

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1914 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL... 1991-92 131

alone.

Mr. Chenoweth said SB's 200 and 201 could be combined.

There were no further questions for Ms. Munson, and so the Chairman continued with the last item on the agenda, which is Rep. Martin's resolution.

HCR Bill Draft by Rep. Terry Martin

Rep. Martin's draft resolves that the Alaska Legislature approve the proposed new settlement with Exxon (those documents signed on September 30, 1991). He felt we should approve the Exxon settlement and move forward.

Rep. Davidson (via teleconference) thought perhaps we should include an additional resolve that the legislature would like to see an increased role for itself in the dispensation of those funds. Would Rep. Martin agree with that?

Rep. Martin replied that although the other bills being considered deal with that issue, he had no problem with including such a provision in his resolution.

Rep. Davidson commented that the reason he says that is that a resolution usually has no problem going forward, whereas these bills obviously are going to have much more scrutiny and involve a longer process. In the event some of the bills do not pass, he would like the resolution to reflect that these people should be aware that we expect to have a role in future settlements.

Chairman Gruenberg asked Mr. Handley to work with Mr. Chenoweth to see that Rep. Davidson's suggestions are incorporated into a new draft of the Martin resolution.

Rep. Pat Parnell agreed with Rep. Davidson. He said Rep. Martin earlier indicated the legislature had to maintain its constitutional role. It seems to him that it is within the purview of the constitution, and it is our responsibility to uphold it, that we agree with the agreement and consent decree -- that we still maintain our rightful role in the disbursement of those funds.

Chairman Gruenberg asked staff to ensure that that kind of language was included also.

Adjournment

There being no further comments or questions, the Chairman adjourned the meeting at 3:45 p.m.

BILLS

Draft #1: "An Act relating to the Exxon Valdez Oil Spill Trust and to natural resource damage recoveries under the Memorandum of Agreement and Consent Decree entered into by the United States and the state in settlement of the parties' claims for damages for injury, loss, or destruction to the natural resources affected by the March 24, 1989, Exxon Valdez oil spill; to the approval of expenditures by the state officers acting as trustees of the trust established for natural resource damage recoveries under that Memorandum of Agreement and Consent Decree; and placing the state trustees of the Exxon Valdez settlement and certain persons to whom trust duties are delegated in the Alaska Executive Branch Ethics Act; and providing for an effective date."

Draft #2: "An Act making a contingent appropriation to the Exxon Valdez Oil Spill Trust; and providing for an effective date."

Draft #3: "An Act requiring judicial approval of proposed settlements entered into by the state in public interest litigation; setting forth procedures for judicial review of these proposed settlements; defining public interest litigation; and amending Rule 41, Alaska Rules of Civil Procedure, and Rules 202 and 216, Alaska Rules of Appellate Procedure."

CSHB 144 (FIN) am: "An Act providing for legislative appropriation of the terms of certain proposed settlements of claims; prohibiting the payment of those terms without an express appropriation; and the requiring reports of settlements." (By Rep. Ulmer)

CSHB 287 (FIN): "An Act disallowing under the Alaska Net Income Tax a portion of the deduction authorized by the Internal Revenue Code for certain oil and hazardous substance discharge related expenditures; and providing for an effective date." (By Rep. Ellis)

HB 411: "An Act making appropriations for restoration projects relating to the Exxon Valdez oil spill; and providing for an effective date." (By Rep. Davidson)

State of Alaska

House Majority Leader

COMMITTEES

HOUSE JUDICIARY

HOUSE RULES

HOUSE STATE AFFAIRS

SPECIAL COMMITTEE

MILITARY AND VET. AFFAIRS

LEGISLATIVE COUNCIL



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MEMORANDUM

February 7, 1992

To: Representative Max Gruenberg
Chair, Settlement Subcommittee

From: Mark Handley *MH*

Re: Sectional Analysis of Draft #1(7-LS1563\M), The Exxon
Valdez Oil Spill Trust Bill

Section 1

This section sets out legislative findings regarding the Exxon Valdez oil spill settlement, and the settlement process. These findings also establish the need for the legislation recommended by the Settlement Subcommittee.

Section 2

AS 37.14.400 establishes the Exxon Valdez Oil Spill Trust and provides that it will be managed in accordance with the terms of the M.O.A.

AS 37.14.405 prohibits state trustees from approving trust expenditures unless the state has appropriated the states interest in the settlement money to the trust and the legislature has made an appropriation for that specific trust expenditure.

AS 37.14.410 provides that reimbursements for state spill-related-expenses incurred before 9/30/92 will be deposited in the general fund. This clarifies an ambiguity as to the disposition of these funds in the M.O.A.

AS 37.14.415 requires that the state trustees annually submit a proposed budget for the next fiscal year and an accounting of funds actually spent out of the preceding years budget.

AS 37.14.420 prohibits the state trustees from approving trust expenditures, unless those expenditures are paid to government agencies, or are made pursuant to our state procurement code.

AS 37.14.425 places records that are subject to the control of a state trustee under the jurisdiction of the state public records act.

AS 37.14.450 defines "state trustee" and "trust" for the purposes of section one of this bill.

Section 3

AS 24.20.206 amends the existing statutes that list the duties of L.B. & A. by adding the duty provide the trustees with assistance in preparing their budget reports.

Section 4

AS 37.05.147(5) adds income of the trust to the definition of "program receipts". This will provide for special accounting of these funds.

Section 5

AS 39.52.960(21)(C) subjects state trustees and their designees to the requirements of the Alaska Executive Branch Ethic Act.

Section 6

AS 44.62.310(g) subjects state trustees and their designees to the requirements of the Open Meetings Act.

Section 7

Provides for an immediate effective date.

Draft
HOUSE BILL NO. 1

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Exxon Valdez Oil Spill Trust and to natural resource damage
2 recoveries under the Memorandum of Agreement and Consent Decree entered into by the
3 United States and the state in settlement of the parties' claims for damages for injury,
4 loss, or destruction to the natural resources affected by the March 24, 1989, Exxon Valdez
5 oil spill; to the approval of expenditures by the state officers acting as trustees of the
6 trust established for natural resource damage recoveries under that Memorandum of
7 Agreement and Consent Decree; and placing the state trustees of the Exxon Valdez
8 settlement and certain persons to whom trust duties are delegated in the Alaska Executive
9 Branch Ethics Act; and providing for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. LEGISLATIVE DISPOSITION AND FINDINGS. The legislature

12 (1) approves the administration's efforts to avoid protracted court battles and escalating

1 attorney costs through settlement of the Exxon Valdez Oil Spill litigation;

2 (2) disapproves the process by which the second settlement proposal was accepted;
3 specifically, the legislature disapproves of the failure of the governor to abide by the governor's
4 commitment to submit the proposal to the legislature for approval, and the refusal of the parties to allow
5 for public comment before the public's claims were irrevocably compromised;

6 (3) approves the acceptance of the second criminal plea agreement that resulted in an
7 additional \$50,000,000 in restitution for restoration of Prince William Sound;

8 (4) disapproves the governor's acceptance of the second civil settlement because, under
9 the terms of the second settlement, there is delay in the payment schedule that reduced the value of that
10 settlement; the second civil settlement is worth approximately \$7,300,000 less than the civil settlement
11 rejected by the House of Representatives;

12 (5) finds that there is a need for statutory change to eliminate the causes of the failure
13 of process that occurred in the final settlement of the Exxon Valdez oil spill litigation, to incorporate
14 the spirit of the recommendations of the House Special Committee on the Exxon Valdez Oil Spill Claims
15 Settlement that are encompassed in House Concurrent Resolution 29, and to cure the constitutional
16 infirmities of this settlement.

17 * Sec. 2. AS 37.14 is amended by adding new sections to read:

18 ARTICLE 5. EXXON VALDEZ OIL SPILL TRUST.

19 Sec. 37.14.400. TRUST ESTABLISHED. The Exxon Valdez Oil Spill Trust is
20 established. Subject to law, the trust shall be managed under the Memorandum of Agreement
21 and Consent Decree entered into by the United States and the state on August 27, 1991, in
22 settlement of claims for damages for injury, loss, or destruction to the natural resources affected
23 by the March 24, 1989, Exxon Valdez oil spill.

24 Sec. 37.14.405. APPROPRIATIONS REQUIRED. (a) The state trustee may not
25 approve an expenditure from the trust unless

26 (1) trust money available for the proposed expenditure has been appropriated by
27 the legislature to the trust; and

28 (2) the legislature has appropriated money from the trust for the proposed
29 expenditure.

30 (b) The provisions of (a) of this section do not apply to amounts paid as reimbursements
31 to the United States or the state as authorized by the Memorandum of Agreement and Consent

Decree for expenses that are

(1) related to the Exxon Valdez oil spill; and

(2) incurred by either government before September 30, 1991.

Sec. 37.14.410. REIMBURSED EXPENDITURES. Amounts received by the state as reimbursement for expenses related to the Exxon Valdez oil spill incurred by the state before September 30, 1991, shall be deposited in the general fund.

Sec. 37.14.415. BUDGET AND REPORTS. The state trustees shall

(1) submit to the governor and the legislature by February 1 each year a report that sets out, for each object or purpose of expenditure, the amounts approved for expenditure from the trust during the preceding fiscal year and the amounts actually expended during the preceding fiscal year; and

(2) prepare and submit, under AS 37.07, a budget for the next fiscal year setting out the trustees' determination of the amount required for that fiscal year for appropriation for

(A) the operating expenses of the trust; and

(B) the probable objects or purposes of expenditure and the anticipated amounts of expenditure of the trust as authorized by the Memorandum of Agreement and Consent Decree.

Sec. 37.14.420. PAYMENTS TO PERSONS OTHER THAN GOVERNMENTS. The state trustees may not approve the payment of an expenditure from the trust to a person other than the state or federal government unless the expenditure complies with the procurement procedures established by AS 36.30.

Sec. 37.14.425. PUBLIC RECORDS. For purposes of AS 09.25.120, records of the trust in the custody or subject to the control of state officers and agencies are public records.

Sec. 37.14.450. DEFINITIONS. In AS 37.14.400 - 37.14.450,

(1) "state trustee" means a state officer designated by the governor to serve as a co-trustee of the trust;

(2) "trust" means the trust established for natural resource damage recoveries under the Memorandum of Agreement and Consent Decree entered into by the United States and the state on August 27, 1991, in settlement of claims for damages for injury, loss, or destruction to the natural resources affected by the March 24, 1989, Exxon Valdez oil spill.

* Sec. 3. AS 24.20.206 is amended to read:

1 Sec. 24.20.206. DUTIES. The Legislative Budget and Audit Committee shall

2 (1) report to the legislature its recommendations relating to the confirmation of
3 appointees to the Board of Trustees of the Alaska Permanent Fund Corporation;

4 (2) annually review the long-range operating plans of all agencies of the state
5 which perform lending or investment functions;

6 (3) review periodic reports from all agencies of the state which perform lending
7 or investment functions;

8 (4) present a complete report of investment programs, plans, performance, and
9 policies of all agencies of the state which perform lending or investment functions to the
10 legislature within 30 days after the convening of each regular session;

11 (5) present to the legislature within 30 days after the convening of each regular
12 session a review of the report of the governor under AS 37.07.020(d) with recommendations for
13 needed legislation;

14 (6) in conjunction with the finance committee of each house recommend annually
15 to the legislature the investment policy for the general fund surplus and for the income from the
16 permanent fund;

17 (7) provide for an annual post audit and annual operational and performance
18 evaluation of the Alaska Permanent Fund Corporation investments and investment programs;

19 (8) provide for an annual operational and performance evaluation of the Alaska
20 Housing Finance Corporation and the Alaska Industrial Development and Export Authority; the
21 performance evaluation shall include, but is not limited to, a comparison of the effect on various
22 sectors of the economy by public and private lending, the effect on resident and nonresident
23 employment, the effect on real wages, and the effect on state and local operating and capital
24 budgets of the programs of the Alaska Housing Finance Corporation and the Alaska Industrial
25 Development and Export Authority;

26 (9) provide assistance to the trustees of the trust established in AS 37.14.400 -
27 37.14.450 in carrying out their duties under AS 37.14.415.

28 * Sec. 4. AS 37.05.146 is amended to read:

29 Sec. 37.05.146. DEFINITION OF PROGRAM RECEIPTS. In AS 37.05.142 - 37.05.146
30 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other
31 state money received by a state agency in connection with the performance of its functions; all

1 program receipts except the following are general fund program receipts:

2 (1) federal receipts;

3 (2) University of Alaska receipts (AS 14.40.491);

4 (3) individual, foundation, or corporation gifts, grants, or bequests that by their
5 terms are restricted to a specific purpose;

6 (4) receipts of the following funds:

7 (A) highway working capital fund (AS 44.68.210);

8 (B) correctional industries fund (AS 33.32.020);

9 (C) loan funds;

10 (D) international airports revenue fund (AS 37.15.430);

11 (E) funds managed by the Alaska Aerospace Development Corporation
12 (AS 14.40.821), the Alaska State Housing Authority (AS 18.55.020), the Alaska Housing
13 Finance Corporation (AS 18.56.020), the Alaska Railroad Corporation (AS 42.40.010),
14 the Municipal Bond Bank Authority (AS 44.85.020), or the Alaska Industrial
15 Development and Export Authority (AS 44.88.020);

16 (F) fish and game fund (AS 16.05.100);

17 (G) school fund (AS 43.50.140);

18 (H) training and building fund (AS 23.20.130);

19 (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and
20 former AS 39.37);

21 (J) permanent fund (art. IX, sec. 15, Alaska Constitution);

22 (K) public school trust fund (AS 37.14.110);

23 (L) second injury fund (AS 23.30.040);

24 (M) fishermen's fund (AS 23.35.060);

25 (N) FICA administration fund (AS 39.30.050);

26 (O) mental health trust fund (AS 37.14.031);

27 (5) receipts of the trust established by AS 37.14.400 - 37.14.450.

28 * Sec. 5. AS 39.52.960(21) is amended to read:

29 (21) "public officer" or "officer" means

30 (A) a public employee; [AND]

31 (B) a member of a board or commission; and

1 (C) a state officer designated by the governor to act as trustee of the
2 trust or a person to whom the trustee has delegated trust duties; in this paragraph,
3 "trust" has the meaning given in AS 37.14.450;

4 * Sec. 6. AS 44.62.310 is amended by adding a new subsection to read:

5 (g) Unless an exception is authorized by federal law, the provisions of this section and
6 AS 44.62.312 apply to meetings of the state officers designated by the governor to act as trustees
7 of the trust established by AS 37.14.400 - 37.14.450, and to meetings of persons to whom they
8 have delegated any of their authority, if the meetings involve

9 (1) two or more of the state officers or persons for purposes of establishing a
10 common state position for purposes of administration of the trust; or

11 (2) one or more of the state officers or persons and one or more of the individuals
12 appointed as trustees by the President of the United States, or individuals to whom those trustees
13 have delegated any of their authority, for purposes of exercising authority over the trust.

14 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

State of Alaska

House Majority Leader

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MEMORANDUM

January 27, 1992

To: Representative Max Gruenberg
Chair, Settlement Subcommittee

From: Mark Handley *MH*

Re: Sectional Analysis of Draft #2(7-LS1675\A), The Exxon
Valdez Oil Spill Trust Appropriation Bill

Section 1

Appropriates the states interest in the the Exxon Valdez oil spill settlement money paid by Exxon in FY '92 and FY '93 to the Exxon Valdez Oil Spill Trust. This appropriation is contingent on the taking effect of legislation creating Exxon Valdez Oil Spill Trust, requiring the state trustees to submit trust expenditures to the legislature for appropriation, comply with the state procurement code, the Alaska Executive Branch Ethics Act, and the Alaska Open Meetings Act.

Section 2

Provides for an immediate effective date.

7-LS1675A
Uermohle
1/16/92

Draft
HOUSE BILL NO. 2

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act making a contingent appropriation to the Exxon Valdez Oil Spill Trust; and
2 providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** (a) Contingent upon (b) of this section, the interest of the State of Alaska in the money
5 paid during fiscal years 1992 and 1993 by Exxon Corporation, Exxon Shipping Company, or Exxon
6 Pipeline Company, under the Agreement and Consent Decree in United States v. Exxon et al., and State
7 of Alaska v. Exxon, et al., United States District Court, District of Alaska, cases No. A91-082 Civ. and
8 A91-083 Civ., and not paid to the state or federal governments as reimbursements for expenses related
9 to the Exxon Valdez oil spill and incurred by either government before September 25, 1991, is
10 appropriated to the Exxon Valdez Oil Spill Trust.

11 (b) The appropriation made by (a) of this section is contingent upon the taking effect of a bill
12 or bills passed by the Seventeenth Alaska State Legislature that

13 (1) establish the Exxon Valdez Oil Spill Trust;

14 (2) prohibit state officers designated as trustees of the Exxon Valdez Oil Spill Trust from

- 1 approving an expenditure from the trust unless the legislature has appropriated trust money available for
- 2 the proposed expenditure to the trust and the legislature has appropriated money from the trust for the
- 3 proposed expenditure; and
- 4 (3) require state officers designated as trustees of the Exxon Valdez Oil Spill Trust to
- 5 comply with AS 36.30 (State Procurement Code), AS 39.52, and AS 44.62.310 - 44.62.312.
- 6 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

State of Alaska

House Majority Leader

COMMITTEES

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MEMORANDUM

January 29, 1992

To: Representative Max Gruenberg
Chair, Settlement Subcommittee

From: Mark Handley *MH*

Re: Sectional Analysis of Draft #3(7-LS1605\M), The
"Settlement in the Sunshine" Bill

Section 1

AS 44.23.070 prohibits the Attorney General from binding the state to a settlement of "public interest litigation" unless the court finds that the proposed settlement is in the public interest.

AS 44.23.075 sets out the procedure for court review of a proposed settlement of "public interest litigation". This procedure provides for notification to the public and a public comment period.

AS 44.23.080 defines "public interest litigation" for the purposes of this bill as state claims for natural resource damages if the value of the proposed settlement exceeds \$10 million.

Section 2

This section provides notice that the bill has the effect of amending Court Rule A.R.C.P. 41.

Draft
~~HOUSE BILL NO.~~ 3

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring judicial approval of proposed settlements entered into by the state in
2 public interest litigation; defining public interest litigation; and amending Rule 41, Alaska
3 Rules of Civil Procedure."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 44.23 is amended by adding new sections to read:

6 Sec. 44.23.070. JUDICIAL APPROVAL REQUIRED FOR PROPOSED SETTLEMENTS
7 OF PUBLIC INTEREST LITIGATION. The attorney general may not bind the state to a
8 proposed settlement of public interest litigation unless the proposed settlement is submitted to the
9 court for review and the court finds that the proposed settlement is in the public interest.

10 Sec. 44.23.075. PROCEDURES FOR JUDICIAL APPROVAL OF PROPOSED
11 SETTLEMENTS OF PUBLIC INTEREST LITIGATION. (a) If the state reaches a proposed
12 settlement of public interest litigation, the attorney general shall within 15 days of reaching the
13 proposed settlement reduce it to writing and submit the writing to the court for review under this
14 section.

1 (b) Upon receipt of a writing from the attorney general under (a) of this section, the court
2 shall require the parties to provide reasonable notice to the public of the terms of the proposed
3 settlement and of the public's opportunity to submit written testimony about the terms. The court
4 shall provide a public comment period on the settlement terms of at least 30 days. During the
5 public comment period, the court may hold a public hearing on the proposed settlement.

6 (c) Within 30 days of the end of the public comment period, the court shall enter written
7 findings as to whether

8 (1) the procedures of (b) of this section have been complied with; and

9 (2) the settlement is in the public interest.

10 Sec. 44.23.080. DEFINITION OF "PUBLIC INTEREST LITIGATION." In
11 AS 44.23.070 - 44.23.080, "public interest litigation" means litigation in which the state asserts
12 claims for damage to natural resources where the proposed settlement would result in the state
13 receiving money, property, or services, or a combination of money, property, or services, having
14 a value of \$10,000,000 or more, exclusive of interest, costs, and attorneys' fees.

15 * Sec. 2. AS 44.23.075, added by sec. 1 of this Act, has the effect of amending Rule 41, Alaska
16 Rules of Civil Procedure, by establishing procedures that the court must follow before granting a
17 voluntary dismissal in certain litigation where the state is a party.

CS FOR HOUSE BILL NO. 144 (FINANCE) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/5/91
Offered: 3/21/91
Referred: Rules

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for legislative appropriation of the terms of certain proposed settlements
2 of claims; prohibiting the payment of those terms without an express appropriation; and
3 requiring reports of settlements."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. PURPOSE. It is the purpose of this Act

6 (1) to place all persons with claims against the state or against whom the state has claims
7 on notice that settlements of those claims requiring large appropriations are subject to legislative action;
8 (2) to require the governor to submit to the legislature all settlements of claims by or
9 against the state that require large appropriations, and to allow the legislature to give informal approval
10 or disapproval of those settlements; and

11 (3) to prohibit the state from paying large claim settlements out of funds other than those
12 expressly appropriated for that purpose.

13 * Sec. 2. AS 09.50.300 is amended to read:

14 Sec. 09.50.300. COMPROMISE BY ATTORNEY GENERAL. Subject to the

HB0144d

-1-

CSHB 144(FIN) am

New Text Underlined [DELETED TEXT BRACKETED]

1 requirements of AS 44.23.070, the [THE] attorney general may, with the approval of the court,
2 arbitrate, compromise, or settle any action filed under AS 09.50.250 - 09.50.300.

3 * Sec. 3. AS 36.30 is amended by adding a new section to read:

4 Sec. 36.30.631. LEGISLATIVE REVIEW. AS 44.23.070 applies to claims brought under
5 AS 36.30.620.

6 * Sec. 4. AS 37.05.170 is amended by adding a new subsection to read:

7 (b) The Department of Administration may not make the certification required under (a)
8 of this section for the payment of part or all of a claim settlement covered by AS 44.23.070
9 unless the legislature has made an express appropriation or expenditure authorization for that part
10 of the settlement for which payment is requested. The Department of Administration may not
11 make a certification for payment of a settlement covered by AS 44.23.070 based on a general
12 appropriation to pay judgments against the state or a general appropriation to the division of risk
13 management.

14 * Sec. 5. AS 44.23 is amended by adding new sections to read:

15 Sec. 44.23.070. LEGISLATIVE APPROVAL REQUIRED FOR CERTAIN PROPOSED
16 SETTLEMENTS OF CLAIMS. (a) If a settlement of a claim by or against the state would
17 require legislative appropriation of goods, services, or money, or a combination of them, worth
18 a total of \$10,000,000 or more, whether in one or more than one fiscal year, the terms of the
19 settlement requiring appropriation may not take effect until the legislature , made a specific
20 appropriation to carry out those terms.

21 (b) A settlement of a claim described in (a) of this section shall be reduced to a written
22 agreement. The written agreement must contain a provision stating the requirements for
23 legislative appropriation set out in (a) of this section. The governor shall submit the written
24 agreement to the speaker of the house of representatives and the president of the senate within
25 15 days of the date that the written agreement is executed. The legislature may advise the
26 governor by concurrent resolution if it approves or disapproves of the terms of the settlement.
27 The approval of the terms of a settlement requiring appropriation under this subsection is a
28 nonbinding, advisory expression of legislative intent. If the legislature disapproves the terms of
29 the settlement under this subsection, the state and the adverse party may resume settlement
30 negotiations.

31 (c) If the settlement provides for payments by the state in more than one fiscal year, the

1 legislature may enact an appropriation carrying out the entire terms of the settlement or may
2 enact an appropriation carrying out only the terms that require appropriation in the next fiscal
3 year. An appropriation for part of the terms of an agreement does not bind the legislature to
4 appropriate for the remaining terms. An appropriation for part or all of the terms of a settlement
5 is subject to repeal of the unexpended portion of the appropriation.

6 (d) This section applies to settlements where money is to be paid to the state but is
7 designated for specific purposes and where a legislative appropriation of \$10,000,000 or more,
8 whether in one or more than one fiscal year, would be necessary to effectuate those purposes.
9 This section applies whether the claim is settled before or after litigation is commenced.

10 (e) If a settlement would require the state to pay costs, attorney fees, or interest, the
11 amount of costs, attorney fees, and interest that the state would be required to pay is included
12 in calculating the \$10,000,000 figure.

13 Sec. 44.23.080. REPORTS ON SETTLEMENT OF CLAIMS. (a) An agency in the
14 executive branch that during a calendar year has settled a claim by or against the agency without
15 the involvement of the attorney general shall report in writing to the attorney general, no later
16 than January 15 of the year following the year in which the claim was settled, on the claim
17 settled and the terms of the settlement.

18 (b) No later than February 1 of each year, the attorney general shall report in writing to
19 the legislature regarding claims by or against the state that were settled during the previous year

20 (1) by the attorney general as a result of litigation;

21 (2) by the attorney general without litigation;

22 (3) by an executive branch agency with the involvement of the attorney general;

23 or

24 (4) by an executive branch agency without the involvement of the attorney
25 general.

26 (c) The report to the legislature under (b) of this section must set out the nature of the
27 claims settled and the terms of the settlements.

28 Sec. 44.23.090. DEFINITIONS. In sections 44.23.070 - 44.23.080 "claim" means a
29 demand for payment of money, goods or services based on a legal cause of action.

30 * Sec. 6. AS 44.77 is amended by adding a new section to read:

31 Sec. 44.77.080. LEGISLATIVE REVIEW. AS 44.23.070 applies to claims brought under

1 this chapter.

CS FOR HOUSE BILL NO. 287 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/8/91

Referred: Today's Calendar

Sponsor(s): REPRESENTATIVES ELLIS, Brown, Gruenberg, Navarre

A BILL

FOR AN ACT ENTITLED

1 "An Act disallowing under the Alaska Net Income Tax Act a portion of the deduction
2 authorized by the Internal Revenue Code for certain oil and hazardous substance discharge
related expenditures; and providing for an effective date."

IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 43.20.036 is amended by adding a new subsection to read:

(k) For purposes of determining the tax payable under this chapter, a taxpayer who owns
7 or who has control over oil or a hazardous substance may deduct expenses not to exceed
8 \$1,000,000 incurred during the tax year to contain, clean up, and mitigate the effects of the
9 discharge of that oil or hazardous substance. The limitation of this subsection also applies to
10 payments, whether compensatory or remedial in nature or otherwise, if made to the state or the
11 federal government or to a trust to which the state is a party when required by a court order
12 entered under 33 U.S.C. 1251 - 1376 (Federal Water Pollution Control Act of 1972, as amended
13 by the Clean Water Act of 1977, as amended) or 42 U.S.C. 9601 - 9657 (Comprehensive
14 Environmental Response, Compensation, and Liability Act of 1980, as amended) or in settlement

1 of litigation by the state against the taxpayer made under one of those Acts or other law. The
2 limitations of this subsection do not apply to a hazardous substance response action contractor,
3 as that term is defined by AS 46.03.823, unless the oil discharge or the discharge of the
4 hazardous substance is caused by an act or omission of the contractor that under AS 46.03.823(a)
5 is negligent or grossly negligent or that constitutes intentional misconduct.

6 * Sec. 2. This Act is retroactive to January 1, 1991, and applies to taxes payable under the Alaska
7 Net Income Tax Act (AS 43.20) after December 31, 1990.

8 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

HOUSE BILL NO. 411

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES DAVIDSON, Navarre, Gruenberg

Introduced: 1/21/92

Referred: Resources, Finance

Funding Information:	General Fund	\$	-0-
	Other Funds		<u>50,000,000</u>
			\$50,000,000

A BILL

FOR AN ACT ENTITLED

1 "An Act making appropriations for restoration projects relating to the Exxon Valdez oil
2 spill; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. FINDINGS. The Seventeenth Alaska State Legislature finds that:

5 (1) Under the recently approved criminal plea agreement between the United States and Exxon
6 Shipping Company and Exxon Corporation (United States of America v. Exxon Corporation and Exxon
7 Shipping Company, United States District Court, District of Alaska, case No. A90-015 CR.), the State
8 of Alaska received \$50,000,000 as "remedial and compensatory payments." The payments received by
9 the state "are to be used by the State of Alaska . . . exclusively for restoration projects, within the State
10 of Alaska, relating to the 'Exxon Valdez' oil spill. Restoration includes restoration, replacement and
11 enhancement of affected resources, acquisition of equivalent resources and services, and long-term
12 environmental monitoring and research programs directed to the prevention, containment, cleanup and
13 amelioration of oil spills."

14 (2) The health of damaged coastal and near-shore habitats is substantially related to activities

1 on adjacent uplands. Economically important fish species, including herring and halibut, utilize near-
2 shore areas and anadromous species, including five species of salmon, rely on continued access to both
3 clean streams and unpolluted estuaries for spawning and rearing.

4 (3) Populations of aquatic birds, including the tree-nesting marbled murrelet and fresh water
5 nesting species such as harlequin ducks, were severely damaged by the Exxon Valdez oil spill.

6 (4) The quality of fresh water entering the estuarine environment is critical to satisfactory
7 restoration and recovery of the physical and biotic environment in the region affected by the Exxon
8 Valdez oil spill.

9 (5) Restoration of the coastal estuaries affected by the Exxon Valdez oil spill is placed at risk
10 by further environmental disturbance resulting from timber harvesting and other industrial activities that
11 involve substantial disturbance. In order to minimize the potential for further
12 environmental stress and enhance the natural recovery and restoration of the affected
13 region, acquisition of uplands in the affected region, including Prince William Sound, the
14 Kenai Peninsula, the Kodiak Archipelago, the south side of the Alaska Peninsula, and adjacent
15 biologically related areas, is an important use of "remedial and compensatory payments" received by the
16 state under the criminal plea agreement.

17 (6) Continued citizen involvement and education are essential in order to identify damage to
18 material resources caused by the Exxon Valdez oil spill, to restore areas affected by the Exxon Valdez
19 oil spill, and to prevent future oil spills in the area.

20 * Sec. 2. In order to restore, replace, and enhance resources affected by the Exxon Valdez oil spill,
21 to acquire resources and services equivalent to those affected by the Exxon Valdez oil spill, and to
22 conduct long-term environmental monitoring and research programs directed to the containment, cleanup,
23 and amelioration of the Exxon Valdez oil spill, the sum of \$34,000,000 is appropriated from the remedial
24 and compensatory payments received by the state under the plea agreement in United States of America
25 v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska,
26 case No. A90-015 CR., to the Department of Natural Resources for the acquisition of land and
27 development rights in land, including timber rights, from willing sellers in the Prince William Sound
28 region including the coastal region between Icy Cape and Gore Point, and the southern Kenai Peninsula.

29 * Sec. 3. In order to restore, replace, and enhance resources affected by the Exxon Valdez oil spill,
30 to acquire resources and services equivalent to those affected by the Exxon Valdez oil spill, and to
31 conduct long-term environmental monitoring and research programs directed to the containment, cleanup,

1 and amelioration of the Exxon Valdez oil spill, the sum of \$7,000,000 is appropriated from the remedial
2 and compensatory payments received by the state under the plea agreement in United States of America
3 v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska,
4 case No. A90-015 CR., to the Department of Natural Resources for the acquisition from willing sellers
5 of land surrounding Pauls Lake and Malina Lake on Afognak Island. Not more than one-half of the land
6 to be acquired through this appropriation shall be from Township 20 South Range 18 West, Township
7 20 South Range 19 West, and Township 21 South Range 19 West, Seward Meridian; the balance of the
8 land to be acquired shall be from Township 23 South Range 23 West, Township 23 South Range 24
9 West, Township 24 South Range 23 West, and Township 24 South Range 24 West, Seward Meridian.

10 * Sec. 4. In order to restore, replace, and enhance resources affected by the Exxon Valdez oil spill,
11 to acquire resources and services equivalent to those affected by the Exxon Valdez oil spill, and to
12 conduct long-term environmental monitoring and research programs directed to the containment, cleanup,
13 and amelioration of the Exxon Valdez oil spill, the sum of \$3,000,000 is appropriated from the remedial
14 and compensatory payments received by the state under the plea agreement in United States of America
15 v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska,
16 case No. A90-015 CR., to the Department of Fish and Game for environmental monitoring and research
17 to determine the long-term effects of the Exxon Valdez oil spill on the biota of Prince William Sound
18 and the Alaskan coast adjacent to the Gulf of Alaska.

19 * Sec. 5. In order to restore, replace, and enhance resources affected by the Exxon Valdez oil spill,
20 to acquire resources and services equivalent to those affected by the Exxon Valdez oil spill, and to
21 conduct long-term environmental monitoring and research programs directed to the prevention,
22 containment, cleanup, and amelioration of the Exxon Valdez oil spill, the sum of \$3,000,000 is
23 appropriated from the remedial and compensatory payments received by the state under the plea
24 agreement in United States of America v. Exxon Corporation and Exxon Shipping Company, United
25 States District Court, District of Alaska, case No. A90-015 CR., to the Department of Environmental
26 Conservation for long-term research programs directed to the prevention, containment, cleanup, and
27 amelioration of the Exxon Valdez oil spill.

28 * Sec. 6. In order to restore, replace, and enhance resources affected by the Exxon Valdez oil spill,
29 to acquire resources and services equivalent to those affected by the Exxon Valdez oil spill, and to
30 conduct long-term environmental monitoring and research programs directed to the containment, cleanup,
31 and amelioration of the Exxon Valdez oil spill, the sum of \$3,000,000 is appropriated from the remedial

1 and compensatory payments received by the state under the plea agreement in United States of America
2 v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska,
3 case No. A90-015 CR., to the Department of Education for grants for environmental education projects
4 related to the Exxon Valdez oil spill and coastal studies.

5 * Sec. 7. The appropriations made by this Act are for capital projects and lapse under AS 37.25.020.

6 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

SCOMM

76:3

HOUSE SPECIAL COMMITTEE ON EXXON VALDEZ
OIL SPILL CLAIMS SETTLEMENT

ATTACHMENTS TO APRIL 10, 1991 MINUTES

Alaska State Legislature

House of Representatives

Official Business



P.O. Box V
State Capitol, Rm. 216
Juneau, Alaska 99811
(907) 485-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

April 10, 1991

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

Dear Judge Holland:

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

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

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

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

Sincerely,

Rep. Max F. Gruenberg
Chairman

Alaska State Legislature

House of Representatives



Official Business

P.O. Box V
State Capitol, Rm. 216
Juneau, Alaska 99811
(907) 463-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

April 10, 1991

Honorable H. Russel Holland
United States District Judge
District of Alaska
222 West 7th Avenue #4
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Dear Judge Holland:

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

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

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

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

Sincerely,

Rep. Max F. Gruenberg, Jr.
Chairman

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

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

CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT

MARCH 20, 1991



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

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

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

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

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

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

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

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

WALTER B. JONES, NORTH CAROLINA, CHAIRMAN

GERRY E. STUDDS, MASSACHUSETTS
CARROLL HUBBARD, JR., KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
EARL HUTTO, FLORIDA
BILLY TAUZIN, LOUISIANA
THOMAS M. FOGLIETTA, PENNSYLVANIA
EDWARD M. HERTZEL, MICHIGAN
WILLIAM D. LIPINSKI, ILLINOIS
ROBERT A. BORSKI, PENNSYLVANIA
THOMAS R. CARPER, DELAWARE
ROBIN TALLON, SOUTH CAROLINA
SOLOMON P. ORTIZ, TEXAS
CHARLES E. BENNETT, FLORIDA
THOMAS J. MANTON, NEW YORK
OWEN B. PICKETT, VIRGINIA
GEORGE J. HOCHBRUCKNER, NEW YORK
BOB CLEMENT, TENNESSEE
STEPHEN J. SOLARZ, NEW YORK
FRANK PALLONE, JR., NEW JERSEY
GREG LAUGHLIN, TEXAS
NITA M. LOWEY, NEW YORK
JOLENE UNSOLD, WASHINGTON
GENE TAYLOR, MISSISSIPPI
GLENN M. ANDERSON, CALIFORNIA
NEIL ABERCROMBIE, HAWAII
JOHN F. REED, RHODE ISLAND
WILLIAM J. JEFFERSON, LOUISIANA
ENI F.H. FAZOMAYAGA, AMERICAN
SAMOA

ROBERT W. DAVIS, MICHIGAN
DON YOUNG, ALASKA
NORMAN F. LENT, NEW YORK
JACK FIELDS, TEXAS
HERBERT H. BATEMAN, VIRGINIA
JIM SAXTON, NEW JERSEY
HOWARD COBLE, NORTH CAROLINA
CURT WELDON, PENNSYLVANIA
WALLY HERGEN, CALIFORNIA
JAMES M. INHOFE, OKLAHOMA
PORTER J. GOSS, FLORIDA
ARTHUR RAVENEL, JR., SOUTH CAROLINA
SONNY CALLAHAN, ALABAMA
WAYNE T. GILCHREST, MARYLAND
JOHN T. DOOLITTLE, CALIFORNIA
RANDY "DUKE" CUNNINGHAM, CALIFORNIA

**U.S. House of Representatives
Committee on**

Merchant Marine and Fisheries

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

CHIEF COUNSEL
EDWARD A. WILSON

CHIEF CLERK
BARBARA L. CAVAS

MINORITY STAFF
DIRECTOR/CHIEF COUNSEL
GEORGE D. PENCE

Witness List

**Subcommittee on Fisheries and Wildlife Conservation
and the Environment**

Subcommittee on Coast Guard and Navigation

**Subcommittee on Oceanography, Great Lakes
and the Outer Continental Shelf**

March 20, 1991

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

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

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

Mr. Alan Raul
General Counsel
Department of Agriculture

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

Mr. John Gaughn
Chief of Staff
Department of Transportation

SUMMARY OF PAYMENTS TO BE MADE BY EXXON

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

2. Civil payments totalling \$900 million as follows:

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

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

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

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



Department of Justice

TESTIMONY

OF

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

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

OF

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

CONCERNING

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

WEDNESDAY, MARCH 20, 1991

Mr. Chairman and Members of the Subcommittees:

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

Background to the Litigation

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

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

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

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

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Mr. Chairman and Members of the Subcommittees:

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

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

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

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

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

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

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

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

Settlement Objectives

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

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

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

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

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

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

Settlement Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Administering Settlement Monies

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

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

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

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

BEFORE THE

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

MARCH 20, 1991

Mr. Chairman and Members of the Subcommittees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

March 20, 1991

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

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

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

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

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

Pat Williams

CONSENT DECREE

MASTER LIST OF ISSUES
(revised 3/29)

[I]
Introduction
(pages 2-3)

1. Could the state still sue Exxon for violation of state criminal laws? Does it intend to do so? [PF]
2. Does the fact that the money is exchanged for the extinguishment of claims under state law affect the applicability of the CWA and regulations under it? [PF]
3. The parties represent that the payments called for are in addition to "those described above". Does this mean that for purposes of the Consent Decree, the amounts recovered are not subject to CWA limitations?

[II]
Jurisdiction
(paragraph 1; page 4)

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

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

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

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

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

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

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

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

[V]

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

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

[VI]

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

Payment Schedule (paragraph 8)

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

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

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

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

Escrow (paragraph 9)

Use of Money (paragraph 10)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[VII]

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

Cleanup Duties (paragraph 11)

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

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

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

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

Set Off for Cleanup Expenses (paragraph 12)

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

[IX]

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

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

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

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

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

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

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

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

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

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

Dismissal of Actions (paragraph 16; page 17)

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

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

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

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

\$100 Million Limitation (paragraph 18; page 18)

Filing of Plans (paragraph 19; page 18)

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

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

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

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

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

Release of Alyeska (paragraph 22; page 20)

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

Partial Payment to Exxon (paragraph 23; page 20)

Partial Payment to Governments (paragraph 24; page 21)

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

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

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

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

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

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

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

No Reduction in Payments (paragraph 28; page 23)

No Tender as Defendants (paragraph 29; page 23)

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

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

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

[XIV]

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

[XV]

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

No Admission (paragraph 32)

No Claims Created (paragraph 33)

Government Programs Not Impaired (paragraph 34)

Existing Contracts Not Impaired (paragraph 35)

[XVI]

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

[XVII]

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

Notice, Legislative Approval, Withdrawal (paragraph 37)

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

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

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

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

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

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

Termination of Agreement (paragraph 38)

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

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

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

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

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

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

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

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

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

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

Modification (paragraph 40)

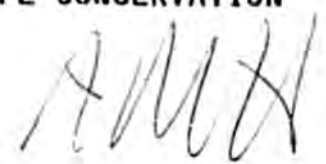
Assertion of Authority (paragraph 41)

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

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

CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT

MARCH 20, 1991



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

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

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

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

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

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

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

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

WALTER S. JONES, NORTH CAROLINA, CHAIRMAN

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CHIEF COUNSEL
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CHIEF CLERK
BARBARA L. CAVAS

MINORITY STAFF
DIRECTOR/CHIEF COUNSEL
GEORGE D. PENCE

U.S. House of Representatives Committee on

Merchant Marine and Fisheries

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

Witness List

Subcommittee on Fisheries and Wildlife Conservation
and the Environment

Subcommittee on Coast Guard and Navigation

Subcommittee on Oceanography, Great Lakes
and the Outer Continental Shelf

March 20, 1991

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

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

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

Mr. Alan Raul
General Counsel
Department of Agriculture

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

Mr. John Gaughn
Chief of Staff
Department of Transportation

SUMMARY OF PAYMENTS TO BE MADE BY EXXON

1. Criminal fine of \$100 million, of which \$50 million is remitted to the State of Alaska.
2. Civil payments totalling \$900 million as follows:
 - o \$ 90 million within ten days of final settlement
 - o \$150 million on September 1, 1992
 - o \$100 million on September 1, 1993
 - o \$ 70 million on September 1, 1994
 - o \$ 70 million on September 1, 1995
 - o \$ 70 million on September 1, 1996
 - o \$ 70 million on September 1, 1997
 - o \$ 70 million on September 1, 1998
 - o \$ 70 million on September 1, 1999
 - o \$ 70 million on September 1, 2000
 - o \$ 70 million on September 1, 2001
3. Of the \$900 million, up to \$72 million may be used to reimburse the State of Alaska for past costs and up to \$62 million may be used to reimburse Federal agencies for past costs.
4. Exxon is entitled to a credit of up to \$4 million for costs incurred between January 1, 1991 and the effective date, and a credit for all costs after the effective date for cleanup operations conducted pursuant to the direction of the Federal or state governments. The costs are defined to include "costs and obligations incurred for salary, wages, benefits, and expenses of Exxon employees, for contractors, for equipment purchase and rental, for office and warehouse space, and for insurance, accounting and other professional services".
5. Between September 1, 2002 and September 1, 2006, Exxon will pay additional amounts of up to \$100 million for natural resource restoration projects if new evidence of injury to the resource in question arises after the effective date of the agreement.



Department of Justice

TESTIMONY

OF

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

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

OF

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

CONCERNING

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

WEDNESDAY, MARCH 20, 1991

Mr. Chairman and Members of the Subcommittees:

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

Background to the Litigation

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

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

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

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

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

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

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

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

Settlement Objectives

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

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

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

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

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

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

Settlement Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Administering Settlement Monies

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

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

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

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

BEFORE THE

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

MARCH 20, 1991

Mr. Chairman and Members of the Subcommittees:

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

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

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

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

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

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