not yet conveyed to ANCSA corporations by the United States Government, or title or interest in land or other property interests, including Natural Resources, and ecosystems affected by the oil spill.

Fifth, the limitations stated at paragraph 13(b), (56 Fed. Reg. 11639) are too narrowly defined. In this regard, the village corporations which we represent are holders of the

surface estate, and are concerned with preserving the use of the lands in accordance with traditional local lifestyles and subsistence economies. See H.R. Rep. No. 729, 94th Cong., 1st Sess. 26-27 (1979) reprinted in 1975 United States Code, Congressional and Administrative News 2376, 2393. See also Ahtna, Inc. 107 IBLA. 266, 269, 270 (1989):

[Section 14(f) of ANCSA] provides protection to villages from a precipitant decision by Regional Corporations to develop the subsurface estate. This provision seeks to avoid potential conflicts between villages which are holders of the surface estate and which may be concerned with preserving the use of the land in accordance with the traditional local lifestyle and subsistence economy. . . .

It is their traditional lifestyle and subsistence economy which our clients are undertaking to protect, in this case, not against the regional corporation's potential development of mining activities, but rather, with regard to devastation on account of the Exxon Valdez and its aftermath. For more information, please see Exhibit 1, a report by the State of Alaska specifically discussing Chenega, Port Graham and English Bay.

It is our position that ANCSA Section 14(f), with the 1976 amendment must be construed to place in the village corporation, as a holder of the surface estate, the right to preserve the use of the land and its resources for traditional lifestyles and subsistence economy. See also 16 U.S.C. Sec. 3111(4), which demonstrates Congress' overriding concern to protect Native cultures. Congress expressed its intent to protect Natives "physical, economic, traditional and cultural existence. . . ." Pursuant to ANCSA and ANILCA, the authority to preserve subsistence activities and the traditional local lifestyle was vested in the village corporations, as owners of the surface estate of once public, and now private or selected but not yet conveyed lands. Alaskan IRAs and Traditional Councils possess authority concurrently with the village corporations. See 25 U.S.C. Sec. 461-495, wherein the Indian Reorganization Act of 1934 was amended and applied by Congress in 1936 to Alaskan Native villages.

The goal of tribal cultural autonomy that Congress expressed in the Indian Civil Rights Act is also expressed in ANCSA and ANILCA, with the duty of the village corporations to protect Native subsistence lifestyles. Cf. McCurdy v. Steele, 353 F. Supp. 629, 633 (1973). Pursuant to the 1976 amendment to ANCSA Sec. 14(f), Congress has voiced the concern for tribal cultural economies by expressly granting

Here, the village corporations of Chenega, Port Graham and English Bay, have suffered enormous losses. 70% of Chenega Corporation's coastline is oiled, and highly toxic oiling occurred on Port Graham and English Bay conveyed lands. Moreover, the purpose of ANCSA was to resolve aboriginal land claims by providing a land resource base. Although Congress did not expressly address Native subsistence, it was and continues to be a Congressional expectation that the Secretary of Interior would protect subsistence users under their existing authority. See Note, The Alaska National Interest Lands Conservation Act: Striking the Balance in favor of customary and traditional subsistence use by Alaska Natives, 27 Natural Resources Journal 421, 425 (1987). Thus, In People of Gambell v. Clark, 746 F.2d 572, 575, (9th Cir. 1984), the 9th Circuit noted:

Based upon the foregoing, we believe that paragraph 13(b) of the Settlement Agreement, in order to conform with ANCSA and ANILCA, must be amended to read as follows:

Sixth, it is our clients' view that the inclusion of Exxon

Pipeline Company, and in the agreement's apparent exclusion of Alyeska, which is owned in part by Exxon Pipeline Company, is not clear and must be amplified before we can offer you a view as to this portion of the agreement.

Seventh, we believe the definitions concerning Natural Resources and Natural Resource Damages (Agreement paragraph 6(c) and (d), page 5; MOA paragraph II (F) and (G) pages 6 through 7) specifically include lands and resources held by the United States in interim jurisdiction, the same constitute selected lands under ANCSA.

"Natural Resources", within its definition also includes resources which are appurtenant to lands selected by the village corporations, which resources the village corporations have a direct interest under ANILCA. See, for example, AMOCO Production Company v. Village of Gambell, 107 Sup. Ct. 1396, 1397 (1987) (applicability of ANILCA includes coastal waters to a point 3 miles from the coastline). The village corporations' restoration claims based upon subsistence use under ANILCA extends to 3 miles from the coastline. Scientific studies and assessments are essential to ascertain the extent of those damages, because village corporations have an obligation under ANCSA and ANILCA to protect the subsistence lifestyle, which extends to the use of marine resources.

The scientific studies and assessments which the Governments undertook earlier are coming to an end, according to news reports. As mentioned earlier, those studies and assessments have not heretofore been made available to the village corporations, either with regard to conveyed lands or selected but not yet conveyed lands. However, the State of Alaska has informed the village corporations that it will not be undertaking any further oil removal work after this season, which means that resource restoration must depend upon species hardy enough to withstand the effects of oil pollution. It is our clients' common view that said substitute resources are unacceptable. That the damaged or destroyed ecosystems appurtenant to the village corporations' property interests render their ability to safeguard subsistence lifestyles and economies and the cultural values thereto unperformable.

Thus, even if the settlement pays lip service not to compromising, the village corporations' claim and rights, as well as these obligations, it is clear that the practical application results in prohibition against the performance and enjoyment of legal obligations and rights.

Eighth, the agreement fails to address the federal government's obligation with regard to escrow of damages money, and does not provide any methodology for restoration with regard to lands and resources in its interim

jurisdiction, except in conjunction with the State, which has become increasingly adverse to oil reclamation and preservation of Native lifestyles.

Ninth, there is no meaningful participation on the part of the village corporations with regard to either their present or future rights and legal obligations.

Tenth, the State of Alaska cannot act as a trustee with regard to resources on lands selected but not conveyed to the village corporations.

Eleventh, both the settlement agreement and the MOA ignore the clear requirements pursuant to CERCLA at 42 U.S.C. Sec. 9651 as it relates to the Clean Water Act, recovering compensation for loss, injury, impairment, and damage or destruction or the ability of polluted ecosystems to recover. . . ." Page 5 of the agreement and consent decree, at paragraph 6(c) and paragraph II (F) of the MOA should be corrected to include this important provision.

Similarly, the MOA, at page 7, paragraph G, fails to address the duties of the federal and state trustees to settle claims for "impacted ecosystems".

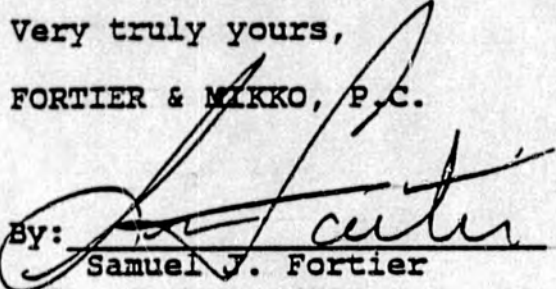
See also MOA at paragraph II (J), (definition of restore or restoration) but fails to address the damage to the ecosystems.

Based upon the foregoing, it is our clients' common view that the Department of the Interior should not enter into the settlement agreement until adequate consultation has occurred. It is Chenega's view that the Department of Agriculture in its capacity as a holder of interim

jurisdiction lands and resources selected by Chenega Corporation has failed to even so much as acknowledge Chenega's letter, and has not sought Chenega's views nor consulted with Chenega Corporation.

Very truly yours,

FORTIER & MIKKO, P.C.

By: 

Samuel J. Fortier

SJF:jmb (ltr-488/204.210.288)

cc: Chenega Corporation
Port Graham Corporation
English Bay Corporation
Kenneth McCallion, Esq.
Christopher Kende, Esq.
Timothy Petumenos, Esq.
Terance Gargan, Esq.
Martin Suuberg, Esq.
Barbara Herman, Esq.

ACE 417461

RECEIVED

Department of Law

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APR 13 1991

THE NATIVE VILLAGE OF
CHENEGA BAY, et. al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et. al.,

Defendants.

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Civil Action No. 91-483 SS

CHENEGA CORPORATION, et. al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et. al.,

Defendants.

Civil Action No. 91-484 SS

MEMORANDUM OPINION AND ORDER

These cases¹ are before the Court on a continuation of the hearing commenced on March 7, 1991, on plaintiffs' motions for a temporary restraining order, and on the plaintiffs' motions for a preliminary injunction. The plaintiffs are Native Alaskan villages, the some 5,000 residents of these villages, and Native Village Corporations owned by these villagers. The defendants are officials of the United States Government and of the State of Alaska. Plaintiffs seek to enjoin the defendants from consummating

¹ The captioned cases have not been consolidated for all purposes. Plaintiffs in both cases have moved for issuance of a preliminary injunction. Because the plaintiffs in both cases seek identical relief, and because the issues raised in the plaintiffs' motions are similar, the Court has treated the motions jointly.

ACE 417462

settlement negotiations with Exxon Corporation, Exxon Shipping Co., [collectively, "Exxon"] and Alyeska Pipeline Service Co., relating to the discharge of oil by the M/V EXXON VALDEZ. The Court on March 7, 1991, issued a ten-day temporary restraining order restraining a settlement. Plaintiffs now seek issuance of a preliminary injunction.

Plaintiffs contend that the defendants plan to enter into an agreement with Exxon and Alyeska settling civil claims against Exxon and Alyeska that the defendants may have as a result of the Valdez oil spill. The plaintiffs' claim, in essence, is that this planned agreement will compromise the plaintiffs' rights to seek relief themselves against Exxon and Alyeska. The plaintiffs' claims for damages against Exxon and Alyeska are currently being prosecuted in federal and state court in Alaska.

In response to plaintiffs' motions, the defendants have represented to the Court that the planned settlement agreement will not in any way compromise the plaintiffs' rights, except to the extent the plaintiffs agree to be bound by the settlement agreement. The Court understands this representation to mean that after the settlement agreement has been executed, the plaintiffs will be able to prosecute fully the suits they have initiated against Exxon and Alyeska just as if no settlement agreement existed. The Court further understands the defendants' representation to mean that Exxon and Alyeska may be liable to the plaintiffs for damages to natural resources with respect to lands they have an interest in even if it is claimed the same natural

resources are covered by the settlement agreement among the defendants and Exxon and Alyeska.

The Court accepts the defendants' good-faith representations. On the basis of these representations, the Court believes that the plaintiffs' rights are not affected by the planned settlement agreement. Accordingly, it is this _____ day of March 1991 hereby

ORDERED that the temporary restraining order issued by this Court on March 7, 1991, is DISSOLVED; and it is further

ORDERED that plaintiffs' motions for a preliminary injunction are DENIED; and it is further

ORDERED that the Court shall retain jurisdiction over this matter to ensure that plaintiffs' rights are protected. The Court shall maintain this case on its docket so that the plaintiffs may on a motion request such additional relief as they may be entitled to, and so that the defendants may make an appropriate motion to have this case transferred to the United States District Court for the District of Alaska, as the defendants have indicated in court they may desire to do.

Stanley Sporkin
United States District Court

PORT
GRAHAM

April 12, 1991

Alaska State Legislature
Oil Spill Settlement Committee
P.O. Box V
Juneau, AK 99811

Dear Committee Members:

I am President of Port Graham Corporation, an Alaska Village Corporation which owns or has selected lands around lower Cook Inlet, the Gulf of Alaska and the Kenai Fjords area. Port Graham Corporation has approximately 190 shareholders, the majority of whom live in Port Graham and other communities on the Kenai Peninsula.

The oil spill has had a devastating effect upon our local economy. All seasonal jobs have been lost because the cannery has not operated in several years. We lost our leasee on account of the oil spill. We have not been able to attract a new lessee, because of concerns over oil contamination.

Our shareholders are, for the most part, traditional and subsistence oriented. Port Graham Corporation, in order to fulfill its obligations as a village corporation, has not developed its lands, so that we can guarantee a subsistence base for our shareholders.

We have been involved in the oil spill litigation for two years. When Exxon settled with the processors, it would not settle with us. We have received no reimbursement from Exxon for the closure of our cannery, the resulting loss of jobs and pressure on the corporation's scarce resources to take care of its shareholders, the tremendous costs the corporation incurred over the first summer of the oil spill in attempting to protect our land, or for any of the other extraordinary costs on account of the oil spill.

We have worked closely with the state, our people have answered innumerable questionnaires, thrown open their doors

ACE 417465

to the state scientist studying the effects of the oil spill, and we have coordinated with state and federal cleanup efforts to the point where that becomes virtually our sole occupation during the summer months. We are, of only two communities in the oil spill area which did not receive local response project funds. We did not receive those funds because the Kenai Peninsula Borough had its own plans for oil spill response, which did not include our lands within the Borough. Thus, even while other communities were able to provide some employment for their residents displaced by the oil spill, we were unable to do so, and at the same time we incurred enormous expenses.

The Rocky Bay, Windy Bay area in the Gulf, which we own, continues to be highly toxic, according to state and federal studies. Yet, even though Port Graham and its shareholders contributed to the study assessments, we have not been permitted any information as to the likelihood of recovery of the polluted ecosystems, ecosystems upon which we depend. The attorney general has said that the studies would not be released because of litigation. The only reason we can figure for not releasing the studies is that the damages assessments would indicate the state is settling for an amount which would mean that the ecosystem recovery and resource damages are not being adequately compensated, and he does not want either you or us to know this.

As citizens of the State of Alaska, we have a direct interest in the state's success in resource and ecosystem restoration. Yet, the State's settlement has not been shown to be adequate to compensate for those damages and restoration expenses into the future. It does not make sense to accept such a situation. Just as I must advise my board of directors by the use of the corporation's professionals, it seems to me that you, the Alaska Legislature, also have a duty on behalf of all of us to make adequate inquiry before agreeing to this proposed settlement. There are too many unanswered questions. My board would not let me get away with something like this. I encourage you not to let the Chief Executive Officer of the so called owner state not get away with it either.

Please make your inquiries. Please take the time you need, and if its another 120 days, try to get it. While you are performing your diligent inquiry, I also hope that you will remember the little people, the displaced residents of Port

Graham, the fishermen, the cannery workers, area businesses, and the entire state which has been impacted negatively by this oil spill. Even if the state settles, that will not put the matter behind those of us who have suffered the most, but may push us into a closet with no escape.

Thank you.

Very truly yours,

FORTIER & MIKKO, P.C.

By: Patrick Norman, President

PN:dea:573ltr

ACE 417467

CHENEGA CORPORATION

General Delivery
Chenega Bay, Alaska 99574-9999
(907) 573-5118

April 12, 1991

The Oil Spill Litigation Committee
of the Alaska Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Ladies & Gentlemen:

I am President of Chenega Corporation, the village corporation for Chenega, located in Prince William Sound. We have 72 shareholders, most of whom live in Chenega Bay and other communities in Prince William Sound. For the past two years, we have been dealing with the impact of the oil spill, and the evidence that the oil spill still pollutes our beaches.

We have read the Exxon settlement papers. We are concerned, if the State does settle with Exxon, that that settlement will mean that Exxon has no reason to settle with the little people, including Chenega Corporation and its shareholders, for many years. The State of Alaska and the Federal governments have the most significant resources to bring against Exxon. We are a very small village corporation, our resources are devoted to insure the continuation of Chenega's unique culture and lifestyles. We do not have the resources to fight a giant like Exxon alone. In this case, because the State's Attorney General is insisting upon concealing the studies and assessments which would otherwise establish resource damage and estimates of recovery on the ecosystem, we have no idea how long or when the seals, otters, and other marine life, as well as land animal populations will recover.

Chenega and its lands are located in the southwestern part of Prince William Sound, and received the full impact of the 11 million gallons of oil spilled from the Exxon Valdez. 70% of our shorelines were oiled, and areas of our shoreline show no recovery whatsoever from 1989. We have devoted

ACE 417468

enormous resources of our own in order to assist with the cleanup effort, and we have been the situs of enormous studies by the state and federal government over the course of the past two years. We feel Chenega had a big part in making the state's case for it.

The proposed settlement with Exxon leaves us on the beach, completely stranded. We don't have the resources to fight Exxon, nor do we think the damaged resources and ecosystems will be restored with the amount on the table, and which you are considering.

We have insisted, for the past two years, that damages to the resources were far greater than Exxon released studies. Studies released by the federal government within the past week established that we were right, and the once rich resources in our area of the country are destroyed. But those studies only relate to marine mammals. They do not show the extent of damages. Nor, have studies been released which will establish damages to other sea-life, including fish, crustaceans, a mollusk population on account of the 11 million gallons of oil degrading into the seabed, and below the surface and tidal areas.

The agreement also says that Alyeska won't be sued on account of resource damages. We have heard the Attorney General say that the State will still be pursuing Alyeska for misrepresentation and fraud, but we note that the settlement agreement requires the state to repay Exxon over 20% of any recovery the state might get from Alyeska.

The settlement agreement fails to answer the most basic questions, including the extent of damages to resources and the amount of time, if ever, those resources can be restored, or the ecosystem rebalanced. The settlement agreement also does not address Exxon's responsibilities to the citizens of this state, including Chenega Corporation and its shareholders. Nor, does the settlement agreement address the other small people and Exxon's responsibility to them, the villages, fishermen, cannery workers, area business, all of whom have been devastated by this spill.

We don't think you ought to let Exxon off this easily. Nor, do we think that you ought to let the Executive Branch of government conceal essential background information from you while you attempt to arrive at a decision concerning a matter which will impact the lives of many of Alaska's residents for many years. We can't put the spill behind us, and we think it is ludicrous for the Governor to insist that

the settlement agreement will permit the state to put the spill behind it. We will still be out there, still fighting with Exxon, and still trying to recover against an oil giant for the destruction of our resources and way of life.

Thank you,

Very truly yours,

CHENEGA CORPORATION

By: _____
Charles W. Totemoff

[Ltr-490]

ACE 417470

To: Oil Spill Litigation Committee of
the Alaska Legislature

From: Philip Totemoff
P.O. Box 64
Chenega Bay, AK 99574

Date: April 12, 1991

Ladies + Gentlemen,

My name is Philip Totemoff, I am a lifelong resident of Prince William Sound, currently living in Chenega Bay. I am a subsistence user, I grew up practically on subsistence foods, it is my diet.

The Exxon Oil Spill of March 1989 ruined my way of life, lifestyle, culture and subsistence.

The Federal Government's Oil Spill Studies recently released show what I knew from the beginning that my subsistence foods are contaminated and are unsafe to eat. The seals, sealions, fish and shellfish were all affected as

ACE 417471

the studies have shown.

It is my utmost concern that Exxon and the State of Alaska will consider us and not forget us and restore the damage done to our resources and lands, which will be many years before it is back to normal.

In the mean time I would like to see Exxon or the State of Alaska to compensate Chenega on a monetary or anyway possible to carry us through on this critical issue.

Oil Spill Litigation Committee Seward Hearing

Ladies + Gentlemen,

I'm Paul Komphoff, Sr. from Chenega Bay. I was born + raised in Chenega and have lived in Prince William Sound all my life, I learned my subsistence skills from my Dad when I was young. Everything was easy and beautiful then. My lifestyle was ruined because of the Exxon Valdez Oil Spill.

All our Subsistence foods are ruined and gone, not only our subsistence but all the animals, bugs + birds.

Why are people saying the sound is Clean when it isn't? It's going to take many many years to see the beaches natural again. Not only the lands but the resources as well.

Why are we being ignored, when we people that lived there all our lives, know what's going on?

I hope you Committee members can

understand what I am saying,
because we have not recovered
emotionally or spiritually, whatever
decision that you make is the
right one and not to forget the
Subsistence users in Prince William
Sound specifically Chenega Bay.

ACE 417474

EXHIBIT 7

The Alaska Legislature
Oil Spill Litigation and
Settlement Committee
P.O. Box V
Juneau, Alaska 99811

Written Testimony of Charles W. Totemoff

Good Evening Ladies & Gentlemen:

My name is Charles W. Totemoff. I am President of Chenega Corporation and Chairman of Chenega Bay I.R.A. Council. I will be presenting the views of Chenega Corporation with regard to the proposed settlement. I have also been requested to present views on behalf of Port Graham Corporation and English Bay Corporation, two village corporations with extensive holdings and selections on land adjacent to the Gulf of Alaska, and into the Kenai Fjord's. Their comments will therefore be included in my testimony.

The village corporations, Chenega, Port Graham and English Bay, are involved in litigation against Exxon Company U.S.A., Exxon Shipping Company, Exxon Pipeline, Alyeska, the consortium of companies which own Alyeska Company, as well as other defendants on account of damages suffered when the Exxon Valdez hit Bly Reef. Chenega Corporation has incurred hundreds of thousands of dollars in expenses in dealing with the oil spill and its effect upon our shareholders, the vast majority of whom are subsistence users. Chenega is a small village corporation, with only 72 shareholders and 76,000 acres of land conveyed or to be conveyed in Prince William Sound. 70% of our coast line was oiled, much of it extensively and heavily oiled. The oil spill caused an immediate and we believe irretrievable loss of lifestyle and destroyed Chenega Corporation's ability to provide lands and appurtenant interests for the purpose of subsistence activities.

There are no stores in Chenega Bay; before March 24, 1989, we were by and large a subsistence economy. There are only two or three limited entry permits owned in the village; before March 24, we were not a cash economy. In order to address the needs of our shareholders, Chenega Corporation was forced to respond quickly, by insisting upon oil spill related jobs. Overnight, the village was forced to shift

ACE 417475

from the subsistence to a cash economy and we are continuing to deal with the resulted upheaval.

Subsistence was the number one priority of Chenega's land management program. Now, our number one priority is to cleanup the environment. The community standards of sharing, however, have given way to competition for scarce jobs. Hunting and gathering activities have virtually ended, because we are uncertain of the effect of eating polluted fish and game.

We do not know what impact the spilled oil or that remaining spilled oil has on the ecosystems on which our people depend. We do not think the Alaska Legislature has sufficient information, either. Do you really know what the cost of restoration will be? Do you know what choices will be made because of shortfalls, and because studies and assessments scheduled for this year and into the future may not be completed? For instance, is it not more likely that, if a choice is made between cleaning-up clam-beds or creating a state maritime park, the choice will be made to create the park and to forego the less sexy projects? We all know that advisory committees' functions are pretty limited under the best of circumstances; under the broad sweep of the settlement agreement, what input into restoration projects, studies, or assessment will an advisory committee have in this agreement?

In addition to the uncertainty as to the nature and extent of damages, whether funds agreed upon are sufficient, and whether damages will be ongoing for years into the future, we believe that the agreement also ignores language which Judge Sporkin in Washington D.C. had believed would be included in the agreement. For instance, paragraph 13(c) of the settlement agreement preserves only a present right, title or interest in lands; Chenega, Port Graham and English Bay have future rights in lands and resources still in interim jurisdiction until conveyed. The village corporations and their shareholders, as well as fishermen and others dependent on natural resources have rights relating to future events which appear to us to be compromised by the agreement. Judge Sporkin viewed such an approach as Un-American. We also believe that the agreement, at paragraph 13(b), with regard to Alaska Native Village Claims as trustees, creates artificial limitations, and compromises important rights under ANCSA and ANILCA. We ask, why not just preserve all claims of private litigants?

With regard to natural resources, the settlement agreement misstates that only governments may recover natural resources damages under the Clean Water Act. This of course is not true. Moreover, the agreement fails to address the likelihood of polluted ecosystems to recover, and whether the ability to recover is even possible. In addition, in

paragraph 6(c) and 6(d) of the agreement the governments appear to compromise all users' claims for damages. Why? At paragraph 6(g) the agreement is unequivocal that it settles all consequences of damages to natural resources.

The agreement therefore binds us, as owners of natural resources, including lands, hand and foot, and blindfolds us and hands Exxon the club to beat us with. The Attorney General has announced that he will not provide studies or assessments to either the legislature or to the user groups to determine what happened, at what costs, and what needs to be done and at what costs. The agreement gives Exxon numerous opportunities to pummel us with the language of the agreement.

In addition, the agreement resolves natural resources damages claims against Alyeska. Why is the state giving up anything as to Alyeska, and what is it receiving? Why does the agreement explicitly allow Exxon to recover TAPPA money? We have all assisted the state during the spill, opening our doors and our knowledge of the area and its resources to the state. Why does the state, in its rush to settlement, give so much and apparently receive so little? And ultimately, why would the state and federal government offer Exxon such neutralizing weapons as are contained in this agreement? Judge Sporkin believed such tactics were Un-American.

As many of you are aware, the oil is still out there, at Sleepy Bay, Point Helen, and other areas around Chenega's selection areas; around and into the Gulf of Alaska selection and Windy Bay, Rocky Bay, Dog Fish Bay, and into the Kenai Fjords, all Port Graham and English Bay selections. This year, the state and federal governments are bearing the tab if the settlement goes through, and it is unlikely that any more oil will be recovered after this year. You are therefore buying Exxon's oil, and, at what price?

I am presenting with this written testimony the views of Gail Evanoff, of Chenega Bay and Vice President of Operations for Chenega Corporation. I am also presenting written comments received from English Bay.

Thank you,

Charles W. Totemoff

[Chuck.doc]

The Oil Spill Litigation Committee
of the Alaska Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Ladies and Gentlemen:

My name is Paul Kompkoff, Sr. I live in Chenega Bay. I have lived in Prince William Sound all of my life. I want to tell you what I think of the settlement.

The Exxon Valdez Oil Spill was the worse thing that has happened in all of my years. It is worst then the famine of 1932, because things came back the next year. It is worse then the earthquake which destroyed my village, because nature and the environment bounced back. This is worse. Oil is still out there. It is killing the living things that we, from Chenega, live off of. It is still killing the way of life that I knew.

Exxon called me a liar for saying the oil was still there, but then the federal government released studies a little while ago, which show that I am not a liar. The sea-otters are wiped out in the Chenega area. We don't enjoy seal anymore because we don't know what has swam through oil and what hasn't. We don't enjoy eating subsistence food anymore because, even though our hearts tell us it is ok, our minds ask us how can it be if it is from such an oiled area? It is just food, but the joy of gathering and sharing it is gone, because we don't know if it is safe.

How are we ever going to get rid of the oil under the surface? It is not just Exxon anymore. It is our land, our subsistence, our way of life. Our way of life is sharing and caring and living. When the tide went out, our table was set. Now, our table is empty, or worse yet, is still covered with oil and dead things.

In all my years, I have learned how things are suppose to look. Things don't look like that. Nature needs our help, not just in areas where Governor Hickel likes to go, but all over. On our land, too.

My little grandchildren use to be proud of the subsistence way of life. Anymore, they ask me Uppa is it safe? I tell them, I don't know. Do you know?

An oil company made an advertisement out of a belief that we Aleuts had, that we had to keep things clean, and if you didn't, the sea-otters would leave and let you know. Well, the sea-otters have gone, but they have been killed. They aren't back. Things are not clean. I don't think the little bit of money you are getting will help restore your

ACE 417478

resources, and I know that it won't help restore ours. I have many years experience living in Prince William Sound. I hope that you will listen to me, that it takes time and that you won't go rushing into the settlement and hurt us, people from Chenega Bay and other areas.

Thank you,

Paul Kompkoff, Sr.

ACE 417479

EXHIBIT 2

Apr 1 12, 1991

The Oil Spill Litigation Committee
of the Alaska Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Ladies and Gentlemen:

My name is Gail Evanoff and my home is in Chenega Bay. Chenega Bay is a community of 70 people on Evans Island in Southwestern Prince William Sound. And, THE community most heavily impacted and damaged by the EXXON VALDEZ Oil Spill.

Since the early 1700's, Chenegans have inhabited this area in PWS. Our children hear stories from elders about their first experiences seeing airplanes and large ships. Large ships that took men and women away to work as slaves, hunting and killing off animals for furs and perfume for large companies to never before heard of lands. Ships with men that come and gouge out huge holes in our mountains for metals never heard of and to cut down trees and take them away to lands never heard of. In recent decades, people on huge ships now are taking oil found deep in the ground to places far away, and this time they don't take our men and women, but, they choke out our way of life by killing off our once rich and abundant resources by spilling oil in our waters.

We Chenegans have grown with the changing times and we experience Alaska's largest and most lucrative industry, the OIL industry, can and has caused insurmountable pain to innocent lives, that of our people, and to the marine mammals and fur animals. Chenegans have tried to join other communities in resource development for their survival into the 20th century. But, our resources in fish, otters, seals and birds have met with such high death rates on account of the EXXON VALDEZ oil spill that these resources have met with near extinction status. Marine mammals that survived are known to be starving and dying off today, 2 years after the catastrophe.

I have witnessed numerous studies conducted on Chenega Corporation lands and adjacent lands, talked with our people about the value of studies, cooperated with the bureaucracy of how they were conducted without our involvement, and asked and requested for consideration and cooperation that we be afforded information as to the results. But, NONE came. We gave of ourselves, endured criticism and insults of our way of life just to have tests and surveys done, studies that could help quiet our fears of eating contaminated foods, studies that could have helped us make responsible and informed decisions about our resources and studies that could help us prepare for the future. All our concerns and cries for studies we help make possible have gone ignored. Our State government is hiding, keeping secret, valuable information that is making such a devastating impact on our lives. That is wrong. I respectfully request that our State Legislature rectify this situation and not hold one man, the Attorney General, responsible for a decision of this magnitude. The peoples of Alaska, and we especially in PWS have charged our elected officials in the legislature to represent our interests, not the Attorney General. He is our public servant as well. The Oil Company, EXXON VALDEZ, is our public enemy, it should not be our State government.

ACE 417480

The Spiller, EXXON VALDEZ, is not through cleaning up the oiled beaches in PWS. You don't measure how well a job has been done by the amount of money spent. EXXON claims they spent 2 billion cleaning up PWS, yet we all know that most of the money was wasted on inexperienced, misguided personnel mostly from out of State, ships and helicopters being paid enormous rates while local people most desirous to see the oil removed were kept away from the beaches. The proposed settlement agreement must not be signed and the State should not be PAYING EXXON our public money to clean up oil they spilled and is still their responsibility to clean up. Our environment cannot be restored until the oil is removed. The State of Alaska is letting EXXON Corporation off the hook. That is not right. EXXON should not be allowed to go away now. The Federal Government through the Coast Guard has made the PROMISE publically that he will make sure that the PWS is cleaned as before the Spill happened. We must ensure the Federal Government honor that promise.

The State of Alaska must demand that EXXON Corporation pay for the lands that was damaged. Hundreds of miles of Chenega Corporation lands are damaged and still contaminated. Chenega Corporations lands, its subsistence lifestyle, its peoples hope for the future to provide economic opportunities are wiped out. Our environment must be restored first. We cannot compete with a Corporate giant like EXXON. But we as people of Alaska, residents of PWS, can request that our rights for a just and fair settlement be met.

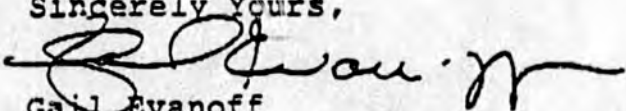
Alyeska is a problem that our State Legislature must recognize. It is no secret that Alyeska was not prepared to respond to an Oil Spill. The public and the legislature didn't even know if Alyeska had an efficient or responsive Contingency Plan. Our Resource damages is as a result of Alyeskas complacency and negligence. It is appauling to suggest th at the proposed settlement agreement requires the State of Alaska to repay REPAY Exxon over 20% of any recovery the State may receive from Alyeska. It is only fair that Alyeska Oil Company be sued on account of resource damages.

I respectfully request that the State reconsider and remove this language from the proposed agreement that Alyeska wont be sued on account of Resource damages.

I don't want to see EXXON get off this easily. In light of the recent information released by the Federal Government, the amount that Gov. Hickie negotiated is far too low. And th e State of Alaska must let the Spiller complete the cleanup still ahead with its own money.

Thank you.

Singerely Yours,


Gail Evanoff
Chenega Bay, Alaska

ACE 417481

EXHIBIT 7

CHENEGA CORPORATION

RESOLUTION NO. 91- 69

WHEREAS Chenega Corporation is an ANCSA village corporation composed of residents of Chenega with cultural, social, and family ties to the community of Chenega Bay; and

WHEREAS the community of Chenega, consisting of the tribe, the corporation, the residents and shareholders have a continuing interest in the restoration of Prince William Sound in general and the land and resources belonging to, held in trust for, and pertaining to, or managed by the corporation and/or the tribe; and

WHEREAS the Exxon Valdez oil spill destroyed much of the resource and ascetic beauty of Prince William Sound, and in particular, areas surrounding Chenega Bay; and

WHEREAS the State of Alaska and the United States government have announced settlement with Exxon, which settlement is subject to legislative approval; and

WHEREAS oil contamination is still present over approximately 70% of the land owned or appurtenant to lands owned by Chenega Corporation as well as traditional use lands;

NOW THEREFORE be it resolved by Chenega Corporation that the legislature be encouraged to seek an extension of the comment period before entry of the proposed consent decree between the State of Alaska, the United States, and Exxon in order that the legislature may obtain studies and assessments concerning resource damage which occurred, is occurring or will occur on account of the wreck of the Exxon Valdez and the consequential spilling of 11 Million gallons of oil into Prince William Sound; and

BE IT FURTHER RESOLVED that the legislature undertake to and conduct its own investigation concerning remaining oiled shorelines in Prince William Sound; and

BE IT FURTHER RESOLVED that the legislature appropriate funds to continue local response project activities in the event the Executive Branch discontinues those activities, which, in view of the events of the past week, is highly likely.

Adopted this 12th day of April, 1991 at
Anchorage, Alaska at which a quorum was present by a
vote of 5 in favor and 6 opposed.

CHENEGA CORPORATION

By: Phil. S. S. S. S. S.
Secretary

Attest:

Charles L. S. S. S.
President

[resira.doc]

ACE 417483

EXHIBIT 7

English Bay Peoples Comments
B. Exxon. State of Alaska Settlement

I don't feel happy about it but now the people are sad and I feel we will not see any of the money if they (Exxon) settle with the state.

I feel the money will be spread out and more than likely the towns and cities will get most of the money. Villages that were affected will be neglected.

Pauline V. Demas

It will probably go to the State offices (The money). We won't see any of it because it will go to some administration. People that are more affected live off of the land will be doing the same thing for what ever they can find which is not much.

Kathy Brewster

I don't like it because the money might go to the cities which the oil spill didn't affect. Why can't just the Villages get it; the oil spill ruined our source of food that we grew up eating. It's like the oil spill spoiled the future of our children.

Tessie Moonin

I don't like it. I feel "We The People" that are really hurt by the oil spill will not benefit from the settlement. I feel all the money will be used for governor Hickels pet projects.

John Kvasnikoff

During the spill Exxon was flying every day to the areas that were affected. They saw that we were affected. Why don't they believe that we were hurt and affected, They saw it with their own eyes. I don't like the contamination. Exxon oil spill ruined our subsistence lifestyle. We are still in fear to eat some of our subsistence foods. The future looks dark. We don't know about our natural resources and what will become of them. What is our alternative, can somebody tell us?

Vincent Kvasnikoff

I don't like it because it affected the seafood we eat. Spoiled our subsistence.

Helen Ukatish

I think that the settlement money should go to the Villages and peoples that were most affected because the oil spill has ruined the Natives subsistence way of life.

Gus Ukatish

I don't like it of course but, I'm not surprised to know that the Indians were lied to in past history when the lower 48's treaties were broken. i.e. Custards last stand and many other wars with Indians. Only now OUR land is taken over by Bullshitting Politics and there is no respect how the Europeans that came across the Atlantic to settle in the States and isn't funny how the United States is called "United" and how the Constitution says it it "protects all people" What are they really talking about? No wonder I never cared for U.S. history or understood Federal or State governments class it is all lies and it is embarrassing to have people leading our country with prejudice in their hearts and still get up in front of everybody and say they are our leaders. As far as I'm concerned about the law suit, The "Klu Klutz Klan" runs the State of Alaska and the Federal government. We aren't included and probably never will be!!!

Alma Kvasnikoff

The settlement from the Exxon Valdez oil spill to the State should be spread out among the Villages that were affected. The Villages were hurt more from the spill. Our subsistence life has almost dwindled to nothing. Because most people are afraid of what might happen to them if they eat their food. We don't want to see the money that should be used for employment in the Villages used throughout the State for purposes that have nothing to do with the spill.

Roberta Kvasnikoff

What the State government did was wrong and unconstitutional. Since when did the Executive branch think they held ultimate power over the Senate and the House of Representatives, and bluntly have total discard for the peoples whose lives were really affected. The States only damage was confined only to lands on the Nuka Bay Park area. so they should have spoken only for that specific area. The Federal government cannot claim for damages on Kenia Fjords because they are set aside for the Port Graham and English Bay Corporations land selections. I think the Hicel and the Bush administrations should be given a leave of absence to attend a grade school of their choice to re-study and reanalyze the United States Constitution or maybe the State government should be exposed for fraud and neglect along with the Alyeska pipe line company. For the sake of getting along with all people and have their blessings this administration should include all and I mean all damaged parties into these talks with Exxon. For the sake of State of Alaska I would like to urge both Houses to reject this agreement or at least delay it, Or are all our Representatives afraid of not being invited for parties and dinners at the mansion.

Robert Kvasnikoff

James Kvasnikoff
4-13-91

6 The oil spill has ^fleft an impact on us. It brought Fear, alcholism, stress,
anxiety and has changed our way of living. The only way of living we have
left culturaly and the only way we can afford. Not only did it do damage to
the foods we eat, but to the food chain and that will change forever our
sea enviornment. We still have fear about eating our food because of
7 seeing some animals from the sea physically ^{deformed} ~~formed~~ after the oil spill, if
it did that much damage to them, How much will it do to us? I'm very sad
about how Exxon took care of the oil spill. There is much to be done.
Exxon should try to help the people who were directly impacted physically,
mentally and socially by the oil spill. Quit hiding facts from everyone and
realize their mistake.

APR-14-91 SUN 16:58

P. 05

I feel sad because Exxon should have settled with the affected instead of the state. We'll never see the money.

Virginia Moonin
4/13/91

Exxon should have been prepared for their disaster and now that we have a mess on our beaches from their oil our subsistence fish & foods from sea are in great danger. I know there's still some mussels floating around our bays. We might not know it, but we might be eating this stuff with our food. I'd rather have seal oil with most of my food from the sea. I am very unhappy with their way of settling this with us. I preferably think they should have settled with the native corporations because most of the beaches in the Chugach region are oiled and a big damn mess.

Ephim Moonin Sr.
13 April, 1991

I feel the State should not be a part of the settlement - It was the people around the Prince William Sound and Lower Cook Inlet who had to, and continue to live with the impacts of the Oil Spill. Our harvesting areas are not the same as they were before this spill. Our social patterns have been disrupted, our trust with the sea is still in jeopardy - We are the ones who have to live with this. A lot of the fisherman depend on the sea to make a living, some even depend on the season's catch to get by through the winter. The people of the Prince William Sound and the lower Cook Inlet should be prioritized in the settlement.

ACE 417488

EXHIBIT 8

YOU CAN'T BE SORROWING LIKE THAT BECAUSE TO THE COMMUNITY and ignore it like never happened. It has affected the whole community and what you're doing is not fair!

Mack & Rose Ukatish
4-13-91

It's not fair!! Keep the state out of this. They don't ^{Just Don't} just like us.

Herman Tanape
4-13-91

I don't know what to do. It's not fair. The spill killed all our subsistence food that we eat. The office people don't eat, ^(conservative say) and like here, why shouldn't they benefit from this all?

Anne Tanape
4-13-91

It's unfair that the state gets a settlement and hides ~~the money~~ on they gathered when the villages were the ones directly hurt by the spill. I don't understand how the state can justifiably leave ~~us~~ cold. We live almost totally on fishing and subsistence. I don't think businessmen or Senators have to gather their food. We were hurt very badly by the spill and it's only fair that we should have been included in anything the state did.

Frank R. Hetrick
Frank & Martha Hetrick
4-13-91

Sally Ach
4-13-91

We don't even know what is good to eat on the beaches. IT IS NOT FAIR!
We need a lot of cleaning to do on the beaches still. It has ruined our
fishing, that is what most people do for a living and earn money.

Becky Kvasnikoff
4-13-91

It's not fair that the Exxon settled with the state. We are the ones that
were impacted by our food/land/not the state government.

Seraphim Ukatish Sr.
4-13-91

Today, gets me depressed when we think, Should we eat from the beaches
(like we use to)? It's not fair the big oil company Exxon settles with the
state.

Irene Ukatish
4-13-91

I think it is not fair for us people who have no jobs and we rely on the fishing jobs and therefore we are unemployed and have no way of bring food for our families. No income no food the main source of food comes from the sea.

Dan Anahonak Jr.
4-13-91

It wasn't "Custard's Last Stand", more like "Custard's Last ^{word} ~~stand~~ Another obvious & disappointing ploy against the natives & the communities, someone had to suffer the tragedy and looks like some one also reaps the benefits again. I'm sure before the oil spill happened, we all thought that something like that would never happen and now that it has, there "silent restitution" was \$16 hr for a couple of months. Funny thing is that money got some nice and expensive things but soon after the last day of work in September, what happened to the tradition of subsistence? It was a shock for us, those who carried on this lifestyle & survival techniques from our ancestors for centuries. Still today the impact of the spill has an effect on us, and we are the ones who have been jurt directly & inderectly from it - Where's the justice? Where's the apology, restitution? What General Custard did over a 100 years ago to Native America, the U.S.A. continues too.....

Anita Evans
4-13-91

No it is not fair because the oil spill did not effect the whole state it happened to the natives and we are the ones who are tying to live our regulare lives the way people would be fishing, gathering alot of sea food. Now people are kinda scared. And now that this happened we have really no where to go without the seafood.

ACE 417491

The state has no idea what it is like to be "gatherer of the land", like many of the people from villages we are dependent on these foods. Now that the subsistence foods have been tainted, we are now relying on food items from the store. Which is the pits because many people are accustomed to eating food from our surroundings. Lets see if the state can come live our way and adjust to our tainted food. They need to taste what Exxon left behind. Don't be scared to eat what Exxon's big mess, if the state wants "BIG MONEY", they should by all rights eat what they are wanting. Don't forget us, after all we are the ones who live off the land!!!

Nancy Yeaton
4-13-91

THE SPILL THAT EFFECTED THE COASTAL AREA (BEACHES, ISLANDS, STREAMS, LAGOONS, ETC...) That sea mammals birds, bottom fish, shellfish, were contaminated. The people who rely on for food is there for a long time. How can an attorney spend privately with Exxon to negotiate the cost and settle without involving the people who were effected by the spill? My honest feelings are we can't trust the state for doing something very ignorant. The people who've been taking an gathering food from the sea is at risk even if we can't tell if it's safe to eat. I guess the state attorney Mr. Cole can't understand because he doesn't live in a village, only in a city. The groceries they buy have no oil effect on their food. They don't have to worry about how we were effected by the spill.

Roy Evans Jr.
4-13-91

If Exxon settles with the state I feel that many people who were effected will lose alot more that they already have which was a very big loss in itself. If they do the people who were the most effected won't have a chance to fight for what we feel should be done for us and not people who weren't directly effected.

Carol Mattson 4-13-91

ACE 417492

I feel the settlement is unfair and will not benefit the people in any way.

Nick Tanape

Unfair and Exxon will never replace what people lost, such as, fishing, and animals, beaches will never be clean. The hot water used to clean killed a lot of things.

Susan Tanape

There is a lot of oil spill, and I think that is why the people are sick. we won't get nothing from the state settlement. I don't feel it is a fair settlement. People won't see any money.

Eloise Meganack

No! Because none of it will go to the Native communities. I think it's unfair and the money is used by the administration. The villages were damaged more than the state. The big cities will benefit more than the villages. I don't think none will go to the subsistence caused by the damage.

Kathy Evans

ACE 417493

EXHIBIT 8

pollution

I think it's not fair because Exxon did let the oil kill fish by pollution and some people need to fish for dinner and other needs.

Leo Ash age 12
4 13 91

What? another high level transaction. And why should it go to the state? Anchorage and Juneau shurely don't deserve it. The moneys should go the areas who were directly effected. We were the ones who went without and suffered. And watched our livelyhood die around us. Fair is fair, compensate the true victims!

Dale Pease
4-13-91

11

ACE 417494

EX-151 8

IT STINKS! We're the ones that got hurt, physically, emotionally, mentally NOT! some guy in a office in Innisbee. He/she is not a owner of land/food we live off of. I ask why? Why our own state does this to us? I thought we had sensible people working for us, But I was wrong! I'm very hurt!

Wally Kvasnikoff
Wally Kvasnikoff

I don't think its fair. The state didn't get hurt we did. No, the state does not feed me or my family. We can't subsist. We can't afford the stores the state turned me down for every assistance I asked for. It's not fair! Why should the state get what we deserve??

Nina Kvasnikoff

It's not fair. We're effected not the state. Oil ruined our food we used to live on. We can't afford the store for subsistance. Our health is not very good from the spill. We eat the foods that was effected. I invite the Cole guy and legislatures to come here and eat the food we're eating, maybe finally they'll reconize us as human beings.

Sarjus Kvasnikoff

I don't think it's fair. State only get the funding. We're the ones hurting by oil spill, our native food. Our land like beaches, our health, lot of our people are hurting emotionally/mentally, in many ways community people still don't trust eating our native food. It's a nightmare. I hope the state will understand our hurt feelings.

Mack Kvasnikoff

ACE 417495

**COMMENTS OF THE ALASKA NATIVE VILLAGE CORPORATIONS
AND REGIONAL CORPORATION CONCERNING
THE PROPOSED SETTLEMENT AND PLEA AGREEMENTS**

The Alaska Native Village Corporations and Regional Corporation listed below, by and through their counsel, submit the following comments concerning the Plea Agreement, Agreement and Consent Decree, and Memorandum of Agreement and Consent Decree, dated March 12, 1991, made and submitted by the United States of America and the State of Alaska (collectively, the "Governments"), Exxon Corporation and Exxon Shipping Company (collectively, "Exxon"), and Exxon Pipeline Company ("Exxon Pipeline") in United States of America v. Exxon Corp. and State of Alaska v. Exxon Corp., Civ. Nos. A91081, A91082 and A91083 (D. Alaska).

These comments are submitted on behalf of the Chugach Alaska Corporation, which is an Alaska Native Regional Corporation, and the Tatitlek Corporation, Chenega Corporation, The Eyak Corporation, Port Graham Corporation, and English Bay Corporation, which are Alaska Native Village Corporations (collectively, the "Alaska Native Corporations"). The Alaska Native Corporations are plaintiffs in federal and state suits against Exxon, Exxon Pipeline and others, resulting from injuries caused by or arising from the grounding of the T/V EXXON VALDEZ on March 23-24, 1989 and discharge of approximately 11 million gallons of crude oil into Prince William Sound (the "Oil Spill"). These Alaska Native Corporations are the largest landowners, apart from the State of Alaska and United States, adversely impacted by the Oil Spill.

The following comments derive from, and are based on, the Alaska Native Corporations' unique property interests in and to lands which have been validly selected by them under the Alaska Native Claims Settlement Act, 43 U.S.C. §1601 et seq. (1990) ("ANCSA"). In connection with the settlement by the Governments, Exxon and Exxon Shipping of claims relating to such lands arising from the Oil Spill, it appears that these parties have purported to encumber, compromise and settle certain of the Alaska Native Corporations' claims, or portions of such claims, arising from the Oil Spill, in direct contravention of federal law and applicable regulations and the United States' representations to Judge Stanley Sporkin of the United States District Court for the District of Columbia.

The unique claims of the Alaska Native Corporations are evidenced by and reflected in: Pub. L. 94-204, 89 Stat. 1146, as amended, which provides that any proceeds of the settlement of claims, including claims arising from trespass and loss of wildlife, related to land withdrawn for selection by Alaska Native Corporations, must be held in escrow by the Secretary of Interior for the Alaska Native Corporations until the land is conveyed to the corporation; Pub. L. 101-380, section 8301, August 18, 1990, 104 Stat. 572, which demonstrates Congress' intent to provide that, for purposes of asserting or recovering for claims arising from the Oil Spill, the Alaska Native Corporations may elect to be vested with both legal and equitable title to all lands selected by them, whether or not title has passed or the land has been formally conveyed; and 43 C.F.R. §2650, et seq., which provides that

the Alaska Native Corporations' views shall be obtained and considered prior to the execution of any contract, including settlement contracts, relating to such lands.

The following comments seek revisions of or amendments to the settlement agreements in order to cure the violations of federal law and regulations discussed herein.

1. Inclusion of Exxon Pipeline Company

The Agreement and Consent Decree is made and entered into by the Governments and, among others, Exxon Pipeline (Agreement, p. 3). The parties to the Agreement subsequently acknowledge that Exxon Pipeline has a 20.34% participation in Alyeska Pipeline Service Company ("Alyeska") (Agreement ¶ 23, p. 20). However, the Agreement is silent as to what effect, if any, Exxon Pipeline's execution of the settlement will have on Alyeska or on claims against Alyeska in pending lawsuits against Alyeska. Since the Governments excluded Alyeska from the complaint and subsequent plea agreement and settlement papers, the issue merits clarification by the parties.

2. The Definitions of Natural Resources and Natural Resource Damages Encompass Plaintiffs' Claims

The definitions concerning "natural resources" and "natural resource damages" (Agreement ¶ 6(c) and (d), p. 5; MOA ¶ II(F) and (G), p. 6-7) specifically include resources "held in trust by" the Governments, and damages obtained by the Governments in their respective capacity as Trustees of selected lands in interim jurisdiction. For example, the definition clearly encompasses lands heretofore

selected by Port Graham Corporation and English Bay Corporation in the Kenai Fjords and lands selected by Chenega Corporation but not conveyed in the Chugach National Forest. In sum, any natural resource damage recoveries obtained by the Governments relate, in part, to lands and resources legally and equitably owned by the Alaska Native Corporations. Accordingly, contrary to the Governments' repeated representations, the settlement purports to settle claims of the Alaska Native Corporations.

3. The Exclusion of Alaska Native Corporations

Both the Agreement and Memorandum provide that the settlement shall not affect or impair "the rights and obligations, if any, of Alaska Native villages to act as trustees for the purpose of asserting" claims related to natural resource damages to village lands. (Agreement ¶ 13(b), p. 15; MOA ¶ III(c)(1), p. 9). (emphasis added). No explanation is provided as to why the settlement has not similarly excluded the claims of the Alaska Native Corporations. There is a significant legal difference between tribal village organizations and ANCSA Corporations.

Concomitantly, the following subparagraph of the Memorandum (MOA ¶ III(c)(2), p. 9), appears to exclude from the settlement Alaska Native Corporations' claims for natural resources damages for lands not otherwise in interim jurisdiction. However, the Agreement, even if construed most favorably, clearly affects the Alaska Native Corporations' claims for natural resource damages for lands in interim jurisdiction. Simply stated, the Alaskan Villages, as referred to in the Agreement and

MOA, have no legal or other right to act as trustees for natural resource damages to lands in interim jurisdiction; such rights are vested solely in the Alaska Native Corporations created under ANCSA.

Accordingly, the Agreement and MOA must be amended to include a clear statement by the Governments that the natural resource damages claims of the Alaska Native Corporations remain unaffected by this settlement whether or not such claims affect lands in interim jurisdiction.

4. Scientific Studies

The MOA (¶ II, p. 13) provides that the Governments "shall continue to work cooperatively to conduct all appropriate scientific studies relating to the Oil Spill, including specifically the scientific studies approved by the Trustees for the 1991 field season." This language is deficient for two reasons.

First, the Governments should be required to share with the Alaska Native Corporations all scientific and evaluative material that, at minimum, relate to Alaska Native Corporation's lands in the Prince William Sound area. Indeed, the Alaska Native Corporations provided the Governments with access to their lands in order to permit such vital studies affecting their lands to be conducted. Since the Corporations have previously been denied access to this material, they are unable to assess whether or not the settlement contracts with regard to lands, either owned by the Alaska Native Corporations or in interim jurisdiction, are fair and reasonable. For example, chemical fertilizers were used on lands either owned by Chenega Corporation or within the interim jurisdiction of the United States in Prince William

Sound; however, the National Park Service refused to permit bioremediation agents on land still within the interim jurisdiction of the Park Service. Land managers from Port Graham and English Bay were not allowed access for the purposes of the survey and study. There is, therefore, a significant uncertainty as to how the cleanup activities in the past or restoration activities in the future will be handled in the Kenai Fjords selection area. The critical importance to the Alaska Native Corporations of obtaining this information is graphically highlighted by the Government's release of summaries of the findings of these scientific studies on April 9, 1991, as reflected in a front-page article in The New York Times, a copy of which is attached as Appendix A. In addition, the Governments should be required to release this information in fulfillment of their fiduciary and other legal duties to the Alaska Native Corporations, as set forth in Federal law and regulations, as Trustees of their lands.

Second, this general provision does not explicitly require the Governments to continue funding all scientific studies now underway. Such continuity of funding is important in order to fully assess the extent and nature of damages to the natural resources.

5. Allocation of Settlement Monies in General

The MOA does not require the Governments to allocate the monies relating to Alaska Native Corporations' lands, nor are they obligated to appropriate the monies in any given time period. (MOA ¶ V (D)).

6. Allocation of Monies Held in Trust for the
Native Village and Regional Corporations

The Agreement and MOA provide that the Governments shall jointly use the settlement monies "for purposes of restoring, replacing, enhancing, rehabilitating or otherwise acquiring the equivalent of natural resources injured as a result of this oil spill." (MOA ¶ V(A), p. 12). However, the federal government is purporting to settle rights and interests of the Alaska Native Corporations with regard to natural resources damages with respect to Alaska Native Corporations' lands still in interim jurisdiction without setting up or in any way referring to any escrow provisions. Thus, this portion of the settlement plainly and unmistakably violates 43 CFR 2650.1. See Pub. L. 94-204, as amended by Pub. L. 96-487; Pub. L. 99-396, Sec. 22, and Pub. L. 100-581, which provides, in part:

During the period of withdrawal for selection pursuant to the Settlement Act, any and all proceeds derived from contracts . . . , or from trespass occurring after the date of withdrawal of the lands for selection, pertaining to lands or resources of lands. . . shall be deposited into an escrow account which shall be held by the Secretary until lands selected pursuant to that Act have been conveyed to the selecting Corporation. . . .

Accordingly, the settlement must establish a mechanism pursuant to which portions of the settlement funds to be received shall be allocated to Alaska Native Corporations' lands which have been or will be withdrawn for selection by them. After such funds are allocated, appropriate escrow arrangements, in conformity with applicable federal regulations, should be made for the benefit of the Alaska Native Corporations.

8. Public Participation

The MOA provides that the "Trustees shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group to advise the Trustees with respect to the matters" concerning injury assessment, restoration activities, or other natural resource damage recoveries obtained by the Government. Again, this provision ignores the specific recoveries obtained by the Government as Trustees for the Alaska Native Corporations' lands in interim jurisdiction. Federal law and regulations require the involvement and input of the Alaska Native Corporations in the allocation and use of these recoveries affecting lands in which they have such a vital property interest. Treating them like any other member of the public is not only unfair and unjust, it is patently unlawful.

9. Covenants Not to Sue

The MOA provides, in the provisions concerning Covenants Not to Sue (MOA ¶ VIII(B), p. 14-15), that the State of Alaska acts as trustee of resources of lands in interim jurisdiction. The purported representation violates ANSCA and is otherwise legally unauthorized.

10. Judicial Review Provisions

The MOA provides that it "creates no rights of action on the part of any persons not signatory to this MOA and shall not... be subject to judicial review." (MOA ¶ XII, p. 18). This provision is ridiculous to the extent it purports to bind the Alaska Native Corporations and to foreclose their right to seek appropriate legal

redress, including judicial review. Moreover, since the settlement purports to settle, compromise and otherwise encumber valuable legal rights of non-parties (i.e., the Alaska Native Corporations), it raises serious constitutional questions which amply justify searching judicial scrutiny.

Dated: Washington, D.C.
April 12, 1991

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April 18, 1991

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Re: Proposed Settlement of U.S. v. Exxon Corp. et al.,
U.S.D.C., D. Alaska, Civil Action No. A91-082 CIV
and State of Alaska v. Exxon Corp. et al.,
U.S.D.C., D. Alaska, Civil Action No. 3AN-89-6852

Dear Mr. Campbell and Ms. Herman:

This letter and accompanying comments and affidavits are being sent to you pursuant to the Notice in the Federal Register at 56 F.Reg. 11636 (March 19, 1991) stating that a proposed settlement of the above referenced lawsuits has been lodged with the Court and that comments will be accepted by you on behalf of the federal agencies and the State of Alaska through April 18, 1991.

We are making this submission on behalf of all plaintiffs in Case No. A89-095 Civil (Consolidated) in the United States District Court for the District of Alaska and all plaintiffs and the classes they represent in Case No. 3AN-89-2533 Civil (Consolidated) in The Superior Court for the State of Alaska, Third Judicial District ("the Civil Plaintiffs"). The classes certified are as follows:

1. Alaska Native Class. The "Alaska Native Class" consists of all Alaska Natives, tribal entities, Native governments, Native entities performing quasi-governmental functions, and their agencies, who engage in, rely upon,

promote, preserve, or provide services for, wholly or in part, a subsistence way of life in the following areas: Native Village of Chenega Bay, Eyak Native Village, Port Graham Village, the Native Village of English Bay, the Native Village of Tatitlek, the Native Village of Kodiak, the Native Village of Larsen Bay, the Native Village of Karluk, the Native Village of Port Lions, the Native Village of Akhiok, the Native Village of Ouzinkie, Ivanoff Bay Village, the Native Village, Seward, Valdez, of Chignik Bay, the Native Village of Chignik Lagoon, Chignik Lake Village and the Native Village of Perryville, the Kenai Peninsula Borough, the Kodiak Island Borough, the Lake and Peninsula Borough and the Aleutians East Borough.

2. Commercial Fishing Class. The "Commercial Fishing Class" consists of all persons and entities engaged in the commercial cultivation, fishing and/or harvesting of fish, other seafood, or marine resources in the State of Alaska and waters adjacent to it. Class II, and subclasses of Class II which may be designated for various species, harvest areas and/or types of permits or activities, includes, inter alia, longline bottom fisherman, kelp pounders, herring seiners, herring gill netters, wild roe on kelp harvesters, salmon seiners, salmon gill netters, setnetters, crabbers, tendermen and other holders of commercial fishing permits and/or licenses, their crews and their employees.
3. Area Business Class. The "Area Business Class" consists of all persons and entities in any business providing goods, equipment or services in the area surrounding Prince William Sound and within Kodiak Island Borough, Kenai Peninsula Borough, Aleutians East Borough and Lake and Peninsula Borough.
4. The Property Owner Class. "The Property Owner Class" consists of all persons and entities who are owners of real property in the area surrounding Prince William Sound and

Thomas A. Campbell
Barbara Herman
April 18, 1991
Page 3

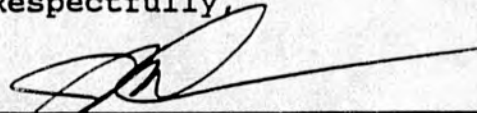
within Kodiak Island Borough, Kenai Peninsula Borough, Aleutians East Borough and Lake and Peninsula Borough.

5. Cannery and Seafood Processor and/or Maintenance Employees. This class consists of cannery and seafood processor and/or maintenance employees who had a reasonable expectation of employment after March 23, 1989, in the areas affected by the Exxon Valdez oil spill.

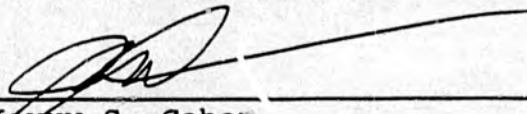
In their suits, Civil Plaintiffs seek both monetary damages and equitable relief for injury to natural resources.

Respectfully,

for


David W. Oesting
DAVIS WRIGHT TREMAINE

for


Jerry S. Cohen
COHEN, MILSTEIN, HAUSFELD & TOLL

Co-Lead Counsel for all
Civil Plaintiffs

SONOSKY, CHAMBERS, SACHSE & MILLER

DICKSTEIN, SHAPIRO & MORIN

CASEY, GERRY, CASEY, WESTBROOK,
REID & HUGHES

STOLL, STOLL, BERNE & LOKTING

Macon Cowles
TRIAL LAWYERS FOR PUBLIC JUSTICE

On the Comments:

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H. Laddie Montague, Jr.
Janice Siegel
Peter R. Kahana
BERGER & MONTAGUE, P.C.

**COMMENTS BY CIVIL PLAINTIFFS IN
FEDERAL AND STATE COURT ON PROPOSED SETTLEMENT**

These comments address six concerns of the Civil Plaintiffs that are raised by the proposed settlement between the United States, the State of Alaska, the Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, in personam, and T/V Exxon Valdez (referred to collectively as "Exxon"). Additional comments are also being submitted on behalf of various classes, members of the classes, and individual civil plaintiffs.

I.

**This Proposed Settlement is
Not Subject to Meaningful Review
Because the Scientific And Economic
Data And Analyses that Comprise Its Under-
pinnings Are Being Withheld From Public Scrutiny.**

The settling parties are asking that the Settlement be commented upon and approved in a vacuum, with significant and relevant scientific information being withheld. The United States and the State of Alaska continue to withhold the data and at least 58 scientific studies related to the effects of the Exxon oil spill in Alaska which the governments or their contractors have amassed.¹ On account of this withholding, comments on the substance of this settlement proposal are prevented. The import of the granite barrier to scrutiny that has been maintained by the government is described in detail in the Affidavits of eminent scientists Drs. Capuzzo, McElroy, and Teal, and Bruce W. Tripp, copies of which are submitted with

¹ As of April 12, 1991, the U.S. released certain data on sea otters, but nothing else, especially not the 58 scientific studies.

these comments. Because of this barrier, experts outside the government have been unable to provide an assessment of the governments' assessments of the damage to natural resources and the plans for restoration. A meaningful comment period would take place after disclosure of the governments' data and analyses and after sufficient time is provided to allow for independent analysis by non-government scientists.

This flaw in the process is aggravated by the debilitating conflict of interest under which the settling governments labor. Both governments are defending claims brought by Exxon and Alyeska for their respective alleged causal contribution to this disaster. Yet, these governments are required by law to act as Trustees for the natural resources. This blatant conflict of interest necessitates curative measures including independent scrutiny and evaluation of this Settlement. Such scrutiny can only be meaningful with full disclosure of the data and analyses being withheld.

II.

**The Reopener Provision [Agreement ¶¶17-19]
is not Subject to Review And is Unsatisfactory
on Its Face Because it Fails to Establish
Objective Standards to Trigger Its Application.**

The ceiling of \$100,000,000 in the "Re-opening" provision cannot possibly be assessed for adequacy without access to the relevant scientific data referred to above. The "Re-opening" provision concerns unforeseen needs to restore populations, habitats or species which have suffered a substantial loss or

decline as a result of the oil spill, and may be used only in limited circumstances and for a relatively short period of time. The provision, therefore, reflects an assumption that the "restoration" needs are fairly well understood and already addressed. The provision explicitly states that it becomes operative only if "the injury to the affected population, habitat, or species could not reasonably have been known nor could it reasonably have been anticipated by any Trustee from any information in the possession of or reasonably available to any Trustee on the effective date [of the Agreement]." (Emphasis supplied). Thus, the assumption must be expertly examined in the light of the vast amount of significant and relevant withheld information in the possession of the United States, the Executive Branch of the State of Alaska, and Exxon.

Moreover, the entire "Re-opening" process is done privately. The Agreement provides for ninety (90) days notice to Exxon, and no notice whatsoever to the public. This too is highly objectionable.

III.

This Agreement is Not Susceptible to Review Because Its Value Has Not Been Disclosed.

The parties to this Settlement have grossly overstated its sweep and actual value by (a) failing to reveal the true "present value" of the settlement, (b) ignoring the tax benefits reaped by Exxon, (c) ignoring "credits" that Exxon receives for work for

which it already had obligated itself to pay,² (d) failing to disclose that the United States has filed a claim seeking over \$1 billion in compensation from the Trans-Alaska Pipeline Liability Fund ("TAPL Fund") in the event the TAPL Fund does not dismiss its claims against the U.S., and (e) failing to disclose that the State of Alaska is pursuing a claim in an unspecified amount against the TAPL Fund. The governments should disclose the true value of this Settlement, and all accounting methods to be used in crediting Exxon. Moreover, the governments should reveal the extent to which they may seek reimbursement from the TAPL Fund -- the fund that should be reserved for the victims -- instead of obtaining such relief from the parties who will be released if this Settlement is approved. Only then will meaningful comment and judicial review for fairness, reasonableness and adequacy be possible.

² For example, while Exxon has publicly committed itself to continue clean-up work, ¶8(b) of the Agreement gives Exxon a credit for "expenditures" for such work performed after January 1, 1991. Thus Exxon is receiving "credits" toward settlement payments for work it already committed to perform. "Expenditures" is defined in ¶11(b) of the Agreement and appears to include a broad variety of costs which Exxon would incur whether its employees were working on the clean-up or other matters and includes expenses that stretch any reasonable definition of "clean-up" costs (e.g., "insurance," "accounting," other professional services").

IV.
The "Reservation of Rights" Provisions
[Agreement, ¶ 13 (c) & (d) And ¶ 32] Are
Unclear And Appear To Threaten The Rights
And Claims of Alaskan Natives And Other Third Parties.

On March 12, 1991, the United States District Court for the District of Columbia, in The Native Village of Chenega Bay v. Lujan (Civ. No. 91-483 SS) (DDC) entered a Memorandum Opinion and Order in actions commenced by Native Alaskan Villages to assure that their claims and rights were not affected in any way by Exxon's settlement with the United States and the State of Alaska. In that Memorandum, the Court interpreted the representations of the defendants (the Settling Parties) as follows:

... The Court believes this representation to mean that after the settlement agreement has been executed, the plaintiffs will be able to prosecute fully the suits they have initiated against Exxon and Alyeska just as if no settlement agreement existed. The Court will further take the defendants' representation to mean that Exxon and Alyeska may be liable to the plaintiffs for damages to natural resources and/or lands they have an interest in, even if it is claimed the same natural resources and/or lands are covered by the settlement agreement among the defendants and Exxon and Alyeska.

The language of the settlement agreement, when read as a whole, appears to violate the settling parties' representations to the United States District Court (D.D.C.) and to impinge upon the rights and claims of the Native Alaskan Villages and other Alaskan claimants (fishermen, landowners, Alaskan municipalities, etc.). See Agreement at Introduction at p. 3; ¶6(c) and (d) at pp. 5 & 6; ¶13(b) & (c) at pp. 14-15 and ¶32 at p. 24. Were the

settling parties not attempting to whittle away at these claims, the settling parties would have adopted the exact language of the Court cited above. Further, the settling parties should have stated that the Settlement shall not affect the claims or rights, past, present, or future, of any third party who is not a party to this Settlement. If this is the intent of the parties, the Settlement Agreement should be modified to make the appropriate corrections.

V.

**The Settlement Inappropriately
Releases The Alyeska Pipeline Service
Company From All Government Claims for
Natural Resources Damages And All Other Govern-
ment Claims For Damages For Injury to Natural Resources.**

This proposed Settlement would completely release the Alyeska Pipeline Service Company from all government claims for natural resource damages and for damages for injury to natural resources without any payments by or responsibilities on Alyeska's part. This release of Alyeska is arbitrary and capricious and should not withstand the Court's scrutiny. As set forth in Congressman George Miller's letter dated April 8, 1991 addressed to Judges Holland and Sporkin, a copy of which accompanies these comments, Alyeska is substantially culpable for the catastrophic effects on the natural resources that resulted from the Exxon oil spill. Accordingly, the governments' releases of Alyeska should come at a substantial price.

VI.
The Settlement Impairs
The Rights of Private Plaintiffs.

While the United States and the State of Alaska propose to settle the claims which Exxon has made against them, under the terms of the Agreement, Exxon reserves its right to assert as defenses to Civil Plaintiffs' actions defenses of Exxon and Alyeska it may have raised against the governments.³ Thus, if such defenses of Exxon and Alyeska have merit, it is the private Civil Plaintiffs -- the victims -- who will be monetarily penalized for such defenses, unless they take on the burden of filing further litigation against the governments. In fact, since notice of this proposed Settlement was provided, private plaintiffs have commenced suit against the State of Alaska. Thus, the governments have shifted the monetary burden of their alleged wrongdoing from themselves to the private plaintiffs.

VII.
CONCLUSION

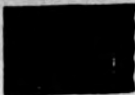
The concerns raised by Civil Plaintiffs about this proposed Settlement, when examined either individually or cumulatively, are of such serious magnitude, revealing government actions that are arbitrary and capricious and in violation of the requirement to act as Trustees for the natural resources, that the

³ Alyeska, being unilaterally released by the governments even though it is not a party to this Agreement, continues to have its right to pursue its claims against both governmental settling parties.

governments should either withdraw or hold in abeyance their proposed Settlement Agreement and should fully disclose all relevant data and analyses so that the proposed Settlement can be independently scrutinized and commented upon prior to any judicial consideration of its approval or rejection.

INDEX OF ATTACHMENTS TO COMMENTS BY CIVIL PLAINTIFFS IN
FEDERAL AND STATE COURT ON PROPOSED SETTLEMENT

1. Affidavit of Dr. Judith McDowell Capuzzo
2. Affidavit of Anne E. McElroy
3. Affidavit of Dr. John M. Teal
4. Affidavit of Bruce Tripp
5. Congressman George Miller's Letter to Judges H. Russel
Holland and Stanley Sporkin Dated April 8, 1991



ACE 417539

EXXON VALDEZ OIL
SPILL LITIGATION

This Document Relates To:
Case No. 3AN-89-6957 Civil
National Wildlife
Federation, et al. v.
Exxon Corporation, et al.

APR 18 1991

DAVIS WRIGHT TREMAINE
BY _____

ACE 417540

usually amount to no more than making lists of the most obvious impacts of the spill. Usually there is no work done on the long-term and subtle impacts of the spill, the area of most scientific interest and the key to complete restoration of the impacted area.

4. Outside scientists who will not accept secrecy limitations or who wish to study subtle and long-term impacts of spills find that funding is limited and that even the most basic data, such as research which monitors the geographical extent and chemical composition of the oil and its gross initial impacts -- which would be of use as a starting point in most outside research -- is unavailable.

5. The present situation in Alaska described in Attachment 2 is, unfortunately, not unique. For example, I have been conducting outside research into the long-term impacts of the contamination of New Bedford Harbor in Massachusetts, a Superfund site with heavy PCB (and other) contamination. Because of the natural resource damage lawsuit involving that site I have been unable to obtain even the most basic information collected as part of the \$3 million EPA damage assessment program.

6. I am aware of many other oil spill and natural resource damage incidents which have led to the same problem of litigation-driven, short-sighted, secret research crowding out critically needed long-term science.

7. In my mind, it is most important to analyze long-term impacts of an incident such as the "Exxon Valdez" oil spill so

Affidavit of Dr. Judith McDowell Capuzzo
Page 2

that the processes that control the recovery and long-term effects of the ecosystem can be understood. This knowledge is important to an improved understanding of the complex relationships between elements of an ecosystem and the way in which a perturbation such as an oil spill affects these relationships and the ecosystem as a whole.

8. This knowledge is also critical to the restoration process. It is extremely difficult to maximally restore the effected ecosystem if the full impacts of such an event are never studied.

9. If the data currently kept secret regarding the impacts of the "Exxon Valdez" oil spill were made public, some of these data could be used to begin or supplement needed long-term ecosystem studies -- that should commence as soon as possible. If monitoring data were available, outside scientists could do badly-needed work on the long-term and subtle impacts of the spill. However, if these data are not made public soon any opportunity for such long-term research will be foreclosed.

10. Although I endorse most of the statements in Attachment 2, "The Problem of Secrecy: Science Under Wraps In the Wake of the Nation's Largest Oil Spill," I want to make clear that paragraphs 14 and 16 should not be read to overemphasize the value of the existing data for scientific assessment purposes. As I have described above, much of these data are likely to be short-term in focus and of limited use to scientists conducting the needed long-term assessment of oil spill impacts.

Affidavit of Dr. Judith McDowell Capuzzo
Page 3

ANYTHING FURTHER THE AFFIANT SAYETH NOT.

Judith McDowell Capuzzo
Dr. Judith McDowell Capuzzo

STATE OF MASSACHUSETTS)
COUNTY OF Barnstable) ss.

On this 26th day of September, 1990, the Affiant Dr. Judith McDowell Capuzzo personally appeared before me and signed the foregoing Affidavit after first having sworn that the information contained therein is true and correct to the best of his knowledge and belief. Witness my hand and official seal. My commission expires on 26 August 1994.

[SEAL]

Judith Z. Kleindinst
Notary Public

JUDITH MCDOWELL CAPUZZO

Zoologist
Senior Scientist
Woods Hole Oceanographic Institution
Woods Hole, Massachusetts 02543

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B.S. (cum laude), 1969, Stonehill College
Major: Biology, Minors: Chemistry and Philosophy
M.S., 1971, University of New Hampshire (Zoology)
Ph.D., 1974, University of New Hampshire (Zoology)
Dissertation: The impact of chromium accumulation in an estuarine environment

PROFESSIONAL POSITIONS

Instructor, Biology Department, Framingham State College, Framingham, MA,
1974-1975
Postdoctoral Scholar, Woods Hole Oceanographic Institution, 1975-1976
Postdoctoral Investigator, Woods Hole Oceanographic Institution, 1976
Assistant Scientist, Woods Hole Oceanographic Institution, 1976-1980
Associate Scientist, Woods Hole Oceanographic Institution, 1980-1990
Senior Scientist, Woods Hole Oceanographic Institution, 1990-Present

VISITING AND ADJUNCT APPOINTMENTS

Instructor, AQUAVET Program, Cornell University-University of
Pennsylvania, 1977-1989
Visiting Professor, Department of Earth Sciences and Geography,
Bridgewater State College, Bridgewater, MA, 1978-1982
Adjunct Professor, Boston University, Department of Biology, 1989-1993

HONORS, AWARDS AND FELLOWSHIPS

Delta Epsilon Sigma, elected 1968
Phi Sigma, elected 1971
NDEA Predoctoral Fellow, University of New Hampshire, 1971-1973
Sigma Xi, elected Associate Member, 1973, Full Member, 1981
Who's Who in American Universities and Colleges, elected 1973
Dissertation Fellow, University of New Hampshire, 1974
American Men and Women in Science, elected 1980
Mellon Senior Study Award, 1982-1984
New England Monthly, Local Hero, 1985
U.S. Environmental Protection Agency, Environmental Merit Award, 1987
Mellon Independent Study Award, 1988-1990
Vetlesen Award, 1989

RESEARCH INTERESTS

Physiological ecology of marine animals, developmental and energetic strategies of marine animals, physiological effects of pollutants on marine animals, invertebrate nutrition.

PROFESSIONAL SOCIETIES

American Association for the Advancement of Science
American Society of Zoologists
American Women in Science
Estuarine Research Federation
Sigma Xi
The Crustacean Society

NATIONAL AND INTERNATIONAL COMMITTEES AND WORKSHOPS

National Oceanic and Atmospheric Administration, National Aquaculture Plan, 1981-1982
National Academy of Sciences - Junta Nacional de Investgacao Cientifica e Tecnologica - U.S. Agency for International Development, Workshop on Oceanography and the Development of Marine Sciences in Portugal, Lisbon, June 1982
National Academy of Sciences, Ocean Policy Committee, Workshop on Land, Sea and Air Options for Disposal of Industrial and Municipal Wastes, member of organizing committee and chairman of Biological Effects Section, 1982-1984.
National Academy of Sciences, Marine Board, Workshop on Ocean Waste Transportation, member of steering committee, 1982-1984.
National Academy of Sciences, Workshop on Petroleum in the Marine Environment, primary reviewer, 1981-1983.
Mussel Watch II: Chemical changes in the coastal zone, Honolulu, Hawaii, November 7-11, 1983; Chairman of plenary session and workshop panel on "Biological Effects."
Member, National Academy of Sciences, Ocean Studies Board, 1985-1987
Member, National Academy of Sciences, Board on Ocean Science and Policy, 1985
U.S. Representative and Vice-Chairman, Intergovernmental Oceanographic Commission, Group of Experts on the Effects of Pollutants (IOC/GEEP), 1985-1989
U.S. Representative, International Council of Scientific Unions, Scientific Committee on Ocean Research (ICSU/SCOR), 1985-1987
National Academy of Sciences, Board on Environmental Studies and Toxicology, Committee to Review the Outer Continental Shelf Environmental Studies Program, member of steering committee and chairman of Ecology Panel, 1986-1990
Workshop on Biological Effects of Pollutants, IOC/GEEP, Oslo, Norway, August 1986. member of planning committee -
Member, International Council for Exploration of the Sea, Working Group on Biological Effects of Contaminants, 1988 - Present
Workshop on the North Sea, ICES, March 1990, member of planning committee
Member at Large, Governing Board, Estuarine Research Federation, 1987-1989

PUBLICATIONS OF THE LAST FIVE YEARS

- 1986 Capuzzo, J. M., J. M. Teal, and R. K. Bastian. Ecological and human health criteria for cross ecosystem comparison of waste disposal impacts. In: G. Kullenberg (Ed.), The Role of the Oceans as a Waste Disposal Option. NATO A.S.I. Series, D. Reidel Publishing Co., Dordrecht, The Netherlands, pp. 347-360.
- 1986 Sasaki, G. C., J. M. Capuzzo, and P. Biesiot. Nutritional and bioenergetic considerations in the development of the American lobster Homarus americanus. Canadian Journal of Fisheries and Aquatic Sciences 43: 2311-2319.
- 1986 Huq, A., S.A. Huq, D.J. Grimes, M. O'Brien, K.H. Chu, J. McDowell Capuzzo, and R.R. Colwell. Colonization of the gut of the blue crab (Callinectes sapidus) by Vibrio cholerae. Applied and Environmental Microbiology 52: 586-588.
- 1987 Capuzzo, J. M. Ecological and human health concerns of waste disposal in the oceans. Marine Pollution Bulletin 18: 107-109.
- 1987 Capuzzo, J. M. Biological effects of waste disposal: Experimental results and predictive assessments. In: J. M. Capuzzo and D. R. Kester (Eds.), Biological Processes in Waste Disposal, Vol. 1, Ocean Processes and Waste Disposal. Krieger Publishers, Melbourne, FL, pp. 3-15.
- 1987 Capuzzo, J. M. Biological effects of petroleum hydrocarbons: Assess- ments from experimental results. In: D. Boesch and N.N. Rabalais (Eds.), Long-Term Environmental Effects of Offshore Oil and Gas Development. Elsevier Applied Science, London, pp. 343-410.
- 1988 Capuzzo, J.M., M.N. Moore, and J. Widdows. Effects of toxic chemicals in the marine environment: Predictions of impacts from laboratory studies. Aquatic Toxicology 11: 303-311.
- 1988 Capuzzo, J.M and D.F. Leavitt. Lipid composition of the digestive glands of Mytilus edulis and Carcinus maenas in response to contaminant gradients. Marine Ecology Progress Series 46: 139-145.
- 1988 Capuzzo, J.M. Physiological effects of a pollutant gradient - Introduction. Marine Ecology Progress Series 46: 111.
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The Problem of Secrecy: Science Under Wraps
In the Wake of the Nation's Largest Oil Spill

Introduction

1. As scientists who have worked in the field of oceanography and have studied in particular the effects of hydrocarbon spills on marine and coastal ecosystems, we are gravely concerned about the secrecy and confidentiality that has surrounded the scientific study of the impact of the Exxon Valdez oil spill on the ecosystem of Prince William Sound.
2. Scientific analysis of the short and long-term impacts of an environmental disaster in a marine, near-shore and coastal environment such as Prince William Sound is exceedingly difficult, involving multiple ecological systems and complex interrelated ecosystem effects. As such, it necessarily requires both short and long-term multi-disciplinary study.
3. Full data sharing, and open discussion of scientific data regarding spill impacts with scientific experts from all relevant disciplines is fundamentally important and critical to assuring that scientific investigators and those analyzing the data get a full picture of the impacts and do not overlook important potential impacts or gaps in the data. Without open data sharing and discussion, subtle potential impacts may not be recognized and new investigations of key ecological perturbations may not be commenced. In addition, ongoing studies may be terminated before ecological injuries are documented due to a lack of a full understanding of the complexities of the ecological response to the catastrophic addition of oil to the ecosystem.

Need for Initial Data

4. After a massive oil spill such as this, the greatest amount of gross ecosystem impact occurs during the initial period. In this spill, significant direct damage to flora and fauna was immediately caused by the massive introduction of foreign and toxic material into the ecosystem and food web.
5. Because of this, all data collected which records the initial damage to flora and fauna and the movement and evolution of the hydrocarbons into the ecosystem is crucially important to both short and long-term evaluation and analysis. The data collected during the acute phase of massive injury to flora and fauna is the starting point for all other analysis.

6. Without complete and detailed information about this initial acute phase, it is difficult to predict or analyze the future impact the spill may have.

Importance of Peer Review

7. If these data are not made public immediately, the ultimate assessment of damage will be hindered and the amount of damage inadequately assessed.
8. Science works well and most effectively when it is conducted in open dialogue, among scientists within a given discipline and among scientists of multiple disciplines. This is particularly so where questions require complicated ecosystem analysis and evaluation, such as is required by a massive spill like the Exxon Valdez oil spill.
9. The conclusions of science are deemed credible only when there is independent and open review through a peer review process. Scientific literature based upon data and research not subjected to peer review is suspect. A study or one person's analysis of data will not be widely accepted in science until the study and analysis have been exposed to criticism and the concerns raised by the critics have been addressed. The entire system of scientific research depends upon the checks and balances provided by discussion and criticism of important ongoing work.
10. Without early feedback, open discussion, and integration of results and ideas from different disciplines, individual scientists or scientists working in one or two disciplines may well miss key parts of the entire picture. Scientists studying some portion of an ecosystem have misunderstood entirely the significance of the data they were collecting until practitioners of another discipline had been brought in to consult.
11. When scientists are talking to each other about their research they can integrate the information, note the type of sampling that is being done and be able to work with comparable data. A shotgun, unintegrated approach which is detached from the findings of others studying a similar subject will ultimately lead to greater cost and less reliability. Unless complete information about all studies is shared and integrated, there may be a tendency for "mindless measurement" while the larger picture is missed. Studies may be redundant or there may be gaps. It would clearly be more cost effective to share from the outset.

Peer Review of Initial Data is Critical

12. It is important to have open and frank discussion among scientists about the data gathered from the earliest impacts of the spill. Given the fact that the initial stages of

this type of disaster involved the greatest and most rapid change, it is clearly detrimental to the scientific investigation of the spill to wait until all the data are gathered before engaging in open dialogue and multiple disciplinary review. The situation is changing quickly in space and time while these studies are ongoing. Open dialogue and communication should be concurrent with the studies, not subsequent to them.

13. Science is enriched by constant feedback and refinement. Scientists never know what they may find when they first start looking. The first protocols used may be inadequate. The methodology or the detection limits may not be appropriate. It may well be that the questions need reframing, or methodologies need to be changed, based upon the initial results.

These Critical Data Should Be Public

14. Due to the passage of time since the spill, the important initial data regarding the Alaska spill are not available. now except from those who actually collected data at the critical times. Thus, the data cannot be reproduced or gathered from any source other than those who actually collected it and who have the knowledge that has come from the data. We cannot state strongly enough that these data should be available for scientific and public review.
15. In addition, it is essential to know the following: What questions were the scientists asking when they did the studies? What procedures were they using to answer those questions? How did those procedures change or how did the questions change during the time that the initial data was coming in? Was there any feedback or modification in the study done during the course of the study?

Conclusion

16. Humankind, and in particular scientists working on environmental and ecosystem problems, need to know the effects of the Exxon Valdez oil spill on the environment. The effects cannot be known adequately without making the data available to everyone with the interest and the expertise to evaluate what it means and what it portends for the future.

ACE 417551

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

EXXON VALDEZ OIL
SPILL LITIGATION

) 3AN-89-2533 Civil
) (Consolidated)
)

This Document Relates to:
Case No. 3AN-89-6957
National Wildlife
Federation, et al. v.
Exxon Corporation, et al.
-----)

RECEIVED
FOR _____

APR 18 1991

DAVIS WRIGHT TREMAINE
BY _____

Affidavit of Anne E. McElroy

I, Anne E. McElroy, after first being duly sworn, state as follows:

1. My name is Anne E. McElroy. I have a Ph.D. in biological oceanography and my professional experience includes extensive work in the field of aquatic toxicology. I am currently an Assistant Professor of Environmental Sciences at the University of Massachusetts, Boston. My curriculum vitae is attached as Attachment 1.

2. I have been retained by the Natural Resources Defense Council and the National Wildlife Federation as a consultant for expert advice on natural resource damages resulting from the Exxon Valdez oil spill. As the case proceeds further, I may also be designated as an expert witness at trial.

3. I have reviewed in detail the draft State/Federal Natural Resource Damage Assessment Plan for the Exxon Valdez Oil Spill (August 1989) which lists the scientific studies the State

and Federal Trustees plan to conduct to assess the natural resource damage from the oil spill.

4. I prepared on behalf of NRDC written comments on the draft plan which were attached to NRDC's comments and submitted to the Trustees on October 27, 1989. Attachment 2.

5. On NRDC's behalf, I attended a conference on "Research in the 1990's for Prince William Sound and the Copper River Delta," Cordova, Alaska, March 31, 1990.

6. I am ready, willing and able to help the Natural Resources Defense Council and National Wildlife Federation as a consulting expert on natural resource damages sustained as a result of the Exxon Valdez oil spill.

7. I have reviewed and wholeheartedly endorse the statement in Attachment 3, "The Problem of Secrecy: Science Under Wraps in the Wake of the Nation's Largest Oil Spill." This statement accurately describes my concerns with the current regime of secrecy imposed by the Trustees and defendants to this lawsuit.

8. There is a great potential for either important information to be missed or an incorrect path for restoration followed if open exchange of information regarding the spill does not occur.

9. The need for an independent and open peer review process is not met by the State and Federal Trustees and Exxon each hiring their own peer reviewers. This is because such a peer review process cannot be considered entirely objective since the reviewers are under contract to one party or another. In addition, since the comments and critiques of these reviewers are not publicly available, they do not serve the same function as does an open scientific dialogue.

10. The secrecy surrounding the scientific research on the oil spill hampers efforts elsewhere to conduct meaningful damage assessment and monitoring. Because the research being done on the Alaska spill represents some of the most extensive marine field research ever conducted, it may serve to validate or invalidate methods for assessing exposure or impacts from oil spills. Such information would be extremely useful in designing future damage assessments for other spills and in conducting environmental monitoring nationwide, including the National Oceanic and Atmospheric Administration's National Status and Trends program, a multi-million dollar effort to document trends in marine pollution.

11. My ability to consult with NRDC and NWF and ultimately to draw any conclusions regarding the natural resource damages resulting from the Exxon Valdez oil spill depends on my having access to the scientific data obtained at the direction of the

State and Federal Trustees and Exxon, as outlined in the proposed discovery rule. This is true for the following reasons:

- A. The scientific data gathered to date are for the first year and a half following the spill when large and rapid changes in the ecosystem are likely to occur. Data gathered during this period will be crucial in determining the immediate impacts of the spill, as well as the components of the ecosystem likely to sustain long-term damage.
- B. The information contained in these data are site and time specific and cannot be inferred from previous oil spills in other locations. Moreover, the vast majority of data being collected with respect to this spill are under the control of the Trustees or Exxon.
- C. Without access to the data, it is very difficult to assess whether additional scientific studies are needed in order to fully understand the extent of natural resource damages. For example, from the description of the State and Federal Trustees' scientific studies in the draft State/Federal Natural Resource Damage Assessment Plan, it appears that very little effort has been placed on assessing the impact on system wide or interactive processes. Instead, the focus seems to be on assessing damage to each species as an individual

unit. In order to get a complete picture of damage, however, studies should focus on the interactive functioning of the ecosystem as a whole, as well as on individual species. Without access to the data collected to date, it is impossible to determine the extent of the gaps in information and hence what additional studies are necessary to assess the full extent of damages.

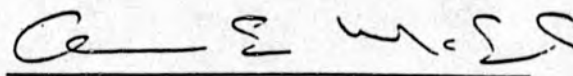
12. It is extremely important that the scientific data be made available now, not at a later date. This is true because:

- A. Formulation of scientific opinion based on scientific data takes time. It requires careful analysis , dissemination of information and discussion with other experts in the same and related fields. Given the nature and extent of scientific studies being conducted in this case, the sooner the data are made available the more helpful I can be to the environmental plaintiffs to consult with them regarding the extent of natural resource damages.
- B. Access to the data is needed in order to assess what important additional research needs to be done so that the Trustees, or Exxon can be convinced to do it or independent scientists can be hired or encouraged to carry it out as soon as possible. Given the limited

field research season in Prince William Sound and the crucial importance of gathering data in the initial years following the spill, the sooner these gaps are identified the better.

13. In conclusion, unless the scientific data are made available promptly, my ability to consult with NRDC and NWF and ultimately, if requested, to render any opinion regarding the full extent of natural resource damages from the spill will be severely hampered.

ANYTHING FURTHER THE AFFIANT SAYETH NOT.



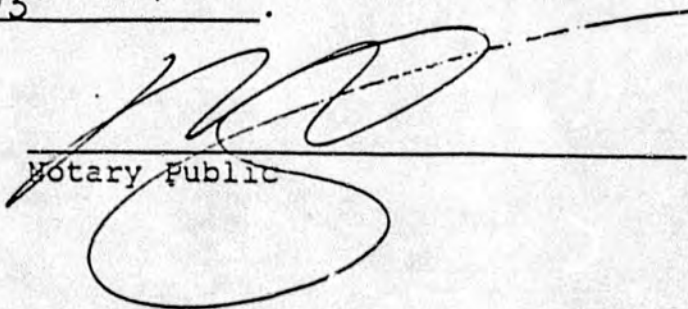
Anne E. McElroy

STATE OF MASSACHUSETTS)

 Suffolk) ss.
COUNTY OF ~~Worcester~~)

On this 17 day of September, 1990, the Affiant Anne E. McElroy personally appeared before me and signed the foregoing Affidavit after first having sworn that the information contained therein is true and correct to the best of his knowledge and belief. Witness my hand and official seal. My commission expires on 10/12/95.

[SEAL]



Notary Public

ANNE ELIZABETH McELROY
CURRICULUM VITAE

Education:

Ph.D. January 1985: Oceanography, Massachusetts Institute of Technology/Woods Hole Oceanographic Institution Joint Program in Oceanography.

Sc.B. June 1976: Aquatic Biology, Brown University. Graduated with honors.

Professional Positions:

January, 1986-present: Assistant Professor, Environmental Sciences Program, University of Massachusetts/Boston, Boston, MA.

Summers, 1987, 1988, 1989: Principal Investigator, Mount Desert Island Biological Laboratory, Salsbury Cove, ME.

February, 1985-January, 1986: National Academy of Sciences/National Academy of Engineering Visiting Scholar Program postdoctoral fellow working at the Environmental Protection Agency Environmental Research Laboratory, Narragansett, RI. Continued project as a consultant through August, 1986.

June, 1979-January, 1985: Graduate Research Assistant, Wood Hole Oceanographic Institution, Woods Hole, MA.

Spring, 1980: Instructor, Marine Sciences, Sea Education Association, Woods Hole, MA.

June, 1976-May, 1979: Research Assistant, Physiology Department, Medical College of the University of Pennsylvania, Philadelphia, PA.

Spring, 1976: Teaching Assistant, Comparative Physiology, Brown University, Providence, RI.

Summer, 1975: Research Assistant, Mount Desert Island Biological Laboratory, Salsbury Cove, ME.

Fall, 1974, 1975: Teaching Assistant, Invertebrate Biology, Brown University, Providence, RI.

Research Interests:

My research interests concern how aquatic organisms interact with chemicals in their environment. To date most of my work has focussed on how benthic organisms influence and are influenced by hydrophobic organic contaminants. Specifically I have been addressing: 1) in vivo metabolism and trophic transfer of polycyclic aromatic hydrocarbons (PAH) and their metabolites; 2) biological and chemical factors controlling bioaccumulation and release of PAH and polychlorinated biphenyls (PCBs) from sediments; and 3) biochemical and physiological responses of marine organisms to pollutant exposure.

Publications:

*Former name

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1987. McElroy, A.E., Tripp, B.W., Farrington, J.W., and Teal, J.M. Biogeochemistry of benz(a)anthracene at the sediment-water interface. Chemosphere 16:2429-2440.

1987. McElroy, A.E., and Means, J.C. Factors affecting the bioavailability of hexachlorobiophenyls to benthic organisms. Aquatic Toxicology and Hazard Assessment: 10th Volume. ASTM SPT 971, W.J. Adams, G.A. Chapman, and W.G. Landis, Eds., American Society for Testing and Materials, Philadelphia, pp. 149-158.

1985. McElroy, A.E. In vivo metabolism of benz(a)anthracene by the polychaete Nereis virens. Mar. Environ. Res. 17:133-136.

1985. McElroy, A.E. Physiological and biochemical effects of the polycyclic

aromatic hydrocarbon benz(a)anthracene on the deposit feeding polychaete Nereis virens. In: Eighteenth European Marine Biology Symposium, "Marine Biology of Polar Regions and Effects of Stress on Marine Organisms", J.S. Gray and M.E. Christiansen eds. John Wiley & Sons Ltd., Chichester. pp. 527-543.

1980. Critz*, A.M. and Crandall, E.D. pH equilibration in human erythrocyte suspensions. J. Memb. Biol. 54:81-88.

1979. Kim, K.F., Critz*, A.M., and Crandall, E.D. Transport of water and solutes across sheep visceral pleura. Ann. Rev. Resp. Dis. 120:883-892.

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1975. Goldstein, L., Boyd, T., McElroy, A.E., Cha, C.J., and Forster, R.P. Free amino acids in tissues of the skate, Raja erinacea: Regulation of concentrations and transport during adaptation to a dilute sea water environment. Mt. Desert Island Biol. Lab. Bull. 15:42-45.

Reports:

1990. McElroy, A.E. Trophic transfer of PAH and metabolites. Final report prepared for the National Cancer Institute and the National Institute of Health.

1987. Capuzzo, J.M., McElroy, A.E. and Wallace, G., Fish and shellfish contamination in New England waters: an evaluation and review of available data on the distribution of chemical contaminants, The Coast Alliance, Washington, D.C.

1985. McElroy, A.E. Benz(a)anthracene in benthic marine environments: bio-availability, metabolism, and physiological effects on the polychaete Nereis virens. Ph.D. Thesis. Massachusetts Institute of Technology and the Woods Hole Oceanographic Institution, WHOI Tech. Rep. #WHOI-85-12. 233 pp.

1983. Farrington, J.W., Teal, J.M., Tripp, B.W., Livramento, J.B., and McElroy, A. Biogeochemistry of petroleum components at the sediment-water interface. Final report prepared for the Department of Energy, Bureau of Land Management.

Membership in Scientific Societies:

American Association for the Advancement of Science
American Association of Women in Science
American Chemical Society
American Society of Limnology and Oceanography
International Society for the Study of Xenobiotics
Northeastern Regional Society of Toxicology
Oceanic Society
Sigma Xi
Society of Environmental Toxicology and Chemistry

Professional Service:

Proposal Reviews for:

Hudson River Foundation
U.S. Environmental Protection Agency Bays Program
U.S. Food and Drug Administration Bound Residue Program
NOAA's Estuarine Research Reserve Program
Maryland Sea Grant

Manuscript Reviews for:

Marine Biology
Environmental Toxicology and Chemistry
J. Experimental Zoology

Book Review for:

Estuaries

COMMENTS ON THE DRAFT STATE/FEDERAL NATURAL RESOURCE DAMAGE ASSESSMENT PLAN
FOR THE EXXON VALDEZ OIL SPILL RELEASED IN AUGUST 1989, PREPARED SEPTEMBER,
1989

Anne McElroy
Assistant Professor
Environmental Sciences Program
University of Massachusetts-Boston

Scope of Review:

As stated in the Federal Register, public comments are being requested to ensure that:

- 1) important resource concerns are not omitted,
- 2) the methodologies receive independent review,
- 3) that appropriate methodologies are chosen for assessment, and
- 4) that the costs of the assessment are reasonable.

The Register notice also states that additional work will only be done if such study is required to support legal recovery of damages for harm to natural resources if such studies are justified scientifically and are consistent with the objective of restoration of the ecology of the effected area.

As noted in the Register, to expedite damage assessment, all studies were begun prior to publication of the Assessment Plan. Indeed, according to the plan all data collection should be finished by mid September 1989, prior to the receipt date for comments. Data analysis will continue until February 28, 1989. Comments at this point can only serve to criticize the Draft Plan and make suggestions for additional work in the future. Without any preliminary data, suggestions will be speculative. Considering the huge expenditure of funds (35 million) committed to this plan, independent review prior to commencement of study should have been obtained.

To purpose of the plan is to determine the extent and magnitude of injury to natural resources of Prince William Sound and the adjacent Gulf of Alaska in support of the development of a restoration plan to promote the long-term recovery of natural resources and to support damages to be claimed for the loss of services.

The plan focusses on assessing damage to each resource as an individual unit with emphasis placed on quantification of exposure to oil components, stock size, and in some cases reproductive fitness. Very little effort has been placed on assessing impact on system wide, or interactive processes. For example, how oiling may effect productivity in a given area which in tern may affect species composition and or food resources. Investigation of each resource species as an individual component is extremely costly and may miss subtle effects caused by interactions between species. If species A is severely affected, its former prey may become more abundant which may deplete the food resources of species B. In this case the two species don't interact directly, but effects on one can lead to significant affects on the other. In order to get a complete picture of damage to the ecosystem, a comprehensive damage assessment plan should focus on individual species as well as their interactions and functioning of the ecosystem as a whole.

The goals of the major sections of the plan are summarized below:

Part I: Injury Determination/Quantification:

Coastal Habitat: to measure spill-related changes in supra-, inter- and subtidal zones.

Air/Water: to determine the distribution and composition of petroleum hydrocarbons in water, sediments, and living resources (ie. determine the dose).

Fish/Shellfish: to quantify numbers and effects in major fisheries species.

Marine Mammals: quantify deaths, pathology and toxicology as well as number and distribution.

Terrestrial Mammals: quantify damage to coastal species which would consume contaminated aquatic species and run laboratory experiments to assess effects on mink as a model.

Migratory birds: quantify mortality, population census, reproductive success.

Technical Services: Provide the expertise and coordination to ensure accurate and verifiable measurements of hydrocarbons in all samples, histopathological measurements in tissue samples, and mapping of results obtained.

Part II: Development of the Restoration Plan and Implementation Plan:

Part III; Damage Determination: Economic Value of Resource Use

In the summary statement at the beginning of the plan, the following criteria were given for choice of the studies included into the plan:

- 1) likely validity of impact hypothesis,
- 2) soundness of scientific approach,
- 3) cost-effectiveness, and
- 4) coordination with related work.

From the information presented in the plan, it is very difficult to assess how well each study met these criteria. Considering the extent of the spill, it is likely that all of the resources under investigation would be affected in some way. Therefore the hypothesis of impact is a moot point. The individual studies only justified the importance of the specific resource under investigation, not the soundness of the scientific approach. In many cases an adequate description of what will actually be measured is absent. Details of sampling and analysis are also sparse, making analysis of the approach and particularly the cost-effectiveness impossible.

I have gone through the details of the Coastal Habitat, Air/Water,

Fish/Shellfish, and Technical Services portions of the proposal, have made specific comments on each, and prepared a brief overall summary statement.

GENERAL COMMENTS ON THE PORTIONS OF THE PLAN REVIEWED

In all cases it is impossible to tell if the budgets are appropriate because no details are given on sample size, number of man-hours needed, specific equipment, or anything else. The level of detail in the study plan, methods and analyses given and budgets presented would be completely unacceptable in any kind of peer-reviewed grant or contract application.

In most of these studies, it is also impossible to tell if the methods to be used are appropriate, again due to lack of information presented. The QA/QC plans given in Appendix A and B for chemical analysis and histopathology analysis indicate field sample collectors and analysts will all be properly trained and that appropriate blanks and standards will be run, and that periodic inspection and intercalibrations will be conducted. No similar description of QA/QC is given for the other measurements described in the plan. A large concern is the speed at which this study was undertaken, and the early date at which it is to be completed (2/28/90). Judging by the dates attached to the signatures on the QA/QC plans, much of this work was already in progress before this document, or standard analytical procedures were agreed upon.

Considering the magnitude of the task, it is impossible to believe that these analyses will be completed by March, 1990. If not, when will the information be available. No time-lines for interim reports or data coordination are given. This will be essential to damage assessment and making informed decision on what portions of this study, or addition work may need to be done in subsequent years. Almost no information is given about coordination, specifically when each of these studies will be done, if different portions will be coordinated temporally, who will be responsible for coordinating sampling, analysis, and data transfer. Formation of the Analytical Chemistry Group and the Histology Technical Group to oversee all QA/QC, and I hope coordinate data evaluation, is a step in the right direction. Similar coordination and oversight groups should be developed for the other types of data to be generated.

The studies as presented appear to be mostly descriptive, in some cases grossly over-sampling specific habitats or species. There is a tremendous amount of information available about the effects of oil on organisms (NRC, 1985). Information obtained from other similar spills should also be utilized (e.g. the Amoco Cadiz which grounded near a rocky coast in temperate waters). This work should not be repeated, rather the information from these studies should be utilized. Short-term efforts should be focused on clearly documenting the extent of oiling and effects on key resource species. This is adequately, and in some cases excessively covered in the plan. However, additional study should focus on measuring and predicting the reservoirs, movement and availability of oil which remains in the system, and in quantifying long-term effects on resource populations and community function and structure. Possibly monetary damages could be assessed in two phases, immediate and continuing.

Assessment of short-term effects on these species will generate data needed to calculate immediate monetary damages. In addition, provisions must be made to assess the economic values of long-term, more subtle damages. For example, persistent changes in benthic community structure or productivity might represent a significant enough change in food resources to cease to support a given commercial species in a given area. If the coupling between community productivity and decomposition is significantly disturbed, anoxic conditions could develop which would render the area unsuitable for many species. Determination of the movement, persistence and availability of oil in the benthos is essential to the prediction of long-term effects. Information of this type will be more useful to understand the fates and effects of oil in this system and predict future fates and effects of the oil from the Exxon Valdez as well as other spills which will undoubtedly occur in the area.

Ecosystem function parameters have been largely left out of this study. Community structure will be evaluated in the Coastal Habitat Study, and in some of the fish studies the age/size distribution of individual species will be documented, but little effort has been made to assess the functioning of the ecosystem. Particularly in the near-shore estuarine habitats primary and secondary productivity as well as system respiration and organic matter decomposition should be assessed in selected areas. In the Amoco Cadiz petroleum degradation by microbes was significant, and researchers felt that the relative decrease in abundance of hydrocarbon metabolizing bacteria with time was a good indicator of recovery. Investigation of oil degrading microbes is absent from the plan of study. Similarly, structural and functional analysis of micro and macro plant and algal communities appears to be left out of the study plan. Coastal and submerged plants and algae should be included in the study, as these species can be important habitat in themselves and form the basis of the food chain.

Another aspect that could be better addressed concerns the fate of persistent oil components. Analysis of hydrocarbons in the sediment and pore waters should be documented for years. Twenty years after the oil spill near West Falmouth in Buzzards Bay, MA, oil was found in marsh sediments (John Farrington, pers. comm.). In the Amoco Cadiz spill oil migrated down through beach sands and cobble to the beach/water table interface. Movement through subsurface waters has not been addressed here. Oil buried in beach sediments may be quite persistent and would be re-released during winter storm events. The magnitude of this annual re-infusion of relatively unweathered oil should be assessed. As mentioned above, the air-sea interface also seems to have been neglected.

Study of the Amoco Cadiz oil spill for 20 months demonstrated the persistence of oil in nearshore sediments, and the persistence of alterations in benthic community and coastal marsh habitats. Indeed these later two parameters should have little evidence of recovery during this period. Considering the colder waters of the arctic, recovery may be much slower. Clearly portions of these studies must be continued for at least several years, with some analyses continued even longer. The damage assessment plan presented, if conducted properly, should be able to support calculation of the immediate monetary damages associated with the Exxon Valdez spill, but some provisions must be made for careful study to assess long-term damages.

COASTAL HABITAT INJURY ASSESSMENT

Overall goals are to determine:

- 1) abundance of intertidal and subtidal organisms used as food by resource species,
- 2) contamination of these food resources by oil,
- 3) quantification of injury over the entire 600 mile affected area, and
- 4) recovery of various habitat types after clean-up treatments.

Although not specifically stated in goals, attempts will also be made to assess potential impacts of clean-up efforts on the above. This portion is mostly aimed at looking at food chain effects, both for lack to food items and food chain transfer of oil.

Study 1: Comprehensive Assessment of Injury to Coastal Habitats

Description:

Phase 1: categorize coastline into 5 representative coastal habitat types, with representatives of each with low, med, and high oiling. Selection of sites will be "statistically valid" and ground-truthed through a reconnaissance survey. Study design will allow extrapolation to entire 600 mile affected area. Initial selection will be based on exiting coastal morphology scheme and shoreline impact survey maps prepared by Technical Services Study 3#. Ground-truthing will establish approx. 150 study sites.

Phase 2: assess changes in critical trophic levels and interactions, and assess changes in terms of quantity (biomass, productivity) and quality (vigor and utility to other trophic levels) and composition (community composition, diversity and standing crop of key species).

These data will be used to:

- 1) assess injury to beach sediment and soils,
- 2) establish response of these parameters to oiling and clean-up,
- 3) estimate rate of recovery and potential for restoration, and
- 4) provide linkages to other studies.

Methods:

Phase 1: using GIS pick 3 rep. sites, for each of 45 categories (3 regions x 5 habitat types x 3 degrees of oiling) plus extras = 150. Visit to check and photograph sites, establish boundaries, and describe sites.

Phase 2: study 4 vertical transects through all 3 tidal zones at each site. Chemical analysis of sediment will include hydrocarbon composition as well as determination of volatile organic compounds. The percent of sediment covered with oil, depth of oiled sediment, salinity and soil/sediment texture will also be determined. Biological analyses will include community composition, cover, and standing stock for each trophic level measured. Dominant producing and prey organisms will be designated as key species and estimates of quantity and quality made to assess their contribution to energy flow in the habitat. Amphipod LC50 bioassays will be done to assess sediment toxicity. Samples of

key species will be analyzed for hydrocarbon content. Additional species may be investigated to support other projects. It appears that some of these parameters will be followed over time, as changes over time are mentioned.

Comments:

As described, this study could provide extremely valuable information as to the effect of oil on benthic community structure, the extent of contamination by various oil components in the coastal zone of the entire effected area, and some estimate of how the oiling of benthic communities may affect species feeding on these organisms either due to lack to food (due to death of prey organisms) or food chain transfer of hydrocarbon contaminants (based on the hydrocarbon content in key prey items observed).

It is impossible to tell from the information given how well these objectives will be realized. Measurements will be made along 4 transects at each of 150 sites. No information is given about how many of each type of measurement will be made along these transects, or what methods will be used. No mention of the time scale for sampling is given. Will some of these be visited just post spill, and others only at the end of the summer? The only way to really assess damage to these habitats and predict recovery or plan recovery strategies would be to revisit a representative number of sites on an annual basis for at least several years, with less frequent sampling at multi-year intervals for a least a decade. On the recent 20 year anniversary of the West Falmouth oil spill in MA signs of oil were still present in subsurface sediments.

Although alluded to, no specifics are given on how the success of the beach steam cleaning operations will be assessed. Paired measurements between beaches that were manually cleaned and those which were left alone could determine whether or not these efforts had any long-term effect on the removal of oil and toxicity to organisms. It is quite likely, in my opinion, that steam cleaning may have done more harm than good. This would be a perfect opportunity to assess this before any more "steaming" is done next year.

In principle this study, if adequately carried out and scaled down to a manageable number of sites, would be a good start to assess coastal habitat damage. In addition to the chemical analysis of sediment and biota, species abundance and composition analysis, and sediment toxicity bioassays proposed, plants and algae should be included in the abundance censuses and be analyzed for hydrocarbon content. As the basis of the food web and important habitats in themselves, the effects of oil on these species should definitely be quantified.

It would be helpful to get an estimate of community function in coastal habitats. Primary and secondary productivity should be assessed in the intertidal and nearshore water column and benthos. This will mean analysis of phytoplankton, submerged vegetation and macroalgae as well as determination of organic carbon and hydrocarbon turnover by microbes. Benthic community respiration rates might also yield useful relative information about impacted and control habitat function.

AIR/WATER RESOURCES INJURY ASSESSMENT

WATER RESOURCES

Overall goals are to:

- 1) map the extent and persistence of floating oil (slick, mouse, tar balls) over the study area, and verify that this material came from the Exxon Valdez,
- 2) quantify the geographic and temporal distribution of dissolved and particulate oil in the water column, and
- 3) document levels of petroleum hydrocarbons in subtidal and deep water sediments and biota

Study #1: Geographical Extent and Temporal Persistence of Floating Oil from the Exxon Valdez

Summary: This is primarily a mapping project which will utilize exiting aerial photographs following the progression of the spill, and apply mathematical models to predict coastal impact, and amount of floating oil. Satellite imagery will also be employed. Samples of floating oil will be analyzed for hydrocarbon content and distribution to "fingerprint" the oil in the hope of assigning it to that carried by the Exxon Valdez.

Comments: Use of aerial and satellite images over time should be very useful to map surface oil movement, and document all shore areas impacted. Fingerprinting the oil (particularly before had weathered significantly should help to implicate the Exxon Valdez).

Study #2: Petroleum Hydrocarbon-Induced Injury to Subtidal Marine Sediment Resources

Summary: This study will analyze total petroleum hydrocarbons (TPH) by gas chromatography (GC) and polycyclic aromatic hydrocarbons (PNA) by GC-mass spectrometry with selective ion monitoring (SIM) in subtidal and deep sediments as well as sediment grain size and organic carbon content in offshore areas known or expected to have been oiled and nearshore sites in coordination with the intertidal sampling sites established by the Coastal Habitat study. Site selection will be based on areas likely to have received oil, sensitive areas (hatcheries and estuaries), and areas near to oiled coastal habitats. Sampling will be done in Prince William Sound, Kenai Fjords, the Kodiak Island area and additional locations extending to the Aleutian Chain. In Prince William Sound a manned submersible will be used to visually check areas for the presence of oil. Hydrocarbon analysis will be done on the top 2 cm of the sediment. If preliminary screening indicates the absence of oil, GC-MS will be omitted.

Comments: This study should give an accurate picture of how much and what components of the oil are contaminating surface sediments in deep and nearshore areas. The analytical methods should be appropriate, but again, no indication is given of exactly how many samples will be analyzed. If these data are to support the coastal habitat study, the same sampling and chemical methods must be used. Since hydrocarbon concentrations in the sediments of some of these areas should be high, it would be very useful to also measure

these compounds in pore waters, as this will allow better estimates of what may be available to biota, and what may be easily remobilized from the sediment. Another informative exercise would be to bring representative samples of these sediments into the laboratory. Relatively simple microcosm experiments would generate data on the actual flux of hydrocarbons out of the sediment and its bioavailability to marine organisms. This information would greatly assist modeling the long-term fate of these compounds in subtidal sediments.

Study #3: Geographic and Temporal Distribution of Dissolved and Particulate Petroleum Hydrocarbons in the Water Column

Summary: This project will analyze volatile aromatic hydrocarbons, TPH by GC and PNA by SIM in water samples already collected at 1,3,5, and 9 depths by a number of groups at "numerous" stations in Prince William Sound, Kenai Fjords and Katmai National Parks. In addition, mussel cages will be deployed at 12 sites in the sound and 18 sites outside the sound to serve as sentinels of water column concentrations of these compounds. Tissue burdens of petroleum compounds will be analyzed in mussels. Additional water samples (including bottom water) will be collected and analyzed as described above at a selected number of sites.

Comments: These parameters need to be measured in water column samples. However, no mention is given in the methods of how or what size of water samples were collected. Due to the low concentrations which would be found in most samples except those taken in the immediate vicinity of the slick, these measurements are very difficult. In order to get really accurate numbers (ie. detectable levels), extremely large volumes (up to many gallons) of water must be collected using clean techniques. In the summary, they speak of determining dissolved and particulate concentrations, yet no mention of this is given in the methods. Due to the high partition coefficients of some of these compounds, it is very important to analyze dissolved and particulate fractions separately. Unless it was clearly specified that all groups had collected water samples in exactly the same way, I would also worry about results being comparable.

Another portion of the water column which seems to have been ignored is the sea surface microlayer. This interface is well known to be a location for locally high concentrations of hydrocarbons. It is also the home of floating eggs and larvae, and a location of photochemical reactions which are likely to alter the chemistry and toxicity of petroleum compounds in this layer.

Use of caged mussels as sentinel organisms is a good idea, but again, evaluation of this portion of the project is hampered by lack of information. How long will the cages be deployed, and at what depths? Hydrocarbon concentrations in mussel tissues tend to be lowest in the late summer just after spawning. Will the same compounds be quantified and mussel tissue and water column samples? How many replicate mussels per cage, and cages per area? There is a large amount of data in the literature on accumulation and depuration of hydrocarbons from caged mussels. Placing caged mussels at so many stations may be unnecessary.

Project #4: Injury to Deep Water (>20 meters) Benthic Infaunal Resources from Petroleum Hydrocarbons

Summary: This study plans to collect benthic samples by Van Veen grab for analysis of community structure at sites (and at the same time) of deep water sediment sampling. Samples will be archived waiting results of sediment analyses, and some undetermined subset would eventually be analyzed for infaunal species composition, abundance, and biomass. Sediments will also be analyzed using "microbial techniques."

Comments: This study stands out for the lack of information presented. No specifics are given as to the number of grabs per station, nor the level of enumeration to be achieved. The statement about "microbial techniques" is meaningless by itself. Since no information is given about the frequency of sampling it is impossible to say how the results of this study would determine the persistence of injury to benthic resources studied. One of the justifications for this study is that these species serve as food sources to resource species, and that this study will quantify the extent of contamination of these food resources. Monitoring species composition and biomass will determine if these dietary resources have been destroyed, but unless samples of these organisms are evaluated for hydrocarbon content, it will not be possible to determine the potential for food chain transfer of hydrocarbons from benthic infauna to marine resources.

Once water column concentrations of oil have dissipated. The sediments and infaunal organisms will serve as the long-term source of hydrocarbons to the water column and species resident or migrating through the entire area. Investigation of these processes should not be omitted.

Study #5: Injury to the Air Resource from the Release of Oil-Generated Volatile Organic Compounds

Summary: This study will measure the volatile organic compounds (VOC) concentrations coming off fresh and weathered oil, and model these data into existing air dispersion models and wind vector data to predict what concentrations of VOC would have been over time and space and model toxic exposure probabilities to organisms encountering contaminated air.

Comments: I don't know much about this area, but if the models are accurate they could predict the extent of toxic concentrations in the atmosphere which may have caused injury to any birds and marine mammals which were there at the time. The need for this study to assess resource damage does not seem compelling to me. This study would have more utility in predicting atmospheric toxic exposures from future events.

Overall Comments Coastal Habitat Assessment:

Despite the lack of detail in the study descriptions, components of all of these studies are essential to document the extent of oil in the water column and benthos (sediment and organisms) and any immediate changes in populations observed. I would strongly suggest that the number of sites visited could be reduced in favor of more detailed analyses at some of the sites. Continuation of sampling in subsequent years will be essential to determine the long-term impacts, plan remediation strategies, and document recovery. In my opinion, the additional measurements and experiments suggested would help to better

document effects of oil on the habitats and provide information that could be used to model and predict the fate and effects of oil in these areas.

FISH/SHELLFISH INJURY ASSESSMENT

Overall goals:

Each species was evaluated as a separate resource with species selection based on value as an indicator organism or role in major fisheries. For each resource evaluated, abundance and mortality of larvae, juveniles, and adults in oiled and non-oiled areas was assessed. Through the use of the Technical Services Program, tissue concentrations of petroleum hydrocarbons in resource species in some of these studies will also be evaluated.

These studies will be reviewed in groups containing all studies related to a particular species, or studies related to similar species. Each study in the group will be briefly described, followed by comments on the entire group.

Study #1: Injury to Salmon Spawning Areas in Prince William Sound

This portion will visually inspect all known spawning streams in the Sound directly affected by oil, photograph each area and document the extent of oiling including penetration of oil into the substrate. Approximately 100 streams will be surveyed by counting numbers of live and dead salmon by species, location in river, stage of spawning, evidence of prespawning mortality, tide stage and visibility.

Study #2: Injury to Salmon Eggs and Preemergent Fry in Prince William Sound

Forty-six of the streams studied in #1 will be selected for preemergent fry studies. Historical data is available on approximately half of these streams. In each stream 4 zones upstream will be samples for numbers of live and dead eggs and live and dead preemergent fry by species. This will be done 2 times in April and once in autumn.

Study #3: Salmon Coded-Wire Tag Studies in Prince William Sound

Salmon fry or smolt will be tagged prior to release from five hatcheries in the Sound. Two of which received heavy oiling. Marine abundance, survival and harvest of tagged fish will be assessed, as well as the extent of straying of returning salmon into outlying areas.

Study #4: Early Marine Salmon Injury Assessment in Prince William Sound

This study will evaluate some of the tagged fish from Study #3 collected at various points as they migrate through oiled areas for tissue hydrocarbon content and histopathology. Abundance, growth, feeding habits, and behavior of juvenile salmon from both oiled and un-oiled areas will also be assessed. Any fish kills observed will be documented. Pairwise comparison between oiled and control areas will be made for all parameters measured.

Study #7: Injury to Pink/Chum Salmon Spawning Areas Outside Prince William Sound

Numbers and locations and species of live and dead spawning salmon will be determined in at least 4 locations in 109 streams outside Prince William Sound where historical information on fry density is available.

Study #8: Injury to Pink and Chum Salmon Egg and Preemergent Fry in Areas Outside Prince William Sound

Preemergent fry and egg sampling will be done in the fall and spring (Spring, 1990?). Counts of live and dead eggs and fry by species will be done at each of 10 digs at 4 locations in each stream studied. All 109 streams will be assessed for preemergent fry and approximately 80 streams examined for eggs.

Study #9: Early Marine Salmon Injury Assessment for the Kenai Peninsula and Kodiak/Shelikof Strait

This study will repeat many of the measurements made in Study 4 on juvenile salmon in locations more distant from the site of the oil spill, but which were impacted by the slick at a later date.

Comments Studies #1-4:

Together these studies will generate a picture of the how badly the salmon spawning habitat was affected by oil, the impact on eggs and fry, and the success and relative health of this year's crop of released fry and smolt as well as their exposure to petroleum hydrocarbons. Portions of the study should be continued to document re-capture of tagged fish returning from the ocean in subsequent years to quantify any long-term effects of the spill on these species. Again, the number of sites to be studied seems excessive. Certainly a good picture of the effect of oil on spawning salmon and their eggs and fry could be documented with many fewer sites.

Comments Studies #7-9:

These studies repeat in lesser detail some of the work done on salmon species within Prince William Sound. As these fisheries probably were exposed to oil of different concentration and composition from that experienced in the Sound, their study seems justified in the complete assessment of the effects of the spill to fisheries in the area. Once again, the number of sites seems excessive, and to really document effects on these fisheries, some areas should be revisited in subsequent years.

Study #5: Injury to Dolly Varden Char and Cutthroat Trout in Prince William Sound

This study will investigate the effects of the spill on two recreational fisheries species with fairly narrow habitat ranges utilizing streams and lakes which communicate with the Sound. These species migrate annually in and out of overwintering lakes down streams into the estuary to feed, and then migrate back again. Weirs will be placed on four streams to catch and tag individuals from the spring emigration. All fish caught will be counted. Weirs will be placed on two additional oiled and un-oiled rivers to count all

smolting, overwintering and spawning Dolly Varden char and cutthroat trout. Two of these streams have oiled estuaries, two do not. Survival of the tagged fish will be assessed through the capture of tagged fish in the recreational fishery described in Study #6 and recapture in this study (no date given).

Study #10: Injury to Dolly Varden Char and Sockeye Salmon in the Lower Kenai Peninsula

This study basically expands the work done on Dolly Varden char in the Sound as part of Study #5 to four areas in the Lower Kenai Peninsula (2 oiled and 2 control). Sockeye salmon are also found at two of these sites.

Comments: Compared to the salmon studies, this one seems much more manageable. Pairwise comparisons will be made between replicate oiled and un-oiled stream/estuary systems. Although the fate of some of the tagged fish will be assessed as part of the Sport Fishery Harvest Effort (Study #6), it would also make sense to place weirs on the river to document the number of fish (both tagged and untagged) returning to the lakes to overwinter. These fish will have spent the summer feeding in areas impacted by oil, and therefore should best demonstrate any effects. Samples of fish on both the downstream and upstream migration would be taken for hydrocarbon analysis and histopathology. Measurements should also be taken of length and weight to document any sublethal effects of oil on growth during the summer feeding period.

Study #6: Prince William Sound and Gulf of Alaska Sport Fishery Harvest and Effort

This study will survey the sport fishery harvest of salmon, rockfish, halibut, cutthroat trout, and Dolly Varden char by interviewing anglers from 7 locations from May 1 through September 15. Information on the sport catch from anglers using sea planes will be obtained through logbooks maintained by fishing guides. Some fish caught will be examined for (visual I presume) signs of oil contamination. Although not stated, I would assume the study would document the location of capture of tagged fish.

Comments: By comparison with historical data on the sport fishery catch, this information should determine whether or not in the first season post spill sport fisheries have been affected. This project should generate information directly applicable to the impact of the spill on sport fisheries, should relatively cheaply gather information on fish abundance independent to that collected directly as part of this study, and by involving the sport fishing populace should generate public enthusiasm for the restoration efforts.

Study #11: Injury to Prince William Sound Herring

Spawn deposition surveys will be conducted in up to 160 randomly selected transects through areas of herring spawn by divers and non-size selective harvesting of spawning adults. This information will be used to estimate herring abundance, egg densities, spawning bed dimensions and fecundity. The ratio of live to dead herring eggs in oiled and non-oiled areas will be assessed every four days until hatching. Eggs will be collected for hydrocarbon analysis. 180 batches of spawn collected from oiled and non-oiled

areas will be reared in the laboratory where survival of eggs, larvae, size, weight and presence of visible abnormalities will be assessed. Data will be compared with historical information.

Study #12: Injury Assessment to Kodiak and Alaska Peninsula Herring

This study appears to repeat some of the work done in Study #12 in two other areas. Laboratory exposures will be conducted to experimentally determine the lethal and sublethal effects of oil on herring eggs, larvae and adults. Data collected from the field will be compared with historical information.

Comments on Studies #11 & 12: Studies #11 & 12 are aimed primarily at determining the effect of oil on fecundity and survival of herring in and outside of the Sound. Study #11 appears to be a comprehensive approach to assessing abundance and reproductive success in this species. 160 transects seems excessive, but no information is given on the size of the area to be surveyed. Study #12 is extremely vague about what will actually be done, but it appears that different kinds of laboratory investigations will be conducted in these two studies. Better integration is clearly warranted. The effects of water soluble fractions of oil on fish larvae have been well studied by others. Repeating these as part of this study does not seem appropriate.

Study #17: Injury to Prince William Sound Rockfish

This study will assess rockfish populations at 10 reefs in the Sound (6 oiled, 4 non-oiled). Fish will be collected with long-line gear in May and again in August and tissues from fish collected for hydrocarbon analysis. Live fish collected with hook and line. Dead fish on the surface will also be collected. Dead fish will be necropsied, and live fish sampled for hydrocarbon content. The number and distribution of rockfish collected will be compared with historical surveys.

Study #23: Injury to Rockfish, Halibut, and Lingcod Along the Lower Kenai Peninsula

This study will essentially repeat that described in study #17 at several locations in oiled and non-oiled water in and near Resurrection Bay. The species list investigated will be expanded to include halibut and lingcod. Sites selection will be based on areas known to have supported sport fisheries in these species in 1988.

Comments Studies #17 & 23: These fish occupy a habitat not previously well studied, so their examination is justified. Although not specified, I would assume numbers caught during a standardized fishing effort as well as size and size will be quantified. Fish should also be examined for parasites, oiled stomach contents, and general condition. Efforts should be made to determine the age of the fish caught (otolith analysis). This will determine what proportion of the population is being counted and demonstrate if any age-dependant effects are being observed. Organoleptic testing (taste tests for tainting) for hydrocarbons is proposed in this study. This makes sense as these fish are consumed by humans, and oily taste would lessen their value. Why has organoleptic testing been omitted from the other studies? Regardless, standard hydrocarbon analysis should also be done on these fish. Hydrocarbon

analysis methods used on tissues taken in any of these studies should be comparable.

Study #13: Injury to Prince William Sound Clams

This study will assess populations of clams (cockle, littleneck, clam, and butter clam) at three sites each which received no, moderate and heavy oil contamination. At each site three transects will be set up and clams sampled at seven tidal heights along each transect. Live and recently dead specimens will be collected, identified and counted. At each site an additional transect will be set up to determine numbers of dead shells deposited on the shore. For each species three samples will be collected per transect for hydrocarbon analysis and histopathology. Growth and age estimations will be made on 100 littlenecks collected from each transect at each site. One of the heavily oiled sites will be monitored biweekly from May through September. If sudden changes in the proportion of dead clams appear, all other sites will be revisited at that time. If this does not occur, all sites will be revisited once during the fall. The repeat sampling will be used to monitor growth and relative abundance in young-of-the-year clams.

Study #21: Injury to Clams Outside Prince William Sound

This study repeats the analyses in Study #13 at ten locations in Resurrection Bay, lower Cook Inlet, Kodiak Island/Shelikof Strait, and the Alaska Peninsula. At each location an oiled and a nearby non-oiled beach will be selected. In addition to the species enumerated above, the razor clam will also be investigated. Five of the locations (which ones is not clear) will be revisited to document changes in growth rates and recruitment between oiled and non-oiled beaches.

Study #16: Prince William Sound Oysters

Mortality, growth, condition and hydrocarbon content will be followed monthly from April-September in marked individuals from three oyster farms in the Sound. One was in the spill, one near it, and I presume one was relatively unaffected. Parameters measured will be evaluated with respect to degree of oiling received and historical data from pre-spill years.

Study #25: Injury to Scallop Resources in Kodiak Waters

Mortality, growth, and condition factors of wild pink, spiny, and weathervane scallops at one oiled and one non-oiled site in the Kodiak area will be monitored monthly. Tissue samples for hydrocarbon analysis will be collected every over month following the spill through October.

Comments on Studies #13,21,16,25: The clam studies (#13 & 21) appear to be well designed and should unambiguously document the short-term effects of oil on mortality and growth in 4 different bivalve populations. However, it is not clear from the project description how growth will be documented, nor how examination of growth parameters and the abundance of bivalves two to four years old will give information about temporal changes in growth rates and recruitment between oiled and non-oiled beaches. Condition (although not stated I assume they are referring to a body condition index(volume of soft tissue to total volume of organism)) should also be measured on a subset of

individuals from the clam studies to provide information comparable to that obtained in the other bivalve studies.

Will the bivalves be allowed to depurate (void) their gut contents prior to analysis for hydrocarbons? The presence of hydrocarbons in material in the gut can dramatically alter whole body levels analyzed. There are good arguments for and against depuration. However, the same approach should be used in all studies if comparable information is to be obtained.

Using marked individual the oyster study (#16) should give better information about growth and age dependent mortality. However, care should be taken to adequately assess effects on oysters of different ages (younger ones may be more sensitive). The scallop study (#25) is very poorly defined. One of the justifications for conducting this work is the cooperative mariculture feasibility and demonstration project at Kodiak, yet no further mention is given of assessing scallops from the projects. Following only one oiled and non-oiled site monthly over time seems insufficient. A better design would utilize multiple oiled and non-oiled sites visited less frequently if necessary. Also no mention is given as to how the scallops will be sampled to ensure adequate representation of the area. How will age-dependent mortality be assessed? Considering the relatively large budget assigned to this particular project (\$2.2 million), a better study design is certainly warranted.

Study #14: Injury to Prince William Sound Crabs

Levels of hydrocarbons will be measured in Dungeness crab samples collected immediately after the spill and again in the autumn prior to egg hatch at eight sites (4 each oiled and control). Fecundity and egg condition will be determined from examination of the adults. Ovigerous crabs will be held in the laboratory until larval release for estimation of larval production. Similar measurements will be made on brown king crab collected in August. Samples of both species will also be taken for histopathology. Observations will be correlated with leveled of hydrocarbons in the sediments at the location of crab collection as determined in the air-water studies. Incidence of leg loss and abnormalities in shells of newly molted crabs will also be assessed.

Study #22: Injury to Crabs Outside Prince William Sound

This study will repeat the fall sampling on Dungeness crab described in Study #14 at some number of oiled and non-oiled sites in Cook Inlet and near Kodiak Island.

Comments on Studies #14 & 22: Study #14 is very well designed. Comparing hydrocarbon levels in these crabs just post-spill and just prior to spawning will give information about speed of depuration from this species as well as short term effects on the adult and on reproductive success. Since female crabs carry eggs on their pleiopods, adults, eggs and larvae can be examined relatively easily in this species. I would suggest that hydrocarbon content of eggs and larvae also be determined. At relatively little additional cost, this will provide useful information to estimate impacts on larvae (the effects of oil on a number of crab larvae have been well documented) as well as provide more information on potential food chain transfer of hydrocarbons.

Study #22 is very poorly described. Although investigating effects on crab outside the Sound is important, from the description provided in study #22 it's impossible to tell what they are going to do. Since crabs live in intimate contact with the sediment and scavenge for food, they should be good long-term indicators of oil remaining in the sediments of these areas. Components of this study should definitely be continued in subsequent years.

Study #15: Injury to Prince William Sound Spot Shrimp

Spot shrimp will be collected from oiled (Unakwik Inlet, Port Wells, Culross Passage) and non-oiled (adjacent to Eleanor, Knight, and Green Island) areas. Catch (in up to 264 pots) will be enumerated by number, weight, size, sexual stage, and fecundity for each species. Samples will be taken for hydrocarbon analysis. A stratified sampling plan by depth and location within oiled areas will allow statistical comparisons between relative abundance, fecundity, stage of egg development, size frequency distribution, sex ratios, species catch composition, and hydrocarbon content to be made.

Comments: This study appears to be well designed. From the information given it's impossible to tell if the sample size is appropriate. If possible, egg hydrocarbon content and survival should be assessed.

Study #18: Prince William Sound Trawl Assessment

This study will assess the bottom fishery within the Sound. Surveys will be conducted from Mid-May to mid-June and again in August enumerating species abundance and collecting otoliths for age determination in primary groundfish species. These surveys will document the abundance of all species of groundfish caught and age class composition for primary species. At eight locations (4 oiled, 4 clean), tissue and organ samples of fish and shellfish will be collected for hydrocarbon analysis and physical injuries, and stomach analysis for tar balls in ground fish.

Study #24: Shellfish and Groundfish Trawl Assessment Outside Prince William Sound

This study will conduct parallel surveys to those conducted in Study #18 in June and August in lower Cook Inlet (Kachemak and Kamishak Bays), bays along the Alaska Peninsula, and coastal waters of the Aleutian Islands. Species abundance and age composition will be determined as described above. Stomach, muscle, liver, and bile samples will be collected and analyzed for indication of exposure to oil and potential reproductive damage.

Comments on Studies #18 & 24: The post-spill survey should determine any immediate impacts of oil on the fisheries of all these species. The fall survey should provide information on missing year classes, and provide a baseline for future impairment of these stocks due to longer-term effects of the oil. Hydrocarbon levels in tissue would indicate any human risk from consuming these species. There appears to be some discrepancies between the methodology to be used between the two studies. Stomach contents will be analyzed in #18, but not in #24. Study 24 states that it will analyze bile for the presence of PAH metabolites. This is an excellent idea because these species can rapidly metabolize petroleum hydrocarbons. Therefore tissue levels of unmetabolized PNA would not be appreciable unless the fish were

still being exposed to hydrocarbons. No mention of bile analysis is given in study #18. "Biochemical analyses" will be used to assess reproductive damage in the fish caught in study #24. These methods should be clarified. Due to my knowledge there are no "standard" biochemical analyses to assess reproductive damage. Regardless, the same methodologies should be utilized in all fish studies.

Study #19: Injury to Larval Fish in Prince William Sound

Potential damage to larvae in the water column will be assessed in this study. According to the draft report, there is virtually no historical data on larval distribution or abundance in Prince William Sound. Larvae will be collected using Tucker trawl nets with 0.5 and 1.0 mm mesh sizes and the MOCKNESS multiple open and closing net system once per month from March through October. Larval densities will be recorded. Although not explicitly mentioned, it appears that for some species, larval size and weight will be recorded.

Comments: This study should generate very useful information about larval resources in the Sound. However, several important factors were either not mentioned or were left out. No specifics are given as to the number of trawls in oil and un-oiled areas or the depths at which larval collections will be made. Abundant or important larvae should be examined for physical deformities, and hydrocarbon content. Nowhere in the entire plan of study have I seen any reference to enumeration of phytoplankton or zooplankton abundance or species distribution. In addition to fish larvae, zooplankton caught in these nets should be enumerated. These species serve as food for many of the larvae, and have been shown to be sensitive to oil. Running small meshed nets behind the nets already being towed in this study would also allow enumeration of phytoplankton. Again, for little additional cost another component of the food chain could be assessed in this study.

Study #20: Undersea Observations

Remotely operated vehicles (ROVs) will be used to visually assess the extent of submerged sediment oiling in up to 1,500 m depth in Prince William Sound and the northwestern Gulf of Alaska. These observations will support designation of paired oiled and un-oiled areas for the trawl surveys.

Comments: The utility of using ROVs to locate oiled and un-oiled deep water sites in support of the fisheries surveys is well justified. Actual proof of oiled sediments will be based on the sediment surveys conducted in other sections. Sixty days of ROV time are requested. This seems excessive if they are really being used primarily to support these other studies and not merely to photograph the entire seafloor in Prince William Sound and the northwestern Gulf of Alaska. Documentation of how ROV use will be coordinated with the other studies it is to support should be presented.

Study #26: Injury to Impacts on Sea Urchins off Kodiak Island

Urchins from four oiled and four non-oiled areas off Kodiak Island will be examined. At each site five transects will be surveyed at high tide in September and November during the egg maturation period. Transects will be picked so that at least three traverse kelp beds (prime urchin habitat). At

one meter intervals from mean high water to a depth of 20 m and out to a distance of 3 m of either side of the transect, data will be collected on the numbers of live vs. dead and oiled vs non-oiled kelp. Every urchin encountered will be assessed for viability, sex, diameter and position. Along each transect a random sample of ten mature females will be assessed for roe weight as a proportion of total weight and size. At each sample location, roe from ten random individuals will be taken for histological examination and three random composite samples of ovaries collected for hydrocarbon analysis. In addition, twenty live urchins will be shipped to the laboratory for bioassay of toxicity of oil to urchin larvae.

Comments: Compared to most others, this study was very clearly described. The data collected should give valuable information on direct mortality of adults, reproductive effects on adults, eggs pathology, viability of larvae, and success of young of the year urchins. The hydrocarbon analysis of roe will also help to quantify exposure and help to assess risk of human consumption. Noting the presence of alive and dead and oil and un-oiled kelp will not along help to assess exposure to the urchins, but document direct impact on another important resource, the kelp itself. Assessment of effects on coastal and submerged vegetation and micro- and macroalgae is largely absent from the study plan. In addition to visually noting the presence of oil, samples of kelp should be taken for hydrocarbon analysis.

TECHNICAL SERVICES

Study #1: Hydrocarbon Analytical Support Services and Analysis of Distribution and Weathering of Spilled Oil

This section and the details presented in Appendix A describe the framework under which hydrocarbon analysis will be conducted.

Comments: This component is the most critical of the entire study, as accurate and comparable determination of the quantity and composition of petroleum hydrocarbons in all samples is essential to tying any effects measured to the spill, predicting future effects on biota, and monitoring restoration of the environment through either natural processes or human intervention. This section and the supporting documents in Appendix A indicate that the hydrocarbon analysis will be conducted in an appropriate manner. However, since the QA/QC plan was signed in many cases after many of the samples were collected for this study, one has to wonder whether or not all the steps to ensure the quality and comparability of the analytical measurements will or has been adequately carried out. Results from intercalibration exercises and data on field and analytical blanks should be reported in the documents resulting from this study. The formation of the Analytical Chemistry Group to oversee all these efforts is an excellent idea.

Chemical analysis should be comparable between the different studies. Some studies neglected to mention what chemistry would be done, some indicated analyses not mentioned in others. Only in one investigation was the analysis of PNA metabolites discussed. Metabolites should be assessed in all fish sampled for routine hydrocarbon analyses. In the Amoco Cadiz oil spill dibenzothiophenes (sulfur containing aromatic hydrocarbons) were found to be a persistent indicator of oil contamination whereas levels of PNAs were sometimes high even in control samples due to the widespread distribution of

these compounds in the biosphere. Analysis for dibenzothiophenes should be included in the study plan.

Study #2: Histopathology: Examination of Abnormalities in Tissues from Birds, Mammals, Finfish, and Shellfish Exposed to the Spilled Oil

This section and the details presented in Appendix B describe the framework under which examine of tissue samples for histopathology will be conducted.

Comments: Histopathological analysis can give very clear and comparable evidence of the effects of oil on aquatic organisms. The description of the methods and the QA/AC plans sounds adequate, although this is not my area of expertise. However, no mention of exactly how preserved tissues will be sampled is given. More effort should be placed on documenting histopathological responses which may lead to long-term affects such as genetic abnormalities. I would like to note that lack to overt histopathology should not necessarily be taken to mean that the organisms were unaffected.

Study #3: Mapping of Damage Assessment Data and Information

All data will be computerized and maps will be prepared to document the extent of oiling in the area, upon which effects noted can be superimposed.

Comments: The initial maps documenting the extent of oiling of water and shoreline over the entire region will be prepared by June 19, 1989. These will be useful to in development of the Coastal Habitat, and fish and Shellfish assessment studies. Adapting a computerized format to collate and display the information generated by this study is critical to proper evaluation of results and the early identification of trends and areas which will require further study. The initial maps should have been included in the Study Plan. Furthermore, a time-table for generation of subsequent maps and their distribution should be included in the plan.

PART II DEVELOPMENT OF THE RESTORATION PLANS

Comments: Basically all this section says is that a restoration plan will be developed for \$500,000. No information is given about the types of strategies which may be considered. It appears that little though has been given to how to approach restoration.

References:

Oil in the Sea, Inputs, Fates and Effects National Research Council, National Academy Press, Washington, D.C. 1985, 601 pp.

Amoco Cadiz, Fates and Effects of the Oil Spill Proceedings of the International Symposium at the Centre Oceanologique de Bretagne, Brest November 19-22, 1989, Published by the National Center for the Exploration of the Sea, Paris, 1981 881 pp. in France with English abstracts.

The Amoco Cadiz Oil Spill a Preliminary Scientific Report NOAA/EPA Special Report, Edited by Wilmot Hess, August 1978.

**The Problem of Secrecy: Science Under Wraps
In the Wake of the Nation's Largest Oil Spill**

Introduction

1. As scientists who have worked in the field of oceanography and have studied in particular the effects of hydrocarbon spills on marine and coastal ecosystems, we are gravely concerned about the secrecy and confidentiality that has surrounded the scientific study of the impact of the Exxon Valdez oil spill on the ecosystem of Prince William Sound.
2. Scientific analysis of the short and long-term impacts of an environmental disaster in a marine, near-shore and coastal environment such as Prince William Sound is exceedingly difficult, involving multiple ecological systems and complex interrelated ecosystem effects. As such, it necessarily requires both short and long-term multi-disciplinary study.
3. Full data sharing, and open discussion of scientific data regarding spill impacts with scientific experts from all relevant disciplines is fundamentally important and critical to assuring that scientific investigators and those analyzing the data get a full picture of the impacts and do not overlook important potential impacts or gaps in the data. Without open data sharing and discussion, subtle potential impacts may not be recognized and new investigations of key ecological perturbations may not be commenced. In addition, ongoing studies may be terminated before ecological injuries are documented due to a lack of a full understanding of the complexities of the ecological response to the catastrophic addition of oil to the ecosystem.

Need for Initial Data

4. After a massive oil spill such as this, the greatest amount of gross ecosystem impact occurs during the initial period. In this spill, significant direct damage to flora and fauna was immediately caused by the massive introduction of foreign and toxic material into the ecosystem and food web.
5. Because of this, all data collected which records the initial damage to flora and fauna and the movement and evolution of the hydrocarbons into the ecosystem is crucially important to both short and long-term evaluation and analysis. The data collected during the acute phase of massive injury to flora and fauna is the starting point for all other analysis.

6. Without complete and detailed information about this initial acute phase, it is difficult to predict or analyze the future impact the spill may have.

Importance of Peer Review

7. If these data are not made public immediately, the ultimate assessment of damage will be hindered and the amount of damage inadequately assessed.
8. Science works well and most effectively when it is conducted in open dialogue, among scientists within a given discipline and among scientists of multiple disciplines. This is particularly so where questions require complicated ecosystem analysis and evaluation, such as is required by a massive spill like the Exxon Valdez oil spill.
9. The conclusions of science are deemed credible only when there is independent and open review through a peer review process. Scientific literature based upon data and research not subjected to peer review is suspect. A study or one person's analysis of data will not be widely accepted in science until the study and analysis have been exposed to criticism and the concerns raised by the critics have been addressed. The entire system of scientific research depends upon the checks and balances provided by discussion and criticism of important ongoing work.
10. Without early feedback, open discussion, and integration of results and ideas from different disciplines, individual scientists or scientists working in one or two disciplines may well miss key parts of the entire picture. Scientists studying some portion of an ecosystem have misunderstood entirely the significance of the data they were collecting until practitioners of another discipline had been brought in to consult.
11. When scientists are talking to each other about their research they can integrate the information, note the type of sampling that is being done and be able to work with comparable data. A shotgun, unintegrated approach which is detached from the findings of others studying a similar subject will ultimately lead to greater cost and less reliability. Unless complete information about all studies is shared and integrated, there may be a tendency for "mindless measurement" while the larger picture is missed. Studies may be redundant or there may be gaps. It would clearly be more cost effective to share from the outset.

Peer Review of Initial Data is Critical

12. It is important to have open and frank discussion among scientists about the data gathered from the earliest impacts of the spill. Given the fact that the initial stages of

this type of disaster involved the greatest and most rapid change, it is clearly detrimental to the scientific investigation of the spill to wait until all the data are gathered before engaging in open dialogue and multiple disciplinary review. The situation is changing quickly in space and time while these studies are ongoing. Open dialogue and communication should be concurrent with the studies, not subsequent to them.

13. Science is enriched by constant feedback and refinement. Scientists never know what they may find when they first start looking. The first protocols used may be inadequate. The methodology or the detection limits may not be appropriate. It may well be that the questions need reframing, or methodologies need to be changed, based upon the initial results.

These Critical Data Should Be Public

14. Due to the passage of time since the spill, the important initial data regarding the Alaska spill are not available now except from those who actually collected data at the critical times. Thus, the data cannot be reproduced or gathered from any source other than those who actually collected it and who have the knowledge that has come from the data. We cannot state strongly enough that these data should be available for scientific and public review.
15. In addition, it is essential to know the following: What questions were the scientists asking when they did the studies? What procedures were they using to answer those questions? How did those procedures change or how did the questions change during the time that the initial data was coming in? Was there any feedback or modification in the study done during the course of the study?

Conclusion

16. Humankind, and in particular scientists working on environmental and ecosystem problems, need to know the effects of the Exxon Valdez oil spill on the environment. The effects cannot be known adequately without making the data available to everyone with the interest and the expertise to evaluate what it means and what it portends for the future.

ACE 417584

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

EXXON VALDEZ OIL
SPILL LITIGATION

This Document Relates To:
Case No. 3AN-89-6957 Civil
National Wildlife
Federation, et al. v.
Exxon Corporation, et al.

3AN-89-2533 Civil
(Consolidated)

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FOR _____

APR 13 1991

DAVIS WRIGHT TREMAINE
BY _____

AFFIDAVIT OF DR. JOHN M. TEAL

I, Dr. John M. Teal, after being first duly sworn, state as follows:

Introduction

1. My name is Dr. John M. Teal and I am over the age of twenty-one. I am a biological oceanographer with extensive professional experience in marine ecology, marine pollution and biogeochemistry. I am a senior scientist in the biology department at the Woods Hole Oceanographic Institution. My curriculum vitae is attached as Attachment 1.

2. I have read and endorse Attachment 2, "The Problem of Secrecy: Science Under Wraps In the Wake of the Nation's Largest Oil Spill." This statement represents many of my concerns about the current regime of secrecy imposed by the parties to this lawsuit.

Need For Open Exchange of Data

3. Many examples illustrate my concerns about the effects

Affidavit of Dr. John M. Teal
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of secrecy on the quality of scientific research on oil spill impacts. One example comes from the investigations of the effects of the tanker "Tsesis" spill in the Baltic. In the affected area the hatching success of herring eggs was drastically reduced. But the oil did not seem to have a large effect on the ratio of normal to malformed herring larvae, indicating no very large direct effect of oil on the eggs, though such a direct effect was the expected result, the logical first hypothesis.

4. Research on other aspects of the affected ecosystem, when combined with the results on herring, suggested the complex pattern of interactions that led to the failure of the herring eggs. A certain type of adult amphipod normally keeps the growth of fungi on herrings eggs low through feeding on the fungi, and thus enhance the survival of the herring eggs. The oil spill virtually wiped out these amphipods which, in turn, allowed fungal growth on the eggs to proceed unchecked. The effects of oil on the adult populations of the amphipod, by preventing their normal interaction with herring eggs, dramatically reduced the survival of herring eggs.

5. Only free interchange of research results and hypotheses by scientists of various disciplines studying the impacts of this spill allowed these scientists to make the necessary logical connection required to understand the cause of the loss of the herring eggs.

6. Without similar opportunities for free interchange of

scientific results, hypotheses and assumptions from research regarding the impacts of the "Exxon Valdez" oil spill (see Attachment 2), many similar complex relationships may never be discerned and the full causal network and/or extent of damage and long-term impacts may never become clear.

Secrecy Hamstrings Other Government Bodies

7. From 1978 to 1990, I have been a member of the Scientific Advisory Board ("Board") to the federal Minerals Management Service ("MMS"). The Board's role is to advise MMS on its scientific studies program. The scientific studies program's purpose is to develop the scientific basis for MMS decisions regarding outer-continental shelf ("OCS") leasing for oil exploration and production.

8. Although the Exxon Valdez spill did not involve OCS oil and did not occur in OCS waters, the Board felt that the results of the spill are very relevant to the decisions MMS makes in regards to the costs and benefits of oil exploration and production.

9. Unfortunately, the secrecy surrounding the Valdez spill effectively prevented the Board, and thus the MMS, from gaining any useful information of this type -- even though it would have been directly relevant to the mission of the MMS.

10. For example, during a meeting of the Board in Juneau, the Board invited representatives of the trustees to attend and discuss the scientific studies being conducted on the "Exxon Valdez" spill. Though the invitees came they were accompanied by

Affidavit of Dr. John M. Teal
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a government lawyer who sat amongst them and frequently told them not to answer the questions we put to them.

Important Research Opportunities Will Be Lost

11. The Exxon Valdez Spill offers a rare and significant opportunity for marine scientists to answer important questions about marine environments. In essence, the significant deposition of oil, which has components that are relatively long-lived and which will remain relatively toxic over time, in the Prince William Sound ecosystem acts as a marker or tracer which would allow scientists to follow the pattern of movement of various elements of the ecosystem just by following the movement of the oil over time.

12. This would also advance our current knowledge of long-term effects of oil spills. For example, this could allow scientists to expand upon the work that I have done with Dr. John Farrington and Bruce Tripp, also of Woods Hole, into the long-term effects of oil in the West Falmouth Harbor ecosystem. In that study, we have been able to trace the long-term movement of oil throughout an ecosystem which was disturbed by a 1969 oil spill.

13. In the wake of the "Exxon Valdez" spill, I am interested in studying the long-term ability of various sea plants and grasses to transmit oxygen to the sediment layers in which their roots are imbedded. The disturbances created by the oil spill and the way in which these disturbances affected and continue to affect this ecosystem would allow me to better

Affidavit of Dr. John M. Teal
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understand the relationship between these plants and their immediate environment.

14. However, I have not been willing to do this work and many other scientists have been deterred from undertaking similar research which would add to our understanding of marine environments in general, as well as our understanding of the long-term effects of oil spills in particular, because most of the data that has been collected is being kept secret.

15. Because so much of the basic data regarding the oil spill is not currently available, it is much more difficult for outside scientists without access to this data to conduct competent scientific investigation. There are so many ways in which one's hypotheses could be significantly in error, just because basic data upon which these hypotheses need to be built are not available, that I and many scientists like me are not willing to risk wasting our time or damaging our reputations (and, thus, our ability to fund the work we want to do) by conducting this type of speculative research.

16. I am also not interested in doing research if I must be bound by a secrecy agreement. If I were to agree to do this type of work I would not be able to publish my results until after the lawsuit was resolved (though a settlement, by its terms, might prevent any data from ever being published). I depend upon being able to publish my work for many reasons: Not only is it the best means of communicating with my peers and benefiting from their ideas and experience, but publishing allows me to advance

Affidavit of Dr. John M. Teal
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my scientific reputation which allows me to obtain funding for the projects I am interested in and to help support Woods Hole and the other scientists I work with.

17. If I know that I will be publishing the results of my investigations, I always have a stronger incentive to carefully and clearly think through my program of research. This is because I know that my work will be subjected to careful scrutiny by the most qualified reviewers possible.

Secrecy Must End Now

18. The longer this secrecy lasts, the more difficult it will be for outside researchers to commence meaningful studies after the existing data is released for public review. Time is of the essence to research on an environmental impact like the "Exxon Valdez" oil spill. Knowledge of the conditions at the time of the spill, details of the initial effects, and of the areas affected are essential to planning and conducting such research.

19. Knowledge made available only months or years after the event may show how one should have planned and conducted the research into that event, but could be useless for actually doing it. If this data is to have maximum value to outside scientists it must be released as soon as possible.

Conclusions

20. The current secrecy of science in Prince William Sound will keep many interested and qualified scientists from studying the effects of the Exxon Valdez oil spill, despite the fact that

Affidavit of Dr. John M. Teal
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this spill offers an unique opportunity to expand our knowledge of the long-term effects of oil spills as well as the basic rules that govern such marine ecosystems.

21. It is very important that this secrecy end immediately so that outside scientists can review the work already done and take steps to correct errors, limitations, and/or gaps in this work and/or initiate their own research on the effects of the spill.

ANYTHING FURTHER THE AFFIANT SAYETH NOT.

John M. Teal
Dr. John M. Teal

STATE OF MASSACHUSETTS)
COUNTY OF Barnstable) ss.

On this 11th day of September, 1990, the Affiant Dr. John M. Teal personally appeared before me and signed the foregoing Affidavit after first having sworn that the information contained therein is true and correct to the best of his knowledge and belief. Witness my hand and official seal. My commission expires on 26 August 1990.

[SEAL]

Julius J. Keeney
Notary Public

RESUME

JOHN M. TEAL
Senior Scientist
Woods Hole Oceanographic Institution
Woods Hole, MA 02543

1 January 1990

Birth date: November 9, 1929.
Omaha, Nebraska
Nationality: U.S.A.
Social Security 507-32-0538

President: Teal, Ltd., environmental consultants associated with Aubrey Consulting Inc.

EDUCATION

B.A., Harvard University, 1951
M.A., Harvard University, 1952
Ph.D., Harvard University, 1955

ACADEMIC POSITIONS

Assistant Professor, 1955-1959, University of Georgia Marine Institute.
Assistant Professor, 1959-1961, Department of Biology and Institute of Oceanography,
Dalhousie University
Research Associate, 1961-1963; Assistant Scientist, 1963-1965; Associate Scientist, 1965-1971,
Senior Scientist, 1971- present; Chair, Biology Dept., 1982-1985; Seward Johnson Chair in
Biology, 1986-1989; Woods Hole Oceanographic Institution.

PROFESSIONAL SOCIETIES

Sigma Xi; Phi Beta Kappa
Ecological Society of America (Certified Senior Ecologist)
American Society of Limnology and Oceanography
American Association for the Advancement of Science
Estuarine Research Federation
Society of Wetland Scientists
International Ecological Society

BOARD & COMMITTEE MEMBERSHIPS

Editorial Board: Ecology, 1960-1963, 1967-1969; Biological Bulletin 1983-1986
Marine Biological Laboratory: Instruction Committee 1968-1971; Instructor, Marine Ecology,
1976-1983; Corporation member 1983-present, Joint Library Committee 1988-present.
Conservation Commission, Town of Falmouth, 1971-1977.
Study Committee, Ecol. Soc. Amer., 1971-1974.
Conservation Law Foundation of New England: Board of Directors, 1978-present; Vice-chairman
of Board, 1980-present.
Scientific Advisory Committee, Outer Continental Shelf program of U.S. Mineral Management
Service, 1979-1981, 1984-1989, Chairman 1987-1989.

Scientific Advisory Subcommittee of Massachusetts DEQE Wetlands/Wildlife Technical Advisory Committee 1987

Lloyd Center Scientific Advisory Committee

Scholarly Studies Review Panel, Smithsonian Institution, 1988-1990

PUBLICATIONS

I am the author and/or co-author of c.125 scientific papers; 3 encyclopedia articles; 6 childrens articles on oceanography; 4 trade books: "Portrait of an Island", Atheneum and Univ. Ga. Press, "Life and Death of a Salt Marsh", Atlantic-Little Brown and Ballentine, "Pigeons and People", Atlantic-Little Brown, "The Sargasso Sea", Atlantic-Little Brown and narrative for the film "Salt Marshes"-Jeff Simon, Harper Row.

CONSULTING

I have served as a consultant on salt and freshwater wetlands, hydrocarbons, pollution, sewage treatment and pollution, coastal ecology, and groundwater protection to:

Conservation commissions: Towns of Mashpee, Falmouth, Barnstable

Massachusetts Towns: Cohasset, Duxbury, Falmouth, Harwich, Kingston,

Environmental organizations: Science Applications, Inc.; Energy Resources, Inc.; The Parks Council, New York; Hackensack Meadowlands Commission, New Jersey; Natural Resources Defence Council;

U.S. Govt. Agencies: President's Council on Environmental Quality; Mineral Management Service; Bureau of Land Management; National Oceanic and Atmospheric Administration; Environmental Protection Agency; National Research Council; Smithsonian Institution;

Universities: Univ. of Texas, Louisiana State, Univ. North Carolina, Stanford;

Other companies: McAbee Real Estate; The Green Company; Boston Gas; De Matteo Construction Co.; Land Use Associates; Peters-Hartell Corp.; Malcolm Pirnie Inc.; LEA Group Inc.; Weston & Sampson Engineers Inc., Ecological Engineering Associates

EXPERT TESTIMONY

I have been an expert witness in wetlands and pollution cases in state and federal courts including:

CLF vs. US-Dept.Interior (Park Service) re ORV permits on Nat. seashores;

Mass. MacGibbon vs. Duxbury, re wetlands protection;

New York vs. US-Dept.Interior re Mid-Atlantic oil leases;

Corps of Engineers vs. Swan Pond Golf Club, NY, re wetland protection;

U.S. vs. (barge company), U.S.District Court, VA, re oil pollution effects;

I have testified as an expert witness at numerous hearings before:

Mass. Dept. Environ. Qual. Engineering;

Rhode Island Coastal Resource Management Council;

Local conservation commissions, zoning boards, boards of public health, etc.

PROFESSIONAL EXPERTISE

I have scientific expertise in most aspects of coastal ecology and coastal pollution: including wetlands ecology, groundwater pollution, eutrophication, wastewater treatment with wetlands, hydrocarbon pollution, nutrient dynamics, ecology of shallow waters, birds, and coastal and dune vegetation.

I have been an invited participant and speaker at meetings on many aspects of marine science and management including:

Research for the '90's, Prince William Sound and Copper River Delta, Cordova, AK, 1990
West Falmouth Oil Spill, 20 years after, 1989;
Effects of OCS oil and gas activities on submarine canyons, 1989;
NAS panel on use of dispersants on oil spills, 1988;
Third International Wetlands Conference, Renne, France 1988;
NATO Ocean Dumping Options Conference, Portugal, 1985;
SCOPE Toronto Conference on Nuclear Winter, 1984;
CEQ Conference on Long-term Environmental Research and Development, 1984;
SCOPE meeting on wetlands, Tallin, E.S.S.R., 1983;
SCOPE Musselwatch II, Honolulu, 1983;
NOAA Ocean Dumping, Napa, 1983; Crystal Mt., 1979, Estes Park, 1978;
Conference on Coastal Productivity, Pollution and Protection, Rio Grande do Sol, Brazil, 1982;
NAC Petroleum in the Marine Environment, 1982, 1975;
International Wetlands Conference, New Dehli, India, 1980;
NATO Benthic Boundary Layer, Les Arc, France, 1975;
Global Ecology Problems: Man in the Living Environment, section on aquatic resources.;
NAS report on National Minerals Policy, section on ecological impacts;
California Coastal Zone Management Conference on Wetlands Protection;
Salt Marsh Conference, Univ. Ga, 1954;
Coastal Zone Workshop, steering committee member, "Critical Problems of the Coastal Zone" 1972;
Hackensack Meadowlands Commission meetings on wetland management;
Coastal Recreation in an Urbanizing Environment, U. Mass. Cooperative Extension;

RESEARCH INTERESTS

Wetland and coastal ecology: especially salt and brackish marsh ecosystem structure and function: fish nursery value, nutrient cycling, hydrology, productivity; groundwater influences on waterbodies, groundwater contamination with nutrients; wastewater treatment by wetlands; petroleum pollution and hydrocarbon biogeochemistry; marine birds and over-ocean migration of land birds; coastal marine ecology including dune and beach ecology; physiological ecology of fishes; aquaculture and fisheries.

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Introduction

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3. Full data sharing, and open discussion of scientific data regarding spill impacts with scientific experts from all relevant disciplines is fundamentally important and critical to assuring that scientific investigators and those analyzing the data get a full picture of the impacts and do not overlook important potential impacts or gaps in the data. Without open data sharing and discussion, subtle potential impacts may not be recognized and new investigations of key ecological perturbations may not be commenced. In addition, ongoing studies may be terminated before ecological injuries are documented due to a lack of a full understanding of the complexities of the ecological response to the catastrophic addition of oil to the ecosystem.

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4. After a massive oil spill such as this, the greatest amount of gross ecosystem impact occurs during the initial period. In this spill, significant direct damage to flora and fauna was immediately caused by the massive introduction of foreign and toxic material into the ecosystem and food web.
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Conclusion

16. Humankind, and in particular scientists working on environmental and ecosystem problems, need to know the effects of the Exxon Valdez oil spill on the environment. The effects cannot be known adequately without making the data available to everyone with the interest and the expertise to evaluate what it means and what it portends for the future.

ACE 417598

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FOR _____

APR 10 1991

DAVIS WRIGHT TREMAINE
BY _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

EXXON VALDEZ OIL	)	3AN-89-2533 Civil
SPILL LITIGATION	)	(Consolidated)
	)	
This Document Relates To:	)	
Case No. 3AN-89-6957 Civil	)	
National Wildlife	)	
Federation, et al. v.	)	
Exxon Corporation, et al.	)	
_____	)	

AFFIDAVIT OF BRUCE TRIPP

I, Bruce Tripp, after being first duly sworn, state as follows:

1. My name is Bruce Tripp. I am a marine chemist and my professional experience includes work in the analysis of hydrocarbons in ocean sediment, water and marine organisms. I am a Research Associate affiliated with the Coastal Resources Center at the Woods Hole Oceanographic Institution. My curriculum vitae is attached as Attachment 1.

2. I have read and endorse Attachment 2, "The Problem of Secrecy: Science Under Wraps In the Wake of the Nation's Largest Oil Spill." This statement represents many of my concerns about the current regime of secrecy imposed by the parties to this lawsuit.

3. I share the concerns of many marine scientists that the current research into the impacts of the Exxon Valdez oil spill may be short-sighted in the sense that critical long-term or broad ecosystem effects are not being properly examined. The secrecy of this work needs to be ended as soon as possible so that these potential shortcomings can be immediately corrected.

4. It is also likely that there are redundancies as well as significant gaps in the program of research currently underway. Open discussion and peer review of this research is critical to eliminating redundancies and filling any gaps. These gaps become more and more critical as each week passes.

5. In my opinion, the subtle, long-term population and ecosystem effects of the Exxon Valdez oil spill may be significantly more important than the initial, acute effects which are visually more dramatic. In order to elucidate these long-term effects, we must study the processes that control ecosystem recovery over the multi-decade time scale. To begin and supplement these studies, early data on the spill must be available.

6. Many competent and interested researchers, including the Coastal Resources Center at Woods Hole, have not been able to fund important research proposals relating to the damage caused by the spill because the parties interested in funding such work have required that any research be kept secret and these researchers have not been willing to accept such terms.

7. As a general policy, scientists at the Woods Hole Oceanographic Institution never undertake research that cannot be reported and reviewed publicly.

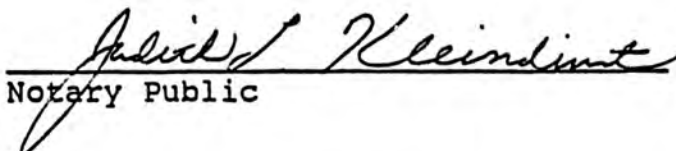
ANYTHING FURTHER THE AFFIANT SAYETH NOT.


Bruce Tripp

STATE OF MASSACHUSETTS)
COUNTY OF Barnstable) ss.

On this 14th day of September, 1990, the Affiant Bruce Tripp personally appeared before me and signed the foregoing Affidavit after first having sworn that the information contained therein is true and correct to the best of his knowledge and belief. Witness my hand and official seal. My commission expires on 26 August 1994.




Notary Public

CURRICULUM VITAE

BRUCE W. TRIPP
Research Associate
Coastal Research Center
Woods Hole Oceanographic Institution
Woods Hole, Massachusetts 02543
(508) 548-1400, Ext: 2900

Home Address: 44 Walker Street
Falmouth, MA 02540
(508) 548-6999

Birth Date: 22 November 1942
Nationality: U.S.A.
(Passport # F1572239)

Place of Birth: Wareham, MA
Social Security No: 033-32-5983

EDUCATION AND EXPERIENCE:

- 1960-1962 New Bedford Institute of Technology. Undergraduate chemistry major.
- 1962-1965 University of Rhode Island (B.S., 1965). Major in agricultural chemistry, emphasizing biochemistry and bacteriology.
- 1964-1966 University of Rhode Island. Research Assistant in agricultural chemistry, pesticide analysis in food crops and animal tissue.
- 1966-1969 Peace Corps Volunteer, Brazil. Rural community development.
- 1969-1971 Woods Hole Oceanographic Institution (WHOI) Research Assistant in Chemistry. Isolation and identification of biologically active compounds.
- 1970-1984 Graduate level, marine-related courses (M.I.T. special student) and Introduction to Substantive Law, Environmental Dispute Resolution.
- 1971-1973 WHOI Coordinator of a national workshop in coastal zone management, including workshop planning and post-workshop editing of report, "The Water's Edge" (MIT Press).
- 1973-1976 WHOI Research Assistant in Chemistry. Analysis of hydrocarbons in coastal and open ocean marine sediments.
- 1976-1982 WHOI Research Associate in Chemistry. Develop and use *in situ* experimentation apparatus to investigate the role of benthic organisms in the distribution and degradation of fossil fuel-derived aromatic hydrocarbons in coastal environments.
- 1979-1985 Oceanic Literature Review/Deep Sea Research. Part-time abstractor of journal articles in the fields of organic geochemistry, environmental pollution, marine policy, coastal zone management.

EDUCATION AND EXPERIENCE: (continued)

1982-1985 WHOI Research Associate in Chemistry. Research in aromatic and chlorinated hydrocarbon biogeochemistry. Increase science-policy activities (e.g., interact with Commonwealth of Massachusetts agencies on New Bedford Harbor contamination, assist with administration of W.H.O.I. Coastal Research Center, contribute to organization of an international workshop on chemical contamination of the coastal zone).

1985-1988 Leave of Absence to Massachusetts Executive Office of Environmental Affairs. Coordinator of EPA-funded National Estuary Program in Buzzards Bay, involving state agency, private contractor and academic research-monitoring and resource management efforts. Advise Secretary of EOEA on creation of a state-wide coastal monitoring program, resolution of coastal problems.

1988-present WHOI Research Associate, Coastal Research Center. CRC coordinator, assist Director and Advisory Committee with administrative and organizational tasks, including project coordination, long-range planning, budget preparation, liaison with state and federal agencies, staff supervision. With separate funding, critically review existing analytical chemistry methods for toxics in marine animals and recommend method changes (J. McDowell Capuzzo, NOAA/NMFS).

TECHNICAL SKILLS:

- i) Knowledge of gas chromatography including high resolution glass capillary; responsibility for instrument maintenance and trouble-shooting; quantification of trace components in complex mixtures. Familiarity with other analytical techniques, including chromatographic (ion exchange, TLC, HPLC) and UV-fluorescence. Attended several short instrumentation courses (e.g., mass spectroscopy, UV-fluorescence, HPLC).
- ii) Experience with large project administration, including annual workplan development, RFP decision making, contract administration and oversight, final report critique. Experience with workshop organization and management, including report editing/publication.
- iii) Extensive sea experience, including use and maintenance of various water and sediment samplers as well as other oceanographic techniques.
- iv) Basic fluency in Portuguese.
- v) Supervisory experience, research and administrative assistants.

PUBLICATIONS:

Co-authorship of several publications on hydrocarbons in the marine environment, list appended separately.

PROFESSIONAL ACTIVITIES:

SCIENTIFIC ACTIVITIES:

Citizens Advisory Committee to the Southeastern New England Study (New England River Basins Commission, 1972-1974).

Workshop in Inputs, Fate and Effects of Petroleum in the Marine Environment (National Academy of Sciences, 1973).

Hydrocarbon Seminar (Bureau of Land Management Outer Continental Shelf Environmental Studies Program, 1975).

*Marine Chemistry in the Coastal Environment American Chemical Society Special Symposium No. 18. (Philadelphia, PA, 1975).

Interagency Task Force on PCB contamination in the Acushnet River Estuary (Massachusetts DEQE, 1981-1983).

*Workshop on the Chemistry and Analysis of Hydrocarbons in the Environment (Barcelona, Spain, 1981).

*International Symposium on Utilization of Coastal Ecosystems — Planning, Pollution and Productivity (Rio Grande, R.S., Brazil, 1982).

Mussel Watch II: Chemical Changes in the Coastal Zone (Honolulu, Hawaii, 1983).

*Coastal Society, 9th Annual Conference, "Gambling with the Shore" (Atlantic City, NJ, 1984).

Toxic Chemicals and Aquatic Life: Research and Management (Seattle, WA, 1986).

Gulf of Maine Conference: sustaining our common heritage (Portland, ME, 1989).

*Estuarine Research Federation, 10th Biennial Conf. (Baltimore, MD, 1989).

Boston Harbor and Massachusetts Bay, Annual Symposium, 1985, *1986, 1987, 1988, 1989, 1990 (Boston, MA).

*West Falmouth Oil Spill: a retrospective. (Woods Hole, MA, 1989).

*Various seminars; presented to undergraduate and graduate classes, to colleagues and to general audiences on results of research and on science-policy interactions. Assist with local organization, on-air radio interview National Public Radio series, "Wetlands in Jeopardy", 1988; Participate in public television NOVA program, "Oil Spills", 1989.

Member, scientific advisory committees: Mass. EOE/U.S. EPA Buzzards Bay Project; Mass. DEM/NOAA Waquoit Bay National Estuarine Research Reserve.

Member, Sigma Xi

*Presentations given

PROFESSIONAL ACTIVITIES: (continued)

COMMUNITY ACTIVITIES:

Falmouth Committee on Land Acquisition for Open Space Preservation and Conservation, 1974-1976.

Falmouth Town Meeting, 1979-Present (elected to sequential 3-year terms).

Troop Committee — Boy Scout Troop 38, 1979-Present.

Judge, Falmouth High School Science Fair, 1980-1989.

Falmouth Conservation Commission, 1983-1987. Chairman, 1985-1987, Associate Member, 1987-Present.

Member, Citizens Advisory Committee, South Cape Beach Management, 1984-1985.

Co-founder (1985) and Member, Citizens Advisory Board, Falmouth 300 Committee (land trust), 1985-Present.

Member, advisory committees: Buzzards Bay Advisory Committee (Buzzards Bay Project), Cape Cod Model Town Project, Cape Cod Mapping Committee.

WHOI COMMITTEES:

Safety Council, 1979-1984

Staff Committee, 1981-82

Endeavour House Committee, 1982-1985

Technical Staff representative to Visiting Committee, 1982.

Buildings and Grounds Committee, 1989-91.

CONSULTING:

Holden Associates, with I. Valiela, 1974. Impact of construction on salt marsh and estuary (hydrocarbon analyses).

Town of Falmouth, with S. Wakeham, 1980. Assessment of tetrachloroethylene in public water distribution network (water analyses).

Town of Falmouth, 1980-1982. Analyses of Ashumet Pond water samples for water quality assessment (hydrocarbons).

Jardine Glanville Ltd., with J. Farrington, 1983. Assessment of Cabinda Gulf Oil Co./SONAGOL blowout of well 45-2x, Angola (data assessment).

U.S. EPA, with John Farrington, 1985-1987. Advice in support of court suit filed as a part of New Bedford Harbor Superfund (data review).

Town of Falmouth, with Chris Clark, 1988. Promulgation of wetlands protection regulations under authority of local bylaw (regulation writing).

SCIENTIFIC PUBLICATIONS:

- Boylan, D.B. and Tripp, B.W., 1971. Determination of hydrocarbons in seawater extracts of crude oil and crude oil fractions. *Nature*, 230:44-47.
- Ketchum, B.H. and Tripp, B.W., 1972. Chapter 1. In: *The Water's Edge: Critical Problems of the Coastal Zone*, Ketchum, B.H. (ed.), MIT Press.
- Farrington, J.W. and Tripp, B.W., 1975. A comparison of analysis methods for hydrocarbons in surface sediments. In: *Marine Chemistry in the Coastal Environment*, Church, T.M. (ed.), ACS Symposium Series No. 18.
- Farrington, J.W., Frew, N.M., Gschwend, P.M. and Tripp, B.W., 1977. Hydrocarbons in cores of northwestern Atlantic coastal and continental margin sediments. *Estuarine and Coastal Marine Science*, 5:793-808.
- Farrington, J.W. and Tripp, B.W., 1977. Hydrocarbons in western North Atlantic surface sediments. *Geochimica et Cosmochimica Acta*, 41:1627-1641.
- Farrington, J.W., Teal, J.M. and Tripp, B.W. Experimental studies of hydrocarbons in benthic animals and sediments. In: *Marine Pollution Transfer Processes*, LAPSO Symposium PS-9, Dec. 1979, Canberra, Australia, Waldichuck, M. (ed.), submitted, 1979.
- Wakeham, S.G., Farrington, J.W., Gagosian, R.B., Lee, C., DeBaar, H., Nigrelli, G.E., Tripp, B.W., Smith, S.O. and Frew, N.M., 1980. Organic matter fluxes from sediment traps in the equatorial Atlantic Ocean. *Nature*, 286:798-800.
- Wakeham, S.G., Davis, A.C., Witt, R.T., Tripp, B.W. and Frew, N.M., 1980. Tetrachloroethylene contamination of drinking water by vinyl-coated asbestos-cement pipe. *Bull. Environ. Contam. Toxicol.*, 25:639-645.
- Tripp, B.W., Farrington, J.W. and Teal, J.M., 1981. Unburned coal as a source of hydrocarbons in surface sediments. *Marine Pollution Bulletin*, 12:126-130.
- Farrington, J.W., Tripp, B.W., Teal, J.M., Mille, G., Tjessem, K., Davis, A.C., Livramento, J.B., Hayward, N.A. and Frew, N.M., 1982. Biogeochemistry of aromatic hydrocarbons in the benthos of microcosm experiments. *Toxicol. and Environ. Chem.*, 5:331-346.
- Peterson, S. and Tripp, B.W., 1984. Conference Report; Mussel Watch II: Chemical Changes in the Coastal Zone. *Marine Policy*, July.
- Farrington, J.W., Tripp, B.W., Davis, A.C. and Sulanowski, J., 1985. One view of the role of scientific information in the solution of enviro-economic problems. In: *Proceedings of the International Symposium on the Utilization of Coastal Ecosystems: Planning, Pollution and Productivity*. 21-27 November 1982, Rio Grande, RS, Brazil, p. 73-102.
- Tripp, B.W. and Farrington, J.W., 1985. Monitoring chemical changes in the coastal zone. In: *Gambling with the Shore*, Proceedings of the Coastal Society, 9th Annual Conference, Atlantic City, NJ, October 1984, p. 195-202.

SCIENTIFIC PUBLICATIONS: (continued)

- Farrington, J.W., Wakeham, S.G., Livramento, J.B., Tripp, B.W. and Teal, J.M., 1986. Aromatic hydrocarbons in New York Bight polychaetes: UV-fluorescence analyses and GC/MS analyses. *Environmental Science and Technology*, 20:69-72.
- Farrington, J.W., Davis, A.C., Brownawell, B.J., Tripp, B.W., Clifford, C.H. and Livramento, J.B., 1986. Some aspects of the biogeochemistry of polychlorinated biphenyls in the Acushnet River estuary. Symposium on Organic Marine Geochemistry. Symposium Series No. 305, ACS Annual Meeting, Miami, FL, April 1986, Sohn, M. (ed.), p. 174-197.
- Farrington, J.W., Davis, A.C., Tripp, B.W., Phelps, D.K. and Galloway, W.B., 1986. "Mussel Watch": measurements of chemical pollutants in bivalves as one indicator of coastal environmental quality. In: *New Approaches to Monitoring Aquatic Ecosystems*, ASTM STP 940, Boyle, T.P. (ed.).
- McElroy, A.E., Tripp, B.W., Farrington, J.W. and Teal, J.M., 1987. Biogeochemistry of Benz(a)anthracene at the sediment-water interface. *Chemosphere*, 16:2429-2440.
- Tripp, B.W. and McDowell Capuzzo, J. (in prep.). Monitoring and Management in Buzzards Bay: the technical basis for resource protection. For submission to: *Estuaries, Environ. Mgt.*
- Teal, J.M., Farrington, J.W., Tripp, B.W., Stegeman, J.J., Burns, K., and Phinney, C. (in prep.). Long-term fate of spilled oil in a New England coastal ecosystem. In: *Oil Spills: Management and Legislative Implications*, (Newport, RI).

TECHNICAL REPORTS:

- Farrington, J.W., Sulanowski, J., Davis, A.C., Staresinic, N., Tripp, B.W., Levin, H. and Stathopoulos, L., 1983. PCB biogeochemistry in the Acushnet River estuary (abs.). 4th International Dumping Symposium, Plymouth, England.
- Tripp, B. W., 1984. Coastal Research Center: Report of the Period January 1982-April 1984. Woods Hole Oceanographic Institution, Technical Report, WHOI-84-22/CRC-84-4, Woods Hole, MA.
- Tripp, B.W., 1985. Buzzards Bay Bibliography: a reference collection of scientific and technical reports published on Buzzards Bay. Woods Hole Oceanographic Institution, Technical Report, WHOI-85-27/CRC-85-1, Woods Hole, MA.
- Farrington, J.W., Tripp, B.W. and Davis, A.C., 1986. Body burdens of contaminants. In: *Contaminant Levels and Relative Sensitivities to Contamination in Deep-Ocean Communities*, Grassle et al.. NOAA Tech. Memo, NOS-OMA-26, Rockville, MD.
- Farrington, J.W., Jia, X., Clifford, C.H., Tripp, B.W., Livramento, J.B., Davis, A.C., Frew, N.M. and Johnson, C.G., 1986. No. 2 fuel oil compound retention and release by *Mytilus edulis*: 1983 Cape Cod Canal oil spill. Woods Hole Oceanographic Institution, Technical Report, WHOI-86-8/CRC-86-1, Woods Hole, MA.
- Tripp, B.W., 1989. WHOI Coastal Research Center: Report of the Period March 1986-July 1988. Woods Hole Oceanographic Institution/Coastal Research Center Technical Report, WHOI-89-7/CRC-89-1, Woods Hole, MA.
- Tripp, B. W. and Polloni, C. (in prep.). Buzzards Bay Bibliography (revised).

**The Problem of Secrecy: Science Under Wraps
In the Wake of the Nation's Largest Oil Spill**

Introduction

1. As scientists who have worked in the field of oceanography and have studied in particular the effects of hydrocarbon spills on marine and coastal ecosystems, we are gravely concerned about the secrecy and confidentiality that has surrounded the scientific study of the impact of the Exxon Valdez oil spill on the ecosystem of Prince William Sound.
2. Scientific analysis of the short and long-term impacts of an environmental disaster in a marine, near-shore and coastal environment such as Prince William Sound is exceedingly difficult, involving multiple ecological systems and complex interrelated ecosystem effects. As such, it necessarily requires both short and long-term multi-disciplinary study.
3. Full data sharing, and open discussion of scientific data regarding spill impacts with scientific experts from all relevant disciplines is fundamentally important and critical to assuring that scientific investigators and those analyzing the data get a full picture of the impacts and do not overlook important potential impacts or gaps in the data. Without open data sharing and discussion, subtle potential impacts may not be recognized and new investigations of key ecological perturbations may not be commenced. In addition, ongoing studies may be terminated before ecological injuries are documented due to a lack of a full understanding of the complexities of the ecological response to the catastrophic addition of oil to the ecosystem.

Need for Initial Data

4. After a massive oil spill such as this, the greatest amount of gross ecosystem impact occurs during the initial period. In this spill, significant direct damage to flora and fauna was immediately caused by the massive introduction of foreign and toxic material into the ecosystem and food web.
5. Because of this, all data collected which records the initial damage to flora and fauna and the movement and evolution of the hydrocarbons into the ecosystem is crucially important to both short and long-term evaluation and analysis. The data collected during the acute phase of massive injury to flora and fauna is the starting point for all other analysis.

6. Without complete and detailed information about this initial acute phase, it is difficult to predict or analyze the future impact the spill may have.

Importance of Peer Review

7. If these data are not made public immediately, the ultimate assessment of damage will be hindered and the amount of damage inadequately assessed.
8. Science works well and most effectively when it is conducted in open dialogue, among scientists within a given discipline and among scientists of multiple disciplines. This is particularly so where questions require complicated ecosystem analysis and evaluation, such as is required by a massive spill like the Exxon Valdez oil spill.
9. The conclusions of science are deemed credible only when there is independent and open review through a peer review process. Scientific literature based upon data and research not subjected to peer review is suspect. A study or one person's analysis of data will not be widely accepted in science until the study and analysis have been exposed to criticism and the concerns raised by the critics have been addressed. The entire system of scientific research depends upon the checks and balances provided by discussion and criticism of important ongoing work.
10. Without early feedback, open discussion, and integration of results and ideas from different disciplines, individual scientists or scientists working in one or two disciplines may well miss key parts of the entire picture. Scientists studying some portion of an ecosystem have misunderstood entirely the significance of the data they were collecting until practitioners of another discipline had been brought in to consult.
11. When scientists are talking to each other about their research they can integrate the information, note the type of sampling that is being done and be able to work with comparable data. A shotgun, unintegrated approach which is detached from the findings of others studying a similar subject will ultimately lead to greater cost and less reliability. Unless complete information about all studies is shared and integrated, there may be a tendency for "mindless measurement" while the larger picture is missed. Studies may be redundant or there may be gaps. It would clearly be more cost effective to share from the outset.

Peer Review of Initial Data is Critical

12. It is important to have open and frank discussion among scientists about the data gathered from the earliest impacts of the spill. Given the fact that the initial stages of

this type of disaster involved the greatest and most rapid change, it is clearly detrimental to the scientific investigation of the spill to wait until all the data are gathered before engaging in open dialogue and multiple disciplinary review. The situation is changing quickly in space and time while these studies are ongoing. Open dialogue and communication should be concurrent with the studies, not subsequent to them.

13. Science is enriched by constant feedback and refinement. Scientists never know what they may find when they first start looking. The first protocols used may be inadequate. The methodology or the detection limits may not be appropriate. It may well be that the questions need reframing, or methodologies need to be changed, based upon the initial results.

These Critical Data Should Be Public

14. Due to the passage of time since the spill, the important initial data regarding the Alaska spill are not available now except from those who actually collected data at the critical times. Thus, the data cannot be reproduced or gathered from any source other than those who actually collected it and who have the knowledge that has come from the data. We cannot state strongly enough that these data should be available for scientific and public review.
15. In addition, it is essential to know the following: What questions were the scientists asking when they did the studies? What procedures were they using to answer those questions? How did those procedures change or how did the questions change during the time that the initial data was coming in? Was there any feedback or modification in the study done during the course of the study?

Conclusion

16. Humankind, and in particular scientists working on environmental and ecosystem problems, need to know the effects of the Exxon Valdez oil spill on the environment. The effects cannot be known adequately without making the data available to everyone with the interest and the expertise to evaluate what it means and what it portends for the future.

ACE 417612

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U.S. House of Representatives
Committee on
Interior and Insular Affairs
Washington, DC 20515-6230

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 WAYNE ALLARD COLORADO

DANIEL P. BEARD
 STAFF DIRECTOR
 RICHARD MELTZER
 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

RECEIVED
 FOR _____

APR 1 - 1991

DAVIS WRIGHT TREMAINE
 BY _____

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

ACE 417613

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

Honorable H. Russel Holland
Honorable Stanley Sporkin
April 8, 1991
Page 2

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").

Honorable H. Russel Holland
Honorable Stanley Sporkin
April 8, 1991
Page 3

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.

⁴Stipulation 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:

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 through 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

⁷Letter 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.

⁹Oil 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

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

¹²Letter 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 I 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."

¹³Howitt'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]

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Honorable Stanley Sporkin
April 8, 1991
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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."

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

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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

¹⁵The 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.

¹⁸A 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

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.

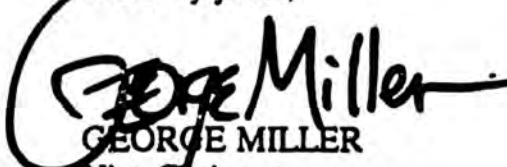
²⁰ Under Alaska law, punitive damages are awarded for the public policy reasons of punishment and deterrent when the defendant's conduct was outrageous, reckless, or malicious. In this instance, there is clear and convincing evidence that Alyeska's conduct merits the award of punitive damages.

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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
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 Murkowski
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

Alyeska pipeline

SERVICE COMPANY

ALASKA MARINE TERMINAL PO BOX 222 VALDEZ ALASKA 99686 TELEPHONE 467-4242 TOLL FREE 800-451-2222

April 18, 1988

ATTN: CAPT.
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John Weichert
Clean Sound Co-op.
Seattle, Washington

Theo L. Polasek
Alyeska Pipeline Service Company
1835 South Bragaw
Anchorage, Alaska 99512

Gentlemen:

A meeting of the Marine Services Sub-Committee will be held May 18, 1988, in Bellingham, Washington.

Present agenda items are:

ACE 417625

- Oil Spill Response Equipment (including a demonstration of large skimmer vessel by John Weichert of Clean Sound Co-op.)
- Port Information Manual status.
- Berth Equipment and Repair and Upgrade Schedule.

An information package will be mailed to confirmed attendees for review prior to the meeting.

The meeting will be held at Nendel's Hotel in Bellingham, the Compass Room, commencing at 8:00 am. The skimmer demonstration will commence at 1:00 pm, departing from the small boat harbor.

Roger Gale has informed me that there will be a joint meeting of the Operations Sub-Committee and the Marine Services Sub-Committee on the previous day, May 17th, at the same location. The agenda for this meeting will be advised separately.

Rooms have been blocked for May 17th at Nendel's Hotel, (206)671-1011, and must be confirmed by individual attendees. Arrangements have been made for a continental breakfast and luncheon buffet to be served in the meeting room on May 18th.

For travel planning; Bellingham is approximately 2 hours North of Sea-Tac airport by car or is served by commuter airlines, PSA, Horizon Air, and San Juan Air.

Please reply to C. F. (Chuck) O'Donnell (907)835-6526, indicating attendance or additional agenda items.

Regards,



W. D. Howitt
Valdez Marine Terminal Superintendent

Alyeska pipeline

SERVICE COMPANY

April 28, 1988

ALYESKA PIPELINE SERVICE COMPANY, P.O. BOX 280, VALDEZ, ALASKA 99686 TELEPHONE (907) 426-0222

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Subject: Meeting Agenda and Information Package

Gentlemen:

As referenced in my April 18, 1988 meeting notification, an information package is enclosed concerning the agenda items for the upcoming Marine Service Subcommittee Meeting in Bellingham, Washington on May 18, 1988.

ACE 417627

Port 13-1788
Page 1 of 1

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 Alyeska's capability to respond to oil spills at midpoint of Prince William Sound. The specific concern stated was the use of the Terminal tugs for the response effort, thereby directly affecting the Terminal's ability to continue vessel loading operations. Alyeska and ARCO personnel visited the Clean Sound Oil Spill Cooperative because of the similarities/comparability of Puget Sound and Prince William Sound operating environments. The briefing summarizes the group's findings.

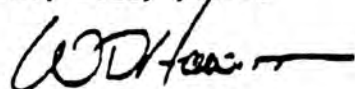
You will note that the briefing makes no recommendations with regard to additional equipment purchases. Mr. Jeff Shaw, ARCO, is prepared to discuss his specific recommendations during the meeting.

The Marine Services Subcommittee has been requested to review the alternatives, and recommend a course of action to the Operations Subcommittee.

The second agenda item covers the present status of the revised Port Information Manual. Enclosed you will find the financial responsibility statements that were presented to the Owners Committee and the Legal Subcommittee for incorporation into the revised manual. A final version of the statement that will be used in the manual will be issued before our meeting, and a distribution schedule of the new manual will be discussed at that time.

The third agenda item covers the Berths and Ballast Water Treatment Plant repair and upgrade schedule for this coming summer. Enclosed you will find a definition of scope and a implementation schedule for each of these projects.

Very truly yours,



W. D. Howitt
Superintendent
Valdez Marine Terminal

CFOD/WDH/pkk

cc: C. F. O'Donnell
L. D. Shier
T. L. Polasek

enclosures

OIL SPILL ISSUES

T. L. Polasek
April 6-7, 1988

OIL SPILL ISSUES

Status of Action Items from January Owners Meeting

ACE 417630

- **Pursue Advance Approval for Dispersant Use**
 - **Regional Response Team (RRT) has issued first Draft of "Prince William Sound Guidelines" for review.**
 - **Most of Port Valdez and all of Tanker Lanes included in "Zone 1" where dispersant is approved for use, with consent of senior Federal official, USCG Captain of Port.**
 - **Follow up meetings scheduled.**

- **Expedite "ADDS Pack" AFE**
 - **AFE sent to Owners on March 4, 1988.**
 - **Approvals received from ARCO, Exxon, and Mobil.**
 - **Procurement package being prepared.**

OIL SPILL ISSUES

- **Conduct Survey of Commercial Ships Available for Oil Spill.**
 - **Preliminary Survey completed.**
 - **Several Hundred fishing vessels, fleet tenders, and supply boats available in Valdez and Cordova (45 ft. to 120 ft. lengths)**
 - **Several "Rig Tender" oil platform supply and service boats available in Kenai/Homer area (18 to 25 hours travel).**
 - **Four tour boats in Valdez (85' to 100') available for personnel support.**
 - **Availability of all dependent on season.**
 - **Private operators.**
 - **Will pursue negotiating rates for "on season" and "off season".**

OIL SPILL ISSUES

ACE 417632

- **Desk Top ARCO/Alyeska Drill**
 - **Drill scheduled for May 3 and 4, 1988.**
 - **Located at Valdez Civic Center and other contingency sites in area.**
 - **Federal/State agencies will participate.**
- **Expeditious Clean-up Cost Reimbursement Procedures.**
 - **Proposed language and section revisions to the Port Information Manual sent to Legal Subcommittee.**
- **USCG Spill Take Over if Responsible Party Unwilling.**
 - **Informal discussions held with Valdez Coast Guard.**
 - **Coast Guard has no problem with concept**
 - **Would continue to use Alyeska as prime "Contractor".**
 - **Discussions with Alaska DEC will be necessary and revision to approved contingency Plan may be required.**
- **Discuss Oil Spill Response Equipment List with ARCO.**
 - **Discussions held.**
 - **Joint tour of "Clean Sound" facilities and equipment during March**
 - **Report follows in this presentation.**

**ARCO/Alyeska
Response Equipment Discussions**

ACE 417633

**T. L. Polasek
April 6-7, 1988**

Response Equipment Discussions

- **Alyeska Response Capability to Spills at midpoint of Prince William Sound.**
 - **Amount/Type of containment of boom.**
 - **Oil skimming vessels.**
 - **Fast response boats.**
- **Equipment and Operating Plan Developed by "Clean Sound" Cooperative for Puget Sound.**
- **Similarities/Comparability of Puget Sound and Prince William Sound Operating Environments.**
 - **Weather**
 - **Sea states and currents**
 - **Environmental sensitivity**
 - **Distances and access**
 - **Spill volume history/exposure**

Response Equipment Discussions

Clean Sound

- **Non-profit, unincorporated organization of Oil and Oil Transportation Companies.**
- **All expenditures by Co-op funded wholly by the member companies.**

ARCO	Union	SPC Shipping
Mobil	US Oil & Refining	Olympic Pipeline
Shell	Foss Maritime	Trans-Mountain Pipeline
Texaco	Chevron	Four others
- **Clean Sound owns equipment and employs small staff.**
- **Contractors utilized for equipment maintenance and operation.**
- **Agreements with contractors assure supply of qualified operators and maintenance personnel**
- **Equipment staged at commercial facilities in five locations:
Bellingham, Anacortes, Seattle, Port Angeles, and Tacoma.**

Response Equipment Discussions

Clean Sound

- Major Equipment and Materials

- 6 each fast response boats (27' to 34'): Each equipped with 1000 foot "Zoom" Boom, sorbent materials, and radar. May be equipped with small, portable hydraulic skimmers.**
- 1 each 42' fast response boat: Equipped with "Destoil" skimming system and 600 gallons recovered oil storage. Has bow door and is capable of beach landing.**
- 3 each 30' work boats: Medium speed response with 1000 foot "Zoom" boom and portable disk skimming units.**
- 1 each tank barge: 12,000 BBL capacity with 60' reach deck crane, 2 diesel powered pumps and tankerman's office/shelter.**
- 10 each highway trailers/vans (32' to 40'): Stocked with booms, sorbents, tools, skimmers, bird scare cannons.**
- 1 each Mobile Command Post: 34' Traller with charts, maps, contingency plans and communications equipment.**

Clean Sound

Major Equipment (continued)

- 3 each "Belt Type" skimmer vessels (34' to 40'): Self-powered, twin hull units rated at 300 to 350 gpm recovery rates.
- 1 each 60' skimmer vessel: Catamaran hull with two each 3 foot belt recovery units rated at 600 gpm total. Designed for all weather operations in all areas of Puget Sound.
- 1 each 75' skimmer vessel: Seagoing vessel designed for sustained operations with minimum crew. Has debris recovery and handling devices. Recovery is 500 gpm with 12,000 gallons on board storage.
- 6000 feet of Kepner "Sea Curtain".
- 30,000 feet of Bennett "Zoom Boom" compactable boom.

Clean Sound

- Spill Cleanup Methodology

- Immediate, fast response to spill, at any location, with boom to contain, exclude, and/or divert oil.**
- After boom deployment, immediately begin light skimming operations with small units carried on response boats.**
- Follow up with large, self-propelled, high efficiency skimmers as required.**
- If necessary, deploy land-based support equipment to spill site for continued work.**
- Use contracted helicopters for spill recon and direction of vessel operations.**

Present Alyeska Prince William Sound Capability

- **All equipment and material staged at Valdez Terminal.**
- **Alyeska employees are prime operators with back-up manpower from Northland Maintenance.**
- **Alyeska equipment maintenance contractor performs maintenance.**
- **Expenditures funded by Owner Companies.**
- **Mission: To immediately respond and perform initial cleanup of oil spills from vessels in the TAPS trade in Prince William Sound.**

Exposure magnitude: Approximately 940 tankers per year, from 30,000 to 265,000 DWT, transiting and loading in a non-congested area with high environmental concern.

Present Alyeska Prince William Sound Capability

- No new skimming vessels purchased since 1977.
- Work boat upgrade/replacement program in progress.
- Response Complement:
 - Fast response boats with sorbent boom and light duty skimmers.
 - Medium capacity self-propelled skimmer vessels.
 - Deck barge with sea skimmer and boom.
 - 10,000 BBL tank barge (late 1988)
 - Airborne dispersant delivery (late 1988)
 - Contracted tug boats.
 - Mobile contingency command center with communications repeaters (mid-1988).

Response Equipment Discussions

Alyeska

- **Present Major Equipment and Materials.**
 - **5 each fast response boats (21' to 26'):** Equipped with sorbent booms. May be equipped with portable hydraulic skimmers.
 - **2 each 26' work boats:** For support and supply delivery.
 - **2 each "Belt Type" skimmer vessels (36' and 45'):** Self-powered, twin hull units, rated at 300 GPM recovery.
 - **5 each Vikoma Sea Pack units:** 8000 total feet inflatable boom. Units must be towed to site by tugs.
 - **1 each deck barge:** 16,000 foot harbor boom packed in containers and Vikoma 240 EBL/hr sea skimmer. Must be towed to site by tugs.
 - **3 each 19' work platforms:** Powered by small outboards for calm water use.

Response Equipment Discussions

Alyeska

- **Prince William Sound Cleanup Methodology**
 - **Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement.**
 - **Dispatch available aircraft for recon and spill cleanup direction.**
 - **Dispatch equipment sets pulled by Crowley tugs and line boats.**
 - **Obtain additional USCG and commercial resources to continue cleanup and relieve Crowley tugs.**
 - **Turn over spill to responsible party or USCG after initial activities complete.**

ALYESKA EQUIPMENT PROJECT
(for oil spill cleanup)

RECOMMENDED PURCHASES

1. LARGE OCEAN GOING SKIMMER, SIMILAR TO THE CLEAN SOUND VESSEL THE NORTH SOUNDER. THIS VESSEL SHOULD BE LARGE ENOUGH TO KEEP THE CREW OUT OF THE WEATHER. THE VESSEL SHOULD HAVE RADAR, BUNKS, GALLEY AND A HEAD, CAPABLE OF A FEW DAYS OF OPERATION WITHOUT RETURNING TO PORT.

THE NORTH SOUNDER IS A BELT TYPE SKIMMER WHICH EVIDENTLY WORKS WELL. I SUGGEST THE SYSTEM THAT McLORI MAKES BE INVESTIGATED.

2. 10000 BARREL BARGE IS NEEDED TO HANDLE OIL THAT IS PICKED UP DURING A SPILL. A SPILL > 5000 bbls, ADDITIONAL BARGES WOULD BE REQUIRED. THE ADDITIONAL BARGES COULD COME FROM SEATTLE, AND BE ON SCENE IN 96 HOURS.

THE DESIRED BARGE SHOULD HAVE CLEAR WORKING SPACE SIMILAR TO CLEAN SOUNDS. CLEAN ONE. ROOM FOR A HELICOPTER PAD WOULD BE USEFUL. SOME "BUNK HOUSE" SHELTERS WOULD BE HANDY FOR EXTENDED CLEANUPS TO HOUSE THE CREWS.

3. ADDS PACK NEEDED. I UNDERSTAND THAT ALYESKA HAS ALREADY STARTED THIS PURCHASE.
4. FAST SPILL RESPONSE VESSELS ARE NEEDED, SUCH AS SEEN AT THE MUNSON BOAT YARD. ALSO, IT IS IMPORTANT TO HAVE A SHELTERED CABIN AND RADAR.
5. DESTROIL SKIMMER WITH POWER PACK, TO BE ABLE TO QUICKLY GET A SKIMMER ON SCENE OR SET UP IN AREAS WHERE THE VESSEL SKIMMERS CANNOT APPROACH. THIS HAS THE CAPABILITY TO USE FROM THE FAST SPILL RESPONSE VESSELS.
6. ADDITIONAL 5000 FEET OF SEA QUALITY BOOM.

JEFF SHAW 3/22/88

JBF DIP MODEL 5001A

DYNAMIC INCLINED PLANE
OIL RECOVERY VESSEL

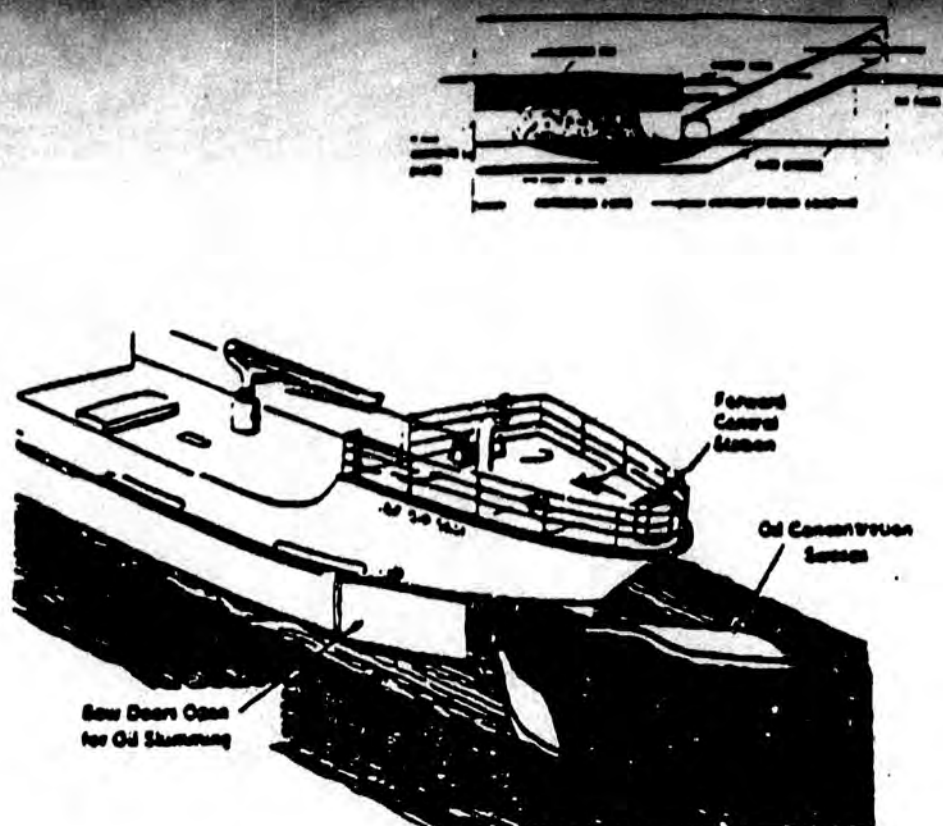


Figure 1-1. JBF DIP Concept and Oil Concentration Sweeps

1-1 PURPOSE OF SYSTEM/DIP CONCEPT

The JBF Model 5001A recovery system is designed to pick up spilled oil and debris from the water's surface. A conveyor forward of the oil recovery system first removes floating debris while water and oil flow through the open-mesh conveyor belt. The oil collection system then collects the oil, separates it from the water, and collected oil can then be pumped into on-board storage tanks from which it can subsequently be pumped to barges or to deckside receiving tanks. The cargo pump and valving system are also designed to allow collected oil to be pumped directly from the collection well to a barge or tank alongside. The vessel is self-propelled and is equipped with a complete and independent power system to drive all collection and pumping systems.

The DIP Model 5001A system is based on the concept (Figure 1-1) of collecting oil under the surface of the water, thus reducing the effect of waves. As the system moves through the water, the oil is forced to follow the surface of a moving inclined plane to a collection well underneath the hull. Buoyant forces cause the oil to surface in the well, forcing water out the bottom. When a sufficiently thick oil layer has collected, it is pumped into storage tanks. Separation occurs automatically and no water is collected.

The vessel can be used in both protected waters and in the more open waters. It can be used in a wide variety of operating modes that require stationary or self-propelled oil-skimming capability. The wide aperture formed by the sweep system makes it extremely effective against oil slicks in open waters. The skimmer can also be used successfully as a fish in boom harvesting system or as a means of picking up oil contained within a boomed-off area.

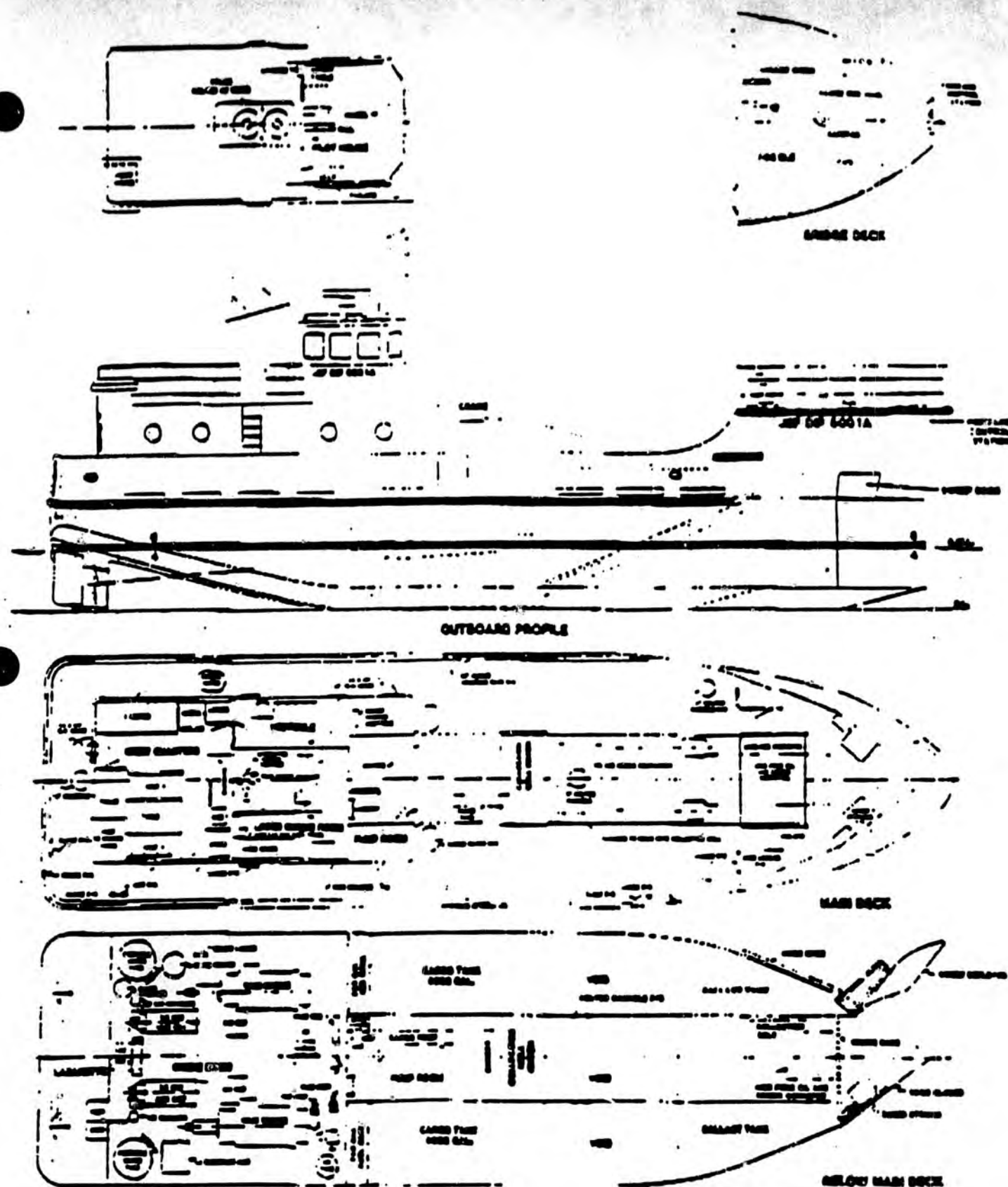


Figure 1-2. DIP 5001A Profile and Arrangements

MR. THEO POLASEK
ALYESKA
ANCHORAGE. ALASKA

RE: ALYESKA OIL SPILL EQUIPMENT

AS YOU KNOW THE MARINE SUBCOMMITTEE WAS ASKED TO PROVIDE THE OWNERS COMMITTEE WITH ITS THOUGHTS AND RECOMMENDATIONS REGARDING THE UPGRADING OF ALYESHA'S OIL SPILL RESPONSE EQUIPMENT FOR USE BOTH AT THE TERMINAL AND IN PRINCE WILLIAM SOUND.

A REVIEW OF THE HISTORY OF OIL SPILLS AT THE VALDEZ TERMINAL LEADS THE COMMITTEE TO THE CONCLUSION THAT THE CURRENT STOCKPILE OF CLEAN UP EQUIPMENT IS ADEQUATE. FROM THAT CONCLUSION, THE MARINE SUBCOMMITTEE'S FIRST RECOMMENDATION SHOULD BE THAT THE CURRENT STOCKPILE OF EQUIPMENT MUST BE MAINTAINED TO THE HIGHEST STATE OF READINESS, AND SHOULD BE REPLACED WITH SIMILAR EQUIPMENT AS AND WHEN APPROPRIATE. PRIOR TO ANY ACTUAL EQUIPMENT RENEWALS, A CAREFUL REVIEW OF ALL TECHNOLOGICAL IMPROVEMENTS SHOULD BE UNDERTAKEN. APPROPRIATE REPLACEMENT EQUIPMENT SHOULD THEN MEET BEST AVAILABLE TECHNOLOGY STANDARDS.

WHEN CONSIDERING ADDITIONAL EQUIPMENT FOR THE PURPOSES OF IMPROVING SPILL RESPONSE AND RECOVERY IN PRINCE WILLIAM SOUND. THE TOTAL LACK OF PRIOR SPILL EXPERIENCE IN THE SOUND IS BOTH A CURSE AND A BLESSING. WHAT SORT OF CASUALTY AND SIZE OF SPILL SHOULD BE PLANNED FOR? ANY SPILL IN PRINCE WILLIAM SOUND IS MOST LIKELY TO RESULT FROM EITHER A COLLISION OR A STRANDING. THE RELATIVELY LOW LEVEL OF TRAFFIC, THE TRAFFIC SEPARATION SCHEME AND THE U.S. COAST GUARDS VESSEL TRAFFIC SERVICE ALL CONTRIBUTE TOWARD LOWERING THE POSSIBILITY OF A COLLISION. A STRANDING AS A RESULT OF THE TOTAL LOSS OF POWER OR STEERING, IS IN THE COMMITTEE'S VIEW MUCH THE MORE LIKELY EVENT TO TRIGGER A SPILL.

WHILE THE ISSUE OF WHETHER A SPILL IS MORE LIKELY TO OCCUR AS A RESULT OF EITHER A COLLISION OR STRANDING IS A VEXING ONE. IT IS QUITE CLEAR THAT A DIFFERENT TYPE OF CLEAN UP EQUIPMENT WOULD BE REQUIRED IN EITHER CASE.

IT IS NOT UNREASONABLE TO ASSUME THAT ANY COLLISION LIKELY TO RESULT IN AN OIL SPILL WOULD MOST PROBABLY OCCUR IN MID-CHANNEL AND, THEREFORE, BE IN RELATIVELY OPEN WATER. WHEREAS A STRANDING BY DEFINITION WOULD PROBABLY BE ON A LEE SHORE, WHERE EQUIPMENT DESIGNED PRINCIPALLY FOR OPEN WATER WOULD BE OF LIMITED VALUE. THEREFORE, THE MARINE SUBCOMMITTEE'S SECOND RECOMMENDATION SHOULD BE THAT ANY ADDITIONAL EQUIPMENT PURCHASED BY ALYESKA FOR THE PURPOSE OF ENHANCING SPILL RESPONSE AVAILABILITY IN PRINCE WILLIAM SOUND SHOULD BE OF THE TYPE BEST SUITED FOR NEAR SHORE AND BEACH OPERATIONS.

SOUND. THE NEED FOR A STABLE WORKING PLATFORM AND FLOATING STORAGE FOR RECOVERED MATERIAL MAKES THE ACQUISITION OF BARGE WITH SUBSTANTIAL DECK SPACE AND TANK VOLUME A PRIORITY. AGAIN, BECAUSE THE CLEAN UP ACTIVITY IS LIKELY TO BE CLOSE INSHORE WITHOUT A BEACH, WORK BOATS MOUNTED ON THE BARGE WILL BE REQUIRED FOR DEPLOYING BOOMS AND SKIMMERS, ETC.

THE MARINE SUBCOMMITTEE'S THIRD RECOMMENDATION SHOULD BE THAT A BARGE (50-100 FEET) OUTFITTED WITH VARIOUS LENGTHS AND TYPE OF BOOM (INCLUDING OPEN WATER BOOM), SKIMMERS (LARGE, SMALL AND VISCOUS), CRANE AND WORKBOATS BE ACQUIRED. DEPLOYMENT AND/OR PRE-STAGING OF THE BARGE ARE REALLY SEPARATE ISSUES, BUT ISSUES THAT SHOULD BE ADDRESSED AT THIS TIME IF A PURCHASED BARGE IS TO BE EFFECTIVE. OUR FOURTH RECOMMENDATION SHOULD BE THAT ALYESKA UNDERTAKE A STUDY OF THE BEST AND QUICKEST METHODS OF MOVING THE BARGE AROUND AND WHETHER THE BARGE SHOULD BE PRE-DEPLOYED IN A SAFE COVE SOMEWHERE BETWEEN ROCKY POINT AND THE NARROWS. THE STUDY SHOULD ALSO DETERMINE WHETHER OR NOT PERSONNEL FROM MIDDLE ROCK, INC. (THE PILOT BOAT SERVICE) COULD BE EFFECTIVELY AND ECONOMICALLY EMPLOYED IN MAINTAINING THE PRE-DEPLOYED BARGE.

THE IMPORTANCE OF CHEMICAL DISPERSANTS SHOULD NOT BE IGNORED AND THE SUBCOMMITTEE'S FINAL RECOMMENDATION SHOULD BE THAT ALYESKA, AIDED BY THE OWNER COMPANY'S AS APPROPRIATE, CONTINUE TO PRESS STATE AND FEDERAL AUTHORITIES FOR PRE-APPROVAL TO USE CHEMICALS ON A WIDE SPREAD BASIS. THE OWNERS COMMITTEE HAS APPROVED THE PURCHASE OF AN ADDS PACK AND DISPERSANTS CONTINGENT ON OBTAINING STATE AND FEDERAL PRE-APPROVAL.

I BELIEVE THE FOREGOING REPRESENTS AN ACCEPTABLE COMPROMISE OF THE SLIGHTLY DIFFERING VIEWS EXPRESSED BY THE TASK GROUP MEMBERS. THE OPERATIONS COMMITTEE IS DUE TO MEET ON JULY 6 AND THEREFORE I WOULD APPRECIATE YOUR ADVISING ME BY TELEX, COPIED TO THEO POLASEK (TELEX: 09025127 -- ANSWER BACK: TRANSPICEAHG) AT ALYESKA. NO LATER THAN JULY 5 THAT YOUR COMPANY CAN SUPPORT ALL FIVE RECOMMENDATIONS.

ROGER A. GALE
MANAGER, MARINE OPERATIONS
SOLIO OIL, CLEVELAND

CC: F. G. GARIBALDI
J. P. G. CROXSON

TO	FROM	INFO	DATE	TIME
GO	RECEIVED			
NO	JUN 30 1988			
NO	T. L. POLASEK			
NO				

COLLEEN WALLENHORST
X5597

TRANSPICE AHG
.....

EXHIBIT G

ROGER A. GALE
SONIO OIL.
CLEVELAND. OHIO

REF: YOUR TELEX 8/30/88 - ALYESKA OIL SPILL EQUIPMENT

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. THE DELAY IN PURCHASING THE AOS PACK IS INEXCUSABLE; NO FURTHER APPROVAL WAS REQUIRED.

STANLEY FACTOR.
VICE PRESIDENT. CHARTERING & EVALUATIONS
ARCO MARINE, INC.

cc - *Copy*

FILE	DATE	NEW	RM	AGE	CLASS
ONE	RECEIVED				ONE
TWO	JUL 6 1988				TWO
THREE	E. L. PELAEZ				THREE
FOUR				CONF. REPORT	FOUR

ACE 417649

FROM
DAVIS WRIGHT TREMAINE
LAW OFFICES

550 WEST 7TH AVENUE • SUITE 1450 • ANCHORAGE, ALASKA 99501

TO:

Ms. Barbara Herman
Office of the Attorney General
State of Alaska
1031 West 4th Avenue, Suite 200
Anchorage, AK 99501

HAND DELIVERED

ACE 417650

**GEORGE'S
COURIER SERVICE
344-3323**

91540

FROM DAVIS-WRIGHT-TREMAINE			
ADDRESS 550 W. 7th AVENUE, SUITE 1450			
CITY ANCHORAGE	STATE ALASKA	ZIP 99501	
SHIPPER Kim	DATE 4/12/91	TIME 4:15	
TO Debra Heiman			
ADDRESS 1031 W. 4th, #1200			
CITY	STATE	ZIP	
ATTENTION		PHONE	

INSTRUCTIONS **Pls deliver to the
Heiman today and return
copy of the file to
the receipt on the
signed by Heiman's
agent**

☐ 24 HOUR

☒ SAME DAY
P/U BY 3PM

☐ ONE HOUR

CASE NO.	ONE HOUR \$
COURT	SAME DAY \$
DOCUMENTS	24 HOUR \$
	OTHER \$
	TOTAL \$

ACE 417651

X

RECEIVED BY	DATE / /	TIME " "
-------------	----------	----------

National Parks
and Conservation Association

PO Box 202045
Anchorage, AK 99520
April 17, 1991

Thomas A. Campbell
General Counsel, NOAA
US Department of Commerce
16th & Constitution Ave., NW
Washington, DC 20230

Re: Memorandum of Agreement Between the United States and
the State of Alaska Concerning the Exxon Valdez Oil Spill

Settlement Agreement Concerning the Exxon Valdez Oil Spill
Between the United States, the State of Alaska and
the Exxon Corp., Exxon Shipping Co., and Exxon Pipeline Co.

Dear Mr. Campbell,

I am writing on behalf of the National Parks and Conservation Association (NPCA), the only national non-profit citizens organization that focuses on national park concerns. Our 280,000 members nationally, including over 1,800 in Alaska, promote the protection, preservation and understanding of our nation's National Park System through diverse activities. We appreciate this opportunity to submit comments on the proposed settlement and MOA.

We applaud the efforts of the State of Alaska and the federal Trustee Council to work for a settlement. Protracted litigation not only absorbs needed fiscal resources but diverts attention and those resources from undertaking assessment studies, restoration and reclamation projects and acquisition of equivalent natural resources. The settlement agreement and MOA however need revisited. NPCA is concerned about the financial settlement, the extent of public participation, the extent of culpability and protection and restoration of the natural (including archeological) resources.

FINANCIAL SETTLEMENT

NPCA appreciates the release of "Summary Of Effects Of The Exxon Valdez Oil Spill On Natural Resources And Archaeological Resources March 1991" by the federal government. Economic analysis is not



1015 Thirty-First Street, N.W., Washington, D.C. 20007-4406
Telephone (202) 944-8530 • Fax (202) 944-8535

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ACE 417667

MOA, Settlement
page 2

included; the report states it is "preliminary" and "available data are not fully analyzed and interpreted". It is quite difficult to offer meaningful comments on the amounts listed in the settlement agreement without this analysis and similar information from the State. NPCA has asked the US District Court for public disclosure of the financial information which provides the basis for the \$100 million proposed criminal fine and then opportunity for public comment. NPCA asks the same for the settlement agreement.

Why is a ten year payment schedule proposed for the civil settlement of \$900 million? Scheduling payments for decision making regarding restoration projects seems reasonable, however, a schedule can be set up after receiving lump sum payments. This schedule will reduce the amount to approximately \$508 million in current dollars. This schedule also allows Exxon to take full advantage of tax deductibility for payments, thereby shifting payments to consumers and taxpayers. Why are costs incurred before to be reimbursed from this amount? If these costs are included, the ten year amount could be reduced to a total of \$766 million.

Paragraph 18 (Reopener For Unknown Injury) has merit. However, again, how can NPCA offer meaningful comments about the \$100 million cap without full knowledge of economic analyses?

PUBLIC PARTICIPATION

The State of Alaska continues to withhold studies; the federal government did not release any economic analysis. It is fundamentally wrong to suppress information about damages. Whether the State or federal government is liable to pay any of the damages is a separate matter from the scientific data and economic analysis that quantifies damages. The scientific and economic information do not address which party was at fault. The public cannot make intelligent and informed judgements without information.

The MOA directs the Trustees Council to establish procedures for meaningful public participation (IV.A. 4 and 5). Thus far, these players have met privately, without even allowing the public to listen to their meetings. IV.B.3. also allows the Trustees Council to change designated officials without public consideration. At issue here is faith and trust in our governments to manage our resources. Secrecy, cavalier disregard for public participation and media reports of changing designated officials do little to maintain that faith. These sections need to more specifics and less flexibility for administrative changes.

While NPCA is pleased that half the proposed criminal fine will go to the State, we think the public has a right to review proposed activities and to challenge any that may seem inconsistent with settlement language. The State should not be given unilateral authority to resolve disagreements nor to insulate itself from public debate and scrutiny.

EXTENT OF CULPABILITY

Central to an equitable settlement of any criminal suit is the imposition of a sentence that reflects the seriousness of the offense, that promotes public respect for the law and that serves as a deterrence to future criminal behavior by the defendants and others.

High fines often achieve the goals of fairness and deterrence. Corporations do not go to jail. Corporations can often absorb fines and redistribute their impacts. Corporate structure is such that fines, while necessary and important, may not lead to rehabilitative changes in management. Creative sentencing needs to be drafted to meet this challenge.

Alyeska Pipeline Service Company played a crucial role in the events following the grounding of the Exxon Valdez. Alyeska's failure to comply with oil spill contingency plans contributed to the extensiveness of the damage and to the confusion of roles for various agencies and companies. The opportunity to ascertain whether Alyeska's conduct warrants criminal and/or civil penalties should not be foreclosed.

Paragraphs 20 through 30 need to be re-worked. Sections VII and III.B. also need to be re-worked. There may be a compelling fiscal rationale for the State and the federal government agreeing to not sue each other and to defend against third party suits together, but statutory responsibilities under the Clean Water Act, the Comprehensive Environmental Response Compensation & Liability Act, Bald Eagle Protection Act, Migratory Bird Treaty, Archeological Resources Protection Act and Section 106 of the National Historic Preservation Act need to be clarified before such an agreement can be signed.

RESTORATION AND PROTECTION OF NATURAL RESOURCES

Ultimately, the MOA and settlement agreement are about making whole what the Exxon Valdez oil spill damaged. It is frustrating to have so little information upon which to make reasonable judgements and offer meaningful comments. It is our land, water and air that are at risk when oil is transported. Yet, again the public is being asked to trust government and industry to protect our resources.

MOA; Settlement
page 4

Clearly, the public learned from the Exxon Valdez oil spill that government and industry were not prepared. Without scientific and economic information, NPCA cannot say that government and industry are now working to protect and restore our resources.

NPCA, as do many other individuals and organizations, has many suggestions about how to spend any monies for research, restoration and related activities. The MOA and the settlement agreement do not give any structure or guidance for spending monies. We however will expect to offer such comments once any settlement agreement has provided that information. We have commented on draft restoration plans.

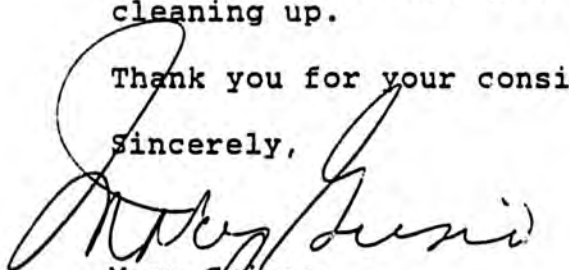
SUMMARY

NPCA chose not to enter litigation following the Exxon Valdez oil spill partly because we expect governments to execute their statutory responsibilities to protect and restore our resources. Without scientific and economic information, NPCA cannot state that the MOA and settlement agreement are in the public's best interest.

For the public to make an intelligent and informed judgement, economic and scientific information needs to be released. Exxon and its companies and Alyeska must be held accountable for their actions. State and federal agencies must also be accountable for their actions. Any settlement should include structure for allocating funds and criteria for what is to be funded. Any settlement needs to act as a deterrent, a clear message to industry and government that prevention costs much less than restoration and cleaning up.

Thank you for your consideration of our comments.

Sincerely,



Mary Grisco
Alaska Regional Director

✓ cc: Barbara Herman, State of Alaska

ACE 417670

National Parks
and Conservation Association

1111 Third Street, N.W.
Washington, D.C. 20007-4406

RECEIVED

Department of Law

APR 13 1991

Office of the Attorney General
Anchorage, Alaska
Anchorage, Alaska

BARBARA HERMAN
OFFICE OF THE ATTORNEY GENERAL
STATE OF ALASKA
1031 W, 4TH #200
ANCHORAGE, AK 99501

ACE 417671

42

SUBJECT: Addendum to comments on the Exxon settlement.

I talked with Edgar Boyco last night on Alascom's Norm Sailor's show last night.

I asked Mr Boyco who I should take this information to. He said that's a good question and said he didn't know. I said how about you Mr Boyco. He said if he thought I had something he would run with it but that we both might end up killed.

Mr. Boyco said that he didn't know of anywhere I could take this information to have it acted upon.

The intent of this letter is to serve notice that I have this information and will come forth with it when I have assurances that it will be justly acted upon.

I've included 9 copies of the printout from the loadmaster of the Exxon Valdez. These are exactly as I received them from the NTSB report.

ACE 417652

a correction of the date marked Departure 3/23/89, yet no one initialed this correction.

Dan Lawn of the DEC said that Exxon simply gave him the figures and he accepted them and said he "couldn't remember what method was used by Exxon to arrive at these figures. Lawn agreed that the proper way to have gauged the grounded tanker was the 'paste and ball method'. He made some quick calculations and said that these were about the same figures he got from James Kunkel, the first mate of the Exxon Valdez.

These printouts prove that the wrong method was used to gauge the Exxon Valdez because the loadmaster only measures the amount of liquid in the tank but doesn't distinguish between water and oil.

Far more oil left the Exxon Valdez than was reported.

Dan Lawn said his only concern at the time was that no samples were taken of the oil pumped off of the Exxon Valdez. He said that he wasn't concerned, at the time, which method was used to gauge the tankers.

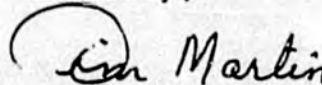
Marge Tillion, wife of Clem Tillion, says that she was called by three divers who worked on the Exxon Valdez who told her that far more oil left the Exxon Valdez than was reported and that large amounts of seawater was pumped onto the unloading tankers.

From this evidence and on-scene witnesses that I've talked with, the Exxon Valdez, conservatively lost 3 times the amount of oil that was reported.

As I'm backing up my claim with this evidence, I can backup my claim that the Exxon Valdez was intentionally grounded, but I won't bring this evidence forward unless I know that this proof is shown to the public.

If I don't get this assurance, then this letter will show as a legal document that I've done everything I can in seeking justice. I await your reply.

Sincerely,



Tim Martin

Inclosures

Barbera Herman, Attorney General's Office
Dick Eliason Senate special Committee on Exxon Settlement
Max Gruenberg House Special Committee on Exxon Settlement
OTHERS

SHIP: EXXON VALDEZ
COND: VZ05-G

HULL 438 REV 3.4

DATE: 03/24/89
TIME: 0915

LOAD SUMMARY

CARGO OIL	=	130348.50 L.TONS
CARGO SLOP	=	7622.16 L.TONS
BALLAST	=	13882.12 L.TONS
LUBE OIL	=	37.00 L.TONS
POTABLE WATER	=	100.00 L.TONS
FEED WATER	=	114.74 L.TONS
FUEL OIL	=	2340.00 L.TONS
DIESEL OIL	=	326.00 L.TONS
MISCELLANEOUS	=	45.46 L.TONS
CREW&EFFECTS	=	140.00 L.TONS
FLOODING	=	.00 L.TONS

DEADWEIGHT = 154955.90 L.TONS

LIGHTWEIGHT = 28822.00 L.TONS

DISPLACEMENT = 183777.90 L.TONS

PRINT THIS DISPLAY ? (Y/N) >

I HAVE SEEN THE ORIGINAL AND COMPARED
THE COPY WITH IT AND FOUND IT TO BE A
TRUE COPY

Mark J. DeLozier 26 MAR 89
MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK. USCG

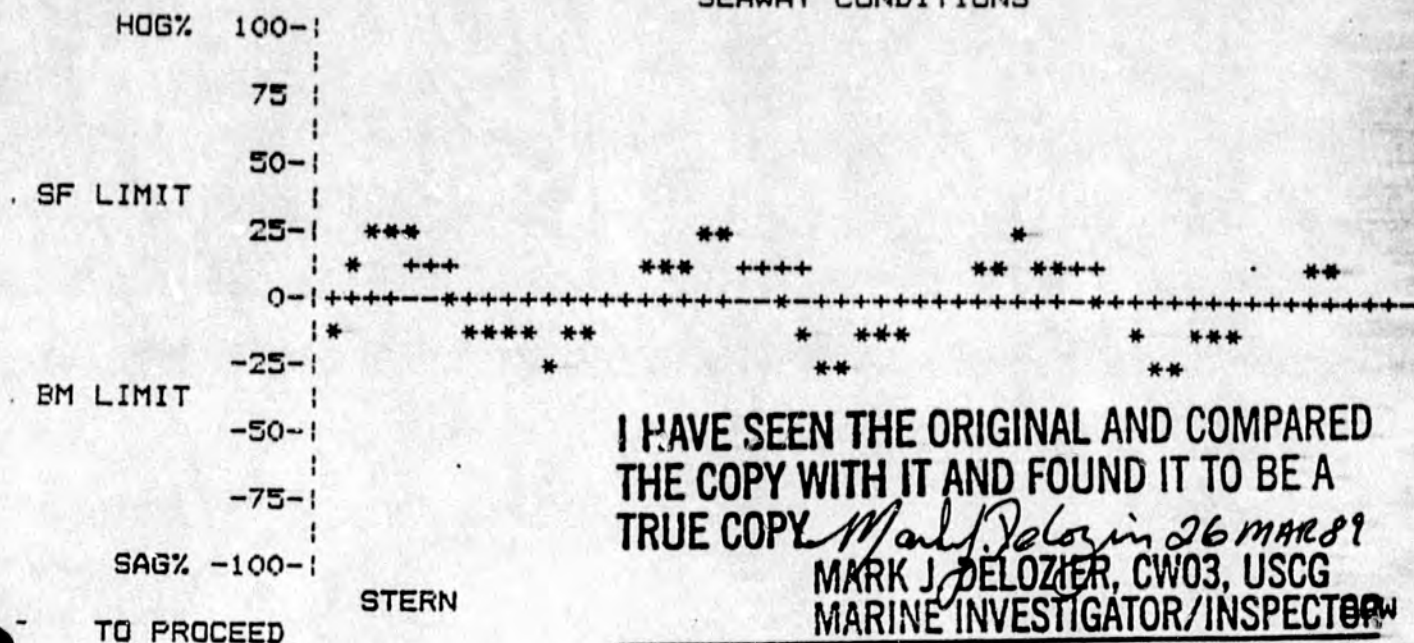
SHIP: EXXON VALDEZ
COND: VZ05-G

HULL 438 REV 3.4

DATE: 03/24/89
TIME: 0916

DWT= 154955.9 L.TONS DRAFT= 50.32 FEET TRIM= 6.55 FEET

SEAWAY CONDITIONS



I HAVE SEEN THE ORIGINAL AND COMPARED
THE COPY WITH IT AND FOUND IT TO BE A
TRUE COPY

Mark J. DeLozier 26 MAR 89
MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK. USCG

SHIP: EXXON VALDEZ
COND: VZ05-G

HULL 438 REV 3.4

DATE: 03/24/89
TIME: 0917

SHEAR FORCES AND BENDING MOMENTS SEAWAY CONDITIONS

S H E A R F O R C E			B E N D I N G M O M E N T		
LIMIT	ACTUAL	%	LIMIT	ACTUAL	%
11549.	-2596.	-22.5	1547703.	-33614.	-2.2
11202.	37.	.3	1665034.	-102087.	-6.1
12814.	3389.	26.4	1864447.	96104.	5.2
13128.	-3423.	-26.1	1558567.	53950.	3.5
14040.	-10.	-.1	1590849.	-91091.	-5.7
13647.	2939.	21.5	1965293.	34901.	1.8
11854.	-66.	-.6	2209370.	139079.	6.3
11403.	-2820.	-24.7	1994574.	-7569.	-.4
11893.	-157.	-1.3	1496613.	-78501.	-5.2
13792.	1942.	14.1	1053082.	-22174.	-2.1

IM SHEAR FORCE = -3545.7 AT 434.70 FEET FROM A.P.
IM BENDING MOMENT= 162985.8 AT 387.45 FEET FROM A.P.

ED PLOT OF SF/BM DATA ? (Y/N) >

ACE 417655

3

SHIP: EXXON VALDEZ
COND: VZ05-G

HULL 438 REV 3.4

DATE: 03/24/89
TIME: 0917

T : YES
DED : NO
ED : NO
ED : NO

DEFLECTION

AX DEFLECTION = .2 INCHES HOG AT 387.4 FEET FROM A.P.

EFLECTED DRAFT AT FWD MARKS = 47.21 FEET
EFLECTION AT FWD MARKS = .02 INCHES HOG

EFLECTED DRAFT AT MIDSHIPS = 50.47 FEET
EFLECTION AT MIDSHIPS = .13 INCHES HOG

EFLECTED DRAFT AT AFT MARKS = 53.73 FEET
EFLECTION AT AFT MARKS = .04 INCHES HOG

TO PRINT THIS DISPLAY ? (Y/N) >

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MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR

SHIP: EXXON VALDEZ
COND: VZ05-G

HULL 438 REV 3

MARINE SAFETY OFFICE, VALDEZ, AK, USCG

T : YES
DED : NO
ED : NO
ED : NO

STABILITY

DISPLACEMENT
OLD DRAFT AT LCF
TRANSVERSE METACENTRIC HEIGHT
ENTER OF GRAVITY ABOVE KEEL
METACENTRIC HEIGHT
REE SURFACE MOMENT CORRECTION
CORRECTED METACENTRIC HEIGHT
REQUIRED METACENTRIC HEIGHT

DISPL = 183777.90 L.TONS
DM = 50.32 FEET
KM = 69.56 FEET
KG = 48.79 FEET
GM = 20.78 FEET
FSMC = 5.37 FEET
GMC = 15.41 FEET
GMREQD = 15.45 FEET
GMC = 1.00 TIMES GMREQD
HEELMOM = -233528.90 L.TONS-FEET
HEEL = -4.73 DEG.

HEELING MOMENT
HEEL ANGLE (+PORT, -STBD)

TO PRINT THIS DISPLAY ? (Y/N) >

SHIP: EXXON VALDEZ
COND: VZ05-G

HULL 438 REV 3.4

DATE: 03/24/89
TIME: 0915

LOAD SUMMARY

CARGO OIL	=	130348.50 L.TONS
CARGO SLOP	=	7622.16 L.TONS
BALLAST	=	13882.12 L.TONS
LUBE OIL	=	37.00 L.TONS
POTABLE WATER	=	100.00 L.TONS
FEED WATER	=	114.74 L.TONS
FUEL OIL	=	2340.00 L.TONS
DIESEL OIL	=	326.00 L.TONS
MISCELLANEOUS	=	45.46 L.TONS
CREW&EFFECTS	=	140.00 L.TONS
FLOODING	=	.00 L.TONS

DEADWEIGHT	=	154955.90 L.TONS
LIGHTWEIGHT	=	28822.00 L.TONS

DISPLACEMENT	=	183777.90 L.TONS
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Mark J. DeLozier 26 MAR 89
MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK. USCG

ACE 417657

DEPARTURE 3/23/85 4

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1258

LOADING DETAIL

NAME	%	L.TONS	ULL	SG	DEG F	DEG API	NET BBLs
#1 CARGO CNTR	88.7	18874.93	13.22		102.4	27.6	135923.2
#1 CARGO PORT	88.8	8334.05	13.27		102.4	27.6	60159.7
#1 CARGO STBD	88.9	8366.00	13.21		102.4	27.6	60245.7
#2 CARGO CNTR	87.0	23816.61	14.72		102.4	27.6	171509.6
#3 CARGO CNTR	87.4	26303.79	14.50		102.4	27.6	189420.3
#3 CARGO PORT	89.3	14870.31	13.92		102.4	27.6	107085.0
#3 CARGO STBD	89.2	14852.72	14.04		102.4	27.6	106958.3
#4 CARGO CNTR	66.8	10966.51	33.26		102.4	27.6	78972.7
#5 CARGO CNTR	81.9	23991.52	18.98		102.4	27.6	172769.1
#5 CARGO PORT	83.3	8601.61	18.60		102.4	27.6	61942.4
#5 CARGO STBD	83.5	8610.80	18.58		102.4	27.6	62008.6

TED LIST: .00 DEG INPUTTED TRIM: .00 FEET

VALUE F2=SCRL DN & REPT F3=CHANGE LIST F4=CHANGE TRIM F10=RETURN

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1258

LOADING DETAIL

NAME	%	L.TONS	ULL	SG	DEG F	DEG API	NET BBLs
3LOP PORT	80.1	3732.41	17.84		102.4	27.6	18.0
3LOP STBD	83.4	3889.75	15.57		102.4	27.6	11.1
FOREPEAK	.0	.00	91.00	1.0250			
#2 SWB WING P	.0	.00	92.58	1.0250			
#2 SWB WING S	.0	.00	92.50	1.0250			
#4 SWB WING P	.0	.00	92.67	1.0250			
#4 SWB WING S	.0	.00	92.67	1.0250			
ER SWB WING P	.0	.00	44.92	1.0250			
ER SWB WING S	.0	.00	44.83	1.0250			
ER SWB D.B.	.0	.00	11.67	1.0250			
AFTPEAK	4.2	100.00	49.97	1.0250			

TED LIST: .00 DEG INPUTTED TRIM: .00 FEET

VALUE F2=SCRL DN & REPT F3=CHANGE LIST F4=CHANGE TRIM F10=RETURN

ACE 417658

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 MARK J. FELIZAR, CW03, USCG
 MARINE INVESTIGATOR/INSPEC
 MARINE SAFETY OFFICE, VALDEZ, AK, USI

DEPARTURE 3/23/85 4

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1258

LOADING DETAIL

NAME	%	L.TONS	ULL	SG	DEG F	DEG API	NET BBLs
#1 CARGO CNTR	88.7	18874.93	13.22		102.4	27.6	135923.2
#1 CARGO PORT	88.8	8334.05	13.27		102.4	27.6	60159.7
#1 CARGO STBD	88.9	8366.00	13.21		102.4	27.6	60245.7
#2 CARGO CNTR	87.0	23816.61	14.72		102.4	27.6	171509.6
#3 CARGO CNTR	87.4	26303.79	14.50		102.4	27.6	189420.3
#3 CARGO PORT	89.3	14870.31	13.92		102.4	27.6	107085.0
#3 CARGO STBD	89.2	14852.72	14.04		102.4	27.6	106958.3
#4 CARGO CNTR	86.8	10966.51	33.26		102.4	27.6	78972.7
#5 CARGO CNTR	81.9	23791.52	18.98		102.4	27.6	172769.1
#5 CARGO PORT	83.5	8601.61	18.60		102.4	27.6	61942.4
#5 CARGO STBD	83.5	8610.80	18.58		102.4	27.6	62008.6

FED LIST: .00 DEG INPUTTED TRIM: .00 FEET

VALUE F2=SCRL DN & REPT F3=CHANGE LIST F4=CHANGE TRIM F10=RETURN

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1258

LOADING DETAIL

NAME	%	L.TONS	ULL	SG	DEG F	DEG API	NET BBLs
3LOP PORT	80.1	3732.41	17.84		102.4	27.6	78.0
3LOP STBD	83.4	3889.75	15.57		102.4	27.6	11.1
FOREPEAK	.0	.00	91.00	1.0250			
#2 SWB WING P	.0	.00	92.58	1.0250			
#2 SWB WING S	.0	.00	92.50	1.0250			
#4 SWB WING P	.0	.00	92.67	1.0250			
#4 SWB WING S	.0	.00	92.67	1.0250			
ER SWB WING P	.0	.00	44.92	1.0250			
ER SWB WING S	.0	.00	44.83	1.0250			
ER SWB D.B.	.0	.00	11.67	1.0250			
AFTPEAK	4.2	100.00	49.97	1.0250			

FED LIST: .00 DEG INPUTTED TRIM: .00 FEET

VALUE F2=SCRL DN & REPT F3=CHANGE LIST F4=CHANGE TRIM F10=RETURN

ACE 417659

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 MARK J. FELDZIER, CW03, USCG
 MARINE INVESTIGATOR/INSPEC
 MARINE SAFETY OFFICE, VALDEZ, AK, USA

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1300

: YES
DED : NO
ED : NO
ED : NO

LOADING DETAIL

NAME	WEIGHT	%	SG	TANK	NAME	WEIGHT	%	SG
#1 CARGO CNTR	18874.9	89	.873	2	#1 CARGO PORT	8354.0	89	.873
#1 CARGO STBD	8366.0	89	.873	4	#2 CARGO CNTR	23816.6	87	.873
#3 CARGO CNTR	26303.8	87	.873	6	#3 CARGO PORT	14870.3	89	.873
#3 CARGO STBD	14852.7	89	.873	8	#4 CARGO CNTR	10966.5	67	.873
#5 CARGO CNTR	23991.5	82	.873	10	#5 CARGO PORT	8601.6	83	.873
#5 CARGO STBD	8610.8	84	.873	12	SLOP PORT	3732.4	80	.873
SLOP STBD	3889.7	83	.873	14	FOREPEAK	.0	0	1.025
#2 SWB WING P	.0	0	1.025	16	#2 SWB WING S	.0	0	1.025
#4 SWB WING P	.0	0	1.025	18	#4 SWB WING S	.0	0	1.025
ER SWB WING P	.0	0	1.025	20	ER SWB WING S	.0	0	1.025
ER SWB D.B.	.0	0	1.025	22	AFTPEAK	100.0	4	1.025
LO SUMP	18.0	52	.893	24	LO STOR	19.0	49	.893
LO SETTLING	.0	0	.893	26	POT WTR P	30.0	31	1.000
POT WTR S	70.0	61	1.000	28	RES FEED	50.0	39	1.000
T WTR	64.7	100	1.000	30	FO SETT FWD	84.0	71	.989
SETT AFT	84.0	71	.989	32	FO STOR P	1473.0	54	.989
FO STOR S	613.0	34	.989	34	FO DAY	86.0	72	.989
DO DAY EDG	9.0	86	.880	36	DO DAY	90.0	68	.880
DO STOR	227.0	65	.880	38	LO STOR SSDG	1.5	100	.893
CYL OIL DAY	1.0	75	.959	40	CYL OIL STORE	43.0	65	.980
SLOP DB P	.0			42	VOID C	.0		
SLOP DB S	.0			44	ENGINE ROOM	.0		
PUMP ROOM	.0			46	BILGE OIL RES	.0		
FO SLUDGE	.0			48	CREW&EFFECTS	140.0		
RAW SEWAGE	.0							

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Mark J. DeLozier, 26 MAR 87
MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK. USCG

ACE 417660

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1301

LOAD SUMMARY

CARGO OIL	=	167608.80 L.TONS
CARGO SLOP	=	7622.16 L.TONS
BALLAST	=	100.00 L.TONS
LUBE OIL	=	37.00 L.TONS
POTABLE WATER	=	100.00 L.TONS
FEED WATER	=	114.74 L.TONS
FUEL OIL	=	2340.00 L.TONS
DIESEL OIL	=	326.00 L.TONS
MISCELLANEOUS	=	45.46 L.TONS
CREW&EFFECTS	=	140.00 L.TONS
FLOODING	=	.00 L.TONS

DEADWEIGHT	=	178434.20 L.TONS
LIGHTWEIGHT	=	28822.00 L.TONS
DISPLACEMENT	=	207256.20 L.TONS

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MARK J. BELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK. USCG

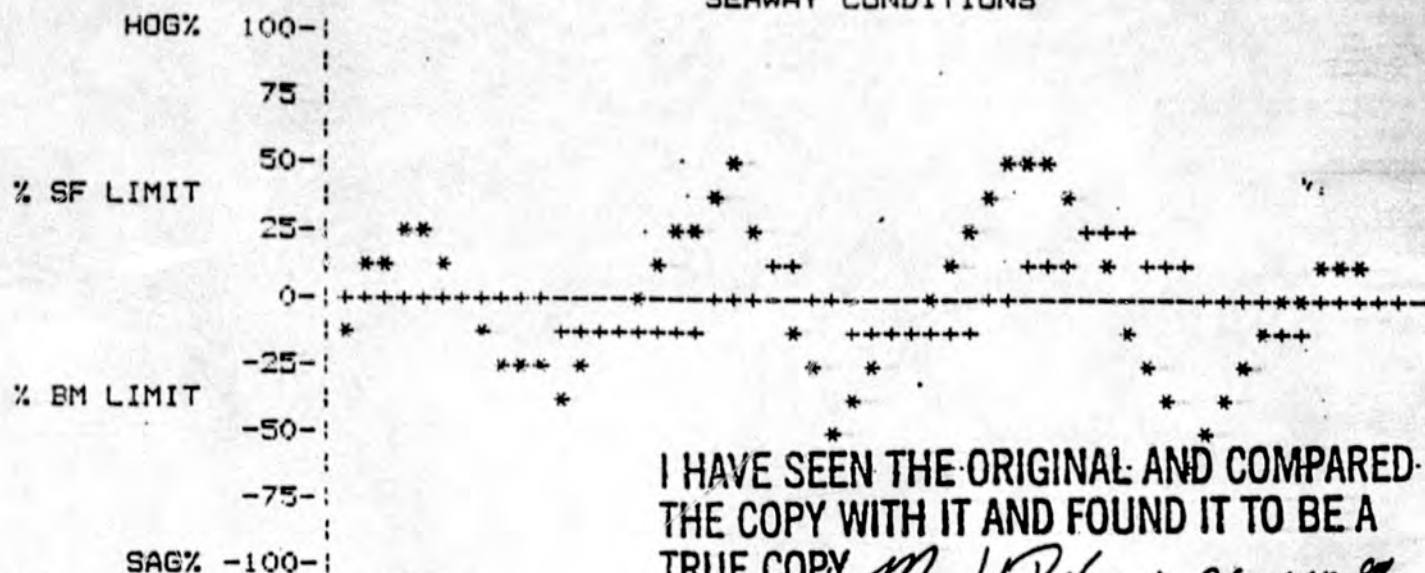
SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1302

DWT= 178434.2 L.TONS DRAFT= 56.29 FEET TRIM= .56 FEET

SEAWAY CONDITIONS



: TO PROCEED

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MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK. USCG
DATE: 01/26/80
TIME: 1303

SHIP: EXXON VALDEZ
COND: VZ05-89D

SHEAR FORCES AND BENDING MOMENTS SEAWAY CONDITIONS

	S H E A R F O R C E			B E N D I N G M O M E N T		
	LIMIT	ACTUAL	%	LIMIT	ACTUAL	%
1	11549.	-4144.	-35.9	1547703.	-149238.	-9.6
1	11202.	-781.	-7.0	1665034.	-294531.	-17.7
1	12814.	5891.	46.0	1864447.	8312.	.4
1	13123.	-6003.	-45.7	1558567.	-70218.	-4.5
1	14040.	1541.	11.0	1570849.	-249300.	-15.7
1	13647.	7691.	56.4	1965293.	144978.	7.4
1	11854.	479.	4.0	2209370.	437610.	19.8
1	11403.	-6635.	-58.2	1994574.	129225.	6.5
1	11893.	-1342.	-11.3	1496613.	-90364.	-6.0
1	13792.	2893.	21.0	1053082.	-32328.	-3.1

10M SHEAR FORCE = 7992.3 AT 604.80 FEET FROM A.P.
10M BENDING MOMENT= 438262.0 AT 689.85 FEET FROM A.P.

WANTED PLOT OF SF/BM DATA ? (Y/N) >

ACE 417662

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1303

IT : YES
IDED : NO
ED : NO
ED : NO

DEFLECTION

MAX DEFLECTION = .5 INCHES SAG AT 245.7 FEET FROM A.P.

REFLECTED DRAFT AT FWD MARKS = 56.02 FEET
DEFLECTION AT FWD MARKS = .03 INCHES SAG

REFLECTED DRAFT AT MIDSHIPS = 56.32 FEET
DEFLECTION AT MIDSHIPS = .27 INCHES SAG

REFLECTED DRAFT AT AFT MARKS = 56.50 FEET
DEFLECTION AT AFT MARKS = .03 INCHES SAG

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MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK, USCG

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1304

IT : YES
IDED : NO
ED : NO
ED : NO

STABILITY

DISPLACEMENT
MOLDED DRAFT AT LCF
TRANSVERSE METACENTRIC HEIGHT
CENTER OF GRAVITY ABOVE KEEL
METACENTRIC HEIGHT
TREE SURFACE MOMENT CORRECTION
CORRECTED METACENTRIC HEIGHT
REQUIRED METACENTRIC HEIGHT

DISPL = 207256.20 L. TONS
DM = 56.29 FEET
KM = 68.18 FEET
KG = 48.49 FEET
GM = 19.69 FEET
GSMC = 4.52 FEET
GMC = 15.18 FEET
GMREQD = 14.67 FEET
GMC = 1.03 TIMES GMREQD
HEELMOM = 15714.52 L. TONS-FEET
HEEL = .29 DEG.

HEELING MOMENT
HEEL ANGLE (+PORT, -STBD)

PRINT THIS DISPLAY ? (Y/N) >

ACE 417663

9

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1305

CT : YES
IDED : NO
GED : NO
DED : NO

DEADWEIGHT	= 178434.20 L.TONS
DISPLACEMENT	= 207256.20 L.TONS
LONGITUDINAL CENTER OF GRAVITY FROM A.P	= 506.24 FEET
DRAFT AT FWD MARKS	= 56.02 FEET
DRAFT AT AFT MARKS	= 56.57 FEET
HEEL DRAFT AT LCF	= 56.29 FEET
TRIM BY THE STERN	= .56 FEET

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MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR
MARINE SAFETY OFFICE, VALDEZ, AK. USCG

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Los Angeles, CA 90071-1560
213/683-9100

Attorneys for ALYESKA PIPELINE SERVICE COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EXXON CORPORATION; EXXON SHIPPING
COMPANY; ALYESKA PIPELINE SERVICE
COMPANY; AMERADA HESS PIPELINE
CORPORATION; ARCO PIPE LINE
COMPANY; EXXON PIPELINE COMPANY;
MOBIL ALASKA PIPELINE COMPANY;
PHILLIPS ALASKA PIPELINE CORPORA-
TION; BP ALASKA PIPELINES, INC.;
UNOCAL ALASKA PIPELINE COMPANY
and the T/V EXXON VALDEZ, in rem,

Defendants.

Case No. A91-082 Civ.

RESPONSE OF ALYESKA
PIPELINE SERVICE COMPANY
TO PUBLIC COMMENTS OF
CONGRESSMAN GEORGE MILLER

Congressman George Miller has submitted a letter to the Court, we assume as a public comment on the proposed Consent Decree. In it, he makes three principal points: (1) Alyeska Pipeline Service Company ("Alyeska") was aware that it could not prevent environmental damage if a major spill occurred in Prince William Sound, but did not disclose this fact, thereby misleading the State and other regulators; (2) Alyeska did not have the necessary equipment available at the time of the EXXON VALDEZ grounding; and (3) Alyeska had "secretly decided," prior to the EXXON VALDEZ grounding, that it would not respond to an oil spill in Prince William Sound.

We respectfully submit that Congressman Miller is wrong on each count. First, it was clearly stated in Alyeska's 1987 Oil Spill Contingency Plan ("OSCP"), and well known to the State and other regulators, that despite the best efforts of Alyeska and the ship owner, a major oil spill in Prince William Sound would result in significant environmental damage. Second, Alyeska had available all of the equipment identified in the OSCP and responded in accordance with the OSCP. Third, as Alyeska's response to the EXXON VALDEZ grounding demonstrated, there was no decision on Alyeska's part -- secret or otherwise -- not to respond to oil spills in Prince William Sound.

It also is significant that the issues raised by Congressman Miller's letter have previously been aired and fully

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considered in public hearings, including hearings conducted by the National Transportation Safety Board ("NTSB"), the Alaska Oil Spill Commission, the General Accounting Office, and Congressman Miller's own Subcommittee on Water, Power and Offshore Resources of the Committee on Interior and Insular Affairs. For example, the NTSB heard testimony by ADEC Commissioner Kelso that he felt the OSCP contemplated a cleanup of the EXXON VALDEZ oil spill within 72 hours, a position quite similar to that espoused by Congressman Miller. Yet, the NTSB flatly rejected this interpretation. The NTSB correctly observed that the OSCP stated that in the event of a major spill in Prince William Sound, a long-term cleanup of the beaches would be required.¹

1. THE LIMITATIONS ON ALYESKA'S RESPONSE CAPABILITY WERE PLAINLY DESCRIBED AND WELL-KNOWN TO THE REGULATORS.

It has long been known that a major oil spill in Prince William Sound could cause substantial impact on the marine environment. In the 1972 Final Environmental Impact Statement for the Proposed Trans-Alaska Pipeline ("EIS"), for example, the Department of the Interior described the consequences of a major marine oil spill as follows:

¹ National Transportation Safety Board Marine Accident Report, PB90-916405, NTSB/MAR-90/04 ("NTSB Report"), at 150.

Present state-of-the-art equipment and techniques for containing and recovering spilled oil can recover less than 20 percent of oil spilled. Thus, unless extraordinary advances in oil containment and recovery techniques occur, almost all of the oil spilled by the tanker system would constitute an adverse impact on the marine ecosystem.

EIS at 224-25.

In the OSCP, Alyeska reiterated that significant environmental effects would result from a major oil spill in Prince William Sound. For example, under conditions assumed to be ideal for cleanup purposes, Alyeska described the anticipated response to and effect of a hypothetical 4,000-barrel spill in Prince William Sound.² OSCP at 3-50 to 3-53. In this hypothetical scenario, 1/60th the size of the EXXON VALDEZ spill, Alyeska suggested that nearly seven miles of beach would be heavily oiled, that only 1,000 barrels of oil would be collected through the use of skimmers and other oil spill containment equipment, and that the cleanup operation would last for approximately two months. Id. Alyeska also indicated that the

² The portion of the OSCP describing the hypothetical 4,000-barrel spill scenario is attached hereto as Exhibit A.

cleanup efforts would require assistance from private commercial vessels, oil spill cooperatives such as Cook Inlet Response Organization ("CIRO") and Alaska Clean Seas, private oil spill response companies, dispersants contractors, and possibly the U. S. Coast Guard Pacific Strike Team. OSCP at 3-51. Alyeska stated that a crucial element of its response to this hypothetical 4,000-barrel spill would be the use of dispersants, which would require approval of the government's on-scene coordinator before application could begin. OSCP at 3-51 to 3-53. As Alyeska noted, this scenario "presumed a dispersant decision is made soon enough to make application feasible." OSCP at 3-53.

Alyeska's OSCP also described the response to a hypothetical 200,000-barrel spill in Prince William Sound.³ OSCP at 3-54 through 3-56. This hypothetical scenario was again premised on ideal conditions for oil containment and cleanup. OSCP at 3-54.⁴ Yet, as Alyeska observed in its

³ The portion of the OSCP describing this hypothetical 200,000-barrel spill is attached as Exhibit B.

⁴ The seas were assumed to be calm, the winds moderate and the weather mild. The spill was assumed to occur at 6:00 a.m. on the longest day of the year, so that maximum daylight would be available during the initial response. OSCP at 3-54. By contrast, the conditions Alyeska encountered in responding to the EXXON VALDEZ spill were much less favorable. The spill occurred in the middle of the night, the days were short, the temperature was cold, and the snow was deep. Moreover, in less than 72 hours, a severe storm struck, forcing the fleet of response vessels to seek shelter.

OSCP, even under these ideal conditions the response would require the use of private commercial vessels and third-party aircraft, and the assistance of the U. S. Coast Guard Pacific Strike Team, all oil spill contractors in the State of Alaska, local oil spill cooperatives such as CIRO and Alaska Clean Seas, the Association of Petroleum Industry Co-op Managers, the International Bird Rescue Research Organization, and others. Id. Furthermore, as Alyeska pointed out, the effectiveness of a response to such a large spill would be largely dependent on the timely and effective application of dispersants. OSCP at 3-54 through 3-56.⁵

Alyeska explained that, even under ideal conditions, all available means of response would not be able to recover most of the oil before it impacted the shorelines. OSCP at 3-56. Alyeska went on to state that a "long-term cleanup of the spill on the various beaches of Prince William Sound" would, of course, be necessary. Id. In sum, the OSCP clearly described that a hypothetical 200,000-barrel spill, even under

⁵ The on-scene coordinator for the EXXON VALDEZ spill withheld approval for the full scale application of dispersants until more than 48 hours after the spill, apparently in response to objections by State officials.

ideal cleanup conditions, would result in significant environmental impact.

Moreover, the State and other regulators were well aware of the limitations of Alyeska's OSCP and understood that a major spill in Prince William Sound would have significant adverse consequences in the marine ecosystem. Although the evidence supporting this conclusion is too voluminous to cite here, one example should suffice to rebut accusation that Alyeska misled the State into believing that it could contain 200,000 barrels within 72 hours and prevent the oil from impacting the beaches.

As part of the Alaska Oil Spill Commission's investigation of the EXXON VALDEZ oil spill, an investigator for the Commission, Allan Adasiak, interviewed Paul O'Brien. From July of 1982 until February of 1989, Mr. O'Brien was the manager in charge of ADEC's oil pollution control program. In that capacity, he was responsible for the review of all contingency plans submitted to the State. Thus, Mr. O'Brien had oversight responsibility for the State's review of Alyeska's 1987 OSCP.

Mr. O'Brien clearly understood that Alyeska's OSCP did not contemplate the capability to eliminate environmental damage from a major oil spill in Prince William Sound as he candidly stated in response to Mr. Adasiak's questions:

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. . . Even in hindsight, I think it is important for people to realize that we never required nor did we ever intend to require that Alyeska have the on-site capability to deal with a catastrophic event. That is an EXXON VALDEZ type of spill. We expected them to have the ability to deal with the more common, smaller operational spills: the 10 barrel, the 100 barrel spills, not the tens of hundreds or tens of thousands of barrels.

. . .

I would not require, even now, Alyeska to have that on-site -- and I keep stressing on-site -- hardware capability to deal with a 10 million gallon spill. No, I would not. Not unless it was a decision, a policy decision made above my level. That should be the place. I would say it is a valid policy call to make as to whether you have an Alyeska with that kind of capability, but you don't, under DEC's current regulations at least, there is no requirement that they have on-site capability to deal with the catastrophic event. So, in retrospect, no, I would still not require that unless it was a policy call made at much higher levels.

Quite clearly, then, the State of Alaska understood, and any reader of Alyeska's OSCP should have understood, that Alyeska could not prevent environmental harm from occurring in the event of a major spill in Prince William Sound.

2. ALYESKA'S RESPONSE AND ITS EQUIPMENT
AVAILABLE FOR RESPONSE WERE IN ACCORDANCE
WITH THE OSCP.

The OSCP lists various items of oil spill response equipment that Alyeska would have available in the event of an oil spill. OSCP at 3-57. All of this equipment was available at the time of the EXXON VALDEZ grounding. See, e.g., Testimony of Theo Polasek before the Alaska Oil Spill Commission, Vol. II at 30-46 (August 31, 1989). As Mr. Polasek testified, "We had our equipment deployed, we had our boom out, and we had done what we promised." Id. at 41. The contention that Alyeska did not have the equipment available at the time of the spill is unfounded.

Congressman Miller has also suggested, however, that Alyeska did not deliver its equipment to the scene of the spill as promptly as it suggested it might in one hypothetical scenario. Again, we must respectfully disagree with Congressman Miller.

As noted above, the difference between the actual event and the hypothetical scenario was, literally, the difference between night and day. It is not surprising that the actual delivery of equipment took longer under adverse conditions of winter, cold and darkness than under ideal conditions. Alyeska's performance must be judged in light of the actual circumstances, not against a hypothetical ideal.

Furthermore, in the hypothetical scenario it was assumed that there was no risk of the loss of the tanker or additional cargo and that containment would be the first priority. OSCP at 3-54. In the instant case, however, the Coast Guard and others at the scene quickly determined that the EXXON VALDEZ was potentially unstable and its remaining cargo of some 43 million gallons of oil was in jeopardy of spilling. Thus, the first priority became lightering, not containment. See, e.g., Alaska Oil Spill Commission, Vol. II at 34-35 (August 31, 1989); NTSB Report at 145.

In sum, the time required for Alyeska's response equipment to arrive on the scene was reasonable under the circumstances and consistent with the OSCP.

Furthermore, had Alyeska been able to respond more quickly, as Congressman Miller contends it should have, the consequences of the spill would not have been significantly

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ameliorated. As the NTSB concluded, "The 10-hour loss [of time] had no material impact on the cleanup because of the size of the spill." NTSB Report at 145.

3. ALYESKA NEVER DECIDED NOT TO RESPOND TO
A MAJOR OIL SPILL IN PRINCE WILLIAM SOUND.

Congressman Miller alleges that Alyeska's owners had secretly decided in advance of the EXXON VALDEZ grounding that Alyeska would not respond to spills in Prince William Sound. This contention is most readily refuted by the fact that Alyeska did respond to the EXXON VALDEZ grounding, which of course took place in Prince William Sound. To the extent, the ARCO Marine telex attached to Congressman Miller's letter, may be read as reporting that Alyeska would not respond to spills in Prince William Sound, it is simply wrong. No such decision was ever made.

During 1988, Alyeska was re-evaluating its oil spill response capabilities in an effort to determine how best to respond -- both immediately and long-term -- to various possible types of oil spills, including a significant spill in Prince William Sound. There were many who thought then, as many think now, that the most effective response to a major spill in open water is the application of dispersants. Another factor considered in these discussions was that it was appropriate to expect the shipper, with the assistance of various

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third parties and other oil spill response organizations, to take principal responsibility for the long-term response to a major oil spill. Indeed, both State and federal statutes imposed on the shipper the duty to clean up a spill. Moreover, the responsible State and federal regulators expected the shipper to promptly take responsibility for the long-term cleanup of a major spill, just as they had observed Alaska's 1988 "desk-top" drill in which it practiced the cleanup responsibility to the "spiller."⁶ It is a setting that the material attached to Congressman Miller's letter should be read.

* * *

In sum, Alyeska's OSCP described, and the State and other regulators were plainly aware that, in the event of a major oil spill in Prince William Sound, substantial quantities of oil would impact the shoreline and environmental damage would occur. It was well understood that the cleanup of such a major incident would take an extended period of time and would require the assistance of numerous third parties and various

⁶ The EXXON VALDEZ Oil Spill -- A Report to the President from Samuel A. Skinner, Secretary, Department of Transportation, and William K. Reilly, Administrator, Environmental Protection Agency, at 13 (May 1989); Testimony of USCG Commander Steven McCall before the NTSB at 1357 (May 20, 1989).

response organizations. It was also understood that the shipper, and not Alyeska, would assume responsibility for the long-term cleanup of the spill.

Alyeska responded to the EXXON VALDEZ oil spill as rapidly and effectively as the situation permitted, and in accordance with the OSCP. Lightering to avoid the possible breakup of the vessel and an even larger spill was the first priority, and containment the second. Within 48 hours the orderly transition of responsibility from Alyeska to Exxon began, and Exxon continued the cleanup efforts initiated by Alyeska.

DATED: April 18, 1991.

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306 SCENARIOS

Valdez Arm Tanker Casualty: Spill Amount 4,000 Barrels

Assumptions

For the purposes of this scenario, the following assumptions have been made. The sea state and weather conditions are in and remain in a state conducive to oil containment and cleanup. Sea state is less than 5 feet, currents are less than 1.6 knots, waves are less than 2 feet, and visibility is equal to or greater than 2 miles.

Conditions

The simulated weather is sunny to overcast with some light rain, winds are from the southwest at eight knots, high tide is approximately 6 hours after the incident.

An outbound tanker experiences a steering casualty just prior to commencing a turn in the Valdez Narrows, northwest of Entrance Point. This simulated incident occurs on June 22, 1986, at 6:00 a.m. Within 15 minutes, the tanker goes aground on Potato Point. One wing tank is damaged and the loss of oil is approximately 2,000 barrels per hour for the first hour and 500 barrels for the next four hours. The tanker is able to transfer oil to other tanks to prevent further significant losses of oil. The tanker will move off of the shoal under its own power with tug assist with permission of the U.S. Coast Guard. It will then be moved back to the Valdez Marine Terminal where it will be berthed for offloading and inspection. Figure 306-3 is an oil spill trajectory for this scenario.

The purpose of this scenario is to illustrate how we would respond to this spill of approximately 4,000 barrels in Valdez Arm. Actually, the most likely spill volume for vessels underway in trade with the Valdez Marine Terminal during the expected 30-year operating lifetime of the Marine Terminal is 1,000 barrels. No attempt will be made to describe the circumstances responsible for the mechanical failure or the additional considerations of tanker off-loading, inspection or release from the berth for sailing to the Lower 48.

The majority of the oil impact will be at Potato Point. It will impact an area about 6,000 yards either side of the point of impact of the shoreline and will be approximately 600 yards wide. Within 24 hours, there is a slick in Valdez Arm approximately $\frac{1}{4}$ mile wide and 2.4 miles long.

Immediate Response Action

The ship and shoreline, which is heavily oiled, will be boomed by 0900 hours and skimming operations will begin. The two mooring launches each with a Vikoma seapack and two 21-foot workboats will boom the ship and shoreline area. A reconnaissance helicopter is on site, originally our security helicopter which is relieved by an ERA helicopter with a crew out of Anchorage. A tug is on standby to assist the ship, if necessary. At the same time (0600-0900 hrs.), one 26-foot workboat and one 21-foot workboat are in the process of booming Shoup Bay.

By approximately 1100 hours, the barge has been moved into close proximity to the spill site by one of the tugs. The barge has on it various oil spill equipment including the sea skimmer, containment boom, sorbent boom, pumps, various hoses and various containers, such as barrels, bags or bladders. The sea skimmer is placed into a heavily oiled contained area next to the Vikoma boom and commences skimming oil and pumping it into the barge. The Class V and Class VII are in position to skim oil in the Vikoma seapack area, having been towed to the area by one of the tugs. One 19-foot workboat and 2 Jon boats are working in the proximity of the barge to begin washing down the beaches and picking up appropriate oil debris on the beach. The shoreline cleanup is initiated by using small pumps with approximately 50 to 100 pounds per square inch (PSI) pressure to wash down the gravelly beach and to skim the oil from the water surface. A Komara skimmer, working off of a 26-foot workboat, is picking up the oil as it is washed back into the water. At 1100 hours, the oil stops flowing from the tanker as the ship has transferred oil to prevent further loss of significant amounts of oil. By 1200 hours, Shoup Bay and Sawmill Bay have been boomed.

The appropriate government agencies will be notified immediately of the spill. It is presumed the regional response team will be organized. Alyeska Pipeline Service Company will make a request to apply dispersants to the spill immediately. Request for burning oil and debris along the contaminated areas of the affected shoreline will be made very soon in the response effort to the Alaska Department of Environmental Conservation. See Sections 404, 405 and 501 in the General Provisions for additional information on government relations.

Private commercial vessels from the Valdez small boat harbor would be employed to respond to the oil spill with booming and logistical support. Aircraft from our eleven on-call flight services contractors would be immediately employed to assist in the response with overflights, communication or logistical support. Oil spill cooperatives, such as (CIRO), Look Inlet Response Organization, or Alaska Clean Seas, and private oil spill response companies would be alerted to provide a backup to our initial response. The dispersants contractors would also be alerted to prepare for movement to Valdez. As an additional contingency, we would request the U.S. Coast Guard Pacific Strike Team to prepare for assisting in the spill response.

If oil was moving differently than the predicted impact area, exclusion booming would be extended to Gold Creek or Mineral Creek. Any change to the scenario weather and/or movement of oil would necessitate exclusion booming to other possible sensitive impact areas in Port Valdez.

By approximately 1800 hours, the high tide, along with an assist from a tug, allows the ship to move off of the shoal. The ship, with the assistance of the tug, returns to the Valdez Marine Terminal and is berthed for off-loading and inspection. The ship is followed back to the berth by the Class VII with 50' of boom, assisted by the one 26-foot workboat and one 21-foot workboat to skim any additional loss of oil. At this time, a fresh crew of contractor personnel are on-scene to replace the majority of Alyeska personnel, along with a relief crew of supervisors to continue the cleanup effort throughout the night.

Preparations are being made for Day 2 operation to be continued with rotating contractor personnel, both laborers and supervisors, from oil spill cooperatives and contractors available in the Anchorage and the West Coast area. Additionally, more boats are brought into the cleanup activity to assist logistically by providing support to run supplies and oil debris to and from the Marine Terminal. Efforts continue primarily on the west shoreline to wash down the gravelly beach and to skim the oil from the water. On Day 2, dispersant approval is given to apply dispersant to the 1/4 mile wide and 2.4 mile long slick in Valdez Arm.

Dispersants

Should a large spill occur in a likely dispersant application area, Alyeska would immediately notify our aerial dispersant applicator contractor, Biegert Aviation, Inc., in Chandler, Arizona to move to Valdez and be prepared to apply dispersants. Concurrently, Alyeska would request the on-scene coordinator to approve the use of dispersants. We would also notify Conair Aviation, Ltd., in Abbotsford, British Columbia to determine its availability and earliest arrival time in Valdez. Preference would be given to the contractor who could arrive in Valdez first. If necessary, we would also contact Air Response, Inc., in Mesa, Arizona. Another alternative is the Biegert Aviation ADDS pack, which could be mounted on a Hercules aircraft and used for dispersant spraying. Again, preference is given to that contractor which could respond in the shortest amount of time. If the Valdez Airport was not available, the base of operations would be Anchorage, Alaska. Various other application equipment could be used depending on the spill size and location; see Figure 306-1.

DISPERSANT APPLICATION EQUIPMENT

EQUIPMENT TYPE	SOURCE/LOCATION	REMARKS
Aircraft - Douglas DC-4	Biegert Aviation, Inc., Chandler, Arizona	9-17 hours response time
Aircraft - Douglas DC-6B	Conair Aviation, Ltd., Abbotsford, B.C., Canada	Must go through U.S. Customs
Vessel - 34-foot workboat	CIRO Raider Cook Inlet Response Organization (CIRO), Kenai, Alaska	Hercable, 50' swath
Helo - buckets	Simplex, CIRO, Kenai, Alaska	40' swath, 300 gal. payload
Large boat spraying package	CIRO Kenai, Alaska	40' swath Need large (125-185') vessel

DISPERSANT APPLICATION EQUIPMENT

Figure 306-1

Along with those notifications, a request would be made to Cook Inlet Response Organization and the Alaska Clean Seas Cooperative to move their dispersants to Anchorage or Valdez. We would also alert the following cooperatives, and would request their dispersants, if appropriate: Clean Bay, San Francisco, California; Clean Coastal Waters, Long Beach, California; and Clean Seas, Santa Barbara, California. Depending on the magnitude of the spill, we might also notify Exxon Chemical Americas in Houston, Texas, which produces Corexit 9527, for additional material. See Figure 306-2 for a summary of highway transport times.

DISPERSANT AVAILABILITY AND TRANSPORT BY HIGHWAY			
Location	Amount	Valdez	Anchorage
Valdez	2,475 gal.	0	10 hrs.
Anchorage	8,800 gal.	10 hrs.	0
Kenai	8,840 gal.	15 hrs.	4 hrs.
Deadhorse	550 gal.	28 hrs.	24 hrs.
San Francisco, CA	5,000 gal.	5 days	6 days
Santa Barbara, CA	14,290 gal.	5 days	6 days
Long Beach, CA	4,000 gal.	6 days	7 days
Houston, TX	50,000 gal./day	6 days	7 days

DISPERSANT AVAILABILITY AND
TRANSPORT BY HIGHWAY

Figure 306-2

Assuming that the on-scene coordinator approves dispersant application, Alyeska could have a plane in Valdez prepared to spray dispersants in as little as nine hours. Average response time is estimated to be 17 hours. The variance in time depends upon the contractors' equipment availability at the time of notification. There are 45 drums of Corexit 9527 available in Valdez. It would require approximately 10 hours to transport 160 drums of Corexit 9527 from Anchorage to Valdez, and approximately 15 hours to transport another 160 drums from Kenai to Valdez. We will make the assumption that approximately 1,000 barrels of oil in the Valdez scenario are in position for dispersant spraying. It has spread to an equilibrium thickness of approximately one-tenth of a millimeter (4×10^{-3} inches) and covers approximately 386 acres. This slick would be approximately 2.4 miles long by $\frac{1}{4}$ mile wide. At a dispersant-to-oil ratio (DOR) of 1 to 20 (1:20), 386 acres would require approximately 38 barrels or 2,090 gallons of dispersant. This dispersal could be accomplished by a DC-6 with a swath width of approximately 175 feet, in 8 to 10 passes. Assuming a payload of 3,000 gallons of dispersants, it would require one sortie, with an elapsed time of approximately $1\frac{1}{2}$ hours if based in Valdez, and 2 hours if based in Anchorage. The payload is the amount of dispersant an aircraft can carry depending upon weather, fuel load and the distance the plane must fly to apply the dispersant. The dispersant-to-oil ratio is determined by the thickness of the oil on the water; and, although oil spreads to varied thicknesses, one would use the thickness that is most representative of the oil in the dispersant area.

COMMUNICATION

Communication between Alyeska boats and aircraft will be accomplished by using VHF radios. Communication from the boats to the Valdez Emergency Center will be relayed through the U.S. Coast Guard in Valdez via the Potato Point repeater and telephone. Alyeska will continue to discuss with the USCG the possibility of the Valdez Marine Terminal tying directly into the Coast Guard radio repeater system during emergencies. This will eliminate the need for telephone relay.

Backup communication can be established using an aircraft on station to relay messages from the spill site to the Valdez Marine Terminal using the VHF radios.

A third method is to use a ship positioned near the spill to relay messages from the VHF radios via the satellite ship-to-shore telephone system.

Continuing Cleanup Activity

The beaches of the impacted areas are primarily rocky walls and gravelly-type beaches. These can probably be most efficiently cleaned by low to high pressure washing while containing the oil and recovering it with skimmers in the water. We anticipate approximately 10 percent of the lost oil will be consumed by weathering and evaporation. It is estimated we will conservatively collect approximately 1,000 barrels of oil in the skimmers, which will be returned to the Terminal via the recovered oil tanks. Approximately 1,000 barrels will be dispersed. Approximately 1,600 barrels will be deposited on the beaches with approximately 1,500 barrels of that recovered by the cleanup methods of washing, adsorbent use and skimming operations. Approximately 100 barrels of oil would not be recovered and will be naturally dispersed.

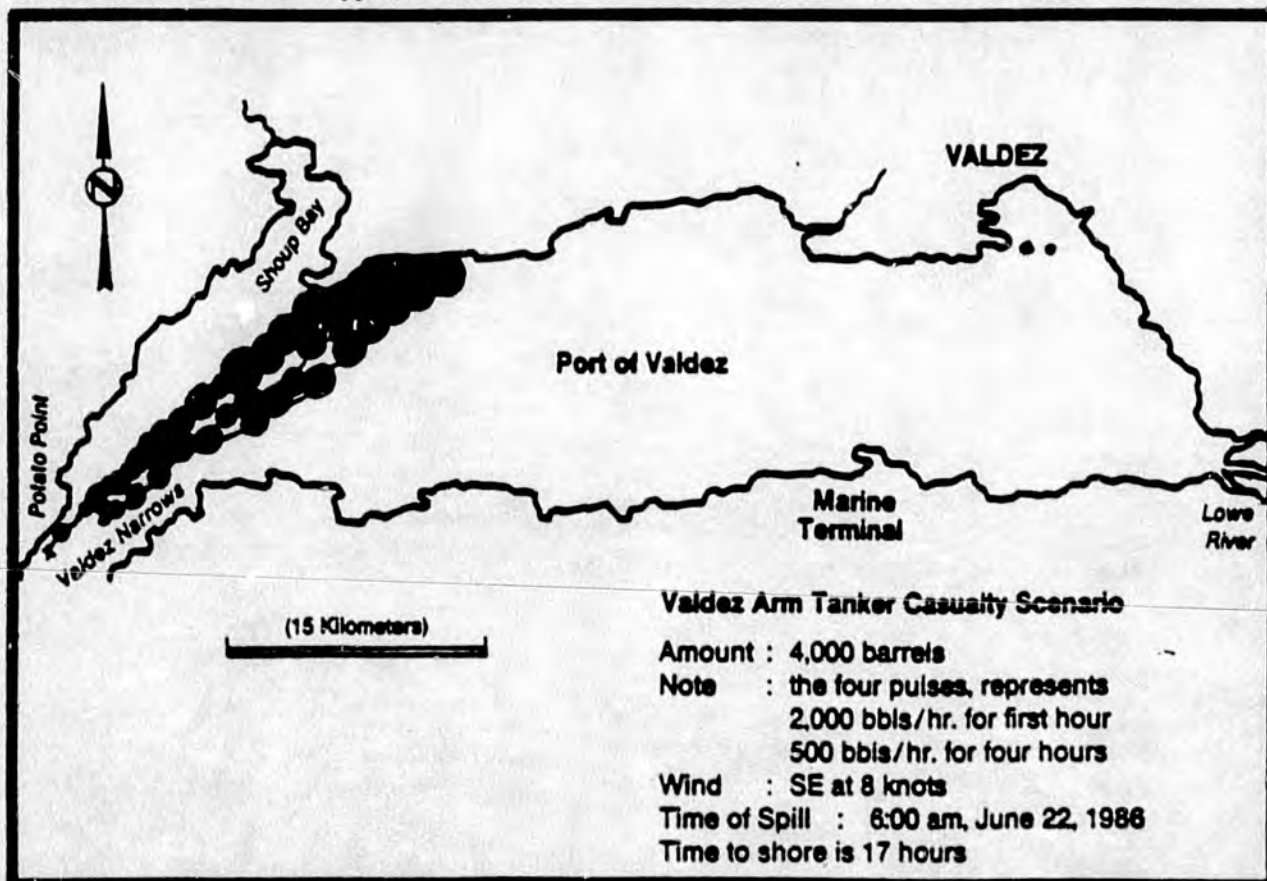
A bird cleaning area would be immediately set up in case there are any significant number of oiled birds affected by the spill. The IBRRC (International Bird Research Rescue Center) would be activated early in the spill to ensure that a facility is available for any oiled birds.

Conclusion

It is anticipated that the cleanup will continue for approximately 2 months. This is primarily to monitor the effects of an extreme high and low tide over a couple of tide changes.

Portions of the cleanup responsibility, for instance, the beach cleanup and/or protection of Sawmill and Shoup Bay, will be given to specific oil spill contractors, so as to release our own personnel back to the operations of the Terminal. Alyeska will supervise the entire cleanup operation. In addition to the above-mentioned resources, members of the Association of Petroleum Industry Co-op managers, a group of West Coast oil spill cooperatives, would be available to provide continuing support in specialized oil spill equipment or supervisory personnel.

The scenario does not address any other aspects of tanker casualties such as fire. It also does not address response during weather conditions which make mechanical recovery impossible. It is presumed a dispersant decision is made soon enough to make application feasible.



VALDEZ ARM OIL SPILL SCENARIO TRAJECTORY

Figure 306-3

EXHIBIT A

Page 4 of 4 Pages

Prince William Sound Tanker Casualty: Spill Amount 200,000 Barrels

Alaska Pipeline Service Company has been requested to respond to a scenario of a 200,000-barrel spill in Prince William Sound. APSC believes it is highly unlikely a spill of this magnitude would occur. Catastrophic events of this nature are further reduced because the majority of tankers calling on Port Valdez are of American registry and all of these are piloted by licensed masters or pilots. Nonetheless, should such an incident occur, the following is our overview of the initial response to that scenario. Attached is an oil spill trajectory of the oil movement. A spill of this magnitude would require considerable resources and logistical operations, the minute details of which are not included in this scenario because the details are not useful in long-term response planning. This scenario will not address the circumstances responsible for the loss of cargo or of the fate of the tanker. Once a tanker is immobilized, the U.S. Coast Guard will determine future movement of the vessel.

Assumptions

The following assumptions are made in presenting the response to the scenario: The sea state and weather conditions are in and remain in a state conducive to oil containment and cleanup. For example, winds less than 15 knots, sea state less than 5 feet, currents less than 1.6 knots, waves less than 2 feet, visibility equal to or greater than 2 miles.

The spill incident occurs through some failure of the tanker crude tanks and does not discuss other disaster possibilities such as collision or fire.

Conditions

In addition to the above assumptions on sea state, the weather is assumed to be conducive to oil spill cleanup and remains in this mode for the response actions. For this particular scenario and trajectory input, the date of June 22 at 6:00 a.m. was chosen for the spill incident with winds from the east at 5 knots. The location is 60° 30' 5" North, and 147° 2' 0" West longitude. The tanker has a cargo amount of 550,000 barrels. The trajectories show two possibilities—one is an instantaneous spill of 200,000 barrels and a second is a 10,000 barrel per hour spill that continues for 20 hours. Figure 306-6 shows the trajectory oil spill movement. It is approximately 30 miles to the site from the Valdez Terminal; an average speed of 12 knots is used to determine the travel time to the area for the Crowley tugs. An approximate speed of 8 knots is used for towed equipment and 20 knots for the workboats without tows. Figure 306-4 is a summary of equipment capacity and response times. Figure 306-5 is a table of equipment in the first response effort.

Immediate Response Actions

On notification of the pollution incident, the following response actions would be simultaneously initiated. The closest empty or light loaded tanker will be directed to the spill site with an estimated maximum arrival time of 12 hours. The initial response would include moving containment booms, skimmer equipment, support equipment and personnel to the site. Additional backup personnel and equipment from the pump stations along the line would be mobilized. Private commercial vessels from the Valdez small boat harbor would be employed to assist in booming and logistical support. Aircraft in Valdez would be employed to assist in the response with overflights, communication or logistics. This would immediately be backed up with air support from our eleven on-call flight services contractors. APSC would request U.S. Coast Guard Pacific Strike Team assistance through the Valdez U.S. Coast Guard office. In addition, all oil spill contractors in the state of Alaska would be asked to mobilize and move to the site as soon as possible to respond to the spill. Also, a request to the local cooperatives, CIRO and Alaska Clean Seas, would be made for any additional equipment that they could supply to this area. See Figure 607-1 for a summary of air transport response times and Figure 607-2 for vessel response times. A request would be made to the Association of Petroleum Industry Co-op Managers to respond with available equipment and personnel that can be located in the West Coast area. The International Bird Rescue Research Organization would be immediately requested to mobilize and prepare for movement to Prince William Sound. A request would be made immediately to the OSC to apply dispersants to the oil slicks. Biege Aviation and other dispersant contractors would be requested to mobilize in Valdez and be prepared to apply dispersants. A request to open-burn slicks on the ocean and debris and oil on the shoreline would also be made immediately to the OSC.

to open-burn slicks on the ocean and debris and oil on the shoreline would also be made immediately to the OSC.

It is expected the agencies response actions would include the following: The regional response team would be immediately mobilized. The decision process on dispersant application would be begun immediately. There would be a joint meeting between the U.S. Coast Guard, EPA, Alyeska, Alaska Department of Environmental Conservation, U.S. Fish and Wildlife Service and possibly other government entities, to keep all affected parties apprised of the situation and, hopefully, to facilitate the decision making on the response alternatives.

As a result of the initial coordination meeting, it was decided certain response priorities would have to be made as this would be a long-term impact and cleanup situation.

The trajectories indicate that oil will threaten Eleanor Island, Naked Island, Lone Island, Perry Island and the Pigot Bay area, Culross Island and the Main Bay area shorelines. Although it is unlikely oil will reach Main Bay, as a precaution the fish hatchery will be boomed immediately. Some of the exclusion area numbers 79 through 92 may be impacted by the oil movement. The first areas of consideration would likely be exclusion areas 81, 82 and 83.

Second considerations would include areas 79, 80, 89, 90, 91 & 92, and third consideration would likely be sites 84 through 88. These sites are considered sensitive, primarily because they are salmon spawning areas. Additional sites or other areas may have a higher priority, depending on the oil movement and other additional information that may become available. The oil spill trajectory indicates the above priorities are likely to be the most significant. This information is listed in Section 300. One of the oil spill response contractors would be directed to Whittier with the sole task of providing exclusion booming in these areas with the above-listed priority, unless other priorities were agreed to among the agencies and Alyeska at the coordination meeting.

300

PRINCE WILLIAM SOUND SCENARIO RESPONSE TIMES

Vessel	Storage Cap. (bbls)	Recovery Rate (bbls/hr)	Vessel Speed/Prep Time		Travel to Spill with Prep Time (hrs)
			(knts)	(hrs)	
Tugs	N/A	N/A	12	0	2.5
2 Mooring Launches	N/A	N/A	8	0.5	3
Towing:					
Marco Class V	40	428			
Marco Class VII	80	428			
2 Vikoma Seapacks	w/1500' boom each				
2-21' Monarks	N/A	N/A	20	0	1.5
1-26' Monark	N/A	N/A	20	0	1.5
1-26' Monark	N/A	N/A	8	0.25	2.75
Towing:					
1 Vikoma Seapack	w/1500' boom				
Tug & Contingency					
Barge with/	4700	N/A	8	2.5	5.0
Sea Skimmer	N/A	536			
Equipment	1976 (bladders)				
Towing:					
2 Vikomas	w/1500' boom each				

PRINCE WILLIAM SOUND SCENARIO RESPONSE TIMES

Figure 306-4

Distribution of Oil

It is estimated that approximately 50% of the oil will be recovered at sea, either directly after the spill or at a later time by being washed off of the rocks, contained and skimmed off of the water. Approximately 15 percent of the spill will evaporate during the time it is moving toward the shoreline and prior to removal. Of the oil that remains approximately 15 percent of the oil will be recovered from the shore, primarily by washing the oil off of the rocks and recovering it on the water. Fifteen percent of the oil will naturally disperse and approximately 5 percent will remain in the environment.

Environmental Considerations

Along with the salmon spawning areas and the sea bird colony areas there are some purse seine and drift gill net areas around Esther Island in the Port Wells area. There is also some ground fish activity on the west side of Naked Island, Eleanor Island, Ingot Island and the Port Wells area.

Section 600 of the Prince William Sound Contingency Plan gives us the Sea Bird colony areas that would likely be impacted by a spill of this nature. The Naked Island group, Eleanor Island, Bald Head Criss Island, Dutch group, Perry Island, Fool Island, Egg Rock, and Esther Rock are likely impact areas of the sea bird colonies. There is a possibility that Smith Island and Little Smith Island sea bird colonies may also be impacted with a slight wind change. The most likely effective protection of the sea bird colonies is to prevent the oil from impacting the shore lines at all. This can be done of course only by dispersing the oil at sea, or allowing an open burn of the oil at sea. Since the timely application of dispersants is so important it is necessary that the decision process for allowing dispersant application be approved prior to an incident such as this. It will allow the oil industry to stockpile the necessary dispersants and application means so that resources such as the sea bird colonies can be protected in the most reasonable manner.

This has been a brief initial response to the spill scenario of a 200,000 barrel catastrophic event. There would, of course, be a long term cleanup of the spill on the various beaches of Prince William Sound. In reviewing the aspects of this size spill it becomes very apparent how important it is to have dispersants approved so that they can be used very effectively to prevent the continuing input of oil into the small bays and shorelines in Prince William Sound. Burning also has to be looked at as a very good alternative to the cleanup in Prince William Sound on the various inlets and bays in which oil may accumulate.

PRINCE WILLIAM SOUND SCENARIO INITIAL EQUIPMENT

Initial Equipment to Prince William Sound Oil Spill:

2 Terminal Tugs and Two Mooring Launches

Contingency Barge B&R 126-1 with the following:

- Vikoma seaskimmer and power unit
- Marco power block
- Life raft
- Inflated fenders
- 2 Stop systems (Tanker Lightering Systems)
- 3,000 feet containment boom
- 1,000 feet sorbent boom
- 20 bales sorbent pads
- 1 50,000 gallon bladder
- 1 20,000 gallon bladder
- 1 10,000 gallon bladder
- 1 3,000 gallon bladder
- 2 3" diesel pumps (Komara skimmer pumps) & 100 feet 3" hose
- 2 21' Monark workboats
- 2 26' Monark workboats
- Towed: { Marco Class V skimmer
Marco Class VII skimmer
5 Vikoma seapacks (7500' of boom)

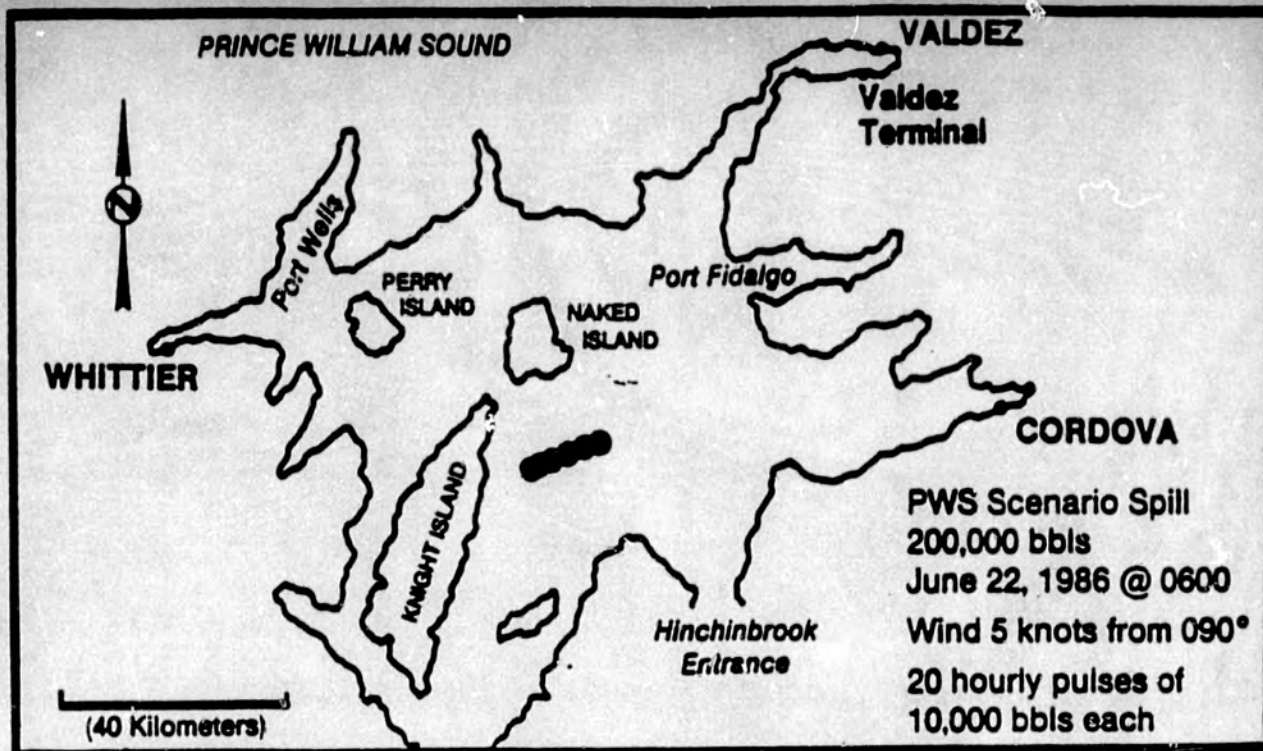
Initial Manpower: 15 minimum and tug crews

Supplies:

- Radios
- Fuel and oil
- Anchors and line
- Life lines
- Life jackets
- Rubber gloves
- Rain suits
- Rubber boots
- Plastic bags
- Cleanup tools
- Batteries

PRINCE WILLIAM SOUND SCENARIO
INITIAL EQUIPMENT

Figure 306-5



PRINCE WILLIAM SOUND OIL SPILL SCENARIO

Figure 306-8

RECEIVED

Department of Law

APR 18 1991

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Charles P. Flynn, Esq.
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810 N Street
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Attorneys for ALYESKA PIPELINE SERVICE COMPANY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
EXXON CORPORATION; EXXON SHIPPING)
COMPANY; ALYESKA PIPELINE SERVICE)
COMPANY; AMERADA HESS PIPELINE)
CORPORATION; ARCO PIPE LINE)
COMPANY; EXXON PIPELINE COMPANY;)
MOBIL ALASKA PIPELINE COMPANY;)
PHILLIPS ALASKA PIPELINE CORPORA-)
TION; BP ALASKA PIPELINES, INC.;)
UNOCAL ALASKA PIPELINE COMPANY)
and the T/V EXXON VALDEZ, in rem,)
)
Defendants.)

Case No. A91-082 Civ.

AFFIDAVIT OF PERSONAL
SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

2373-195
CPF/lstf

BURR, PEASE
& KURTZ
A PROFESSIONAL CORPORATION
810 N STREET
ANCHORAGE, AK 99501
907/276-6100

ACE 417694

Linda S. Foley, an employee of Burr, Pease and Kurtz, 810 N Street, Anchorage, Alaska, being duly sworn, states that on April 18, 1991, she personally had served by hand-delivery a copy of the "Response of Alyeska Pipeline Service Company to Public Comments of Congressman George Miller" upon counsel for the parties as follows:

Barbara B. Herman, Esq.
Assistant Attorney General
STATE OF ALASKA, Department of Law
Office of the Attorney General
1031 West Fourth Avenue, Suite 200
Anchorage, AK 99501

Douglas J. Serdahely, Esq.
BOGLE & GATES
1031 West Fourth Avenue, Suite 600
Anchorage, AK 99501

Joseph W. Bottini, Esq.
Assistant U. S. Attorney
222 West Seventh Street
Anchorage, AK 99513

Linda S. Foley
Linda S. Foley

SUBSCRIBED and SWORN to before me this 18th day of April, 1991.

Sharon L. Hollingshead
NOTARY PUBLIC in and for Alaska
My Commission Expires: July 25, 1993

BURR, PEASE
& KURTZ
A PROFESSIONAL CORPORATION
810 N STREET
ANCHORAGE, AK 99501
(907) 276-6100



BURR, PEASE & KURTZ

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

810 N STREET

ANCHORAGE, ALASKA 99501-3293

HAND-DELIVERED

To

BARBARA B HERMAN ESQ
ASSISTANT ATTORNEY GENERAL
STATE OF ALASKA DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
1031 WEST FOURTH AVENUE SUITE 200
ANCHORAGE AK 99501

ACF 417696

CHENEGA BAY I.R.A. COUNCIL

44

Post-It™ brand fax transmittal memo 7671		# of pages • 2
To	Barbara Herman	
From	Darrell Tolomoff	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

April 18, 1991

HAND DELIVERED

Barbara Herman, Esq.
Oil Spill Litigation
Supervising Attorney
Attorney General's Office
1031 West Fourth Avenue, Suite 400
Anchorage, AK 99501

Gentlemen:

I would like to comment on the \$900 million civil settlement which Exxon has agreed to. The Chenega Bay I.R.A. Council is the recognized governing body for the residents of the village of Chenega Bay, Alaska. We were the first community to be impacted by the *Exxon Valdez* oil spill.

First, the \$900 million is literally pocket change for a giant corporation like Exxon. The wrong message is being sent to polluters and criminals. The message is clearly: **DON'T WORRY, BE HAPPY!** Because you'll get off with a slap on the wrist and any money you pay out, you can just pass the bill to the customers. I am astonished that the criminal is allowed to name their punishment and fine.

Second, how can the people settle without even knowing the extent of the damage? There must be public disclosure of the scientific and economic studies. How can we determine if the settlement was fair without this knowledge?

Third, any attempt at restoration must include those people most affected by the oil spill. Native villages have been around before Exxon was even incorporated; they have been around for hundreds of years. Unlike oil companies and the oil spill workers, the Natives will be here until the end of time. It is only common sense that the people most impacted have a strong say in restoration.

ACE 417665

CHENEGA BAY IRA COUNCIL

Barbara Herman, Esq.

April 18, 1991

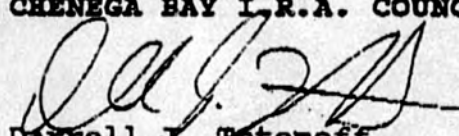
Page 2

Fourth, it is insulting for state and federal officials to criticize us in our attempts to sue for natural resource damages. We have lived here all of our lives and relied on our natural resources for that very existence. We do have a right to our natural resources.

Finally, and most important, I perceive the "settlement" money as no more than "hush" money. By this terrible deed, the government is keeping the true facts hidden from the public. I could only equate that to a rape victim not being informed if the rapist has AIDS or not. They would not know the extent of the damage until it is too late, until they are dead.

Sincerely,

CHENEGA BAY I.R.A. COUNCIL



Darrell J. Totemoff,
Administrator



ALASKA DISCOVERY

369 South Franklin Street • Juneau, Alaska 99801 • (907) 586-1911 • Fax: (907) 586-2332

April 19, 1991

Barbara Herman
Office of the Attorney General
Alaska Department of Law
1031 West 4th Avenue, Suite 200
Anchorage AK 99501

Dear Ms. Herman:

On behalf of Alaska Discovery, Inc., I wish to comment on the State of Alaska's proposed settlement of civil litigation arising from the Exxon Valdez oil spill disaster. Alaska Discovery is an Alaska business that depends on tourism, primarily visitors interested in wildlife and other natural resources. We believe that the terms of the proposed settlement do not protect the public interest and that the settlement should not be accepted.

We support the concept that an adequate settlement is preferable to protracted litigation. However, the proposed settlement is inadequate because it fails to ensure restoration of injured natural resources in the areas affected and because it does not require payment substantial enough to serve as both compensation and assurance to Alaskans that operators such as Exxon will not simply externalize the costs of safety by burdening the public with the risk.

The Exxon Valdez spill killed more wildlife than any spill in history. The state-federal natural resource damage assessment studies show substantial damage to natural resources. The Summary of Effects of the Exxon Valdez Oil Spill on Natural Resources and Archaeological Resources (March 1991) estimates bird mortality at between 260,000 and 580,000 animals. (at p. 8). The common murre, for example, may take decades to recover; the regional population suffered virtually total reproductive failure in both 1989 and 1990. Other species also show severe disruption of life cycles and population dynamics. Injury to marine mammals was documented, including "continuing injury to sea otters." (*Ibid.* at p. 5.) The intertidal and nearshore ecosystem was "the most severely contaminated habitat" (*Ibid.* at p. 13). This was reflected in decreased biological productivity, reduced abundance of organisms, and disruption of ecosystem functions. "Contaminated clams and other invertebrates are a potential continuing source of petroleum hydrocarbons for sea otters and other species that forage in the shallow subtidal zone." (*Ibid.*) Strikingly, samples from pollock taken as far as 500 miles away from the site of the tanker grounding showed

ACE 447133

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- Since 1972 -*

elevated petroleum hydrocarbon metabolite concentrations in their bile. (See ibid.)

Even without the release of all the scientific damage assessment information, it is clear that the Exxon spill caused serious long-term damage. If all the data on the intertidal and subtidal ecosystem were released, we believe it would reinforce this conclusion and document additional damage as well. The Summary of Effects also notes that "long-lived species such as bald eagles, murre, and sea otters may not manifest some effects until a number of years have passed." (at p. 15)

Harm to human communities also has been well-documented. Disruption to fisheries, to other natural resource based businesses, and to local government functions was widespread. While Exxon paid some damage claims, it has flatly refused to pay many others. Alaska Discovery is one of the businesses harmed financially by the spill. Exxon has simply refused to pay, correctly betting that the expense of litigation would make it impossible for us to pursue our claims against the company.

The Exxon spill caused serious injury beyond financial harm. For communities like Chenega Bay, it has disrupted residents' ability to use resources near the village; they have concluded that many traditional subsistence harvest areas are no longer suitable and village activities have either been discontinued or shifted to other areas, at considerably greater cost and risk. Some of these changes may be permanent. The spill has also torn apart community life in other towns and left lasting scars.

To be considered adequate, any settlement must be sufficient to restore damaged natural resources and services. In addition, however, a settlement must be substantial enough to show that Exxon is compensating the state for the many other harms to Alaskans resulting from the company's failure to prevent the spill and its failure to respond effectively and in accordance with the approved, site-specific oil spill contingency plan. Anything less will mean that Exxon has escaped without shouldering its full responsibility. If that happens, the affected public will know that the State of Alaska has let an operator off the hook without clearly taking full responsibility for what its actions have caused and without establishing that industry operations must fully protect the public in Alaska.

It is important to note that the settlement is not as large as first reported. Exxon apparently is not being required to pay interest on the deferred payments. The present value of money received by the State of Alaska years in the future is much less than the face value of the debt, unless it is corrected by appropriate discounting and interest payments.

The Associated Press (March 22, 1991), citing projections by the Congressional Research Service and private companies specializing in deferred payment settlements of lawsuits, estimates that the actual cost to Exxon of the settlement may be as little as \$486.3 million -- less than half of the "one billion dollar" deal originally announced. This reduced value to the state is not merely theoretical. Every household paying a mortgage and every business facing operating loans pays interest on the deferred amount still

owed; this agreement does not hold Exxon to the same standard. Even worse, Exxon would be free to set up its own annuity arrangement, using investments and tax deductions to reduce the cost of the settlement still further.

The amount of money available for damage restoration is also reduced by the amount already expended in the response effort by the state and federal governments. Reimbursement of these expenditures will consume up to \$134 million. In addition, the costs of damage assessment studies now scheduled or planned could require another \$40 million. Together, these items will reduce the amount of the settlement actually available for restoration work by nearly \$175 million.

This settlement also lets Exxon escape all further cleanup responsibility. Additional cleanup costs will fall on the state. These expenses may total \$50 million in the short-term and another \$50 million in the future. As a consequence, the adequacy of the proposed settlement is directly and substantially reduced.

With respect to natural resource damages, the settlement does not provide for a payment large enough to cover all restoration costs. The ecosystems damaged by the spill desperately need a substantial recovery period during which they are free from further degradation. Consequently, the highest priority should be prevention of additional stress on the ecosystems hurt by the spill. The most effective method is direct protection of areas that otherwise could be subject to further degradation. Examples include acquisition of timber harvest rights, land classifications to safeguard the area while recovery occurs, establishment of forested stream buffers to prevent siltation of salmon spawning beds, and protection of critical areas such as bald eagle nesting sites. These measures could easily cost \$200 to \$300 million in Prince William Sound alone and more than twice that amount if damaged areas outside the Sound are included.

Direct assistance to some plant and animal populations should be considered as well. Although the complete program depends on the results of the scientific damage assessment work and the restoration planning process, a partial list includes cleaning of affected spawning beds and bank gravels, building incubation boxes, enhancing stream channels for spawning, and replanting beach vegetation. In addition to these direct boosts to populations, it is necessary to manage fisheries harvests more precisely in order to protect wild stocks harmed by the spill. This requires expenditures for research and for better in-season management. Other techniques, such as shellfish mariculture projects, also should be considered — especially in relation to village subsistence and economic needs.

Restoration of biological communities is not the only work remaining to be done, however. Shoreline areas used by Alaskans and visitors need substantial attention. Many sites plainly need additional cleaning plus revegetation and other restoration measures. For example, recreational campsites remain badly damaged, archaeological and historical sites need

attention, and areas used by village people for subsistence activities and other aspects of community life are still seriously degraded.

One other matter, equally important but more difficult to quantify, should not be neglected in evaluating the adequacy of the settlement. The Exxon spill violated Alaskans' trust and eroded our sense of confidence in the oil industry. Tremendous damage was done to the people who live in the areas hit by the spill. They and many other Alaskans experienced a strong sense of violation. The ineffective response by Alyeska and Exxon and their failure to follow the site-specific oil spill contingency plan exacerbated this feeling. Exxon's subsequent, and continuing, massive national public relations blitz, claiming that everything is clean and back to normal is further evidence that the company sees this as simply a transitory incident in its business enterprise. Exxon has spent a great deal of money in selectively releasing massaged "scientific" data, anonymously presenting airline in-flight video propaganda pieces that look like news reports, producing a torrent of glossy, misleading publications and many other items designed to convince the American public that there's no longer a problem.

This settlement does virtually nothing to vindicate the sense of violation and the sense of injustice engendered by the spill and its aftermath. The proposed deal requires Exxon to pay for things that it was required to pay anyway under applicable statutes. There is no overall compensation element to the settlement, showing that the full extent of the damage has been recognized, that the seriousness of this violation has been acknowledged, and that Alaskans can put this matter behind us with the assurance that Exxon has made a genuine commitment to safe, responsible operations.

A compensation element could take at least two forms: a monetary payment to the State of Alaska or concrete measures to provide greater protection against damage from future spills. The latter approach has the advantage of matching the compensation to the source of the harm and reducing the risks that Alaskans face from potential oil spills. For example, Exxon could fund a Marine Spill Response Center for Alaska (MSRC). Since Alaska does not now have the statewide response capacity that the MSRC would provide, Exxon's sponsorship of MSRC facilities and services would help demonstrate the company's commitment to strengthening spill prevention and response preparedness.

In summary, we believe the settlement is inadequate. The dollar amount is too low to cover the full range of restoration activities, Exxon has escaped further cleanup responsibility, and there is no overall compensation element to clear the air and reestablish confidence. In our view, the most appropriate course is to require the renegotiation of this proposed agreement. Recognizing, however, that the settlement may be approved even with these serious shortcomings, we offer the following recommendations for conditions or stipulations:

1. Exxon should be required to forego any deduction of settlement costs or cleanup expenditures from its state and federal taxes. With respect to the

State of Alaska, such a deduction would amount to a direct subsidy by the people most damaged by the company's failures.

2. Use of the settlement proceeds should be explicitly limited to reimbursement of state response costs, damage assessment, and restoration. There is not enough money in the settlement to tolerate spending it for economic development projects, highway construction, or other collateral items.

3. The Alaska Legislature should exercise its oversight authority and structure the allocation of the settlement proceeds. The decision should not be left to state agency heads designated as natural resource trustees. A public process should be established so that affected Alaskans and their local governments are directly involved in making the decisions about how settlement proceeds are used. Simply commenting is insufficient; they must actually shape the decisions ultimately reached. The legislature has already created the Citizens Oversight Council on Oil and Other Hazardous Substances. This body is well-suited for implementing the kind of public process needed for decisions on how to use the settlement proceeds. Under no circumstances should the state administration be authorized to control the allocation of the funds or the appointments to any public process.

4. The legislature should direct that habitat protection and acquisition be given top priority in restoration efforts using settlement proceeds. This is the single most effective tool available to achieve lasting recovery of the natural resources damaged by the spill. Recent statements by some state officials have suggested that the administration may not give habitat sufficient priority. The legislature should not leave this crucial decision to the administration's discretion.

5. All parties should release their scientific and other studies, including economic studies. This information should include but not be limited to data generated in the natural resource damage assessment effort. Alaskans have a right to know the acute and long-term effects of the spill. Selective release of information by Exxon has skewed the public's understanding of the impacts. Honest scientific inquiry demands that the studies be subject to public and peer review.

6. The State of Alaska should be required not only to release the scientific damage assessment studies, economic studies, technical analyses, and other information within its control, but also to help the public understand the data. Public workshops to discuss the findings in the affected areas would be a useful approach. Although a legal justification for not releasing the information has been offered by the attorney general, there is a compelling public policy reason for full disclosure. The public is entitled to know what damage actually occurred, what risk still exists, and what

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restoration burdens may fall on local communities. The public also is entitled to know the basis used by the state to conclude that this settlement proposal was desirable.

Thank you for the opportunity to comment.

Sincerely,

Ken S. Leghorn

Ken S. Leghorn
Alaska Discovery, Inc.

cc Thomas A. Campbell,
NOAA General Counsel

ACE 447138

TOTAL P.06

To: Honorable Russet Holland
US District Judge
U.S. District Court
222 West 7th Ave #4
Anchorage AK 99513

46

From: PAN
A.I.T. Treaty Council
Abolish Alliance
et al.

Contact: Elise Scott
(415) 564-7001

RE: Exxon/AK Settlement
Public Comments

4/18/91

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

FROM: Pesticide Action Network - NARC
Int'l Indian Treaty Council
Abalone Alliance
West County Toxics Coalition
Coalition For Our Earth
South and Meso Am. Indian Center
Alaska Action Group

In Re:

United States of America v. Exxon Corporation, Shipping, and Pipeline Companies: Cases No. A90-015 CR., A91082 Civil, A91083 Civil.

U.S. v. State of Alaska and St. of Ak. v. U.S.: No. A91081 Civil

St. of Alaska v. Exxon Corporation, et al.: 3 AN-89-6852 Civil

Native Village of Chenega Bay v. Manuel Lujan, Jr., et al. and Chenega Corp. v. Manuel Lujan, Jr., et al.: 91-484-SS Civil.

Dear Sirs:

We are presenting this letter as public comment for the above stated cases and the Settlement Agreement Concerning Exxon Valdez Oil Spill and Memorandum of Agreement Between the United States and the State of Alaska and Exxon Corp. (Exxon Settlement)

The following comments on the Exxon Settlement represent the views of the above mentioned organizations which have reviewed the Exxon Settlement, the comments submitted by Representative George Miller, the Summary of Effects of the Exxon Valdez report, and other applicable reports and comments. In our review of these documents and other available information we found the current Exxon Settlement inadequate and severely lacking in several key areas, including legal.

We urge you to reject the Exxon Settlement because of the following important points of information:

* The Exxon Settlement compromises the rights of the people of the United States by waiving their right to suit on civil or criminal claims Alyeska Pipeline Company and its owner companies. Alyeska intentionally broke the law and has a record of negligence and incompetence in its activities in Alaska. In no way does this settlement act as a deterrent for Alyeska and other companies who knowingly jeopardize the health and welfare of the people of the U.S.

Criminal charges against Alyeska Pipeline Company and its owner companies need to be pursued by the U.S. Department of Justice and the State of Alaska. To not file these charges will be to ignore the legal responsibility of the State of Alaska and the U.S. to protect and preserve the rights of its citizens.

We refer to the comments and proof provided by the Honorable George Miller, D - Martinez in making the above conclusions. It is only through the work of Rep. Miller that the people of the U.S. have been alerted to the legal atrocities that are occurring in the State of Alaska, which are a national issue.

* Settlement cannot be made until an objective verification is made of the amount of oil spilled from the t/v Exxon Valdez. To date, the only estimate has come from Exxon and requests for verification have been ignored. We believe 11 million gallons is an incorrect figure based on the fact that 8 out of 13 cargo holds were split open, the total of which contained 53 million gallons of oil. It does not make logistical sense that more oil did not get out, especially given the 5 day delay in response.

Penalties must be based on an accurate, objective verification of the amount of oil spilled. This verification can still be pursued. Other estimates some as high as 25 million gallons should be investigated.

* The Exxon Settlement suppresses information from studies done by publicly funded agencies. Suppression of these studies deprives those directly affected by the spill of irreplaceable and needed information. In addition, withholding information paid for by tax dollars attained through public agencies is highly questionable and at least an affront to the people of the U.S.

* Given the information contained within the Summary Effects of the Exxon Valdez report, long-term damage abatement and restoration will continue for many years. 1 billion and its 500,000 estimated value upon final payment is inadequate. At least, the appropriateness of the damages that would be recovered under this settlement cannot be determined until the studies are released.

Restoration will be imperative for 3rd parties currently abandoned by the state. The state is already in the process of legislating away to other expenditures money from the settlement that should be spent on restoration.

An accurate account of coastal impact in miles of beach oiled has not been done. There are reports of oiled beaches being found that are not currently listed and have never been cleaned. Most of these seem to be outside of the Prince William Sound. Reports by people who testify that they were told "enough beaches have been reported" should be investigated.

* The re-opener clause has been made ~~obsolete~~ ^{obsolete} due to the release of the Summary of Effects report. It is not realistic that we will discover any damage we are not currently aware of. It is the longevity and the persistence of the impacts that will cause the most damage. This fact is already being predicted, making it impossible for the state to be awarded any more damages in the future.

* The state's constitution is being abrogated by the settlement. Precedents such as this compromises the ability of the state of Alaska or other states fighting industry to attain reparations for damages done. Given the practices of the oil industry in and out of Alaska, it is important that this case act as a precedent damaged parties can look to for assistance in future cases versus a precedence they are disabled by.

It is not in the peoples interest to have their state constitution abrogated when Alyeska remains free to press charges against the state. This failure to protect the state spells pure stupidity on the part of those acting for the State of Alaska.

* On moral grounds, the state of Alaska is abandoning those it represents and siding with an immoral and criminal party that has severely impacted the people and resources of the state. After

4/18/91

supposedly persuading the Native villages to drop their cases against the state and convincing them to side with the state in their suits against Exxon, the state has since taken a turn for the worse.

Community impacts are not represented in the settlement. Impacts that threaten the integrity of Native communities and have caused devastating economic, psychological, and emotional effects in these communities. Alaska Natives are being ignored by all parties of this case. Given the states role in the spill, which is fairly large considering their lack of enforcement of critical laws, the state has a responsibility to those negatively affected by the spill. Including, extensive restoration of damaged resources and communities.

In summary:

The Exxon Settlement fails as a deterrent to Multinational Corporation arrogance that works to undermine the rights of the people of the U.S. and effectively places them at the hands of Corporate whim. Exxon's reaction alone is enough to reject this settlement. Comments such as calling the settlement "a price of doing business," saying "it looks pretty good," and it "will not have a noticeable effect on their financial results" reveal the inadequacy of the settlement.

The state needs to re-evaluate its responsibilities and constituency and base the settlement on those aspects, rather than on the political endeavors of certain key public figures.

As we as national and international groups believe we will be ultimately affected by this decision, we urge you to reject the Exxon Settlement.

Thank You

Pesticide Action Network - North American Regional Center
International Indian Treaty Council
Abalone Alliance
Coalition For Our Earth
West County Toxics Coalition
South and Meso American Indian Center
Alaska Action Group

* Appendix offers contact information for the above groups

Addresses:

Pesticide Action Network - North American Regional Office
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International Indian Treaty Council
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Coalition For Our Earth
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South and Meso American Indian Center
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