

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1936 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL. . 1991-92

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methodologies that includes more specific information on their use is provided by an accompanying Technical Information Document.³⁴

In the case of a resource for which a well-defined market exists, the regulations stipulate that the trustee must make a determination as to whether the specific market is reasonably competitive before choosing a valuation methodology. If the market for such a resource is determined to be reasonably competitive, the trustee is instructed to first turn to the market price methodology for determining damages, which is based on the diminution in market price for the injured resource. If the trustee determines that the market price methodology is not appropriate for valuing a particular resource, the regulations provide that the "appraisal" methodology be employed to value the resource if sufficient information exists. This methodology simply uses the difference between the before-injury and after-injury appraisal values for the resource in question. Trustees are instructed to turn to the "Uniform Appraisal Standards for Federal Land Acquisitions" for guidance in making such resource value appraisals.³⁵

If the trustee determines that neither the market price nor the appraisal methodologies are appropriate, the regulations provide for the use of nonmarket valuation methodologies for measuring the use value of natural resource services. For nonmarket resources, the regulations allow the trustee discretion in the use of methodologies that estimate use value measures of damages based on estimates of willingness-to-pay (WTP).³⁶ For injured resources which are used as inputs into the production of products associated with well-defined market prices, the regulations specify that the Factor Income methodology may be employed to estimate the economic rent attributable to the resource as a measure of damages. Alternatively, for natural resources which provide consumer utility, the regulations specify the Travel Cost, Hedonic Pricing, and the Contingent Valuation (CV) methods as acceptable approaches for measuring damages. Regional unit values derived from existing studies may also be used if these values are based on WTP and closely resemble the specific recreational or other experience to which they are applied to estimate damages.³⁷ The regulations also allow, in addition to the specific methodologies listed, the use of any other valuation methodology that cost-effectively measures use values based on willingness-to-pay.³⁸

While the regulations allow trustees complete discretion in the choice of valuation approaches for measuring nonmarket resource damages based on reductions in use value, certain restrictions are placed on the use of CV to measure damages based upon option and existence values. Section 11.83 (d)(5) explains that CV "can determine use values and explicitly determine option and existence value," but provides that "the use of the CV methodology to explicitly estimate option and existence values should be used only if the authorized official determines that no other use values can be determined." While DOI acknowledged that option and existence values would ordinarily be additive to use value, they noted that Section 301(c) of CERCLA mentions only use values, and not non-use (intrinsic) values.

Guidance is also provided on various smaller issues related to the implementation of the valuation methodologies. These issues include the handling of possible double counting problems, the treatment of uncertainty in damage determination, and discounting costs and benefits over time. The regulations specify that double counting of resource benefits should be avoided, but offer little guidance except to say that resource damages should be based on the residual resource

injury after incorporating the effects (or anticipated effects) of response actions on resource services.³⁹ With regard to the treatment of uncertainties in damage determination, the regulations state that when considerable uncertainties exist concerning the assumptions made when implementing valuation methodologies, trustees should consider alternative assumptions and document their effects on the calculation of costs and benefits.⁴⁰ (The regulations are broad enough to allow the inclusion of probability estimates of the likelihood of occurrence for all parameter estimates to account for uncertainty.) For discounting costs and benefits over time (including past and future), the regulations mandate the use of a 10% real rate of discount as specified by the Office of Management and Budget.⁴¹

Preliminary Evaluation

In the ideal, the natural resource damage assessment process under CERCLA should establish a framework to accomplish two basic and important purposes. In an aggregate sense, the regulations should compensate the public for injuries to their natural resources from oil or hazardous waste spills and releases. Specifically, the scheme should make the public whole, so that the public is as well-off after natural resource injury as they were before the injury. The law should also seek to redistribute a specific subset of the costs of certain types of industrial or commercial activities: those non-health related external economic costs that fall on the public as a result of "improper" disposal or handling of oil and hazardous wastes.⁴² In this sense, compensation, in combination with the other provisions of CERCLA (as well as private rights of action under state common law) would act to internalize the social costs associated with past and future waste disposal practices. CERCLA assumes that the disposer is always in the position of being able to reduce risks most cheaply and thus bears the full responsibility of insuring against, and compensating for, public natural resource injury. In order for the CERCLA natural resource assessment provisions to achieve an efficient allocation of social resources, the system has to generate reasonably accurate estimates of the true economic value of injured natural resources and to do so while incurring the least costs possible.

Given the nascent nature of state or federal attempts to utilize the damage assessment scheme, it is difficult to forecast how closely the damage assessment framework outlined in the first section of this paper will hit this mark. Many elements of the assessment process will be modified and more fully defined by the court system as cases are heard and evaluated. However, there are several controversial elements, definitions, and assumptions built into the damage assessment regulations that, assuming they are upheld by the courts, appear to have the potential to undermine the equity and efficiency of damage assessments. As currently written, the regulations appear to suggest that many natural resource injuries may go undervalued. These issues, as will be discussed below, are quite varied, but share one common characteristic. They all reflect, in part, the difficulty of integrating economic concepts of natural resource value (and their estimation) into the legal environment.

Natural Resource Use Values

The Type B rules define the "use value" of a natural resource in terms of the public's willingness-to-pay to use a resource, and the rules allow for diminution

in use value to serve as the basis for estimating damages. Thus, natural resource damages may be reflected by reductions in consumer surplus and economic rents accruing to resource users. Although the regulations adopt a rather formal economic concept of resource value, they retain a "common law" bias towards the use of market prices to reflect use values. The rules specify that in situations where injured resources are traded in competitive markets, diminution in market price should serve as the reduction in use value for purposes of damage estimation. Only in cases where injured resources are not associated with observable market prices do the regulations allow for the application of the more economic-based approaches for estimating changes in use values.

Because market prices do not directly indicate the net benefits provided by goods, they do not provide adequate measures of welfare changes. While DOI explicitly recognized that diminution in market price may not fully reflect the change in social welfare associated with injury to market resources, they argued that market prices are widely recognized by the courts as a reasonable basis for estimating damages and represent the most cost-effective approach. While the use of diminution in market price for measuring damages may in some instances be reasonable, in many cases reliance on market prices may seriously undervalue resource injury. For example, market resources such as wetlands often provide bundles of nonmarket goods and services to society, the value of which are not fully reflected in the market price of the land.

Natural Resource Intrinsic Values

The regulatory definition of economic use value discussed above appears to include both direct consumptive (e.g. hunting) and non-consumptive (e.g. bird-watching) values of natural resources, but treats intrinsic values such as option and existence values somewhat differently. The rules do acknowledge and explicitly discuss intrinsic values; however, they stipulate that these values can be estimated and used as the basis for a damage claim only if the trustee is unable to estimate direct use values. The regulations also limit economic damages only to those damages that can be associated with "committed" not "speculative" uses of the resource, perhaps ruling out the consideration of option and existence values in all but a few situations. The proposed rules originally included a classification of resources, called "special resources," which may have mitigated the anti-intrinsic value bias of the final rules. Special resources were defined by the proposed regulations as "those natural resources committed to a specific use by law before the discharge of oil or release of hazardous substance . . . [including] resources set aside primarily to preserve wildlife habitat or other unique or sensitive environments."⁴³ Compensation for "special resources" would have been based on replacement or restoration costs rather than lost use value.⁴⁴ This would have allowed the trustee to treat resources with low use value but high intrinsic value as special cases. The exemption for such resources articulated in the proposed rule, however, was dropped in the final rule.

The debate among various interested parties concerning intrinsic values is the result of differences in perspective and philosophy. Some of these are more easily identified and discussed than others

First is the issue of whether such values are true economic values. The answer

here is somewhat a matter of philosophy; an environmentalist might say yes, an industrial polluter might say no. Yet the evidence would seem to support a positive response. It is difficult to explain the high level of social resources that are devoted to protecting wilderness areas and endangered species, the creation of national parks and marine sanctuaries, and the whole of our nation's environmental protection efforts, if option and existence values were not some part of the value we accord those programs. Further, the growing body of economic literature on the subject of intrinsic values, while not strictly in accord, does provide considerable weight at least on a conceptual level, as well as some empirical evidence for these values.⁴⁵

Second is the question as to whether intrinsic values fall within the traditional legal concepts of economic value as defined under common law theories of damage. The case law involving natural resource damage cases is not very helpful here. We know of no single case where option and existence values formed an explicit basis for a damage claim. While some states have included values representing these concepts in estimating natural resource damage assessments, we are not aware of any that have been the subject of court scrutiny; most are settled out of court and thus do not provide much in the way of precedent.⁴⁶ However, a legal parallel may exist in personal injury cases. Courts have long held that in such cases compensation may be made for both direct economic losses (such as lost income, medical expenses, etc.) as well as "non-pecuniary" damages including pain and suffering, loss of consortium, and mental anguish over the loss of a loved one.⁴⁷

Although not a perfect fit, intrinsic values have many of the same characteristics as the non-pecuniary damages in personal injury cases. Most notably, they both represent kinds of effects that we perceive to be real but have a very hard time putting into dollar terms. There is an important difference between speculative damages (those that require a stretch of one's imagination to believe) and damages that are uncertain as to their value. While courts may be comfortable with the notion of pain and suffering as a very real and believable effect of personal injury, they continue to grapple with how best to express those values in dollar terms. This uncertainty may not be the basis for excluding the consideration of "non-use" values, but may lead to widely varying outcomes for very similar cases.

Finally, the uncertainty as to how best to handle intrinsic values leads to a third element of the controversy over their inclusion in natural resource damage assessments. While it may be theoretically possible to measure option and existence values through other economic methods, the technique with the most promise and that has been applied most often is Contingent Valuation. The question of whether one can accurately measure individuals' valuation of any commodity through preference revealing surveys continues to divide the economics community and is often dismissed out-of-hand by non-economists. Some might argue that if the rebuttable presumption provides substantial leverage to damage assessments, then it may be unwise to allow for the use a valuation technique whose efficacy for estimating intrinsic values is still a matter of debate within the economics profession. (It should be noted that a trustee could estimate intrinsic values and add these to estimated use values to calculate resource damages, but the resulting assessment would not be afforded the rebuttable presumption of accuracy in legal proceedings.)

It is beyond the scope of this paper to venture into the Contingent Valuation

debate except to note that there appears to be developing a consensus on the conditions that need to be met in order for a CV study to be credible, and an improved understanding of the limits and biases of the technique in its general application.⁴⁸ Courts have extensive experience with judging the credibility of alternative approaches to measuring economic damages, and a rather strong argument can be made that the option should be available to public trustees under the assessment rules subject to review and consideration of the judicial system.

There are undoubtedly other factors that carry weight in the intrinsic value debate. Once one is willing to admit that such values do exist under certain circumstances and that they are permissible under the law, the entire issue would appear to collapse into a series of questions concerning reasonableness and certainty that courts have to deal with all the time to some degree. This would argue for more explicit recognition of the potential for such values in the regulations and the flexibility for the trustee to attempt to estimate such damages if they feel a credible case can be made.

Real Versus Perceived Injury

The CERCLA natural resource damage provisions imply that natural resource trustees should be compensated for lost or altered human uses of public natural resources services resulting from injuries to these resources caused by releases of oil or hazardous substances. The regulations mirror this causal chain and set out a process in which an injury to a public natural resource resulting from a release of oil or hazardous substance is quantified, the effect of this resource injury on public uses of resource services is determined, and an economic value is attached to changes in public uses of resource services. The rules thus require that a resource injury be "measurable" in order for it to be part of a damage assessment. While trustees are required to demonstrate the relationship between pollutants and the resource injury, at the same time, the rules provide for the application of economic valuation tools in the damage assessment phase that do not necessarily require estimation of measurable injury. Economists value damages on the basis of changes in consumer and producer behavior by isolating individuals' responses to their perceptions of new conditions and resource characteristics. For an economist, perceived damages are real damages if they result in changes to consumer utility or producer production capabilities, regardless of measurable physical injury to the natural resources in question.

It is not clear whether the authors of the regulations were aware of this potential for conflict. Yet, given the bias of the rules towards the demonstration of physical harm before the award of damages, the potential is very real. This is particularly so given the chronic, sub-acute nature of many of the environmental injuries that are likely to occur from hazardous waste releases. A wetland area containing above background levels of a particular pollutant (but below a state or federal standard) has experienced an economic injury if certain birdwatchers make fewer trips to the wetland. This is so even if there is no physical injury or risk of injury to the biological system. The rules appear to accept this proposition but at the same time require a substantial demonstration of physical harm. Given what appear to be rather high burdens of proof concerning physical and biological harm in the regulations, it is not difficult to imagine a bias towards natural resource

compensation only in those cases where clear evidence of measurable injury is available.

Public Versus Private Damages

The regulations provide for the assessment of damages to publicly owned resources, but explicitly exclude compensation for injury to privately owned resources. The justification for this bifurcation of damage categories is the definition of resources covered by the Act which is interpreted by DOI to exclude damages that might be recoverable under private rights of action for injury to privately owned resources. This distinction between private and public resources has already generated tremendous confusion and controversy. Several key points may help focus this debate if not provide ready resolutions. To help frame the following discussion, we refer to "private damages" as those private losses which result from injury to privately owned resources and define "public damages" as the aggregation of producer and consumer losses resulting from injury to publicly owned resources.

First, the distinction between public and private damages may seem somewhat arbitrary to an economist. If a hazardous waste release has altered the characteristic of a natural resource that serves as an input to the production of a recreational experience (utility function) or commercial product (production function), the economic damages are given by the willingness-to-pay (or sell) of recreationists or producers and consumers to avoid (accept) the additional cost of adjusting to the altered input. Whether the natural resource is privately or publicly owned is inconsequential at least on this level of analysis. However, accepting this distinction between public and private resources defined by the Act, economists would take the view that damages resulting from injury to publicly owned resources are represented by the aggregation of losses to all parties who use the resource.

In a strict legal setting, however, using the lost economic rents accruing to commercial harvestors of an injured animal species, for example, to place an economic value on that species, may suggest that private damages which are not permissible under the Act are at stake, regardless of the possible public trusteeship of the injured animals. The regulations adopt, at least on the surface, the economic view of public natural resource damages which holds that aggregate private losses to individuals who use public resources in production or consumption represent the lost value of these resources. However, there appears to be an increasing tendency to interpret the rules to limit the use of private income losses to individuals who use public resources in commercial production to approximate diminished public use values. That is, while there appears to be a consensus that losses in consumer value to users of a public resource (e.g. users of a public beach) represent compensable public loss, considerable confusion exists as to whether reductions in income experienced by users of public resources for commercial enterprises (e.g. commercial fishing) are compensable. To the extent that the courts do not accept the economist's approach to estimating value based on both consumer surplus and economic rent, it is possible that resource value represented by economic rents may go uncompensated under the rules.⁴⁹

Second is the issue of who is in the least-cost position for bringing successful natural resource damage claims. If the Act or the rules limit the use by a public trustee of private losses as an approximation of public damage, private parties would be forced to bring individual suits under state common law to seek compensation. Given the subtlety of many of the injuries from hazardous waste spills and the expense and complexity of proper economic damage assessments, the conditions under which a private party could mount a successful case may be limited. A further complication results from damages to natural resources that do not obey property lines or political boundaries. It is not clear how injuries to private parties from contaminated air would be handled under a strict interpretation of private versus public resources. The risk of too narrowly defining public versus private damages is excessively large litigation and other transaction costs (such as duplicative assessments) to achieve fair compensation. A more cost-effective solution might allow for consolidation of public and private damage claims when the trustee can take advantage of cost economies-of-scale. Of course, allowing for consolidation of public and private claims would raise a host of theoretical and practical questions and problems. For example, would state or federal trustees be in the position to determine the validity of private claims? If so, could trustees collect and distribute damage awards to private claimants? How would this be accomplished?

Finally, the last point raises the issue of who gets the award. As the rules currently read, a public trustee claiming damages based on losses to public users has to use the award to restore, rehabilitate, or acquire comparable natural resources. Individual users would not receive compensation for losses incurred after the release, but before the restoration, even though such losses would be included in the assessment. From an economic point of view, the resource allocation implications of such a distributional outcome are minimal. The legal questions are more interesting. For example, would public users have standing to bring suit under state tort law against the state or the responsible party for damages incurred but for which they receive no compensation? The answer is unclear, but there may be some potential for double payments for the same injury to the extent that the public user is viewed by the courts as having a cause-of-action independent of the trustee's claim over the injured resource.

The debate over public versus private resources is not only a question of ownership. It involves distinctions between ownership, private versus public injuries, and income versus value losses. The net effect is uncertain pending resolution by the courts.

The final assessment of the public versus private resource issue is an empirical one and has to await some practical experience with the process. It may be that the assessment process conducted by a public trustee will provide potential private parties with all the information and analysis they will need to bring compensation actions under state common law. On the other hand, the incentives for any one injured party to undertake the necessary studies to support a tort action on their behalf are sufficiently small to assume that few private actions will be brought in the absence of an organized group of plaintiffs or readily identifiable and easily valued damages (such as fish kills). It is worth asking the question whether society's best interests are served by encouraging a large number of relatively small, but still expensive, legal actions.

Conclusion

The emerging compensation framework for natural resource damages attempts to integrate the economics and law of natural resource valuation into a single comprehensive package. The ability of the framework to achieve the dual goals of fair compensation and the efficient allocation of social resources is a function of how carefully the perspectives and limits of economic valuation are coordinated with the constraints imposed by the legal structure in which these assessments will be judged. We have singled out four current issues concerning the application of natural resource economics to the CERCLA assessment process that appear to have the potential to skew the compensation formula towards under-compensation. Others may well be equally important. For example, the reliance in the regulations on a ten percent discount rate is a double-edged sword, perhaps greatly under-valuing future losses but over-valuing past damages.

We do not have a crystal ball that offers a clear picture of how the assessment process will actually be implemented in practice. Many of the issues raised here as well as many technical elements of the DOI regulations await final resolution in the courts. Nevertheless, we have tried to provide some hints as to likely outcomes. The magnitude of the possible effects cannot be predicted, but a qualitative assessment can be constructed.

Our sense is that the tendency will be toward awards that represent something less than the full economic value of natural resource injuries. We believe the assessment regulations as they stand foster this outcome. However, whether or not the regulations contain an inherent bias towards undercompensation is debatable. Moreover, if one accepts our preliminary conclusion, the question then arises as to whether the perceived bias in the regulations results from an inherent bias towards undercompensation in CERCLA itself or results primarily from a conservative interpretation of the CERCLA natural resource damage provisions by DOI. The latter appears to be the prevailing view among the environmental organizations and state trustees who are currently suing DOI over the Type B rules. This view also appears to be shared by others, including members of Congress. Senator Max Baucus (D-Mont.), speaking in support of passage of SARA on the Senate floor, stated that "the rules to date strongly discourage natural resource damage claims from ever being brought and would severely reduce recoverable damages in those few cases in which they were sought."⁵⁰

References

1. See, e.g., *National Wildlife Federation v. U.S. Department of Interior*, No. 87-1266 (D.C. Cir. June 18, 1987).
2. 42 U.S.C. §§9601-9657 (hereinafter cited as "CERCLA").
3. P.L. 99-499.
4. CERCLA §101(14) defines "hazardous substance" primarily by referring to designations made under a variety of other environmental statutes. These hazardous substances include 696 substances (see 48 Fed. Reg. 23552) as well as any additional substances designated by EPA pursuant to §102 of CERCLA.
5. CERCLA §101(22). "Release" is broadly defined but excludes exposures resulting from specified nuclear materials, workplace emissions, most engine exhausts, fertilizer applications and "federally permitted releases." (See §101(10))
6. Reed, P. D., "CERCLA Litigation Update: The Emerging Law of Generator Liability," 14 *Envtl. L. Rep. (Envtl. L. Inst.)* 10024 (1984).

7. CERCLA §221.
8. CERCLA §111(a).
9. The CERCLA natural resource damage provisions are contained in three separate sections of the Act: §107, §111 and §301.
10. CERCLA §107(a)(4)(C).
11. CERCLA §107(f).
12. CERCLA §101(16).
13. CERCLA §107(f).
14. SARA §113(b) codified at CERCLA §113(g)(1).
15. CERCLA §107(c)(1)(C).
16. SARA §517 codified at Internal Revenue Code §9507(c).
17. CERCLA §301(c)(2).
18. CERCLA §111(h)(2).
19. See, e.g. Menefee, M. "Recovery for Natural Resource Damages Under Superfund: The Role of the Rebuttable Presumption," 12 *Envtl. L. Rep. (Envtl. L. Inst.)* 15057 (1982).
20. The provisions of various Federal Laws relating to natural resource damage compensation are reviewed in: Yang, E., R. C. Dower, and M. Menefee, *The Use of Economic Analysis in Valuing Natural Resource Damages*, U.S. Department of Commerce, Washington, DC 1984. A general discussion of common law principles for valuing natural resource damages may be found in: Dower, R. C. and Paul F. Scodari, "Economics and the Law: Compensation for Damages to Natural Resources" Presented Paper at the Workshop on Economic Evaluation of Losses to Fish, Wildlife and Other Environmental Resources, held in Monterey, Ca., November 11, 1986.
21. State of New Jersey v. Ruckelshaus, Civil Action No. 84-1668 (D.C.N.J. 1984).
22. 51 Fed. Reg. 27674 (August 1, 1986) (hereinafter cited as "Regulations").
23. 52 Fed. Reg. 9042 (March 20, 1987).
24. 52 Fed. Reg. 12886 (April 17, 1987).
25. Regulations §11.14(ee).
26. Regulations §11.14(j).
27. Regulations §11.35(a)(2).
28. Regulations §11.35(e)(3)(i) and (ii).
29. Regulations §11.35(e)(1) and (2).
30. Regulations §11.81(a)-(f).
31. Regulations §11.83(b)(1) and (2).
32. Regulations §11.84(b)(2).
33. Regulations §11.14(h).
34. Desvousges, W. H. 1985. *Type B technical information document: techniques to measure damages to natural resources*. Draft report prepared for the CERCLA 301 Project, U.S. Department of Interior, September 1985.
35. Regulations §11.83(c)(1) and (2).
36. In earlier versions of the final rule, DOI included both willingness-to-pay and willingness-to-sell (WTS) as appropriate measures of resource value, noting that economic theory gave greater support to the latter in the case of compensation to public resources. The final rule, however, discards the concept of WTS as difficult to measure empirically and subject to greater uncertainty.
37. Regulations §11.83(d)(1)-(6).
38. Regulations §11.83(d)(7).
39. Regulations §11.84(c).
40. Regulations §11.84(d).
41. Regulations §11.84(e).
42. For an economic analysis of compensation for health impacts see, Viscusi, W. K. 1983. Alternative approaches to valuing health impacts of accidents: liability law and prospective valuations. *Law and contemporary problems*, 46:49-68.

43. 50 Fed. Reg. 52126, §11.14(pp).
44. The special resources classification would have negated the "lesser of restoration or replacement costs, or diminution of use values" decision rule that DOI argued was a common law principle of natural resource damages. The special resources classification would have also negated the economics of damage assessment.
45. See, for example: Desvousges, W. H., J. K. Smith and McGivney, M. P. 1983. *A comparison of alternative approaches for estimating recreation and related benefits of water quality improvements* Wash., D.C. U.S. EPA; and Walsh, R. G., Loomis, J. B., and Gillman, R. S. 1981 Valuing option, existence and bequest demands for wilderness. *Land Economics* 60, (May).
46. The historical treatment of natural resource damages in courts and a review of past cases, as well as a discussion of state assessment schemes that consider intrinsic values, can be found in Yang, E., R. C. Dower, and Menefee, M. *The use of economic analysis in valuing natural resource damages*. Wash., D.C.: U.S. Department of Commerce.
47. A general treatment of damage categories for tort actions is found in Prosser, W. C., and Wade, J. W. 1979 *Torts 2nd—restatement of the law*, St. Paul: American Law Institute.
48. A current overview of contingent valuation methods is found in Cummings, R. O., Brookshire, D. S. and Schulze, W. 1986 *Valuing public goods: the contingent valuation method*, Totowa: Rowman & Allanheld.
49. For example, if private commercial users of public resources do not have standing under state common law for injury to public resources, exclusion of this type of value loss from state and federal damage cases would result in undercompensation.
50. Cong. Rec. (October 3, 1986) S 14929.

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76:18

Submission to House Committee on Exxon Valdez Oil Spill Settlement regarding Regional Aquaculture Salmon Enhancement Tax

8/15/89 Letter from Jeff Bush, Assistant AG confirming commitment of Exxon to pay tax

10/1/89 Letter from Kodiak Regional Aquaculture Association to Exxon requesting money to cover lost tax

10/18/89 letter from Exxon to Aquaculture Association acknowledging deduction of 2% from fishermen, and requesting submission of claim

10/25/89 letter to Exxon from Aquaculture Association setting out claim for lost enhancement tax

11/8/89 letter from state A.G. confirming original agreement of Exxon to pass through aquaculture enhancement tax irrespective of any other factors that might affect claims.

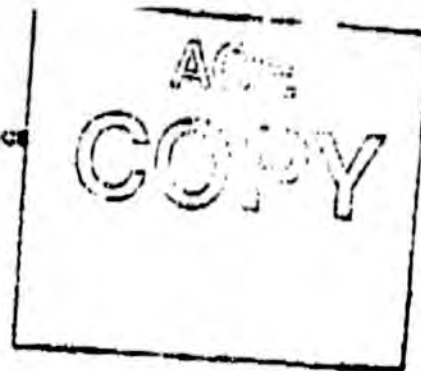
4/27/90 letter from Department of Fish & Game indicating nature of alleged setoff to claim for enhancement tax, and explaining that cost recovery money which Exxon was suggesting should eliminate claim for enhancement tax belonged to state, not the association.

5/24/90 letter from Exxon nonetheless rejecting claim for fisheries enhancement based on setoff idea, and directing association to take matter of lost enhancement tax up with the state.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
ALASKA OIL SPILL COORDINATING OFFICE



August 15, 1989

Rick Eichner
Exxon Claims Office
Exxon Company, U.S.A.
P.O. Box 240489
Anchorage, AK 99524-0489

Re: Salmon Enhancement Taxes

Dear Rick:

Thank you for meeting with Steve Kettel and me on July 28 to discuss how to deal with funds deducted from fishermen's claim payments that otherwise would be paid to the state as salmon enhancement taxes. This will confirm Exxon's commitment to work directly with the affected aquaculture associations to arrange payment of the withheld funds directly to them.

As I indicated at our meeting, salmon enhancement tax collections affect the budgets of the aquaculture associations during the next fiscal year. Any lost tax revenue this summer will not be felt by the associations until July 1990. Therefore, I encourage you to arrange for Exxon's direct payments to the associations to be made sometime after July 1, 1990.

The state has recently filed a lawsuit against Exxon and others in which one of its claims is for lost salmon enhancement tax revenue. When Exxon reaches formal agreement with all the aquaculture associations, please forward copies of the agreements and the appropriate back up material to me. Assuming everything is in order, the state will then agree not to pursue its claim for these taxes for this tax year.

Rick Eichner
August 15, 1989
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I have received a number of telephone calls from concerned fishermen regarding Exxon's treatment of these withheld funds in Upper Cook Inlet. These fishermen allege that Exxon is withholding the tax funds but does not intend to turn these funds over to the aquaculture association. I told these people to deal directly with you on this issue, and I assume some solution will be reached.

Thank you again for coming to Juneau to meet with us. I am pleased that this potentially thorny issue appears to be resolved, and I look forward to receiving copies of the agreements with the associations, once they are completed.

Sincerely,



Jeffrey W. Bush

cc: Steve Kettel, Director
Division of Income and Excise Audit
Department of Revenue

Barbara Herman
Assistant Attorney General
Department of Law

KODIAK REGIONAL AQUACULTURE ASSOCIATION

BOX 3407 KODIAK, ALASKA 99515

(907) 488-8555

October 1, 1989

Mr. Dick Harvin, Manager
Exxon Claims Office
P. O. Box 240489
Anchorage, Ak., 99524



Dear Mr. Harvin:

Several weeks ago our Executive Board met with John Peavy of your Kodiak Claim's office to discuss our association and the affects of the Exxon "Valdez" oil spill. At that time Mr. Peavy indicated that the 2% Enhancement Tax would be withheld from the fishermen's claims. It was assumed that this money once withheld would then be submitted to the Department of Revenue for future allocation back to KRAA.

It is, we understand, Exxon's intention to assure funding of KRAA as usual and toward this goal Exxon will make up the shortfall of difference between the preseason estimate and the actual commercial catch. As you are probably aware, KRAA managed a special one-time cost recovery at the Kitoi Hatchery under an addendum to our co-operative agreement with ADF&G. Under the conditions of the addendum, the funds obtained through the sale of those fish are to be used for the future operational cost of the Kitoi Hatchery. As such, the funds are entirely separate from any funds or accounts of KRAA and are not available for KRAA's normal projects.

KRAA's normal operation costs, i.e., administrative and enhancement and rehabilitation projects AREA WIDE are funded through a contract with Department of Commerce and Economic Development. This contract is prepared and funded through allocation by the legislature of those 2% funds collected from the fishermen within Kodiak Management Area K. In this particular year, that normal funding source has not been available to the extent anticipated as only a limited amount of commercial fishing has been done within this area. The difference between the preseason estimate and actual catch at this point is in the neighborhood of \$600,000.00. Final catch figures should be available from ADF&G some time during the month of October and the final difference can be calculated at that time.

Mr. Dick Harvin, page 2

October 1, 1989

If you have any questions on this matter or wish to meet with member of KRAA's Executive Committee please do not hesitate to contact our office at (907) 486-6555. As we are currently in the process of planning the budget for the next year's project your early attention to this matter would be appreciated.

Sincerely,

Oliver N. Holm

Oliver N. Holm
President KRAA
Board of Directors

EXXON COMPANY, U.S.A

EXXON CLAIMS OFFICE
TELEPHONE (907) 564-3836
FAX (907) 564-3857
FAX (907) 564-3874
POST OFFICE BOX 240489 • ANCHORAGE, ALASKA 99524-0489

October 18, 1989

Mr. Oliver N. Holm, President
Kodiak Regional Aquaculture Association
Box 3407
Kodiak, Alaska 99615

Dear Mr. Holm:

I would like to clarify some points you made in your letter to me dated October 1, 1989. As part of our voluntary claims settlement procedure to determine the amount due to salmon permit holders, we are deducting the aquaculture assessment from the value of the fish not caught. We are not withholding the tax for the Department of Revenue, rather we are recognizing the 2% as a cost not incurred by the fisherman.

We discussed this arrangement with the Department of Revenue in July. The key point in these discussions is that we would treat the aquaculture associations as if they were individual permit holders under our guidelines. As such, if the Kodiak Regional Aquaculture Association (KRAA) has incurred losses to the M/V Exxon Valdez oil spill, a claim should be submitted to this office.

The claim should consider all factors occurring as a result of the spill. Given the exceptional results of the Kitoi hatchery catch this year versus the forecast, the funding relationship between the hatchery and the Association need to be considered. The statutory/contractual relationships of the hatchery, KRAA, Department of Fish and Game, and Department of Commerce and Economic Development will need to be evaluated to determine if a claim from the KRAA has value.

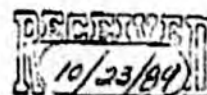
Please contact us if you have any questions.

Sincerely,



R. T. Harvin
Exxon Claims Manager

JH108/yc



KODIAK REGIONAL AQUACULTURE ASSOCIATION

BOX 3407 KODIAK, ALASKA 99615

(907) 486-6565

25 October 1989

Mr. R. T. Harvin
Exxon Claims Manager
Exxon Company, USA
P. O. Box 240489
Anchorage, Alaska 99524-0489



Dear Mr. Harvin:

Thank you for your letter of October 18, 1989, which clarified Exxon's position on the 2% Enhancement Tax normally collected from the permit holders.

You indicated in your letter that if the Kodiak Regional Aquaculture Association (KRAA) had incurred losses due to the M/V Exxon Valdez oil spill, a claim should be submitted to your office. Please accept this letter as a formal claim for losses KRAA incurred due to the M/V Exxon Oil Spill.

Due to the oil spill, a normal commercial fishery could not be conducted. In 1988, the Permit Holders of Kodiak Management Area K voted in a 2% tax based on their individual gross sales. These taxes are collected by the processors at the time of the sale, and those funds are later granted to KRAA for the area-wide enhancement and rehabilitation projects; administration of the office and management of those projects. This is the only funding available to KRAA for the area-wide projects, and without the normal commercial fishery KRAA does not have access to those funds. We are therefore making claim for those funds that would have been collected for the 1989 season through the 2% Tax. As to the relationship between KRAA and the Department of Commerce and Economic Development, that department is simply the agency through which the 2% funds are passed from the Department of Revenue for distribution to the area aquaculture associations. Since this is a state tax; state law regulates the handling of these funds, KRAA has no control over that process.

Your letter of October 18, 1989, mentioned the funding relationship between the Kitoi Bay Hatchery and KRAA. Under a co-operative agreement with the Department of Fish & Game, FRED Division, KRAA manages a cost recovery program each year to obtain sufficient funds for operating the hatchery. These funds are separate from the normal activities of KRAA and are not co-mingled with KRAA accounts, nor can any of these funds be used for the normal day to day operations of the KRAA office. The Kitoi cost recovery funds are not available for those enhancement and rehabilitation projects established area wide. The co-operative agreement

* Enhancing Salmon in Kodiak Waters

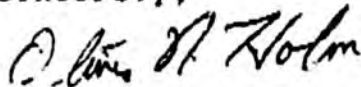
designates those cost recovery funds for operational cost of the Kitoi Bay Hatchery.

Under normal conditions, a minimal cost recovery is conducted to obtain funds for the hatchery's following year budget, and this minimal recovery program would have continued through the duration of the existing contract. Due to the extent of the M/V Exxon oil spill, it was necessary this year to recover some of the fish that returned to the hatchery. So rather than spreading the operational funding cost recovery over several years, it was accomplished in one season. Because of the exceptional results of this season's recovery, KRAA will not have funding for the area wide project since these fish were not available to Area K permit holders, and therefore the 2% tax was not collected.

If ADF&G's 1989 Harvest Forecast is used, the area value for all species is \$42,107,500. Two percent of that value would be \$842,150.00. According to ADF&G's records the 1989 commercial catch within Management Area K totalled \$11,699,125.00; 2% of that value would be \$233,982.50 that was collected from the commercial fishermen by the processors. Using this formula KRAA's loss due to the M/V Exxon's oil spill is: \$608,167.50. The actual number of fish returning to the area and normally available for harvest was much higher than the ADF&G forecast and if those figures were used, the loss to KRAA would be much greater than indicated.

Members of our Executive Board would like to meet with a representative from your claims office at your earliest convenience to discuss this matter. Please advise when you or someone from your office would be available for such a meeting.

Sincerely,



Oliver N. Holm, President
KRAA Board of Directors

enc.

PULASKI RECREATION
AQUACULTURE ASSOCIATION
Box 3407
Kodiak, AK 99615EXXON OIL CLAIMS - WORKSHEET
PREVENTED SALES1989 ADF&G
Harvest Forecast
Area Value

\$42,107,500.00

2% Area Value, Normal Fishery.....\$ 842,150.00

Value Actual Commercial Harvest, 1989

\$11,699,125.00

2% Commercial Harvest collected. 233,982.50

TOTAL LOSS DUE TO M/V EXXON OIL SPILL \$ 608,167.50

ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

November 8, 1989

R. T. Harvin
Exxon Claims Manager
Exxon Company, U.S.A.
P.O. Box 240489
Anchorage, AK 99524-0489

REPLY TO:

☐ 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

☐ 1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1588
FAX: (907) 456-1317

☒ P.O. BOX K--STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

Re: Negotiations with aquaculture
associations

Dear Mr. Harvin:

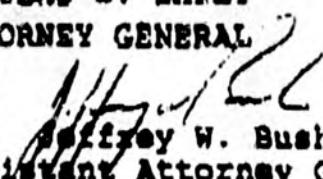
I recently received a copy of your letter of October 18, 1989 to the Kodiak Regional Aquaculture Association. I am particularly concerned with respect to your representations regarding discussions held with state officials, including me, this summer. The process that you outline in your letter for Exxon's treatment of the 2 percent salmon enhancement tax that it has withheld from fishermen totally misrepresents the understanding reached during our discussions. Before the discussions, Exxon admitted liability for the withheld funds, and the only subject of our discussion was the method that would be used to get these funds to the aquaculture associations. It was agreed that rather than have Exxon pass the money through the state, Exxon would pay these funds directly to the associations as part of the normal claims process. A copy of my letter to Rick Eichner, confirming the agreement reached at that meeting, is enclosed for your reference.

These funds are owed by Exxon irrespective of any other factors that may impact potential claims.

— factors that may impact potential claims by these associations.
I hope you will undertake whatever steps are necessary to ensure
that these funds are turned over to the appropriate associations.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Jeffrey W. Bush
Assistant Attorney General

JWB:jf

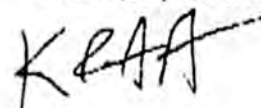
STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 485-4100



April 27, 1990

Mr. Oliver Holm, President
Kodiak Regional
Aquaculture Association
P.O. Box 3407
Kodiak, AK 99615

Dear Mr. Holm:

Recently, some confusion has arisen concerning the intent of the July 29, 1989, amendment to Contract [redacted] an agreement between the Alaska Department of Fish and Game (ADF&G) and Kodiak Regional Aquaculture Association (KRAA) for KRAA to operate the Kitoi Bay Hatchery with a portion of operational costs to be borne through sale of returning fish by KRAA. I am providing the following background and contract language review so that all parties will be clear on the intent of the 1989 harvest and disposition of revenue generated.

The Exxon Valdez oil spill (EVOS) impacted the fishery to the extent that salmon returning to the Kitoi Bay Hatchery could not be harvested in the traditional manner by gear groups. Rather than allow a record return of pink salmon to be wasted on the beach, the state negotiated the July 29 amendment for KRAA to harvest the pink salmon available beyond hatchery broodstock needs. The joint-venture approach on harvesting was necessary since the State of Alaska does not conduct cost-recovery harvest at its hatcheries at this time. The guidelines were specifically determined between ADF&G and KRAA for the conduct and disposition of funds from, as the contract amendment specifies, a "...special, one-time cost recovery harvest. ..." After consultation with the Alaska Department of Law and the Office of the Governor, ADF&G developed contract language concerning use of revenue generated from the harvest. The funds were to be placed in a federally insured, interest-bearing account and, according to the contract:

"Due to the extraordinary circumstance, and due to the uncertainty regarding hatchery returns for cost recovery purposes, it is prudent to use the remaining funds in the account to cover future cost recovery needs at the Kitoi Bay Hatchery. Therefore, additional revenues generated through this special cost recovery

Mr. Oliver Holm

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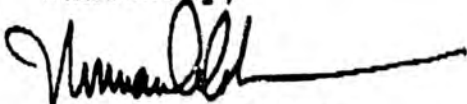
April 27, 1990

effort shall be used to fund KRAA's share of future operational costs at Kitoi Bay Hatchery, beginning in fiscal year 1991 (July 1, 1990, to June 30, 1991) and continuing through the life of the contract."

Review of the amendment language clarifies that the first intent of the amendment was to harvest in the Kitoi Bay Hatchery Special Harvest Area, the pink salmon made inaccessible to the fishermen because of EVOS and, secondarily, to be certain any revenue from that harvest would not be used for any other purpose except for the original intent of the contract; that is, supporting operational costs of the hatchery. Having been involved in the negotiation of the amendment, I can reach no other interpretation of the intent. Any diversion of these funds for fisheries enhancement purposes at other locations or for administrative costs not directly connected with Kitoi Bay Hatchery operations would constitute violation of the contract.

If any misunderstanding about the purpose of the Kitoi Bay Hatchery EVOS revenue remains, or you have other questions, please contact Jerry Madden.

Sincerely,



Norman A. Cohen
Deputy Commissioner

bcc: N. Holt
T. Joyce
J. Sanders
L. White

5/13/90

EXXON COMPANY, U.S.A.

EXXON CLAIMS OFFICE
TELEPHONE (907) 564-3886
FAX (907) 564-3857
FAX (907) 564-3874
POST OFFICE BOX 240488 • ANCHORAGE, ALASKA 99524-0488

May 24, 1990

Mr. M.D. Jamin
Jamin, Ebell, Bolger & Company,
Attorneys at Law
323 Carolyn Street
Kodiak, Alaska 99615

VIA FAX: 486-6112

Dear Matt:

Thank you for your letter of May 11, 1990 asking that we reconsider KRAA's request that Exxon compensate for its claimed loss of salmon enhancement tax proceeds from the State.

While it is interesting to know the specifics of the KRAA agreement with the State on how proceeds from the special 1989 Kitoi Hatchery harvest may be spent, this does not change our fundamental view of the situation. It is still quite clear to us that, as a result of the March 1989 Exxon Valdez accident and taking into account the special Kitoi harvest, KRAA and the State have received funding substantially in excess of what they might have hoped absent the accident. Given this excess of funding, we do not understand how KRAA can conclude it has suffered a net economic loss that should be compensated by Exxon. In taking this position, we are not expressing any view as to the appropriate disposition of the funds being held from the special harvest. If Kodiak fishermen and KRAA now feel that the original terms of their agreement with the State do not permit optimal disposition of the available funds, we would suggest that the matter be raised with the State.

Finally, we find that some in Kodiak are under the misconception that we have withheld State salmon enhancement taxes from our claim payments to fishermen. This is clearly not the case! Our voluntary claim settlement program provides compensation for the permit holder's net economic loss directly resulting from the accident. It is necessary to consider a variety of factors, including salmon enhancement tax the permit holders did not incur in 1989 because of the Kodiak closures, in the calculation of a permit holder's net economic loss. Clearly, there is no salmon enhancement tax payable on fish that were not caught, and it is factually incorrect to imply that Exxon has withheld a tax which it has failed to pass on to the appropriate taxing authority. I trust you understand this, and I would ask that you assist in clarifying the matter to any of your clients who may hold this misconception.

Best regards, and I look forward to seeing you soon on the various other issues that remain open between your clients and Exxon Claims.

Very truly yours,



David E. Shoup

SCOMM

76.19

Alaska Deserves a Fair Settlement

by Rep. Max Gruenberg

When Gov. Hickel returned from Washington D.C. in March, he announced that he had just negotiated with Exxon and the Justice Department the best oil spill civil settlement deal Alaska could expect. Despite the Governor's sincere attempt to negotiate a good deal for Alaska, this settlement was unfair to Alaska and here's why:

- Alaskans would have been excluded from decisions as to how money should be spent on restoration and recovery in spill-hit areas. Instead, a board of federal and state bureaucrats would have unilaterally decided how the money should be allocated. There was no guarantee that the people directly affected by the spill would have had any say in the matter.

- It did not adequately protect the rights of Alaska Natives and other third party groups. Unless loopholes in the settlement were closed, the rights of Alaska Natives to recover damages from Exxon for cultural and subsistence losses could have been restricted. Also, commercial fishermen could have lost their right to recover damages resulting from diminished fish stocks.

- All scientific and economic data could have remained secret without justification. This information should be published so the public can be sure that further damage is minimized, more safeguards can be prepared, and the total impact of the spill can be fully assessed. This will also help prevent unfounded claims by the oil industry of recovery rates in spill areas and verify the toll on wildlife and natural resources.

The House set-up a nine-member bipartisan committee which went over the proposal literally line by line during more than 100 hours of hearings over a period of six weeks. The committee also held hearings in Seward,

Homer, Kodiak and Cordova to hear from people in areas most directly affected by the spill.

In total, 237 Alaskans from all over the the state either wrote or testified about the settlement. Of those, 169 (71 percent) were strongly against the settlement proposal, 14 (6 percent) favored it and the remaining 54 (22 percent) were neutral.

Most committee members felt the settlement weighed too heavily in favor of Exxon by giving the oil giant 11 years to pay the \$900 million settlement. Over time that meant the settlement was really worth only between \$500 million and \$700 million. Meanwhile, Exxon would have continued to profit off money owed to the state.

The House wants a \$700 million payout (what Alaska Attorney General Charles Cole asserted is the real value of the original proposal) within 15 months of the date the judge approves the settlement. Exxon should pay that up front and be done with it.

Under the rejected proposal, the State of Alaska would have subsidized Exxon through state corporate tax write-offs from the settlement worth at least \$5 million. House members thought it was unfair that Exxon should be awarded a \$5 million state tax break. Incidentally, under the agreement, Exxon would have been able to write-off more than \$150 million in federal taxes. The House wanted the agreement modified to prevent Exxon from deducting the civil settlement from its state taxes.

The House also suggested changes so scientific and economic data would be published on a case by case basis unless a court ordered that the data be kept secret.

In addition, The House asked that the public be intimately involved in spending decisions and that the rights of Alaska Natives and other third parties to file claims against Exxon be fully protected.

Other recommended changes would assure that the settlement conforms to the Alaska Constitution by requiring legislative appropriation of monies and that two state legislators be nonvoting members of the trustee board, which will make final spending decisions.

The House suggested the criminal fine be increased to \$500 million, \$100 million going to the state and \$100 million going to the federal government. The rest would go into the civil settlement trust fund for restoration purposes. That would bring the total settlement to \$1.2 billion, a much higher figure than the rejected settlement, but equal to Governor Hickel's goal.

Let's be very clear: the House still wants a fair settlement. The House's suggestions are a road map to making an equitable settlement happen. In rejecting the civil settlement, the House showed that Alaskans have the fortitude to withstand large offers that are really not fair in the long run. True, we took a risk that one of the parties might choose to litigate rather than renegotiate. My colleagues and I felt that was a small risk because litigation is in nobody's best interest.

The Governor made the right decision in putting the settlement before the legislature. He now has a stronger hand to win concessions that protect Alaska's rights, provide fair and adequate compensation and have broad-based popular support. Legislators expect the Governor to honor his word that he will give the public and the legislature opportunity to review and approve the settlement, even if it's a second version. With a little encouragement, Exxon, the Justice Department and the Hickel administration will emerge with a better proposal, one that we all can live with.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3800

June 21, 1989

Charles DiMonaco, Chief
Lands Division
Environmental Crime Section
Department of Justice
Washington D.C. 20038

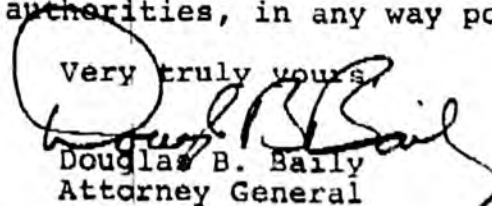
Dear Mr. DiMonaco:

We would like to inform you that the State of Alaska is no longer pursuing a criminal investigation of either Alyeska Pipeline Company or Exxon Shipping Company with respect to the Exxon Valdez oil spill. Based on our initial investigation, we believe that our remedies against these corporations are limited to B misdemeanors. For corporations, the maximum penalty for a B misdemeanor is a fine of \$100,000. In light of the state penalty structure, and the broader range of remedies available under federal law, we would defer any further investigation of the corporations involved in this matter to the Department of Justice.

Of course, if new evidence is developed that indicates additional criminal acts under state law have been committed by either defendant, we would be willing to resume our investigation. However, given our limited resources and limited remedies, we believe the best course of action at this time is to turn primary responsibility for any criminal prosecution of Alyeska and Exxon over to you. Part of the reason for our decision is the excellent cooperation we received from the Department of Justice during the course of our investigation.

As you continue your inquiry, please keep in mind that we will make available to you the information and materials we have developed to date. We will make every effort to cooperate with you, and the other federal authorities, in any way possible.

Very truly yours,


Douglas B. Bailly
Attorney General

cc: Mark Davis, Acting U.S. Attorney

THE WASHINGTON POST

Value of Intangible Losses From Exxon Valdez Spill Put at \$3 Billion

By John Lancaster
Washington Post Staff Writer

Confidential government studies have estimated the "social cost" of the Exxon Valdez oil spill at \$3 billion, nearly three times the \$1.1 billion that Exxon has agreed to pay to settle criminal and civil charges arising from the accident.

The controversial economic studies, conducted for the state of Alaska and the federal government, are an attempt to assign a dollar value to intangible losses said to have been suffered by the American public as a result of damage to wildlife and natural habitat. Economists polled households nationwide to arrive at the estimate, which would have figured prominently in Exxon's trial had the case not been settled out of court.

There is no guarantee that a judge and jury would have accepted the \$3 billion estimate, which was provided to The Washington Post by one of the economists involved in the studies. Federal officials defended the settlement as a landmark penalty that avoids a costly and uncertain trial while providing immediate cash for cleanup and restoration.

But critics noted that several recent court decisions have upheld the validity of social cost studies for valuing environmental catastrophes, suggesting that Exxon may have gotten off too lightly. "The federal government has a fiduciary responsibility to the citizens to look out for these resources, to provide a market signal that if you do damage, this is what it's going to cost you," said an economist familiar with the studies.

In affirming the method two years ago, a three-judge federal appeals court panel ruled that although "the extent of damage to natural resources from releases of oil and hazardous substances varies greatly . . . it is in the mission of [federal law] to assess the public loss."

Exxon declined to comment on the studies.

William K. Reilly, administrator of the Environmental Protection Agency, said in an interview that while such studies "have their place

. . . they're new, there's not a lot of litigation, and courts haven't awarded anything on the basis of how much somebody says they're willing to pay to save a river otter."

State and federal officials, citing unresolved claims from third parties such as fishermen and Native Alaskans, have refused to make any information from damage studies available to the public. "We won't do so unless we get a commitment from the plaintiffs that they won't sue us with the information," said a spokesman for Alaska Gov. Walter J. Hickel (I).

If nothing else, the debate over the economic studies illustrates the difficulty of assessing damage to natural resources from accidents

such as the Exxon Valdez spill, the nation's worst. Some values, such as cleanup costs and measurable financial damage to tourism and commercial fishing, are relatively easy to calculate. But the question of intangible losses has proved harder to resolve.

What, for example, is the price of a dead sea otter or sea bird, both of which society presumably holds dear even though they have no commercial value?

In the past, the federal government has assigned market values to dead wildlife, such as \$15 for a fur seal or \$35.74 for a Canada goose. But the appeals court decision found that such methods did not adequately compensate the public,

and ordered federal agencies to give more weight to intangible losses in figuring the bill for environmental catastrophes.

Norman Meade, chief economist of the damage assessment branch for the National Oceanic and Atmospheric Administration, declined to comment on the substance of the economic studies and said he feels "fine about the settlement."

But he also defended the methodology of so-called contingent value studies, describing them as "the only way to get at these kinds of values." He added, "When these [resources] are interfered with, there is a social cost, the public has lost some general welfare, and that's what we're trying to estimate."

In evaluating the losses, economists hired by the state of Alaska developed elaborate surveys aimed at calculating the public's "willingness to pay" for a clean Prince William Sound. Beginning in 1989, the economists met with "focus groups" in Seattle, San Diego and Baltimore with the aim of exploring "how people think about the oil spill and its consequences," one of the surveyors said. "You use these to find out the language and assumptions people use so you can frame your questions accordingly."

After pilot surveys in San Francisco, Toledo and rural Georgia—"They're sort of middle America," the economist explained—the contractors surveyed 1,000 households nationwide. Surveyors conducted face-to-face interviews in which they displayed photographs and other information about the spill, then asked respondents how much they would be willing to pay to protect Prince William Sound from future spills.

Preliminary results from the survey, conducted in January and February, showed a median amount of \$30 for each household, or—figuring there are 100 million households in the country—\$3 billion for the American public as a whole, according to one of the economists. Although the federal government had not progressed as far with its studies, a federal official said the \$3 billion figure was "in the ballpark."

EXXON WILL ADMIT TO CRIMINAL WRONG IN '89 ALASKA SPILL

FINE OF \$100 MILLION SET

Plea and Payment Included in
\$1.1 Billion Settlement
in Valdez Disaster

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, March 12 — The Exxon Corporation has agreed to plead guilty to a criminal charge arising from the 1989 Exxon Valdez oil spill and pay a \$100 million fine, officials of the Environmental Protection Agency said tonight.

The \$100 million would be part of the \$1.1 billion Exxon is to pay over the next 10 years to settle civil and criminal cases arising from North America's largest oil spill, Alaskan and Federal authorities said today.

Final arrangements for the guilty plea were being worked out tonight, the E.P.A. officials said. The arrangements included a review of the agreement by the E.P.A. Administrator, William K. Reilly. It was not clear this evening what charge Exxon would plead to. The company had faced two felony charges and at least three misdemeanor counts stemming from the March 24, 1989, accident and could have been fined up to \$600 million if convicted on all counts, Attorney General Dick Thornburgh said after the company was indicted a year ago.

As for the overall \$1.1 billion settlement, Federal and state officials have agreed to the arrangement. Although a Federal District Court judge at first seemed to raise another hurdle today when he said he would review the settlement to insure that the rights of 5,000 Alaskan villagers were protected, a state official said early this evening that the final obstacles appeared to have been overcome.

Exxon would pay \$100 million immediately to settle criminal charges brought by the Department of Justice. That would be one of the largest, if not the largest, criminal fine ever paid for pollution. A trial on the charges had been scheduled for April 10 in District Court in Alaska.

Effects Would be Studied

The villagers had filed suit last week, asserting that they had been locked out of negotiations between Exxon, the State of Alaska and the Federal Government. The villagers said they feared that a settlement would prevent them from recovering financial damages caused by the spill on March 24, 1989.

The settlement, which has been under negotiations for months, would not end Exxon's legal troubles in Alaska. At last count, 330 separate suits were pending against the company. But the settlement would end the major suits, brought by the State of Alaska and the United States.

In addition, the company would pay

Continued on Page A12, Column 3

Exxon Penalty

\$1.1 Billion For Valdez Oil Spill: A Bargain?

HOW do you put a price on an environmental disaster? Last week the Exxon Corporation and the Federal Government set a benchmark by agreeing that the Valdez oil spill, in which an Exxon tanker dumped 11 million gallons of petroleum into Alaska's Prince William Sound, was worth \$1.1 billion. That is the amount the company could pay as a settlement for violating Federal environmental law.

After years of insisting that the disaster on March 24, 1989, was purely accidental, Exxon and its shipping subsidiary pleaded guilty to four misdemeanor criminal violations and agreed to pay a \$100 million fine, the largest ever for environmental crimes. Exxon will also pay \$300 million over the next 10 years to settle civil litigation that was being prepared by the state of Alaska and the Federal Government, and could be required to spend up to \$100 million more if additional damage is discovered after the turn of the century.

Some of the money is to be used to reimburse the state and Federal governments for \$135 million in expenses from the first year after the spill. The rest will be managed by three state and three Federal agencies and could be used to pay for scrubbing more miles of shoreline, building fish hatcheries, restoring bird populations, buying land, and conducting scientific studies and other restoration projects. The agreement is open to comment for 30 days and must be approved by a Federal district judge in Alaska and by the state legislature.

Environmental groups nervously commended the agreement for setting legal precedents and new standards for penalizing polluters. But they said they worried that the settlement might not provide enough money to finish the job of restoring the sound, and that it appeared to let Exxon, the world's largest oil corporation, off too cheaply. Except for the \$100 million criminal penalty, Exxon will be able to write off the entire settlement as a business expense.

At a news conference on Wednesday, Lawrence G. Rawl, the chairman of Exxon, seemed to shrug off the cost of the settlement. "We're talking about stretching a bill out over 10 years," he said. "It will not curtail any of our plans." Hours later, Exxon stock closed at \$57.25, up \$1, on the New York Stock Exchange.

KEITH SCHNEIDER



Photo Courtesy/Associated Press
Cleaning up the Exxon Valdez spill on Alaska's Green Island last year.

NY Times 3/17/91 E-5

NY Times 3/13/91 Page A-1

Obstacles Cleared, Exxon Is Ready to Pay \$1.1 Billion in Oil Spill

Continued From Page A1

\$90 million this year into a fund administered by three Federal agencies and three state agencies. The money would be used for scientific studies of the Prince William Sound region, which suffered great damage, and for projects to continue scrubbing the shoreline of oil left when nearly 11 million gallons of crude oil spilled from the hull of the Exxon Valdez after the tanker ran aground in the sound.

The tanker's skipper, Capt. Joseph J. Hazelwood, was convicted in April 1990 of the relatively minor charge of negligently discharging oil but acquitted of piloting the vessel while drunk and other charges. He was sentenced to spend 1,000 hours in the cleanup operation and was ordered to make \$50,000 restitution.

Exxon said in April 1990 that it had spent \$2 billion on the cleanup and had paid another \$200 million to settle claims.

The agreement made final today also called for payments into the fund of \$150 million in September 1992, \$100 million in September 1993, and \$70 million annually from 1994 until 2001. The proposed settlement also calls for Exxon to contribute \$100 million more to the fund if additional damage from the oil spill is discovered.

Economists noted that Exxon would be able to claim tax deductions for every payment except for the \$100 million criminal penalty, to be paid this year.

The agreement would not affect some 300 other lawsuits filed by environmentalists, fishermen and Aleuts asking Exxon to pay for damages these groups say they suffered after the spill.

The proposed settlement was applauded by Gov. Walter J. Hickel of Alaska but strongly criticized by environmental groups and some state officials who said, essentially, that Exxon would be paying too cheap a price in settling the case.

Bottom of the Pockets?

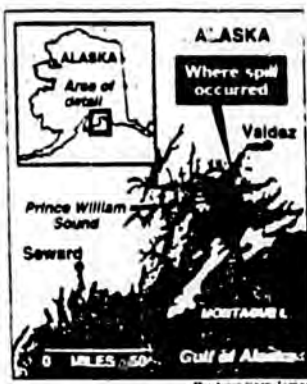
"It seems like a good deal for Exxon," said Eric Jorgenson, a lawyer for the Sierra Club Legal Defense Fund in Juneau, which has a separate suit pending against the company in the aftermath of the spill.

But Governor Hickel said: "I am very happy with the settlement. It allows us to get to the bottom of Exxon's pockets."

Lance Lamberton, a spokesman for Exxon in Irving, Tex., declined today to say whether Exxon would sign the agreement and said the company would make no comment about the situation for the time being.

"If and when things break and we have come together for a proposal to be signed, there will be extensive notification," said Mr. Lamberton.

The settlement contains provisions to make public a wealth of scientific studies conducted after the spill by the Department of the Interior, the Environmental Protection Agency and



The spill near Valdez fouled much of the Gulf of Alaska.

other Federal agencies. But studies sponsored by the State of Alaska and the United States Coast Guard are to remain private pending the outcome of court cases brought against the state and the Coast Guard.

"Keeping the data secret is a major problem," said Mr. Jorgenson. "All of the data available from the spill should be released. The public paid for it. It's public information."

Although the terms would make the settlement the most expensive ever for damages caused by an environmental disaster, the pact is certain to raise a

stir in Alaska and in Washington. The litigation, I certainly am inclined to think a bird in the hand is worth two in the bush. The cost of litigation would be very substantial." Officials with the state and two Federal agencies said the pact could be altered as a result.

Economists who have studied the public to help oversee how money from the settlement is spent. The Department of Justice scheduled a news conference for Wednesday to explain the actual value of the damage to fisheries, water, wildlife and land. The economists said the Exxon Valdez disaster will have caused \$2.5 billion to \$5 billion in damages from the time of the spill before midnight on March 24, 1989, through 1994.

Several state officials who asked not to be identified today said they had hoped that Exxon would be required to pay \$1 billion in a one-time payment that could generate permanent income through annual interest payments. Thus, the annual payments, spread out over 10 years, are much less valuable to the state's efforts to clean up and study the effects of the spill.

Senator Frank Murkowski, a Republican from Alaska, said today that Alaska was fortunate to have gained a settlement. The alternative was years of litigation that would have cost Alaska millions of dollars in legal fees without any assurances of success.

"I think this agreement, if it is resolved, is going to have to stand the light of day by the Legislature, the Governor and Exxon shareholders," said Senator Murkowski. "The alternative

The settlement also calls for an advisory group made up of members of the public to help oversee how money from the settlement is spent. The Department of Justice scheduled a news conference for Wednesday to explain the actual value of the damage to fisheries, water, wildlife and land. The economists said the Exxon Valdez disaster will have caused \$2.5 billion to \$5 billion in damages from the time of the spill before midnight on March 24, 1989, through 1994.

The last obstacles to the settlement were crossed this afternoon when Judge Stanley Sporkin lifted an order here that prevented the pact from being signed, and a District Judge from Alaska, H. Russell Holland, approved the agreement. Judge Holland was to have presided over the criminal trial next month.

Last week, Judge Sporkin blocked the settlement from being signed until the state and Federal Government assured more than 5,000 Alaskan native villagers that their right to gain financial damages from Exxon would not be harmed by the pact.

Today, Judge Sporkin said he was satisfied that the rights of the native villagers to fully prosecute their suits had not been harmed by any settlement, between Exxon, Alaska and the Federal Government and lifted his injunction.

"The court shall retain jurisdiction over this matter to ensure that the defendants' representations are carried out so the plaintiffs' rights are protected," Judge Sporkin wrote in the order.

Bush Digs In on Arctic Drilling Plan

WASHINGTON, March 12 (Reuters) — President Bush will veto any national energy strategy that does not include his proposal allowing drilling in part of the Arctic National Wildlife Refuge in Alaska, the Secretary of Energy told a Senate hearing today.

Both the White House energy plan and a Senate version propose opening a 1.5-million-acre coastal plain in the wildlife refuge to oil and gas drilling, a provision that environmentalists and some lawmakers oppose.

Testifying today before the Senate Energy and Natural Resources Committee, the Energy Secretary, James D. Watkins, said that any strategy that does not include drilling in part of the wildlife refuge "is a veto-able issue with the President."

Mr. Watkins also told the panel that if no new large oilfields were developed on Alaska's North Slope, where the refuge is situated, declining production would probably force the Trans-Alaska Pipeline to shut down within 18 years.

The two largest oilfields in North America are on the North Slope. One is the Prudhoe Bay field, the

most prolific in the nation, and the other is the Kuparuk River field. These two fields and five smaller ones nearby produce from 1.8 million to 2 million barrels of crude oil a day, about 25 percent of American domestic production.

Decline in Oil Output Seen

But Mr. Watkins said today that there was already evidence of a decline in the oil flow from the North Slope. And an Energy Department study whose results were issued today predicted that by the year 2009, the use of the Trans-Alaska Pipeline, which carries oil from the North Slope down the 800-mile length of the state to ports on Alaska's southern coast, might no longer be technically or economically feasible if North Slope production drops, as expected, to less than 300,000 barrels a day.

Estimates of the amount of oil to be found on the Arctic coastal plain range from zero to between 500,000 and 2 million barrels a day. "It could be a small Middle East," Gov. Walter J. Hickel of Alaska, an enthusiastic advocate of the drilling provision, said at the hearing today.

Among the critics of the proposal

is Senator Bill Bradley, Democrat of New Jersey, who is an Energy Committee member and favors a national energy strategy that places greater emphasis on conservation and less on production.

Mr. Bradley has proposed raising the price that Americans pay for their oil through higher taxes. Today he said the United States could either raise taxes or adopt a policy of "In Fahd We Trust" in which the nation would continue to be dependent on the Saudi king and the leaders of other major oil-producing nations.

Environmentalists today also reiterated their opposition to the Arctic refuge drilling. Brooks Yeager, vice president of the National Audubon Society, said the drilling would "destroy one of the earth's last great dynamic ecosystems."

But Mr. Hickel disagreed. "We are tired of those who distort the arguments about A.N.W.R.'s coastal plain," he said. "It is a barren, marshy wilderness in the summer, infested with uncountable mosquitoes, and locked in temperatures of 60 and 70 degrees below zero for up to nine months of the year."

In Exxon Deal, Transportation Chief Wins Another One for the President

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, March 20 — A week ago Tuesday, Lawrence G. Rawl, the chairman of Exxon, flew to Washington. In an informal ceremony at the Justice Department just before midnight he signed a \$1.1 billion settlement that he hoped would put the nation's worst oil spill, and the two years of civil and criminal cases that followed, behind him and his company.

Standing with Mr. Rawl, Gov. Walter J. Hickel of Alaska and the lawyers for the Department of Justice was Transportation Secretary Samuel K. Skinner.

Once again Mr. Skinner had pulled it out for the White House, bringing to a successful conclusion talks that by all accounts could easily have tipped the other way.

"I viewed my job as a facilitator," said Mr. Skinner, a former United States Attorney from Chicago. "You had a huge amount of egos and interests that had to be blended together."

"In my experience I've found that if the principals don't want to settle they look for an opportunity to get out. In this case everybody wanted a deal because they knew the alternatives didn't make sense."

A 52-year-old lawyer and protégé of James R. Thompson, the former Governor of Illinois who at one time was considered as a potential national Republican figure himself, Mr. Skinner has made his career in the capital handling domestic political issues without embarrassing the President. His background as a litigator has helped. So has his instinct for the spotlight and his good feel for the Washington social circuit.

In Response to Disasters

When the tanker Exxon Valdez struck a reef in Prince William Sound in Alaska on March 24, 1989, spilling 11 million gallons of Alaska crude into the sound and turning beaches into a chaos of oil-soaked birds and dying otters, it was Mr. Skinner who was dispatched to supervise the Government's response.

Earlier that month, when machinists at Eastern Airlines went on strike, President Bush tapped Mr. Skinner instead of Elizabeth Dole, then Secretary of Labor, to handle the strike. Mr. Skinner's advice to the President: stay out of the struggle.

In September 1989 Hurricane Hugo swept through the Caribbean and struck the mainland in South Carolina, killing 24 Americans and causing immense property damage. A month later a powerful earthquake hit the San Francisco Bay area, killing 59 people. In both disasters Mr. Skinner was called in.

Now there is the Exxon deal. With his company facing a criminal trial in April and civil litigation afterwards being prepared by the Justice De-



Marty Kell for The New York Times

"I viewed my job as a facilitator," said Transportation Secretary Samuel K. Skinner of Exxon's Justice Department settlement. "You had a huge amount of egos and interests that had to be blended together."

partment, Mr. Rawl had been ready for months to talk. "It's been a burden to us," the Exxon chairman said in a news conference on March 13 in Irving, Tex.

Eager for a Settlement

Governor Hickel, an independent, wanted a consistent source of money to continue recovery work in Prince William Sound, the source of a prosperous fishing and tourism industry.

The Federal Government was eager to settle, too. The civil case against Exxon was expected to take at least five years to litigate, and in the criminal case, scheduled to begin April 10, the Justice Department was going to be testing new applications of environmental law. Nobody knew how a jury would respond.

"The cleanup efforts Exxon had made in the sound made a significant difference," Mr. Skinner said. "Nature had also done a tremendous job there. Scientists were telling everybody this was not a multibillion dollar damage suit."

Mr. Rawl and Lee R. Raymond, Exxon's president, flew to Juneau, Alaska, on Jan. 15 at Governor Hickel's invitation. The state and the Federal Government had agreed three weeks earlier to work together. He told them Mr. Raymond called Mr.

An experienced litigator finds a way to satisfy everybody.

Skinner and told him that the Government was seeking an agreement.

Mr. Skinner said he believed that a successful negotiation was possible, but only if it was conducted at the Cabinet level. "I said this case will not be settled by lawyers," Mr. Skinner said. "First of all, they don't know how to settle it. Second, they have a built-in conflict of interest. This could go on for years."

The Chairman Cools His Heels

On Feb. 5 Mr. Rawl and Mr. Raymond were asked to come to Washington for a meeting at the Commerce Department with the Federal and state negotiators: Mr. Skinner, Manuel Lujan Jr., Secretary of the Interior, William K. Reilly, Administrator of the Environmental Protection Agency, John Knauss, Administrator of the National Oceanic and Atmospheric Administration, Governor

Hickel and Charles E. Cole, the Alaska Attorney General.

Mr. Rawl, a combative executive whose four-year tenure as Exxon's chairman had been marred by the oil spill, was in a sour mood, several negotiators recalled. After being asked to wait outside a conference room for 30 minutes while the government officials finished a meeting, Mr. Rawl became furious.

"I went out twice and asked them to please be patient," said Thomas A. Campbell, general counsel of the National Oceanic and Atmospheric Administration, who organized the meeting. "Rawl said: 'Just tell them they don't need to take much time. What I'm going to say is short and sweet.' He was going to tell them he's had it, he'll see them in court."

Mr. Skinner said that when the Exxon chairman entered the room he lashed out at the negotiators, saying he was sick and tired of how the company had been treated by the Government, the news media and the people of Alaska. Exxon had spent \$2 billion to help clean up Prince William Sound, Mr. Rawl said, more than had ever been spent by any company for an environmental restoration project, and had received no credit.

Nobody responded until Mr. Skinner

ner disarmed Mr. Rawl, according to participants.

"Look, Larry," said Mr. Skinner, whose department includes the Coast Guard and who has developed a personal relationship with Mr. Rawl in the two years since the spill. "Let's not relive it. If we do, we'll never get past it."

'Reopener Clause' Is a Snag

Over the next 90 minutes, participants say, the broad outline of a settlement of the civil claims was established. Following Mr. Hickel's lead, the state and the Federal Government said they were looking for at least \$1 billion. Mr. Reilly insisted that the settlement include \$300 million more to be put into a special fund if more damage was found, a provision that came to be known as the "reopener clause."

Mr. Rawl and Mr. Raymond said that they wanted the settlement to make Exxon immune to any more state and Federal claims, that they did not want to pay the money in a lump sum and that they hated the reopener clause.

Three more meetings were held in Washington in February and early March before lawyers were dispatched on March 3 to put the agreement into legal language. With Washington gripped by the Persian Gulf war, the group was able to work undistracted by reporters or environmental groups or other interests.

"This had to be handled by the principals only, and it had to be handled in a short period," Mr. Skinner said.

Through February, the talks were never far from collapse. "We knew the longer the discussions went on the harder it would be to put it together," the Secretary said.

Justice Department lawyers and other participants credit Mr. Skinner with keeping Exxon and government officials at the table.

When Mr. Rawl and Mr. Raymond almost walked out because of Mr. Reilly's insistence that the agreement should have a reopener clause, Mr. Skinner told them the E.P.A. administrator's signature on the agreement was vital politically. Without it, the Secretary said, the Bush Administration and Exxon would have a hard time justifying the settlement to environmental groups.

And when Exxon insisted that Mr. Reilly be barred from attending a meeting on Feb. 24, Mr. Skinner assured Mr. Reilly that the Government would not negotiate something the E.P.A. administrator was unable to accept. In the end, Exxon and Mr. Reilly accepted a provision that called for the company to spend up to \$100 million after the year 2001 if more work in the sound was needed.

Mr. Skinner also kept the White House informed. During a meeting at the White House, John H. Sununu, the President's chief of staff, remarked that the \$1.1 billion deal sounded "like

an awful lot of money," Mr. Skinner said. But he assured Mr. Sununu that the agreement between the Government, Alaska and Exxon would be a good deal for everybody.

Exxon and its shipping subsidiary pleaded guilty to four criminal misdemeanor violations of environmental law and agreed to pay a \$100 million fine. It was the largest penalty ever assessed in a pollution case, more than three times higher than the \$29.7 million that the Government collected in 1990 for all environmental crimes. Even more, from the White House point of view, it makes good on Mr. Bush's campaign promise to penalize polluters.

From the state's point of view, the cost of the settlement, \$1.1 billion, will keep Exxon involved in the restoration of Prince William Sound for at least a decade.

Exxon, like any corporation (or person, for that matter), would have preferred not to spend any money. But Mr. Rawl said last week that he thought the settlement was good for the company. Paid out annually over 10 years, the payments reach a maximum of \$190 million this year, and then drop to \$70 million each year from 1994 to 2001.

To a corporation with an annual revenue of \$100 billion, the cost of the settlement each year is roughly the same as drilling two difficult offshore wells. "It will not curtail any of our plans," Mr. Rawl said.

Samuel K. Skinner

Born Jan. 12, 1938

Hometown: Chicago

Education: A.B., Harvard; J.D., University of Chicago

Career: Attorney

1981-82, Attorney General of Illinois

with L.A. Times

served as

United States

Attorney General

of Illinois

1981-82

1981-82

1981-82

1981-82

1981-82

1981-82

Information believed to be in spill studies

By CHARLES WOHLFORTH
Daily News reporter

Studies commissioned by the state and federal government on the Exxon Valdez oil spill reportedly suggest serious, long-term damage to Alaska's coastal environment and an astronomical price tag for that damage.

The governments have spent more than \$70 million on the studies, but their results remain secret. But some information has leaked out, including these points:

- Seaweed beds in Prince William Sound that provide the basic fuel for the ecosystem of sheltered bays were badly damaged;

- Recovery is in doubt for colonies of murrens on islands south of the Kenai Peninsula hit hard by the spill because the oil caused long-term disruption to their reproductive process;

- And economic surveys

designed to show the cost of the spill to society as a whole placed the price Exxon could be made to pay at \$3 billion to \$8 billion.

The economic studies used a method called contingent valuation to survey a cross-section of Americans on the value they place on natural resources. A federal court validated the method.

Workers on the studies anonymously told The Washington Post that one of the studies set a damage figure of \$3 billion, the newspaper reported March 20. That figure was partly confirmed when Tom Campbell, general counsel for the National Oceanic and Atmospheric Administration, told a U.S. House committee the study's \$3 billion to \$5 billion finding might be hard to prove in court, said National Wildlife Federation attorney Doug Wolf.

A source working on the case told the Daily News Friday those numbers were low. More recent data indicate damages of \$3 billion to \$8 billion would be defensible in court, the source said.

The information on murre colonies first was reported in a Post article Feb. 21. It cited leaked documents that said murre colonies had suffered a total reproductive failure and might not recover for 70 years. The cause of the failure was said to be a lack of adult birds to defend eggs.

David Nysewander, investigator of the colonies for the U.S. Fish and Wildlife Service, appeared inadvertently to confirm that conclusion when he explained murre reproduction to a reporter last week.

Nysewander said murrens' reproductive success depends on synchronized egg laying, which allows them to band together to defend

nesting birds. Laying usually takes place all in one month. But his group has had to change plans, extending its visits to the colonies across several months — and that suggests the egg laying is no longer well-synchronized.

"If there were changes, you have to look at it different," he said. "But I can't tell you about that."

The information on seaweed in Prince William Sound comes from environmental attorneys.

"It's only just very vaguely being leaked out by the concerned scientists involved," said Bill Rossbach, an attorney representing environmental plaintiffs against Exxon. "There are a number of scientists who are concerned."

"They're finding what the inside people say is very substantial deterioration of that crucial part of the food web," Rossbach said.

SUNDAY

SECTION B March 31, 1991

Spill lessons stay secret

Suits keep studies — and answers — under wraps

By CHARLES WOHLFORTH
Daily News reporter

The secrecy of government studies on the Exxon Valdez oil spill has led to a warped view of the spill's damage, hampered makers of public policy and an adviser on the Persian Gulf spill, and made it more difficult to evaluate a proposed agreement to settle suits against Exxon, say legal, scientific and government officials.

Federal lawyers have said they would release their scientists' da-

Alaska Attorney General Charlie Cole said the state's studies will remain secret as long as the state stands to lose money in court over the spill. That could be years.

People hurt by the spill are suing the state as well as Exxon because the state's lax regulation of tankers in Prince William Sound may have helped lead to the spill. The suits and settlement have made unwilling allies of Exxon and the state against the state's own citizens because a

ble for the damage.

The studies were set up to measure the damage caused by Exxon's spill on March 24, 1989, of 11 million gallons of crude oil, which killed 100,000 to 300,000 birds and oiled more than 1,000 miles of Alaska coast. The two governments together have spent about \$35 million on each of the three years of study — the third year just began — and Exxon is thought to have spent about as much.

Please See Page B 2, SECRETS

SECRETS: Lessons of Exxon Valdez oil spill kept under wraps by lawsuits

Continued from Page B-1

The studies reportedly show reproductive failure of damaged seabird colonies in the Gulf of Alaska, damage to kelp forests in Prince William Sound that are important food for other life forms, and social costs of the damage, resources totaling \$3 billion to \$8 billion.

But those findings are impossible to confirm because the studies are secret.

The information has been denied to legislators evaluating Gov. Wally Hickel's \$900 million Exxon settlement and to federal scientists developing long-term environmental policy for outer continental shelf oil and gas leases.

John Farrington, chairman of a committee to review the federal leasing program, and one of the nation's leading oil spill sci-

entists, said the secrecy has meant the Exxon Valdez spill has so far taught few scientific lessons.

"I was asked, how would I bring the lessons of Prince William Sound to the recent oil spill in the Persian Gulf," Farrington said. "And the answer I had to give was that there are so many lessons from the Prince William Sound oil spill that I don't know, that I can't really give advice."

The report on the environmental impact of federal offshore oil development was also limited by the lack of information on the nation's biggest oil spill. Farrington said he wanted to know about the extent of wildlife damage and the accuracy of models scientists used to predict the breakdown of oil in the ocean.

"Those are very important questions," he said.

The legislature also needs the information to judge the settlement, said Rep. Gene Kubina, D-Valdez, a member of a settlement review committee.

"I don't know what it says, so I don't know if it is going to indicate that the damage is far worse than we think it is," Kubina said. "They lose votes in the legislature by keeping it secret. I'm more likely to vote no without the information."

But without Cole's agreement, most of the data will remain secret. The state controls about half the 60 studies now in progress, and about a dozen more were conducted jointly.

Tom Campbell, general counsel for the National Oceanic and Atmospheric Administration, told congressional staffers recently that the federal government would let the state veto re-

lease of the joint studies. Federal officials also said the studies will require scientific review before they are released, which could delay some by a year.

Richard Stewart, lead spill litigation attorney for the U.S. Department of Justice, had told a U.S. House committee summaries of the studies would be released by late last week. But it never happened, and a justice spokeswoman said late Friday only that it was "under discussion."

Federal, state and Exxon officials already promised to release their data last summer, then entered into talks that never came to any conclusion on how to accomplish the release. A federal lawyer said in October that federal scientists immediately would begin unilateral release of all their informa-

tion. That didn't happen, either.

Cole said it may be a long time before he can release the state's studies. He said he is acting in the interest of all the state's taxpayers by protecting them from having to pay damages to a minority who were hurt by the spill.

"My view is that the information should not be released as long as the lawsuits pending against the state remain unresolved, and I just don't intend to change my mind about it, notwithstanding the pressure that's been placed on me."

He said that pressure is coming from plaintiffs and legislators because the studies would not be of much interest to the public.

"I don't think it's of great consequence to the store owner in Galena how many eagles were killed as a result of the spill," Cole said.

But David Nysewander, who is studying murre colonies for the U.S. Fish and Wildlife Service, expects interest in his work.

"We have some findings that will be interesting to the public, but I can't tell you about them," he said.

Environmentalists also said the data would be interesting to the public. They say Exxon's selective release

of information, such as a water quality study that Exxon scientists said showed the spill did no long-term damage, has given the public a warped view of the spill as doing little harm. With Exxon and the state now facing joint liability for the spill, they are in danger of becoming allies in supporting that distorted view, said Macon Cowles, an attorney for environmental organizations suing Exxon.

"If you take Cole's argument you can flip it around and say, look, the state's taxpayers paid for these studies, and if their state government screwed up and was at fault, then the taxpayers ought to know about it," said National Wildlife Federation attorney Doug Wolf.

Lloyd Miller, one of the attorneys suing the state, said Cole could easily settle the suits with the plaintiffs, making the secrecy unnecessary.

"That's the answer to all of this," Miller said. "To hold the litigation as a reason not to release the information is a false issue. There must be some other agenda that we don't know about."

"The real reason may be that the studies would show the state isn't getting a very good deal (from Exxon)."

Spill Pact Deepens Natives' Isolation

By RICHARD MAUER

Special to The New York Times

PORT GRAHAM, Alaska — Here and in other small isolated native villages, the Exxon Corporation's \$1 billion settlement of government suits over the Exxon Valdez oil spill has not brought relief, only a further sense of being left out.

The Aleuts and Eskimos living in these villages had sued to prevent settlement of the government criminal and civil cases. After the settlement announced March 13, they find themselves virtually alone as they continue pressing Exxon to pay for damages they suffered from North America's worst oil spill.

"We felt extremely abandoned by the state and Federal Government," said Port Graham's village chief, Elenore McMullen, explaining that the residents would have no voice in how the \$1 billion would be spent. Two years after the spill, their fishing remains disrupted and their ancient

burial sites and settlements disturbed.

The settlement can still be rejected by Alaska's Legislature. Judge Stanley Sporkin of Federal District Court, who heard the suit by the Alaskan natives said he would block the settlement only if he was persuaded that native rights were jeopardized.

Terms of Settlement

In the settlement, Exxon agreed to plead guilty to four misdemeanor charges and pay \$1 billion over 10 years in fines, restitution and civil claims. The money will reimburse the state and Federal governments for their costs in the cleanup, the loss of resources, and scientific and economic studies. It will also be used to restore the area damaged by the spill in Prince William Sound.

In Port Graham, the agreement has only fueled mistrust.

"It didn't involve us as a native people," Mrs. McMullen said.

Eskimos and Aleuts fear for the little they have left.

Pat Norman, president of the local village corporation, expressed suspicion about Gov. Walter J. Hickel's motives in the settlement.

"He's got his own agenda regarding oil," Mr. Norman said, citing Mr. Hickel's personal project to build a gas pipeline from the North Slope to the port of Valdez, and his efforts on behalf of the state to open the Arctic National Wildlife Refuge to drilling. "If A.N.W.R. is going to be opened up, they can't be reminded about Prince William Sound."

Port Graham, with a population of about 170, sits among the spruce trees beside a bay on the sheltered side of the stormy Gulf of Alaska, 150 miles south-west of Anchorage. It is accessible only by air or water, and its people have used that isolation to preserve the village's Eskimo character. But distance did not protect it from the oil spill.

The village is over 200 miles west by sea from Bligh Reef, where the Exxon Valdez ran aground on March 24, 1989.

Oil Spreads to Port Graham

But then the oil rounded out of Prince William Sound, spread into the Gulf of Alaska, passed Kennedy Entrance to Cook Inlet and lapped up on the shores of Port Graham.

"It was like slow torture every morning," Mrs. McMullen said. "At first it was pain and tears for my friends in the sound, and then it was for us."

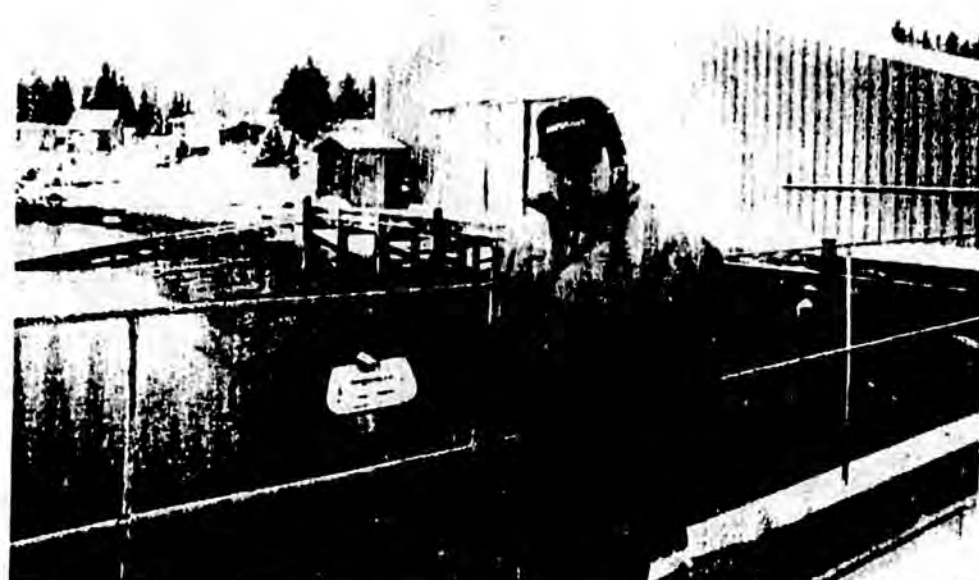
The oil is mostly gone now, but the damage remains. The other day, Mrs. McMullen said, she went to the beach for mussels, but there were none.

"I don't know what caused them to die and not be there," she said.

Studies done by the state might have some answers. But the Attorney General, Charles Cole, said he would not disclose the results because it could hurt the state in other litigation.

With the loss of most other facets of their culture, Alaska's natives view the hunting and gathering of traditional foods as one of their last links to their past and the tie that binds them together. In places like Port Graham, where jobs are scarce, subsistence is also a means for survival.

Salmon fishing was mostly abandoned the year of the spill when fish showed up with oil on their scales and in their gills. Though fishing returned last year, the company that operated the Port Graham cannery, uncertain



Photographs by Richard Mauer for The New York Times

"Governor Hickel said we're getting a settlement on behalf of all Alaska," said Pat Norman, president of the local village corporation in Port Graham, Alaska, "but all Alaska didn't have an impact like our

people and our corporation did." Mr. Norman expressed suspicion about Gov. Walter J. Hickel's motives for settling with the Exxon Corporation for damages from the Exxon Valdez oil spill.



The New York Times

Native villages like Port Graham are still seeking oil spill damages.

closed again this year, costing the community 70 seasonal jobs and the most important source of cash for its economy.

More infuriating to Mr. Norman, though, was the public disclosure of previously unknown antiquity sites on the 50,000 acres of land owned or claimed by the village corporation.

Will Exxon, having placated Alaska, stop there?

neries came and people left their scattered homes along the coast, were discovered by archeologists sent out before cleanup crews and were put on maps used by officials assessing spill damage. Mr. Norman and others fear that the antiquities will be looted.

"They're our people's sites," he said. "They need to be protected."

He is also angry that Exxon's chairman, Lawrence Rawl, has shrugged off the settlement cost. Exxon has hurt his people, Mr. Norman argued, and now the settlement should hurt the company.

Pleas by Native Groups

In December, when Governor Hickel, an independent, began talking about settling the state's lawsuit, the native groups wrote to him, seeking to wrap their claims in with the state's. They also wrote to the Federal Justice Department.

The letters were never answered.

and then canceled at the last minute.

Attorney General Cole said there was no reason to involve the natives in the agreement because their claims were not being discussed in it.

But Mr. Norman said the state had more obligation than that.

"Governor Hickel said we're getting a settlement on behalf of all Alaska," he said. "But all Alaska didn't have an impact like our people and our corporation did. We didn't want Exxon to come in and say we paid that money to the state and Federal Government, so why the heck are you coming to us now?"

Though a decision has not yet been made on whether the natives will try to block the settlement, one of their lawyers, Lloyd Miller, of Anchorage, said the agreement falls far short of protecting their interests.

"They could have fashioned a remedy in that consent decree that would have provided for native participation in directing restoration efforts," Mr. Miller said.

With limited money, he said, what would happen if a proposal to restore clams and mollusks near Port Graham had to compete against a plan to rebuild the population of bald eagles in Prince William Sound? With no one



Elenore McMullen, the village chief. "We felt extremely abandoned by the state and Federal government," she said, referring to the \$1 billion

Spill suits jam court system

More than 200 filed

By DESIREE HUMPHREY
and STEVE PILKINGTON

TIMES WRITERS

State court officials said a run of last-minute lawsuits over the 1989 Exxon Valdez oil spill brought the clerk's office to a crawl this week.

Hundreds of people are included in more than 200 civil lawsuits in state courts against Exxon Corp., Alyeska Pipeline Service Co. and the state.

"It took me four hours to do four cases," said Diane Alford, a legal technician with the Alaska Court System.

There were 53 lawsuits filed between March 21 and Tuesday, the final day for the two-year deadline on lawsuits, court officials said. Despite the deadline, more are expected.

Nine lawsuits representing nearly 900 individuals and businesses also were filed in U.S. District Court in Anchorage on Monday. The clerk's office usually averages one to two new cases a day.

See **Lawsuits**, back page

Lawsuits

Continued from page A1

The federal cases will be added to the nearly 170 Exxon suits still active. About 300 suits have been filed since the March 24, 1989 spill, with about 120 no longer on the court's work list.

"This is kind of a quirk they're going to have to deal with," said Don Miller, professor of justice and law science at the University of Alaska Anchorage Justice Center. "There's generally not that much activity in the federal court."

While no new personnel have been added to handle the influx of cases at both courts, taxpayers and consumers can expect to foot part of the bill in other ways.

Exxon agreed to pay \$1 billion to the state and federal governments in a March 12 settlement. But Lawrence Rawl, chairman of the board of Exxon Corp., has said the cost will be passed along to customers at the gas pump. Also, some of the settlement money is expected to be used by Exxon as a tax write-off.

Meanwhile, court officials say the cost of the massive number of lawsuits to the court system — and taxpayers — is still unknown. But a look at budgets and average times it takes for cases to go through the system shows Exxon is not the only one that will be paying.

The state had paid a Seattle-based law firm \$9 million in February to help the staff of the Department of Law with its case against Exxon. The Department of Law will not release additional figures, but more funds are expected to be paid to Preston, Thorgrimson, Shidler, Gates & Ellis, which has an office in Anchorage.

The federal suits filed Monday represent at least three times as many people already on the court's register suing Exxon and others. For 1990, there was a total of 550 civil cases, including the Exxon suits filed that year.

The courts may need to add staff and another judge to help with the cases, especially if the cases go to trial, Miller said. The new cases will join the other Exxon paperwork that already fills a five-drawer cabinet in the clerk's office.

The average time it takes a federal court case to be processed and finished is one year. For state superior court, where

the Exxon suits are, it takes about two years, court officials said.

U.S. District Judge H. Russel Holland said in a Sept. 13 hearing some people said he would probably retire before the Exxon matter is completed.

"I am 11 years away from retirement," Holland said. "I have no intention of allowing the payment of claims to take that long."

Some people have chosen to settle with Exxon rather than continue a protracted court battle. Lawyers say the facts of the spill are established, but it will be difficult and time-consuming to prove the individual damage for each of the thousands of people who were affected by the spill.

And with the state of Alaska also being sued, the fight promises to stretch out.

Some lawyers are complaining the state refuses to release environmental studies funded with public money. Alaska Attorney General Charles Cole said he is worried the information will be used against the state in court.

And other lawyers say they are doing some of their own research. But, they said, they need the state's data to fight the oil giant and its team of lawyers.

Eight of the nine suits filed in federal court were also filed in state court and the same number of claims were filed with the Trans-Alaska Pipeline Liability Fund, said Richard Jameson, a lawyer with one of the two Pennsylvania law firms representing plaintiffs.

Charlie Coe, an Anchorage lawyer, said he is involved with only five civil suits stemming from the Exxon Valdez oil spill. But there are nearly 800 people represented in the five suits, he said.

Coe said the two-year anniversary of the spill may have passed, but lawyers are still filing suits and the state courts are still processing them.

The two-year anniversary of the spill was Sunday. Since it fell on the weekend, state legal officials said the deadline would not pass until Tuesday since Monday was a state holiday.

Alford said the court system was swamped Tuesday.

She said extra court personnel were pulled away from their normal jobs to help process the load of Exxon civil suits. She said the courts may see more lawsuits in the next few weeks despite the passed deadline for filing.

Villagers want deal to settle Sound claims

By DIRK MILLER

TIMES CAPITAL BUREAU

JUNEAU — Rural Alaska villagers are asking lawmakers to reject Gov. Walter J. Hickel's proposed \$1 billion Exxon Valdez settlement unless it resolves damages to Prince William Sound communities.

The state and federal government announced a proposed \$1 billion settlement with Exxon Corp. earlier this month, resolving criminal and civil claims against the oil giant. There is also a clause that could reopen the settlement to pay as much as \$100 million for unforeseen future damages.

The Village Participation Conference, an annual gathering of villages across the state, passed a resolution this week urging lawmakers to reject the settlement "unless it addresses the multiplicity of continuing losses and damages to the Native villages."

Both the House and Senate have formed special committees to review the settlement. The agreement gives the Legislature a say in whether it is approved or rejected by Hickel.

Lawsuits were filed recently against the state of Alaska on behalf of Prince William Sound Native and village corporations over the March 24, 1989 oil spill, which killed thousands of sea birds and marine mammals. It fouled hundreds of miles of beaches stretching from the Sound to Kodiak Island and Katmai National Park.

"If 11 million gallons was dumped say five miles from where you lived," said Martha Vlasoff of Tatitlek, "wouldn't you want to be involved in the processing of solving that problem and also of the litigation that's going to ensue from the damages?"

Eric Rehmann, Hickel's spokesman, said the settlement was never intended to resolve all claims.

"It was meant to resolve and provide for the restoration of Prince William Sound," he said. "It was never intended to resolve third-party complaints."

The 18th annual village conference is organized by Rural CAP, a private, nonprofit organization that provides training, education and information to rural residents.

On Thursday, Attorney General Charles Cole told a Senate committee the settlement would not impair third party lawsuits in any way. He did say economic and resource damage data gathered by the state would remain confidential until the state is released from all claims.

Vlasoff said Native people are historically ignored by government.

"They're going to get what serves them best, but the Native peoples are traditionally almost always left out of the picture," she said. "And that seems to be the problem right there is recognizing we're the people who live there. We're the people who will live there long after they've already spent the \$1.1 billion dollars."

The resolution says villagers lost much of the traditional subsistence harvest the year of the spill and are worried oil has contaminated their food.

"Any settlement that disregards the concerns of Native villages and-or its effects without consultation of representatives of these villages evidences an attitude of arrogance that is contrary to the call of unity as expressed by Gov. Hickel," the resolution said.

3/28/91

ADN

Alaskans rush to file spill suits as deadline nears

Commercial fishermen, Native villagers, fishing guides, business owners and hundreds of other Alaskans filed dozens of lawsuits in the Anchorage courts to meet this week's statute of limitations deadline for claims arising from the Exxon Valdez oil spill.

More than 50 new suits were filed in Anchorage Superior Court from March 19 to March 26, the state court's deadline. They include a claim by the Afognak Native Corporation that historical and archaeological sites were damaged by the tide of oil that washed through

Prince William Sound and the Gulf of Alaska two years ago.

In addition, eight lawsuits filed in U.S. District Court Monday name more than 900 plaintiffs, residents of communities in the Sound and Cook Inlet who claim they lost income or subsistence

food as a result of the spill.

"It was pretty frantic around here the last few days," said Mark Bledsoe, an Anchorage lawyer who represents those 900 clients. One of his suits includes about 50 people who contacted his office about suing Exxon at the 11th hour, he said.

Some of his clients' suits were also filed in state court to take advantage of different laws and judicial rulings.

Times

Native, village corporations sue state over spill damage

TIMES STAFF

A Native corporation, five village corporations and their subsidiaries filed suit against the state Tuesday, claiming its actions during the cleanup of the Exxon Valdez oil spill made a bad situation worse.

"The State of Alaska's oil spill clean-up efforts, and its supervision of oil spill clean-up efforts, were performed negligently, carelessly and in an unreasonable manner," the suit said.

The suit, which seeks unspecified damages, also said the state

failed to take precautions that could have prevented the spill.

The suit was filed in Anchorage Superior Court by Chugach Alaska Corp., five of its subsidiaries, Chenega Corp., Port Graham Corp., English Bay Corp., Tatitlek Corp., Eyak Corp. and four subsidiaries of the village corporations.

Chugach filed for protection under federal bankruptcy laws two weeks ago, claiming the oil spill contributed to the economic problems of several of its holdings.

Scientists charge results of oil spill studies are skewed

By JOSE LAMBIET
Fairbanks Daily News-Miner

FAIRBANKS — Some scientists who have been conducting studies on the effects of the 1989 Exxon Valdez oil spill say the work is not being done properly — and results are skewed to fit the sponsors' biases.

"Applying good science to spill-related research has been impossible," University of Alaska Fairbanks ecologist Glenn Juday said. "Most of us have not been able to apply proven and accepted scientific principles in our studies."

As a result, he and others say, some of the findings about the nation's largest oil spill will be flawed, and the multi-million dollar research may not yield the kind of comprehensive information expected.

A few months ago, when he asked for a U.S. Forest Service grant to pursue his Exxon Valdez spill-related research, Juday said he was told to "pick a side."

Juday has told the Forest Service that he also had sought funds from Exxon. Eventually, both Exxon and the Forest Service rejected his grant application.

However, Juday scraped together funds from various sources, including some of his own money, and went ahead with the study of effects of the oil spill on Green Island, 80 miles south of Valdez in

Prince William Sound.

Now that his study is complete he can talk in detail about his findings, but most scientists cannot. Lawyers on all sides have fought to keep spill studies secret to prevent court opponents from gaining knowledge that might help them win lawsuits.

Juday said the silence orders are preventing him from sharing notes with colleagues on the UAF campus and elsewhere.

"Not only was I asked to pick a side, but I haven't been able to verify if others have found the same things as I have. The accepted scientific procedure, which should be unbiased, has been perverted by these types of attitudes."

Meanwhile, spill-related research continues at UAF and mostly involves damage assessment among the fish, mammal and plant populations in the ocean and on Prince William Sound islands.

Usually samples are picked up on-site every few months and are examined in UAF labs. Funding for such studies seemed limitless at first for 18 UAF scientists asked to conduct damage assessment research.

In the past two years, they received about \$15 million distributed by federal and state agencies and Exxon, according to UAF Sea Grant communications officer

Doug Schneider.

"We were just stunned to receive all that money. It is very hard in this country to get a \$100,000 grant for any type of research," said UAF biologist Joshua Schimle, who received about \$1 million from the Forest Service to study the impact of the spill on coastal vegetation.

"All of sudden, shortly after the spill, researchers were getting millions of dollars in grants."

"The thing is... they didn't get much science for their money."

The legal battle pitting state and federal agencies against the oil giant Exxon for the payment of the damages is generally cited as the cause for the scientists' recent grumbling.

The state, federal government and Exxon reached a tentative \$1 billion settlement earlier this month.

Secrecy covering the result of scientific studies has been particularly disturbing to some scientists, however.

Juday was able to publish the results of his observations because he acted independently. But the two dozen UAF professors who accepted grants from either government agencies or Exxon are legally forbidden to reveal their findings to parties outside the litigation.

"The way science works is

through scrutiny," said Ron Dearborn, the director of Sea Grant at UAF. Sea Grant is a program created by the U.S. Congress in 1966 that funds research on marine resources.

"A scientist gathers data, writes a paper about his discovery and presents it in a meeting where it is critiqued by other scientists. The more exchange and arguments, the better the results. None of this has been done in spill-related research," Dearborn said.

Craig Tiller, an assistant state's attorney general involved with oil spill litigation, said it was in the interest of all parties to keep the results of their research secret.

"Whichever side gets the other side's information early gets the advantage," he said. "We just want to protect our case."

The proposed 60-page settlement does not deal with question of research secrecy, according to state House Majority press secretary Terrence O'Malley.

Some scientists who accepted government or Exxon grants to conduct damage assessment research also say they quickly found out that their benefactors' sole interest was to build up their cases, and not to learn as much as possible about the effects of the spill on the environment.

Biologist Schimle early this year recommended that his \$1 mil-

lion coastal habitat study be discontinued. His wish was granted.

"The lack of scientific flexibility is partly why I recommended that my study be stopped," he said.

"I was told when I accepted the grant that this was not about science but strictly about damage assessment. In other words, when I noticed something really interesting in my studies, I couldn't pursue it."

"I'd rather concentrate on the three federal grants I received to do more interesting research."

Not all UAF scientists involved in spill-related research agreed with the criticisms, however.

"I understand that the people who pay us have to develop their legal positions," said Raymond Highsmith, an assistant professor at UAF's Institute of Marine Science.

Highsmith is conducting two Forest Service studies costing more than \$6 million on the spill's impact on intertidal animals, according to UAF documents.

"But that doesn't mean research will be flawed. My research is going extremely well. I think most of the research has been top notch."

Accord Won't End Finger-Pointing

By TIMOTHY EGAN

Special to The New York Times

SEATTLE, March 13 — From the very start of the Exxon Valdez accident, when Capt. Joseph J. Hazelwood reported just after midnight on March 24, 1989, that his fractured tanker was "leaking some oil," the nation's worst oil spill has been viewed as an indictment of things well beyond Alaska and Prince William Sound.

News Analysis

It was considered a failure in technology, an ecological catastrophe, a consequence of a society hooked on oil and a demonstration of nature's resilience. No single point of view has ever prevailed.

With today's settlement of criminal and civil claims against the Exxon Company, the "Valdez as metaphor" business is without the trial that was to be its centerpiece. Finger-pointing will go on for years, as will studies of the sound. But the settlement avoids a definitive legal conclusion of what caused the spill.

Exxon officials were scheduled to face a trial, on five Federal criminal charges, beginning April 10 in Anchorage. By pleading guilty today to four misdemeanor charges under three environmental laws and agreeing to pay a \$100 million fine in addition to \$1 billion in a civil settlement, Exxon and its shipping subsidiary will end the Government's investigation of how the world's largest private oil company transports its cargo.

Three Technical Violations

The guilty pleas say nothing about staffing levels of tankers or drinking alcohol on such ships; both issues figured prominently in the National Transportation Safety Board inquiry into the spill. Instead, Exxon pleaded guilty to three technical violations of Federal statutes, including an admission that the company killed migratory birds without a permit.

Attorney General Dick Thornburg and leading environmental groups hailed the settlement as the strongest message ever sent by the Government to corporate polluters. But a trial, the historic format for determining blame, before a jury of Alaskans, might have sent an equally strong message.

"I don't think people are after revenge against Exxon," said former Mayor John Devens of Valdez, now president of Prince William Sound Community College. "But people would like to see an exclamation point at the end of all this, and a trial was considered the best way to do it."

Of course, as Government prosecutors noted, Exxon could have been vindicated in a trial. Then the Government would still have been left with many unanswered questions about the spill, in addition to very little Exxon money to continue cleanup efforts.

The Skipper Stood His Ground

Captain Hazelwood, who began his career with Exxon more than 12 years ago as the youngest captain in the company's fleet, was convicted last March 22 of the misdemeanor charge of negli-

A definitive legal conclusion of what caused the spill is lacking.

gently discharging oil. He was acquitted of piloting the vessel while drunk, and other charges.

At the end of the trial Captain Hazelwood was urged by the judge to make an apology, but he refused. Even though many Alaskans had ridiculed the skipper, they agreed with his standing his ground, and spoke of bringing Exxon's board members before the judge, rather than Captain Hazelwood.

"Here was Joe Hazelwood, the very image of what went wrong, and a jury had a hard time pinning the blame on him," said Ernie Piper, the oil spill coordinator for the State of Alaska.

By contrast, when Captain Hazelwood was first arrested and arraigned in New York, his bond was set at \$1 million by Justice Kenneth Roehl of the State Supreme Court, who likened the spill to dropping the atomic bomb on Hiroshima.

Casualties on Both Sides

Well before today's settlement, the exaggerated claims made by both Exxon and the environmentalists became casualties.

Mr. Piper said Prince William Sound never became a dead sea, as some had predicted. The salmon runs this year are expected to be of record proportions. But neither did the sound instantly bounce back, as if blinking off a bad night in geologic time.

"We were lucky, because Prince Wil-

liam Sound is an enormously dynamic body of water," Mr. Piper said. "It was in good shape, ecologically, to absorb this great insult."

But he also noted that more wildlife had been killed in the Exxon Valdez spill than in any other known industrial accident. It will take years for the bald eagle to reach the population levels it had attained before the spill. And some colonies of seabirds have shown dangerously high mortality rates.

60% of the Oil Remains

Despite a cleanup program that Exxon said had cost the company \$2 billion by April 1990, less than 10 percent of the oil was recovered. Mr. Piper said 30 percent of the oil evaporated and 60 percent of it remained in Prince William Sound.

Mr. Piper, who has spent nearly every day of the last two years studying and talking about the spill, said a recent conference on the effect of the oil showed him how far apart the two sides remain. Exxon presented an upbeat picture, while environmentalists spoke of disaster.

"Most of the people I deal with have little use for these kinds of institutional observations," he said. "They want to know if they can hunt seals next year."

With more than 300 civil suits by fishermen, environmentalists, Alaska natives and others pending against Exxon, the legal fights will continue for years, each carving up small pieces of the picture. But with today's settlement the significant blame-making has probably shifted from the courts to the historians.

As John Keeble wrote in "Out of the Channel," a book on the spill published this month by HarperCollins, "the story of the spill is a parable for the future eventualities we must face."

Chairman Calls Exxon Strong After Valdez Pact

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, March 13 — Lawrence G. Rawl, the chairman of the Exxon Corporation, said today that the \$1.1 billion settlement reached Tuesday night with Alaska and the Federal Government in the Exxon Valdez oil spill would not have any effect on Exxon's finances or its plans.

In a news conference at the company's headquarters in Irving, Tex., that was also shown on closed-circuit television at the National Press Club here, Mr. Rawl added that he did not believe the settlement would affect the company's image, which he described as good.

Combative at times and not at all chastened, Mr. Rawl nevertheless said the spill, the bad publicity that followed, the expense of cleaning up Prince William Sound in Alaska, and the civil and criminal cases brought by the Government against Exxon had been an ordeal.

"I feel this a heck of a lot," said Mr. Rawl. "I've been disappointed and angry since March 24, 1989. It's been a burden to us."

58 Days of Negotiations

He insisted, however, that the settlement "will not have a significant effect on our earnings." In fact, investors saw it as good news: Exxon stock closed at 57 1/4, up \$1, on the New York Stock Exchange today.

The settlement, reached late Tuesday night after 58 days of negotiation in Juneau and Washington, resolved civil and criminal cases against the world's largest oil company as a result of the nation's biggest oil spill.

As a part of the agreement, Exxon and its shipping subsidiary pleaded guilty to four misdemeanor violations under three Federal environmental laws and agreed to pay a penalty of \$100 million, the largest ever for a criminal violation of environmental statutes. As part of the agreement, two felony charges under the Federal Maritime Law were dropped.

More than 300 civil suits filed against Exxon by private parties are not affected by the accord.

At a news conference in Washington today, Attorney General Dick Thornburgh hailed the agreement as the "strongest message" ever sent by the Government that pollution violations would be thoroughly investigated and prosecuted.

Environmentalists Happy

Several influential national environmental groups commended the agreement and said it set new standards for penalizing polluters, among them that full payment would be required to cover environmental damage from a disaster.

But the chairman of Exxon, the nation's third-largest industrial corporation, today seemed exasperated at times and testy at other moments. It was clear that Mr. Rawl's intention this afternoon was to assure shareholders



Agence France Press

The \$1.1 billion settlement for the Exxon Valdez oil spill is the "strongest message" ever sent that the Government is prepared to prosecute polluters, said Attorney General Dick Thornburgh, right. He and Gov. Walter Hickel of Alaska spoke yesterday at a news conference.

The oil giant agrees to pay \$1.1 billion and looks ahead.

ers that the settlement would not alter the company's day-to-day operations.

"The settlement encompasses issues we were prepared to contest," Mr. Rawl said. "However, we have agreed to the settlements because they are in the best interests of Exxon shareholders and all other parties involved."

He said Exxon had been preparing for more than a year for the criminal trial that was scheduled for April 10 in Alaska. The agreement made the trial unnecessary. "We felt pretty good about our chances," Mr. Rawl said.

'We Learned a Lot'

But he added that he had agreed to fly to Washington, where he signed the settlement just before midnight Tuesday, because "looking forward to years of litigation, maybe decades, wasn't in anybody's interest."

Asked whether he or Exxon had learned anything from the accident and the cleanup, whose cost the company puts at more than \$2 billion, Mr. Rawl said: "We learned a lot. Actually, all of us knew some of these things before. We learned a lot about cleanup."

Near the end of his remarks today, Mr. Rawl indicated that the Exxon Valdez disaster had heightened awareness within Exxon about the environment.

"You can't let your guard down," he said. "We all have to be more diligent, I guess. In the future, we have to be a lot more sensitive."

'You Change Your Priorities'

Moments later, he concluded with these remarks: "The day it happened, we said it was our oil, our ship, and we would clean it up. It has distracted us. When you spill oil like that, a disaster like that, you change your priorities pretty quick."

The settlement was reached after weeks of negotiation by Mr. Rawl, Gov. Walter J. Hickel, Charles Cole, the Alaska Attorney General, and top lawyers from five Federal agencies. The talks started in Juneau on Jan. 15, when Mr. Rawl flew to Alaska's state capital to meet with Mr. Hickel and Mr. Cole.

One of the toughest issues, participants said today, was gaining Exxon's agreement to plead guilty and pay a \$100 million penalty for misdemeanor violations of the Clean Water Act, the Refuse Act, and the Migratory Bird Treaty Act.

A year ago, Doug Bailly, then Alaska's Attorney General, was unable to obtain the conviction of the captain of the Exxon Valdez, Joseph J. Hazelwood, on charges of piloting the tanker while under the influence of alcohol.

Mr. Hazelwood was convicted of a relatively minor charge, negligently discharging oil, but acquitted of criminal mischief, operating a vessel while intoxicated and reckless endangerment.

Much Is Tax-Deductible

The Federal Government had initiated talks with Exxon before Mr. Hazelwood's acquittal on the alcohol charge after one of the most widely followed trials in state history. The Government was seeking \$150 million in criminal penalties and guilty pleas to felony violations of environmental laws. But the negotiations fell apart in 1990.

Along with the \$100 million criminal penalty, Exxon will pay \$90 million this year into a fund overseen by officials from three Federal and three state agencies. In September 1992, the company will pay \$150 million more to the fund, followed by a \$100 million payment in September 1993, and \$70 million annual payments from 1994 through 2001. The agreement also could require Exxon to pay as much as \$100 million more after 2001 if additional environmental damage is discovered.

Except for the criminal penalty, all payments by Exxon will be tax-deductible. One economist who studied the effects of the spill estimated that Exxon's ability to write off most of the settlement could cost the taxpayers \$300 million in lost revenues.

Quick Reimbursements Specified

The agreement also calls for the state and the Federal Government to be reimbursed for many expenses incurred to determine the environmental damage from the spill. Alaska spent more than \$72 million and the Federal Government \$62 million. These reimbursements are to be among the earliest payments from Exxon.

"The size of the settlement and the criminal pleas represents a clear and unmistakable signal that those involved in environmental crimes will not go unnoticed and unpunished," said Mr. Thornburgh.

In Alaska, the settlement was greeted today with widespread approval.

"I think it's great there is money to protect Prince William Sound," said Tom Masolini, a 34-year-old fisherman from Cordova, a prosperous fishing near the mouth of the Sound. "You know, along with the oil, one of our concerns here is that there is too much clear-cutting of the forests around the sound. Maybe they can use some of this money to buy up timber rights and preserve forests here."

National environmental groups, including the Natural Resources Defense Council, the National Audubon Society and the National Wildlife Federation, also applauded the agreement.

From Oil Spill to Settlement

1989

MARCH 24: The 607-ton tanker Exxon Valdez runs aground on Bligh Reef 28 miles south of Valdez, Alaska, spilling nearly 11 million gallons of crude oil into Prince William Sound, making this the largest tanker spill in United States history.

MARCH 24: Exxon Shipping Company, owner of the tanker, takes "full responsibility" for the spill.

MARCH 28: Gov. Steve Cowper, a Democrat, declares a disaster emergency. Alaskan fishermen seek full compensation. Eventually 330 lawsuits will be filed in state and Federal courts against the Exxon Corporation. The litigants will include fishermen, seafood processors and distributors, Alaska natives, and businesses, Exxon shareholders, environmental groups, municipalities and the State of Alaska. The suits will involve a variety of maritime and environmental statutes.

MARCH 30: Exxon dismisses Joseph J. Hazelwood, the captain of the Exxon Valdez, after an investigation by the National Transportation Safety Board shows that the captain's blood alcohol content was above the Federal limit for operating a commercial vessel.

APRIL 8: Despite containment efforts, the spill has covered an estimated 3,100 square miles, leaking out of the sound to local beaches along the Gulf of Alaska.

MAY 22: A grand jury indicts Captain Hazelwood on three felony counts, holding him responsible for the destruction.

SEPT. 18: After spending \$1 billion, Exxon suspends its beach cleanup for the winter, asserting that it has left 1,100 miles of beaches "environmentally stable." Alaskan officials disagree and announce their own \$21 million winter cleanup plan.

1990

FEB. 27: A Federal grand jury indicts Exxon and its shipping subsidiary on five criminal counts. If convicted on all counts, the company could be fined up to \$1.6 billion and could be assessed an additional \$600 million in penalties.

MARCH 22: Jury finds Captain Hazelwood guilty of a single charge of misdemeanor negligence. He is acquitted of the felony charge of criminal mischief and other misdemeanor charges of operating a vessel while intoxicated and of reckless endangerment.

NOV. 6: Walter J. Hickel, a former Governor and former Interior Secretary, is elected Governor of Alaska as an independent.

1991

MARCH 14: In a private meeting, Governor Hickel proposes dropping all state and Federal lawsuits against the Exxon Corporation over damage costs by the oil spill. In response, Exxon offers to fund a \$21 million winter cleanup plan.

MARCH 13: Exxon, Alaska and the Federal Government announce the settlement of the criminal and civil cases brought by the governments against Exxon.

Lost fish taxes worry oil spill communities

By DIRK MILLER

TIMES CAPITAL BUREAU

JUNEAU — Gov. Walter Hickel's Exxon Valdez settlement last week has left oil spill communities worrying what will happen to their claims of between \$3.7 million and \$1.7 million in lost fish taxes.

"It leaves the burden on us to figure out what we're owed," said Kenai Peninsula Borough Attorney Tom Boedeker. Fishing seasons in the Kenai Peninsula, Prince William Sound and Kodiak Island areas were disrupted after the Exxon Valdez crashed into Bligh Reef on March 24, 1989, spilling about 11 million

gallons of crude oil.

"It's one area left unclear in the settlement," said Jerome Selby, Kodiak Island Borough mayor. "Hopefully, the state would help us pursue the matter."

Hickel and the federal government announced a proposed \$900 million settlement with Exxon Corp. last week that pays the state and federal governments for natural resource damages caused by the spill and also assesses a \$100 million criminal fine against the company.

Selby said the Kodiak borough was estimating it had lost about \$1 million in shared tax revenues because of the spill. Nearly all of Kodiak's fisheries were shut down that summer.

Boedeker said the Kenai borough figures it lost between \$750,000 and \$420,000 in lost fish taxes, depending on how the claims are calculated.

Boedeker said the fish tax losses were figured three ways: The high range was computed using fish prices from 1988. The middle range was based on an average of prices from 1987-1988 and the low range was figured based on prices paid to fishermen by the Exxon claims office.

Attorney General Charlie Cole said Monday the administration had not forgotten them. He said the lost fish taxes were excluded from the settlement in the closing days because of disagreements on how to handle them.

The raw fish tax is split between the state and municipalities that help service the fishing industry. The tax ranges from 5 to 3 percent on fish products.

"I had consistently said fish taxes were outside the settlement," Cole said. "As the days wore on, Exxon did not accept that position. When we got down to the final days, if not the final hours, it was agreed that the fish tax claims would be outside the settlement."

An Exxon spokesman in Anchorage said the fish tax issue was still unresolved. "It's an open legal issue," spokesman Joe Tucker said.

The Washington Post

AN INDEPENDENT NEWSPAPER

The Exxon Valdez Settlement

FISH ARE back in great numbers in Alaska's Prince William Sound, and last summer's catch was large. The sea otters appear to be flourishing again. It's been two years since the Exxon Valdez ran aground on a reef in the sound and lost a quarter of a million barrels of crude oil into the water. The damage has not been entirely repaired. There are, for example, carpets of tar buried under some of the beaches, and no one knows precisely what effect they will have on the ecology. But two years' experience with cleaning up the mess has given federal and Alaska state authorities a fairly clear idea of the size of the job that remains. That has enabled them to negotiate this week's settlement of damages with some assurance that the money will cover the decade of work ahead.

Exxon has spent more than \$2 billion on the cleanup so far. In this settlement it has committed itself to a further \$900 million in damages, to be spent by a committee of federal and state officials. At the end of that time, Exxon will be liable for another \$100 million if restoration requires work not now anticipated. In addition, the company has pleaded guilty to a series of criminal charges and will pay a fine of \$100 million, of which half will go to Alaska as restitution.

The alternative to this settlement was litigation.

The trial was scheduled to have begun next month. The state and federal governments were clearly right to have chosen negotiation instead. It means that both sides will save enormous legal costs—money that might better go into ecological protection. It means that there will be a dependable flow of funds for restoration, beginning immediately. If the question were left to a long quarrel in the courts, no one would know how much might eventually be paid, or when. The Amoco Cadiz spilled a much larger amount of oil into the Atlantic off the French coast in 1978, and damages from that wreck are only now beginning to be paid.

Many questions about the impact of the Valdez spill are still unanswered. State and federal authorities hope to establish a scientific institute in Prince William Sound that, in the course of answering them, will make itself a major contributor to marine research. The cleanup money will do more than scrub tar off rocks.

This settlement sets sound and healthy precedents for responsibility in a kind of disaster in which, until recently, there would have been little recognition of any damage to the public and little chance of compensation. Perhaps, in the political sense, it will also set a useful precedent for the current case—larger and legally much more complex—of the oil spill in the Persian Gulf.

The New York Times

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Now, Save Prince William Sound

Exxon's \$1 billion settlement of state and Federal claims stemming from the calamitous Exxon Valdez oil spill is clearly preferable to a long and chancy trial that might have yielded a smaller penalty. But the real test will be whether the money is spent wisely.

The six Federal and state agencies controlling the funds will inevitably lodge competing claims. These claims must not be allowed to shortchange the main victim of one of the worst environmental disasters in American history: Prince William Sound.

Under the settlement, Exxon and a shipping subsidiary will plead guilty to four Federal criminal charges, pay an immediate criminal fine of \$100 million and an additional \$900 million over 10 years to settle civil claims brought by the Federal Government and the state of Alaska.

The agreement wisely includes a "reopener" clause, obligating Exxon to pay an extra \$100 million if damages turn out to be greater than presently anticipated. And while the settlement relieves Exxon of Federal and state liabilities, the company still faces 300 smaller suits brought by fishermen, food processors and other individuals and businesses.

The settlement isn't perfect. The Justice Department might also have pressured Exxon to fork over the entire \$1 billion immediately. True, Exxon has already paid a stiff price for its carelessness — \$2 billion so far in cleanup costs. It's also true, as Justice argues, that the additional \$1 billion can't be spent right away. But that's disingenuous. A one-time payment would begin earning interest immediately; the same amount spread over 10 years will lose value through inflation.

A further question is why Justice chose not to

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The agreement is unlikely to be changed, so the task now is to make sure it does the most good. Six different agencies — three Federal, three Alaskan — will collaborate in administering the funds. The agreement calls vaguely for the "restoration, rehabilitation or replacement of natural resources" or the acquisition of "equivalent resources." Those words could mean almost anything, from cleaning beaches to land acquisition for wildlife refuges to building recreational parks to encourage tourism.

There will be many good ideas and hard choices. But the first beneficiary of the money should be the sound itself. Eleven million gallons of oil did not, as some feared, turn Prince William into a dead sea. The beaches are now much cleaner and there have been predictions, challenged by some environmentalists, that salmon runs will reach record proportions this year.

But coastal wetlands have suffered grievously, as have colonies of sea birds and the bald eagles, shellfish and other species vital to the food chain and the local economy. Despite the sound's hardy resilience, there's no guarantee that the ecosystem will recover on its own. Exxon devastated that ecosystem; Exxon's money ought to be targeted first and foremost at speeding its renewal.

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The New York Times

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Exxon Settles Spill For \$1.1 Billion

\$100 Million in Pact for Criminal Fine

By Michael Weiskopf
Washington Post Staff Writer

Exxon Corp. agreed early today to acknowledge criminal responsibility and pay a \$100 million fine as part of a \$1.1 billion agreement with the federal and Alaskan governments to settle civil and criminal charges stemming from the nation's worst oil tanker spill, according to informed sources.

The settlement, by far the largest for environmental damage in the United States, apparently dealt with one of five federal criminal charges filed against the company and its shipping subsidiary, the sources said. Exxon faced two felony and three misdemeanor charges related to the spill.

Trial on the criminal charges was to begin April 10 in U.S. District Court in Anchorage.

Half of the criminal fine and most of the \$1 billion in civil damages to be paid over 10 years would be used to restore the fragile Alaskan shoreline after the ecological havoc caused when the tanker Exxon Valdez ran aground on a marked reef March 24, 1989. Nearly 11 million gallons of crude oil gushed into Prince William Sound, eventually spreading for miles.

Under the settlement signed here, Exxon is obligated to pay another \$100 million if significant environmental problems can be traced to the spill after the 10-year payment period.

Negotiators reached basic terms of the settlement days ago, but U.S. District Court Judge Stanley Sporkin barred final agreement until he heard arguments here Monday by five native Alaskan villages seeking to protect their rights to pursue damages separate from the government agreement.

Yesterday, Sporkin lifted his ban after warning government lawyers not to trample on the villagers' legal rights.

The settlement was signed shortly after midnight at the Justice Department, and details of the agreement are expected to be released at a news conference here today. Spokesmen for the Justice Department and Exxon declined to comment.

Walter J. Hickel (D), who took office as Alaska's governor last December and has been representing the state in negotiations here, said the settlement terms are "in the best interests" of Alaskans.

But environmentalists and some Alaskans criticized the agreement for failing to provide enough money and specifically target its use for environmental restoration. Actual distribution of Exxon's payment would be decided by a board of trustees that is to include representatives of the federal and state governments.

"The worry is that the state of Alaska is going to stretch the definition of restoration and spend the money for marinas and roads," said Doug Wolf, counsel for Alaskan issues at the National Wildlife Federation.

Michael Hausfeld, an attorney who represented the native Alaskan villages in the hearing before Sporkin, said the two governments should have held out for an "open-ended" settlement in which Exxon agreed to pay whatever is necessary to restore ecological damage related to the spill.

Exxon has spent \$2 billion on the cleanup, leaving shorelines almost free of oil. The huge Alaskan fishing industry, badly dislocated by the spill, gradually is returning to normal.

But authorities have barely begun to calculate damage to wildlife as scientific studies continue to find new evidence of long-term damage to certain varieties of sea birds, salmon, trout and other marine life.

According to confidential documents, federal scientists have concluded that some colonies of diving birds have suffered "total failure" to reproduce as result of the spill, while some species of marine life were so affected that they "may not respond" to revival efforts for decades.

Known as the greatest man-made wildlife disaster in the nation's history, the spill resulted in the deaths of more than 36,000 waterfowl, at least 1,016 sea otters and 144 bald eagles along with many other animals.

A federal grand jury in Anchorage indicted Exxon and its subsidiary, Exxon Shipping Co., a year ago after the corporation rejected a plea bargain proposed by the Justice Department. The two felony counts accused Exxon of failing to man its ships with a competent captain and physically and mentally capable crew members.

Joseph J. Hazelwood, the Exxon Valdez captain who witnesses said was drinking ashore before the early morning grounding, left the ship's bridge shortly before it hit the reef and left in command a third mate who lacked Coast Guard certification.

Hazelwood was acquitted last March on state charges of criminal

misconduct, reckless endangerment and piloting a vessel while intoxicated. He was convicted of negligent discharge of oil and sentenced to perform 1,000 hours of community service and pay \$50,000 in partial restitution for spill damage.

Under terms of the agreement, Exxon is to pay \$190 million, including the fine, immediately. Of the first installment, \$40 million is slated for continued evaluation of environmental damage and planning for restoration.

And, \$150 million to be released by October is intended to be used to return Prince William Sound to its pristine state before the spill.

Exxon also agreed to pay \$100 million in fiscal 1993 and \$660 million over the next eight years. It was not immediately known if that is earmarked for a specific purpose.

Cont'd

\$1.1 Billion Settlement by Exxon Is Said to Include Criminal Fine

Payments Would End Big Claims in Valdez Spill

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, March 12 — The Exxon Corporation is prepared to pay a \$100 million criminal penalty as part of a \$1.1 billion payment over the next 10 years to settle civil and criminal cases arising from North America's largest oil spill, Alaskan and Federal authorities said today.

Federal and state officials have agreed to the arrangement. Although a Federal District Court judge at first seemed to raise another hurdle today when he said he would review the settlement to insure that the rights of 5,000 Alaskan villagers were protected, a state official said early this evening that the final obstacles to a settlement appeared to have been overcome.

Effects Would Be Studied

Under the proposed agreement, Exxon would pay \$100 million immediately to settle criminal charges brought by the Department of Justice. That would be one of the largest, if not the largest, criminal fine ever paid for pollution. A trial on the charges had been scheduled for April 10 in District Court in Alaska.

The villagers had filed suit last week, asserting that they had been locked out of negotiations between Exxon, the State of Alaska and the Federal Government. The villagers said they feared that a settlement would prevent them from recovering financial damages caused by the Exxon Valdez oil spill on March 24, 1989.

The proposed settlement, which has

been under negotiations for months, would not end Exxon's legal troubles in Alaska. At last count, 330 separate suits were pending against the company. But the settlement would end the major suits, brought by the State of Alaska and the United States.

In addition, the company would pay \$80 million this year into a fund administered by three Federal agencies and three state agencies. The money would be used for scientific studies of the Prince William Sound region, which suffered great damage, and for projects to continue scrubbing the shoreline of oil left when nearly 11 million gallons spilled from the hull of the

Exxon Valdez after the tanker ran aground in the sound. The tanker's skipper, Capt. Joseph J. Hazelwood, was convicted in April 1990 of the relatively minor charge of negligently discharging oil but acquitted of piloting the vessel while drunk and other charges.

The agreement also called for payments into the fund of \$150 million in September 1992, \$100 million in September 1993, and \$70 million annually from 1994 until 2001. The proposed settlement also calls for Exxon to contribute \$100 million more to the fund if additional damage from the oil spill is discovered.

Economists noted that Exxon would be able to claim tax deductions for every payment except for the \$100 mil-

lion criminal penalty, to be paid this year.

The agreement would not affect some 300 other lawsuits filed by environmentalists, fishermen and Aleuts asking Exxon to pay for damages those groups say they suffered after the spill.

The proposed settlement was applauded by Gov. Walter J. Hickel of Alaska but strongly criticized by environmental groups and some state officials who said, essentially, that Exxon would be paying too cheap a price in settling the case.

Bottom of the Pockets?

"It seems like a good deal for Exxon," said Eric Jorgenson, a lawyer for the Sierra Club Legal Defense Fund in Juneau, which has a separate suit pending against the company in the aftermath of the spill.

But Governor Hickel said: "I am very happy with the settlement. It allows us to get to the bottom of Exxon's pockets."

Lance Lambertson, a spokesman for Exxon in Irving, Tex., declined today to say whether Exxon would sign the agreement and said the company would make no comment about the situation for the time being.

"If and when things break and we have come together for a proposal to be signed, there will be extensive notification," said Mr. Lambertson.

The settlement contains provisions to make public a wealth of scientific studies conducted after the spill by the Department of the Interior, the Environmental Protection Agency and other Federal agencies. But studies sponsored by the State of Alaska and the United States Coast Guard are to remain private pending the outcome of court cases brought against the state and the Coast Guard.

"Keeping the data secret is a major problem," said Mr. Jorgenson. "All of the data available from the spill should be released. The public paid for it. It's public information."

Although the terms would make the settlement the most expensive ever for damages caused by an environmental disaster, the pact is certain to raise a stir in Alaska and in Washington. The negotiators will open the pact to public comment for 30 days after it is signed. Officials with the state and two Federal agencies said the pact could be altered as a result.

Economists who have studied the spill for the state and Federal governments said today that the \$1.1 billion settlement represents only a portion of the actual value of the damage to fisheries, water, wildlife and land. The economists said the Exxon Valdez disaster will have caused \$2.5 billion to \$5 billion in damages from the time of the



The New York Times

The spill near Valdez fouled much of the Gulf of Alaska.

To some, an offer
to end the Exxon
Valdez affair is
too low.

spill before midnight on March 24, 1989, through 1994.

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In Plea Bargain, Exxon Accepts Criminal Liability

\$100 Million Alaska Spill Fine Is Largest

By Michael Weisskopf
Washington Post Staff Writer

Exxon Corp. agreed yesterday to plead guilty to three environmental crimes and pay a record fine in a plea bargain demanded by the government as a condition for settling federal and state claims arising from the nation's costliest ecological disaster.

The \$100 million fine, largest levied against a polluter, is part of a \$1 billion package that Exxon pledged to pay for damage caused when the tanker Exxon Valdez ran aground in Prince William Sound two years ago and fouled one of the nation's most delicate natural environments.

Although the fine represented a fraction of total damages, Exxon initially refused to accept criminal liability, informed sources said. But Justice Department negotiators insisted that any agreement include guilty pleas on at least the misdemeanor counts of a federal indictment that had been scheduled for trial in Anchorage April 10.

The agreement includes a pledge by Exxon's subsidiary, Exxon Shipping Co., to plead guilty to "negligent" discharge of pollutants into the sound, dumping refuse into U.S. waterways without a permit and unauthorized killing of migratory birds.

In exchange for guilty pleas to those misdemeanors, the department agreed to drop two felony charges apiece against Exxon and Exxon Shipping.

Attorney General Dick Thornburgh said at a news conference here that the pleas and the amount of the fine should send a "very clear and unmistakable signal" to polluters that environmental crimes will not be overlooked or dealt with lightly.

Exxon Chairman Lawrence G. Rawl, who signed the agreement at the Justice Department shortly after midnight yesterday, said in Dallas yesterday that, while the company was ready to fight the charges, the settlement is "in the best interest of Exxon shareholders and all other involved parties. A long and costly legal confrontation would benefit no one."

The settlement was announced 10 days short of the second anniversary of the night that the 987-foot tanker strayed outside shipping lanes and struck a well-marked reef four minutes after midnight local time. Nearly 11 million gallons of crude oil began spurting into the sound, eventually spreading 700 miles down the Alaskan shoreline and leaving thousands of dead birds, sea otters and bald eagles in its wake.

Efforts to reach agreement blew up a year ago when Exxon rejected a proposed plea bargain that would have allowed the oil giant to avoid criminal charges while requiring a payment of \$550 million in damages and a \$150 million civil fine.

But negotiations resumed in January, two months after Walter J. Hickel (I) was elected governor of Alaska, and he invited Rawl to a one-on-one meeting in his Juneau office. Hickel said he seemed to intrigue Rawl by describing Exxon compensation as a fund for environmental restoration, not a penalty.

"It's a good settlement for the state of Alaska, it's a good settlement for Exxon and it's a good settlement for the environment," Hickel said at the news conference.

Half of the \$100 million fine goes to Alaska for environmental restoration, augmenting \$900 million in civil damages to be allocated by Exxon over 10 years. The civil damages also are the largest ever paid for polluting.

The agreement includes a "re-opener for unknown injury," which earmarks as much as \$100 million more between the years 2002 and 2006 for unforeseen "substantial loss or substantial decline" in the region's ecology.

Exxon is obligated under the agreement to continue cleanup of the shoreline at the direction of federal and state coordinators. The \$2.2 billion already spent by the company to scrub beaches and cleanse water has revived the state's fisheries and burnished the ecology. But scientists have forecast significant damage to certain species of wildlife that may require decades to recover from the disaster.

KEY ELEMENTS OF THE SETTLEMENT

- Exxon Corp. and Exxon Shipping Co. agreed to plead guilty to misdemeanor charges and pay a \$100 million fine, the largest ever levied against a polluter.
- Exxon agreed to pay \$900 million in civil damages over the next decade to repair environmental damage to the Alaskan shoreline. If unforeseen ecological damage becomes apparent between the years 2002 and 2006, Exxon will be liable for up to \$100 million more.
- The money is to be administered by a board of state and federal officials.
- The Justice Department agreed to drop four felony charges against Exxon and its subsidiary. The federal and Alaskan governments pledged not to pursue further criminal or civil claims against the companies.



ASSOCIATED PRESS PHOTO

In the settlement, Exxon Shipping agreed to acquiesce to all three misdemeanor counts, while the parent corporation admitted only to violating the Migratory Bird Treaty Act.

The Justice Department agreed to dismiss two misdemeanor charges against Exxon Corp. and two felony counts against each defendant. One felony count alleged that they violated federal requirements of ship owners to assure that their captains are competent and crew members physically and mentally capable.

Joseph J. Hazelwood, the Exxon Valdez captain, whose absence from the bridge was blamed for the collision, was acquitted last March of all but one minor state charge.

Hailed by Bush administration officials, the agreement received mixed reviews from environmentalists and Alaskans.

Eric Jorgensen, staff attorney for the Sierra Club Legal Defense Fund who is based in Alaska, praised the criminal plea for "sending a strong message to polluters." But he questioned whether the civil damages, which will be lessened by \$135 million to reimburse state and federal

governments for past cleanup, are sufficient to restore the region's environment.

"Will we have to make compromises?" he asked. "Will we have to get money from somewhere else?"

Steve Cowper (D), Hickel's predecessor as governor during the spill, praised negotiators for moving quickly so damage can be repaired. But Douglas Baily, his former attorney general, said the amount of damages should have been adjusted to reflect inflation so that they will retain value over the 10-year payout period.

Jerome Selby, mayor of the Kodiak Island Borough whose beaches were flooded with oil, criticized the agreement for overlooking needs of local governments that lost tax revenue because of disruption to fisheries and increases in public services during the crisis.

Although the local governments can still pursue claims in courts, "the state would have been a major driving force in resolving them," he said. "Now it will be much tougher."

The settlement frees Exxon of government claims stemming from the spill, but more than 300 individual lawsuits are pending.

CORRECTION

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

Exxon Settles Spill For \$1.1 Billion

\$100 Million in Pact for Criminal Fine

By Michael Weiskopf
Washington Post Staff Writer

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But environmentalists and some Alaskans criticized the agreement for failing to provide enough money and specifically target its use for environmental restoration. Actual distribution of Exxon's payment would be decided by a board of trustees that is to include representatives of the federal and state governments.

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Although the agreement frees Exxon of further obligations to the state and federal governments, the company faces more than 300 lawsuits by Alaskan residents and business executives claiming large losses caused by the spill.

The Alaskan villages that filed suit here said they feared that the government was bartering away their right to pursue spill-related claims later.

But Sporkin assured lawyers for the villages that "the government, I think, understands that they cannot play fast and loose with your rights." If the settlement later compromises those rights, he said, "Hell hath no fury like a judge scorned. . . . It's not fair, it's not right and it's not American."

\$1.1 Billion Settlement by Exxon Is Said to Include Criminal Fine

Payments Would End Big Claims in Valdez Spill

By KEITH SCHNEIDER
Special to The New York Times

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Bottom of the Pockets?

"It seems like a good deal for Exxon," said Eric Jorgenson, a lawyer for the Sierra Club Legal Defense Fund in Juneau, which has a separate suit pending against the company in the aftermath of the spill.

But Governor Hickel said: "I am very happy with the settlement. It allows us to get to the bottom of Exxon's pockets."

Lance Lamberton, a spokesman for Exxon in Irving, Tex., declined today to say whether Exxon would sign the agreement and said the company would make no comment about the situation for the time being.

"If and when things break and we have come together for a proposal to be signed, there will be extensive notification," said Mr. Lamberton.

The settlement contains provisions to make public a wealth of scientific studies conducted after the spill by the Department of the Interior, the Environmental Protection Agency and other Federal agencies. But studies sponsored by the State of Alaska and the United States Coast Guard are to remain private pending the outcome of court cases brought against the state and the Coast Guard.

"Keeping the data secret is a major problem," said Mr. Jorgenson. "All of the data available from the spill should be released. The public paid for it. It's public information."

Although the terms would make the settlement the most expensive ever for damages caused by an environmental disaster, the pact is certain to raise a stir in Alaska and in Washington. The negotiators will open the pact to public comment for 30 days after it is signed. Officials with the state and two Federal agencies said the pact could be altered as a result.

Economists who have studied the spill for the state and Federal governments said today that the \$1.1 billion settlement represents only a portion of the actual value of the damage to fisheries, water, wildlife and land. The economists said the Exxon Valdez disaster will have caused \$2.5 billion to \$5 billion in damages from the time of the



The spill near Valdez fouled much of the Gulf of Alaska.

To some, an offer
to end the Exxon
Valdez affair is
too low.

spill before midnight on March 24, 1989, through 1994.

3

Cont'd

Several state officials who asked not to be identified today said they had hoped that Exxon would be required to pay \$1 billion in a one-time payment that could generate permanent income through annual interest payments. Thus, the annual payments, spread out over 10 years, are much less valuable to the state's efforts to clean up and study the effects of the spill.

Senator Frank Murkowski, a Republican from Alaska, said today that Alaska was fortunate to have gained a settlement. The alternative was years

of litigation that would have cost Alaska millions of dollars in legal fees without any assurances of success.

"I think this agreement, if it is resolved, is going to have to stand the light of day by the Legislature, the Governor and Exxon shareholders," said Senator Murkowski. "The alternative is litigation. I certainly am inclined to think a bird in the hand is worth two in the bush. The cost of litigation would be very substantial."

The settlement also calls for an advisory group made up of members of the public to help oversee how money from the settlement is spent. The Department of Justice scheduled a news conference for Wednesday to explain provisions in the settlement.

The last obstacles to the settlement were crossed this afternoon when Judge Stanley Sporkin lifted an order here that prevented the pact from being signed, and a District Judge from Alaska, H. Russell Holland, approved the agreement. Judge Holland was to have presided over the criminal trial next month.

Last week, Judge Sporkin blocked the settlement from being signed until the state and Federal Government assured more than 5,000 Alaskan native villagers that their right to gain financial damages from Exxon would not be harmed by the pact.

Today, Judge Sporkin said he was satisfied that the rights of the native villagers to fully prosecute their suits had not been harmed by any settlement between Exxon, Alaska and the Federal Government and lifted his injunction. But in an order he signed this afternoon, Judge Sporkin said he would review the settlement after it is signed to make sure the rights of the villages are ensured.

"The court shall retain jurisdiction over this matter to ensure that the defendants' representations are carried out so the plaintiffs' rights are protected," Judge Sporkin wrote in the order.

3/14/91

A-3

In Plea Bargain, Exxon Accepts Criminal Liability

\$100 Million Alaska Spill Fine Is Largest

By Michael Weisskopf
Washington Post Staff Writer

Exxon Corp. agreed yesterday to plead guilty to three environmental crimes and pay a record fine in a plea bargain demanded by the government as a condition for settling federal and state claims arising from the nation's costliest ecological disaster.

The \$100 million fine, largest levied against a polluter, is part of a \$1 billion package that Exxon pledged to pay for damage caused when the tanker Exxon Valdez ran aground in Prince William Sound two years ago and fouled one of the nation's most delicate natural environments.

Although the fine represented a fraction of total damages, Exxon initially refused to accept criminal liability, informed sources said. But Justice Department negotiators insisted that any agreement include guilty pleas on at least the misdemeanor counts of a federal indictment that had been scheduled for trial in Anchorage April 10.

The agreement includes a pledge by Exxon's subsidiary, Exxon Shipping Co., to plead guilty to "negligent" discharge of pollutants into the sound, dumping refuse into U.S. waterways without a permit and unauthorized killing of migratory birds.

In exchange for guilty pleas to those misdemeanors, the department agreed to drop two felony charges apiece against Exxon and Exxon Shipping.

Attorney General Dick Thornburgh said at a news conference here that the pleas and the amount of the fine should send a "very clear and unmistakable signal" to polluters that environmental crimes will not be overlooked or dealt with lightly.

Exxon Chairman Lawrence G. Rawl, who signed the agreement at the Justice Department shortly after midnight yesterday, said in Dallas yesterday that, while the company was ready to fight the charges, the settlement is "in the best interest of Exxon shareholders and all other involved parties. A long and costly legal confrontation would benefit no one."

The settlement was announced 10 days short of the second anniversary of the night that the 987-foot tanker strayed outside shipping lanes and struck a well-marked reef four minutes after midnight local time. Nearly 11 million gallons of crude oil began spurting into the sound, eventually spreading 700 miles down the Alaskan shoreline and leaving thousands of dead birds, sea otters and bald eagles in its wake.

Efforts to reach agreement blew up a year ago when Exxon rejected a proposed plea bargain that would have allowed the oil giant to avoid criminal charges while requiring a payment of \$550 million in damages and a \$150 million civil fine.

But negotiations resumed in January, two months after Walter J. Hickel (I) was elected governor of Alaska, and he invited Rawl to a one-on-one meeting in his Juneau office. Hickel said he seemed to intrigue Rawl by describing Exxon compensation as a fund for environmental restoration, not a penalty.

"It's a good settlement for the state of Alaska, it's a good settlement for Exxon and it's a good settlement for the environment," Hickel said at the news conference.

Half of the \$100 million fine goes to Alaska for environmental restoration, augmenting \$900 million in civil damages to be allocated by Exxon over 10 years. The civil damages also are the largest ever paid for polluting.

The agreement includes a "re-opener for unknown injury," which earmarks as much as \$100 million more between the years 2002 and 2006 for unforeseen "substantial loss or substantial decline" in the region's ecology.

Exxon is obligated under the agreement to continue cleanup of the shoreline at the direction of federal and state coordinators. The \$2.2 billion already spent by the company to scrub beaches and cleanse water has revived the state's fisheries and burnished the ecology. But scientists have forecast significant damage to certain species of wildlife that may require decades to recover from the disaster.

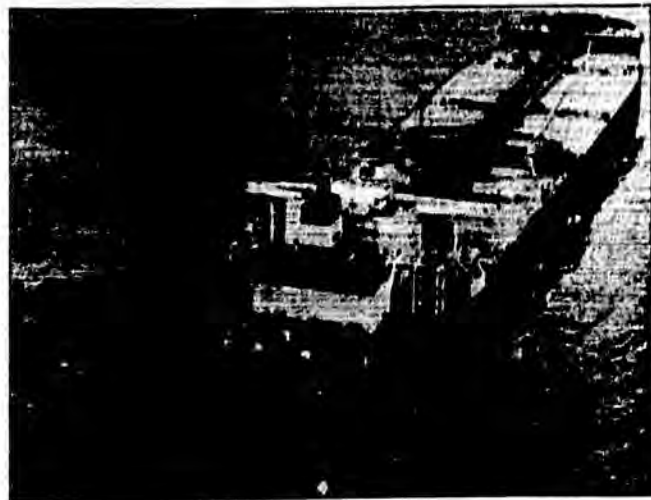
KEY ELEMENTS OF THE SETTLEMENT

■ Exxon Corp. and Exxon Shipping Co. agreed to plead guilty to misdemeanor charges and pay a \$100 million fine, the largest ever levied against a polluter.

■ Exxon agreed to pay \$900 million in civil damages over the next decade to repair environmental damage to the Alaskan shoreline. If unforeseen ecological damage becomes apparent between the years 2002 and 2006, Exxon will be liable for up to \$100 million more.

■ The money is to be administered by a board of state and federal officials.

■ The Justice Department agreed to drop four felony charges against Exxon and its subsidiary. The federal and Alaskan governments pledged not to pursue further criminal or civil claims against the companies.



ASSOCIATED PRESS PHOTO

In the settlement, Exxon Shipping agreed to acquiesce to all three misdemeanor counts, while the parent corporation admitted only to violating the Migratory Bird Treaty Act.

The Justice Department agreed to dismiss two misdemeanor charges against Exxon Corp. and two felony counts against each defendant. One felony count alleged that they violated federal requirements of ship owners to assure that their captains are competent and crew members physically and mentally capable.

Joseph J. Hazelwood, the Exxon Valdez captain, whose absence from the bridge was blamed for the collision, was acquitted last March of all but one minor state charge.

Hailed by Bush administration officials, the agreement received mixed reviews from environmentalists and Alaskans.

Eric Jorgensen, staff attorney for the Sierra Club Legal Defense Fund who is based in Alaska, praised the criminal plea for "sending a strong message to polluters." But he questioned whether the civil damages, which will be lessened by \$135 million to reimburse state and federal

governments for past cleanup, are sufficient to restore the region's environment.

"Will we have to make compromises?" he asked. "Will we have to get money from somewhere else?"

Steve Cowper (D), Hickel's predecessor as governor during the spill, praised negotiators for moving quickly so damage can be repaired. But Douglas Bailey, his former attorney general, said the amount of damages should have been adjusted to reflect inflation so that they will retain value over the 10-year payout period.

Jerome Selby, mayor of the Kodiak Island Borough whose beaches were flooded with oil, criticized the agreement for overlooking needs of local governments that lost tax revenue because of disruption to fisheries and increases in public services during the crisis.

Although the local governments can still pursue claims in courts, "the state would have been a major driving force in resolving them," he said. "Now it will be much tougher."

The settlement frees Exxon of government claims stemming from the spill, but more than 300 individual lawsuits are pending.



Letter to the editor

by Lacey Berns

Disaster boils down to dead salmon fry and floating oily mousse and sheen in every bay

Editor:

The oil disaster story is disappearing from the pages of U.S. newspapers. If you are concerned about Exxon's "clean-up," and/or the compromise of an uncertain fishing season, you can express your opinion with "Letters to the Editor."

Here's a partial list:

San Francisco Chronicle
907 Mission
San Francisco, Ca. 94103

Los Angeles Times
Times-Mirror Square
Los Angeles, Ca. 90053

Washington Post
1150 15th St. NW
Washington, D.C. 20071

New York Times
229 W. 43rd
New York, N.Y. 10036

Houston Chronicle
P.O. Box 4260
Houston, Texas 77210

Houston Post
P.O. Box 4747
Houston, Texas 77210-4747

A few hundred letters from our small island might help our situation... and they do get printed.

Sincerely,
Lacey Berns
Kodiak

(This is the letter I wrote recently to these papers.)

Dear editor:

I'm an Alaskan resident. We fish commercially for a living in the waters of Kodiak Island, and as many others do, depend on healthy catches of salmon, halibut and herring.

I wrote a letter to the Chronicle on April 15 which was printed. I feel it's absolutely necessary for people in our country to understand that our state, its people, animals and coasts are still suffering from the ongoing effects of the

beaches daily. Over 13,500 dead birds have been counted in Kodiak alone.

It is devastating our wildlife and beaches, and our livelihood from fishing.

The June sockeye salmon fishing is postponed.

It would be "nice" to assume after Exxon apologized and took "full responsibility" for this incident that the company would actually find somewhere in its corporate "heart" the willingness and ability to help Alaskans put our lives and landscape back together in an efficient, speedy manner.

However, in all the communities affected, the common outrageous experience is quite the opposite.

We are constantly faced with bureaucracy, days and weeks of waiting for Exxon to make decisions which put our lives and our futures on hold.

The men who can make decisions for Exxon do not meet us at the table — in fact, will not even meet our mayors and leaders in negotiating reimbursement for oil-spill related costs.

Exxon has sent several different men to Kodiak who are relieved of duty once they have a small grasp of how this island lives.

These men have no decision-making capabilities and are only mouth-pieces for the corporation in the chain of command.

Our June sockeye salmon fishery is passing us by. Alaskan fishermen support "zero-tolerance" policy in fishing areas, which would close oil-affected areas down. We steadfastly support this policy to insure that no contaminated fish will ever be caught or marketed.

We care desperately about the fishing businesses we've built over the years and the quality seafood caught in Alaskan waters. All of this is under attack because of Exxon, who is pres-

ity.

We don't want to risk the reputation and quality of our Alaskan product, and our vessels and gear to this kind of pressure.

Exxon won't give us any details on how to make claims for salmon. So, here we sit, on the beach waiting for possible openings with no funds coming in, at the mercy of a giant corporation in Houston. We can't even clean up our own beaches because Exxon won't hire more than a handful every few weeks. There's enough clean-up work here for every man, woman and child in Alaska.

This is a traumatic, on-going event in the lives of thousands: families of men, women, children, businessmen, people just like you. But already we fear that our story has disappeared from the pages of newspapers. Our own President Bush, despite that this is a huge disaster, has yet to lay eyes on Alaska's plight himself, yet, he declares himself an environmentalist?

The Exxon "clean-up" is totally unacceptable to us. We are angry, frustrated, discouraged and quickly going broke. The trusting attitude we had toward Exxon is gone, replaced with empty and hollow phrases such as, we will make you whole.

In Exxon's corporate mind, this disaster boils down to dollars and cents, legalities and liability. In ours, it's in tangible realities: dead birds, otters, whales, eagles, dead salmon fry, lost fishing time, black, tarry rocks and beaches, floating oily mousse and sheen in every single bay.

We need your support. Please help us to send messages to Exxon Headquarters, 800 Bell, Houston Texas (713) 656-3636 or to Pres. Bush, 1600 Pennsylvania Ave., Washington D.C. 20515 (202) 456-7639.

These powerful men are ignoring us. Exxon.

6-12

Moral Blame In Exxon Spill

WHEN I SEE yet another account of oil-slicked sea birds washed up on slippery beach rocks in Alaska, I wonder about L.G. Rawls. The chairman of Exxon must see these photos too. When he looks up from the bottom line, out from the circle of lawyers who have surrounded him, what does he think?

I am not the only one who has wondered about him and his inner circle of executives. More than one economist or ecologist, making a cross-cultural note, has said that in Japan the CEO of such a disaster would have resigned in shame and sorrow. Japan is no paragon of virtue — recent government scandals have proved that — but the country is ruled by moral consensus. Ours seems to be ruled by the ethic of lawsuits.

In litigious America, guilt is no longer defined as something you feel but, rather, something that must be proved. We rarely hear a high corporate executive admit moral blame. Here, having a lawyer means never really saying you're sorry.

Chairman Rawls did apologize. Sort of. More than a week after the disaster, he published the most impersonal of personal apologies. I can imagine the wrangling between the public-relations and legal staffs behind the words of that hollow statement: "...I want to tell you how sorry I am that this accident took place."

"This accident" that "took place" sounded as distant from his moral domain as his desk was from Prince William Sound. But it's more than Captain Hazelwood of the Valdez said, lawyered into silence. To apologize might be to incriminate.

I am not demanding the resignation of Rawls and his inner circle. But it does seem to me that when a disaster occurs, the people in charge have some duty to do more than call their lawyers. They have a duty to pay their respects with time and energy, to spend weeks, months, scrubbing the rocks and sea life with their own hands, and paying last



respects to the lost life.

I think this is true for Chairman Rawls as well as for the crew of the Valdez. I thought it was also true for the Union Carbide people who devastated Bhopal and never laid a personal compassionate hand on its victims. And I think it is true for all the people who have ever confused a moral wrong with a criminal wrong, whose self-defense against unethical behavior is: "I did nothing illegal."

The American system of laws and suits allows us to get retribution, even justice, for some crimes. But it seems to work against that process of confession and forgiveness that heals wounds as it rights wrongs. It even makes it harder for adversaries to explain themselves and to understand each other.

You don't have to go to Prince William Sound or Bhopal to see this. Consider the kind of defensive medicine practiced routinely by hospitals. In any hospital over time, there are operations botched, accidents that "took place." Patients and families are left suffering.

BUT MANY a doctor is advised not to apologize, even speak to the family, because that human expression of regret could be used in court as an admission of guilt. In turn, people filing malpractice suits often express their greatest anger against the very doctors who "didn't even say they were sorry."

So the motto of American disagreement is: Go ahead and sue me. Ultimately, under the rule of lawsuits, it has become far too easy to confuse moral and legal responsibility. We mix up the long words like culpability and liability. And in that linguistic and ethical confusion, it becomes harder and harder to express something as simple as regrets, dismay and sorrow.

lishes until
aker

If Exxon spill fine is 'clear and unmistakable symbol,' watch out

If you think we got a good deal when the state and federal governments settled their lawsuits against Exxon for the oil spill, sit right down. Let's talk about it.

You and I could have gotten two things out of the federal criminal and state civil cases: protection for our land, air and water by making an example of Exxon, and a bunch of money.

We got neither.

To get federal criminal charges dismissed, Exxon agreed to pay a \$100 million fine. In return, the feds agreed not to prosecute anyone associated with Exxon or Alyeska for anything associated with the wreck of the Exxon Valdez, the oil spill, the cleanup, or the oil spill contingency plans.

Attorney General Dick Thornburgh said the fine "represents a clear and unmistakable signal to those engaged in environmental crime" that they will be punished.



MIKE DOOGAN

Either Thornburgh's got a terrific sense of humor or he flunked math. Exxon's revenue last year was \$117 billion. Fining them \$100 million is like punishing somebody who makes \$40,000 a year by fining him \$34.19. Doesn't sound like much of a deterrent to me.

Especially when you stop to consider that the oil spill was not an accident, but the logical outcome of a set of cost-cutting moves by officials of Exxon. Those officials could have been put on trial, which might actually have been a lesson for the next corporate biggie weighing profit against environmental hazard. Instead, the feds let them skate and nicked their company for chump change. What do you think the real message is?

Then there's the civil settlement. In it, the feds and the state drop their natural resource damage claims — the only big-money claims they've got — in return for \$900 million paid over 10 years or more. That's the same as our \$40,000-a-year guy shelling out about \$30 a year, most of which he gets to write right off his taxes. (I know, there's the chance of another \$100 million much,

much later, but that's like saying the check might be in the mail.)

No wonder Exxon Chairman Lawrence Rawl said the settlement "looks pretty good to us." They're probably still partying over at Exxon.

What happens to that money? It goes into a fund run by state and federal bureaucrats to be used to pay for spill cleanup, restoration and scientific studies. Part of the cleanup cost to be paid is money Exxon's already spent.

I'll bet they're having champagne and caviar at that party.

Aside from keeping scientists and bureaucrats busy, what do we get for the money? We know the man-made cleanup was a joke, that the real cleanup is still being done by Nature. Won't the same thing be true of restoration? What can we do to restore the Sound, buy kelp and nail it to the seabed? Paint the rocks white again?

This seems to be a very iffy set of benefits to be letting Exxon off the hook. To get them we traded an unknown amount of money that we would have gotten sometime

in the future and used to pay for education, bridges and the like.

Is this a good deal? Well, we'd have a better idea if the state wasn't keeping secret the economic studies that would tell us what the damage to the Sound was really worth. But it's hard to see how a wrist-slap for Exxon and a small trust fund run by 'crats amounts to a very good deal for Alaska or the people who live here.

Oh, you can see what's in it for Exxon. And what's in it for George Bush, who wants to clear the decks for putting pipe in the ground of the Arctic National Wildlife Refuge. And even what's in it for Wally Hickel: He needed something he could call an accomplishment after 100 days of fumbling around in office. He wants development — ANWR, his very deserving gas pipeline, anydamnthin'. And he got to climb back into the national spotlight.

You just can't see what's in it for us.

□ Mike Doogan's opinion column appears Sundays, Tuesdays and Fridays.

ADN 3/15/91

Spill deal in Juneau hot seat

By DIRK MILLER

4/4/91

TIMES CAPITAL BUREAU

JUNEAU — Attorney General Charlie Cole and the House's oil spill settlement committee squared off Wednesday on why the state's spill study data should remain secret and how the \$1 billion agreement was reached.

Rep. Gene Kubina, D-Valdez, started things off on a forceful note.

"I'm kind of an impatient person so I'm going to put my major concerns to you right up front," Kubina told Cole. "Number one, I'd like to compliment Exxon on their skill in negotiating. I think they negotiated a very good settlement for themselves."

"You may think I did a bum job..." Cole answered. "That's your view. But I'm prepared to support my view with a lot of sound experience and legal craftsmanship."

Lawmakers are considering whether to approve a settlement of federal and state lawsuits against Exxon reached last month. Their deadline for rejecting or accepting the settlement passes on May 3.

Cole and lawmakers had different views on the release of

See Deal, page B4

Deal

Continued from page B1

spill study data.

Kubina said without the studies, lawmakers could not make as informed a decision on the settlement. He said not releasing the data puts the state's own residents at a disadvantage in pursuing claims against Exxon and the state.

"I'm very concerned about Prince William Sound being held hostage, and the state of Alaska allowing Prince William Sound and the affected areas to be hos-

tages by your refusal to release the scientific data," Kubina said. The legislator represents communities affected by the spill.

Rep. David Finkelstein, D-Anchorage, said he thinks the state has an obligation to release the studies.

"Where there's damning information, or something that helps them, that's the truth," Finkelstein said. "They ought to have access to that as well."

Cole said lawmakers should focus on the terms of the Exxon Valdez oil spill settlement and

not on whether the state should release its secret spill data.

Cole said he would not release results of resource, social and economic damage studies until private plaintiffs release the state from claims arising out of the March 24, 1989, spill of about

11 million gallons of oil in Prince William Sound. He fears study results could be used against the state in lawsuits.

"If the Legislature wants to say open the state treasury to 5,000 lawsuits or 10,000, frankly it scares me," he said.

Spill fund suits ask billions ^{4/4/91}

Governments vie for spoils

By DESIREE HUMPHREY

TIMES WRITER

The U.S. government, the state of Alaska, Exxon Co. USA and several other groups filed more than \$59 billion in claims against an oil-spill liability fund that is limited to \$100 million in payments to all people affected by the 1989 Exxon Valdez spill.

The federal government and the state of Alaska want more than \$1 billion from the Trans-Alaska Pipeline Liability Fund, although a federal judge asked the governments not to file. U.S. District Judge H. Russel Holland has said the limited funds available to individuals hurt by the spill would be substantially reduced by any government claims.

Several large groups of fishermen, businesses, Natives and others asked for \$56.1 billion, according to the fund's March report.

Holland urged many with spill-related lawsuits to file claims with the fund before the March 25 cut-off date because it was probably their only chance to receive a settlement. Holland cited existing federal law that denies many people except fishermen the chance to sue Exxon later for damages.

He asked the federal and state governments not to file claims because they have other recourse.

The 1973 Trans-Alaska Pipeline Authorization Act allows the fund to pay up to \$100 million dollars per accident to people it finds were injured by spilled pipeline oil. Congress established the fund in 1973 to quickly assist individuals hurt by a spill.

But no claims can be paid until all the requests have been processed since, according to law, claims will be distributed proportionately if they exceed the \$100-million cap.

The government claims are two of nearly 11,100 submitted by March 30, according to the fund's monthly report filed with the U.S. District Court in Anchorage on Monday.

Lawyers representing fishermen and other indi-

Large groups of fishermen, businesses, Natives and others want \$56.1 billion.

A10 Thursday, April 4, 1991, The Anchorage Times

Suits

Continued from page A1

viduals said the U.S. government and the state were acting unfairly by filing claims and are trying to force approval of the tentative \$1 billion settlement the state signed with Exxon on March 12.

"I think it's ludicrous, bordering on outrageous," said Dave Oesting, an Anchorage lawyer appointed as co-council to coordinate the numerous plaintiffs' court actions. The huge amount of the claims also show the "inadequacy and meaninglessness of the fund process," he said.

San Francisco lawyer Randall Scarlett, a member of the Melvin Belli firm representing about 1,000 people, agreed with Oesting. Because of the state and federal governments' large claims, individuals may get only "pennies on the dollar, if anything," he said.

"No, I don't think it is fair at all," Scarlett said. "Governments have other ways of raising revenues."

The U.S. government has agreed to withdraw its claim if its \$1 billion settlement with Exxon and the state is approved and if the fund promises to drop its claims against the government, the report said. The federal government seeks reimbursement for cleanup and response expenses, removal of oil, and natural resource damages.

Trans-Alaska Pipeline Liability Fund

The fund has a cap of \$100 million per accident it can pay to people affected by spilled oil. Here are some of the larger claims filed in March:

U.S. government:	\$1 billion plus
State government:	confidential
Exxon Co. USA:	\$1.3 billion plus
Other oil companies:	\$85 million
A group of property owners:	\$5 billion
A group of fishermen:	\$45.6 billion
A group of businesses:	\$4.8 billion
A group of Alaska Natives:	\$530 million
A group of cannery and seafood processors:	\$160 million

SOURCE: Trans-Alaska Pipeline Liability Fund

TIMES CHART

The fund's lawyers wrote in the report they were reluctant to relieve the government of its obligations to pay for damages possibly caused by the government through negligence.

Unlike Exxon and the federal government, the state asked that the amount of its claim be kept confidential. The state wants to be compensated for natural resource damages, some response costs and lost revenues, the report said.

Alaska Attorney General Charles Cole could not be reached late Wednesday for comment.

The amount requested by the federal government, the state government and the oil companies totals nearly \$2.5 billion, the

report said.

Besides the \$1 billion for the federal government, Exxon asked for more than \$1.3 billion. BP America Inc., Atlantic Richfield Co., Phillips Petroleum Co. and Mobil Oil Corp. asked for \$85 million.

The oil companies agree to wait until everyone else, except the governments, is paid before seeking their shares, according to the report.

A five-cent-per-barrel-of-oil charge was assessed on North Slope crude until the fund reached its \$100-million limit in 1981.

With accumulated interest and investments, the fund had grown to about \$300 million, said Stephen Hut, the fund's Washington, D.C., lawyer.

See Suits, back page

4/24/91

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^PM-Exxon Settlement, 2nd Ld - Writethru, a0636,0538<

^Judge Rejects Part of Exxon Settlement<

^Eds: Leads throughout with reax from Justice Department and Exxon reporting 75 percent jump in first quarter profits. No pickup. Russel in 3rd graf is cq. Also moving on financial wires.<

^By JOHN ENDERS=

^Associated Press Writer=

ANCHORAGE, Alaska (AP) — A federal judge today rejected part of the \$1 billion settlement in the Exxon Valdez oil spill, saying the record \$100 million criminal fine was inadequate.

Under the plea agreement, the Exxon would have paid a \$100 million criminal fine and another \$900 million to settle state and federal civil claims for natural resource damages. The agreement was negotiated by the state of Alaska, the Justice Department and the Exxon Corp.

“The fines which were proposed to me were simply not adequate,” said U.S. District Judge H. Russel Holland. “There is no question that the Exxon Valdez oil spill was off the chart.”

He said the criminal fines did not adequately reflect the environmental damage done to Prince William Sound, site of the nation's worst oil spill.

In New York, Exxon today reported its profits jumped 75 percent in the first quarter.

Because of the judge's action, Exxon and its shipping subsidiary can withdraw guilty pleas to four misdemeanor criminal pollution charges. At the request of Exxon attorney James Neal, the judge gave the company 30 days to consider what actions it may take.

“It was one of the options the court has,” said Neal said after the hearing. “We thought it was a good plea agreement.”

Justice Department officials in Washington said in a statement: “We are disappointed that the court would not approve the \$100 million fine and restitution The department continues to believe that the pleas and the fine provided for represent a just and reasonable settlement of the criminal case.”

The Justice statement said Holland's decision “threatens the \$1 billion civil settlement to which Exxon has separately agreed.”

Holland last month said the criminal and civil agreements were legally separate. It was not immediately clear what effect today's decision will have on the \$900 million civil settlement now pending before the state legislature.

State Attorney General Charles Cole told reporters outside the courtroom that the state intends to pursue the civil settlement. Cole said he still thinks a civil settlement is in the best interest of the state.

The \$900 million fine was to be paid over 11 years, with the money going into a trust to pay for cleanup and restoration of Prince William Sound.

The Exxon Valdez ran aground in the sound in March 1989, spilling nearly 11 million gallons of crude oil. The oil company already has spent \$2.5 billion to clean up the spill.

Exxon, the nation's largest oil company, said earnings rose to \$2.24 billion, or \$1.78 per share in the three months ended March 31, compared with \$1.28 billion, or \$1.01 per share in the year-earlier period.

Exxon's earnings increase was largely attributed to a lag in price movements. Prices at the gasoline pump, which rose with the Persian Gulf crisis, have not fallen as quickly as crude oil prices on the spot market.

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^PM-AK--XGR-Settlement Reax,807<

^URGENT<

^Lawmakers Surprised by Judge's Rejection of Exxon Plea Bargain<

^By BRIAN S. AKRE=

^Associated Press Writer=

JUNEAU, Alaska (AP) — Alaska lawmakers reacted with surprise today after a judge rejected the federal government's criminal plea bargain with Exxon Corp. over the nation's worst oil spill.

Legislative committees for weeks have been reviewing the billion-dollar settlement of Exxon Valdez litigation, of which the criminal plea bargain was a central part.

"I don't think anybody suspected this would happen," said Sen. Pat Rodey, D-Anchorage and a member of the Senate settlement committee.

"Certainly, conventional wisdom was that the plea agreement would be approved."

Although the federal criminal case was separate from the state and federal government civil litigation, they were linked under the settlement negotiated earlier this year.

Exxon agreed to plead guilty to four misdemeanor pollution charges and pay a \$100 million fine, which U.S. District Judge H. Russel Holland said was inadequate. To settle the civil damage claims, Exxon would pay \$700 million over 11 years for restoration of Prince William Sound.

The waterway was polluted with nearly 11 million gallons of crude oil when the tanker Exxon Valdez ran aground in March 1989.

Lawmakers disagreed over the effect of the judge's decision.

Rodey said the Legislature, which faces a May 3 deadline to approve or reject the settlement, likely will halt its review.

"It's a moot point," he said. "Should we really spend any more time looking at an agreement that's not going to be approved?"

But House Speaker Ben Grussendorf, D-Sitka, said it depends on whether Exxon decides to keep the settlement of the state and federal civil claims on the table.

If Exxon wants to reopen negotiations, the Legislature would have to approve any new settlement in a special session next summer or fall, or wait until its next regular session in January, he said.

The Legislature must end its 1991 session by May 21.

Senate President Dick Eliason, R-Sitka and chairman of the Senate settlement committee, said the state can still deal with Exxon on the civil claims to avoid years of expensive litigation.

"You'd have to renegotiate, certainly," Eliason said. "The state is going to be the loser. We'll find out down the road that this is the best deal we could have made."

Rep. Max Gruenberg, D-Anchorage and chairman of the House settlement committee, said he would ask the panel this afternoon to approve a letter asking the Hickel administration, federal government and Exxon what their plans are. The letter will ask for a response by 2 p.m. Thursday, he said.

The letter will ask if the parties want the Legislature to continue consideration of the civil settlement and if the May 3 deadline for a decision should remain in effect.

Gruenberg said he would like to see the deadline renegotiated.

"This may, in a very strange way, help the process considerably," he said. "It may take some of the pressure off. The deadline has created a lot of artificial pressure."

Gov. Walter J. Hickel was on a jet to Los Angeles and could not be reached for comment.

Hickel spokesman John Manly said the administration hopes the civil settlement can still be approved even if the criminal case remains unresolved.

"We don't think that they're so linked that it's going to affect the civil side of it," Manly said. "The only problem is if Exxon doesn't want to go through with it."

"Nothing's done until it's done. We believe that Exxon feels like they're getting a reasonable deal in this settlement, as the state of Alaska feels it's getting a reasonable deal."

Manly added, however, that the judge's ruling "probably sends a signal that we don't really want sent."

Grussendorf, who said he was leaning toward rejecting the settlement, praised the judge's ruling.

"Judge Holland's lived up to his reputation for being a jurist who's known for his deliberation of the cases before him."

Environmental activist Kiki Ott of Cordova also cheered the ruling.

"It's about time somebody called the shots like they really are," said Ott, a leader of the Oil Reform Alliance, an oil industry watchdog group formed after the spill.

The rejection should force the Legislature to look closer at the civil settlement, she said.

"I'm hoping that Judge Holland's decision gives the Legislature an adrenalin shot that carries them through the next nine days to just say 'no.'"

Ott said she would like to see an agreement that makes Exxon pay more and forces the parties to release spill-damage studies that have been kept secret.

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April 25, 1991

FOR YOUR INFORMATION
COURTESY OF NORM HIGBY

Editor, New York Times

Sir:

See attached

If Judge H. Russel Holland wants REAL deterrence by Exxon or any other oil company against repeating the incompetence that caused the Valdez spill, he will have to do more than reject the \$100 million criminal fine negotiated by Exxon and Washington. He will have to place under a court trust at least \$10 billion of Exxon assets; otherwise, Exxon will pay only criminal penalties and escape all civil damages for destroying a national treasure. By the time suits, delays, and negotiations are through, Exxon will not be ABLE to pay full civil damages, even though Chairman Lawrence Rawl promised America in 1989 that the company would do so.

Should Judge Holland fail to ensure Exxon assets sufficient to pay DOUBLE the currently estimated economic costs to restore Prince William Sound (\$5 billion, from the unreleased report paid for by taxpayers) are taken out of potential mismanagement by the perpetrator, when Exxon finally is called to account, it will not have the ability to pay. By the end of this decade, it and the rest of the U.S. oil industry will have been reduced to minor economic status as gasoline marketers, replaced by Saudi Arabia and Kuwait. Exxon may still have assets and earnings from non-U.S. markets, but collecting outside America would be a lawyer's life work. The scale of the damage rises still; our estimate in 1989 for Congress (Rep. James Scheuer of New York) that the TOTAL could reach \$50 billion is gradually being confirmed by time, and scientific evidence.

The aftermath of the Valdez still follows the path we outlined in an article published April 17, 1989 (CNN reports aired on the 19th), and in our article published in a Palo Alto, CA paper March 6, 1990). We advised Exxon to set aside some \$30 billion for the purpose in April, 1989; it has not, and Exxon shareholders will pay the price for this lack of judgement. Expect suits soon to make public the scientific reports paid for by the taxpayers; when they become public, Congress will be forced to ensure the ability to collect damages from Exxon should Judge Holland not do so.

Cordially, *Norman Higby*
Norman Higby, 966 Fremont, Menlo Park, CA 94025 (415) 327-6793

Outline for Legislation/Procedure to Replace Sand on Beaches of Prince William Sound, Alaska

Since March 24, 1989, Exxon USA has spent \$1 billion in various methods of cleaning the beaches in Prince William Sound, Alaska. Everything attempted to date, from hand scrubbing rocks to the use of high pressure steam hoses, has failed to remove oil imbedded in the beach sand. Lee Raymond, Exxon president, was quoted in the July 27, 1989 Wall Street Journal as indicating either steam hoses would have to use such high pressure that anything living in the beach would be killed, or Exxon would have to dig the beaches up.

This last, digging the beaches up, or more precisely, replacing the beach sand 100% is the only remaining option if the requirements of a U.S. Appeals Court in Washington, D.C. - reported July 17, 1989 - are to be met. This ruling overrode an existing Interior ruling, stating that those responsible for oil spills must complete "full restoration" of the damaged environment to its former condition regardless of cost. We must assume that the U.S. Supreme Court will affirm this ruling.

In a letter dated April 24, 1989, oil expert Norman Higby described exactly this necessity for Rep. James Scheuer (NY). Since then, Mr. Higby has calculated the volume of sand needed and estimated the costs. The costs were outlined for various members of Congress and the Administration, and covered in Higby's press release dated July 17, 1989. Copies of both are attached.

For 730 miles of beach, ten feet down, and an average of 150 feet from low to high tide, the volume of sand is roughly 700 MILLION cubic yards. The depth is arbitrary. Oil has been pushed into the sand by tidal action and inappropriate cleanup procedures. Little, if any, life can exist or return to polluted sand. If life is to return the sand must be replaced, or picked up, cleaned and returned. Higby believes this latter procedure would be more intrusive to the environment, and far less effective, than bringing in all new uncontaminated sand in which marine life might return, even given the tidal deposits.

Suitable sand is available in California, in the Santa Cruz mountains, and various grades FOB Menlo Park, CA. average some \$20/cubic yard. Thus, the cost of the sand can reach \$14 BILLION. All of which is a direct charge to Exxon USA.

A Suggested Procedure for the Cleanup

Higby and associates recognize that to replace the beaches in a desolate region where 20 foot swells are seen, and surface temperatures of minus 30° are frequent and where tidal action is constant, is a task to dwarf the building of the Panama and Suez Canals combined. Precedent does not apply here, which is why all cleanup efforts to date have proven inadequate or inappropriate. Perhaps the most direct expertise can come from Holland, which constantly repairs the dikes and levees to keep out the sea. Nations like Norway might offer their expertise.

This task is what is required if the irreplaceable environment of Alaska is to have a chance to recover from the damage brought by 11,000,000 gallons of crude oil. The decision must be made to either do it, or "let nature clean the Sound". Let us assume the decision is to do it.

Higby and his associates recommend consideration of a submersible balloon made of Kevlar, or Hypalon. These two tough, flexible materials can handle oil and salt water. As it may not be possible at any one time to clean more than a mile stretch of beach, this balloon should be expandable for two miles in length, to allow for workboats, and barges for both the new sand, and as a depository for the extracted old beach. The balloon should rest on the Sound floor, but expand to protect against the swells, thus it should be expandable to some 30 feet above the water line. It should be anchorable at both ends, to divert tidal action away from beach areas adjacent to the ends of the balloon. Higby and his associates are developing ways to combine and/or modify these materials for improved performance.

Higby recommends that all power equipment used be muffled, and as non-invasive as possible to the nonbeach ecosystem. The dredging ship(s) and sand barges employed within the balloon and doing the work should be self-contained, and emit no human waste or garbage. The workcrews should live as near as possible, perhaps on now moth-balled former U.S. Navy ships, reactivated for this purpose. The work should go on around the clock for as much of the year as weather permits. Let us assume an average of one mile of beach replaced per day, working 24 hours. The time frame for the work is thus five years.

The Cost

Higby acknowledges the actual cost will not be known until bids are solicited, the sand, balloon and other materials have been supplied, and the workboats, crews and support ships are in place. Given the historical cost of the Panama Canal, Higby calculates - for purposes of legislation/planning - a figure of \$40 million/mile. For the 730 miles, this gives a figure of \$29 BILLION, making the total \$43 billion.

Who should do the work?

Higby recommends the U.S. Corps of Engineers, either directly, or by using subcontractors, and specialty consultants. The Federal government should be responsible to see the work is done, consulting with the government of Alaska as appropriate. Neither the oil industry nor Exxon USA should do the work, nor should Alaska alone. It is in the "national interest" that the beaches be restored, and the entity to oversee the job should have a national constituency.

How to pay for the job

Exxon USA is fully liable for the costs to replace the beaches in Prince William Sound. It should be billed for the work by the Federal government, as incurred, but at the rate of \$1 billion per quarter, or \$4 billion annually through the calendar quarter of the year 2000. In a letter dated April 18, 1989, Higby advised Exxon USA Vice-President Joe McMillan that Exxon should place a minimum of \$30 billion, in cash, in a trust.

The immediate financing of the job must come from the Federal government. This can be in the form of increased budget deficits, special appropriations, or increasing the level of the Federal deficit - none of which is attractive and all dangerous to Gramm Rudman. Exxon should immediately place in a trust \$10 billion in cash or the equivalent, as a performance bond, and against which Washington can draw to offset expenses as incurred. This trust should be maintained at no less than one year's charges of \$4 billion.

While it may be possible that such items as the sand, or equipment necessary to the job might be donated or lent by "public-spirited" citizens and corporations, a "fair market value" should be

placed on such items. They would reduce the cash outflow of Washington, but Exxon should not be exempt from "paying" for them. The funds charged, but not expended, could be held in reserve as a performance bond for the future, or be used for related matters. One such would be the \$20 billion required to design and implement a viable safety procedure for handling oil in Alaska.

In following this procedure, Higby feels Washington will have the basis on which it can legally seize assets of Exxon USA should at any time Exxon fail to honor all financial obligations. In the future, oil markets will remain so volatile that Exxon may not survive, or be able to pay UNLESS such assets as are required for completion have been legally separated from its day to day business operations.

Respectfully Submitted,

Norman P. Higby, Jr.
Publisher
The Higby Report
Menlo Park, California
July 31, 1989

P.S. In a 400,000 gallon oil spill in early February, 1990 off Newport Beach/Huntington Beach in California, by 2/15/90 oil had been driven THREE FEET into the sand of the beaches. This footnote was added 2/15/90.

Anchorage Daily News

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Dare to open up

State should release oil spill studies

Gov. Wally Hickel styles himself as a bold and decisive executive. He takes pride in his willingness to take risks and take whatever heat comes his way. He showed all those qualities in daring to settle the state's oil spill lawsuits with Exxon. Having put that deal on the table, he now has a chance to make another bold move: Override his attorney general's objections and release the state's oil spill studies.

Releasing the studies definitely would be daring. The conventional wisdom, as articulated by Attorney General Charlie Cole, is that such a move is legally dangerous. Mr. Cole worries that releasing the studies will give aid and comfort to the state's courtroom enemies. Scores of parties have sued the state over the spill.

But that view of the state's interest is too narrow, adversarial and legalistic. Overriding it are two broader and compelling public interests. Other scientists trying to understand the spill want and need the studies. And the information could help many Alaskans harmed by the spill to get fair and just settlements from Exxon.

The administration may be forced to release many of the studies anyway. Under legal standards governing the exchange of information in lawsuits, the state may have to let the other side see them. Fishermen, businesses and native villages cannot be expected to go out and duplicate years of costly research on their own.

And the scientific studies are unlikely to contain any smoking guns. Science is almost never open and shut. The most common scientific conclusion is "more study needed."

But science cannot progress in secrecy. The world will never fully understand the spill if years of litigation keeps state studies buried in secrecy.

Gov. Hickel likes to refer to Alaska as an "owner state." He's usually referring to the fact that the state owns vast resources and land. But here it has a different twist: The state owns valuable information, and Alaskans want to see it. Showing them the spill studies may be legally a bit risky, but it's the right thing to do.

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How The Oil Spill Settlement Exploded

Alaska's attorney general says he refused to sign on to Exxon's plea agreement because it threatened the state's interests—but Justice's negotiating style didn't help.

On February 6, 1990, just over ten months after the Exxon oil spill in Prince William Sound, Alaska attorney general Douglas Baily hurried into the offices of Seattle's Preston, Thorgrimson, Ellis & Holman. He was late for a meeting with Justice Department officials. The key item on the agenda was one Baily had been hashing out with the feds since the previous October—an agreement for sharing scientific information collected on the spill.

But the meeting was far from routine. Soon after Baily arrived, he was taken aside by assistant attorney general Richard Stewart, chief of the Justice Department's 300-lawyer environment and natural resources division.

Although the two are no longer on speaking terms, they do agree on what happened next. "[Stewart] said he was negotiating a plea agreement with Exxon . . . that it had gone a long

BY WILLIAM HORNE

Oil spilling from the Exxon Valdez (left) into Prince William Sound

PHOTOGRAPH BY CAMPAGNELL/SON/DOUGLAS BARNES



Alaska's attorney general, Doug Baily: A former P.I. lawyer, ex-U.S. attorney, avid hunter, and Alaska resident since 1964

When Stewart first outlined the restoration agreement on February 6, "it all sounded pretty exciting," Baily recalls. He was not excited for long.

ways," Baily says. "And that the state had an opportunity to be part of the deal."

Stewart was prohibited by department policy from revealing the criminal side of the plea to Baily, but he explained that he wanted the state to sign off on the civil portion, which addressed restoration of the sound. That portion, Stewart told Baily, included \$500 million from Exxon for assessment studies and restoration projects—an amount over and above the \$2 billion Exxon had already paid for cleanup. He said he would disclose the other major terms of the restoration agreement to Baily and his staff if they promised to keep the terms and existence of the proposed plea a secret.

Baily agreed, with the caveat that he be permitted to inform Alaska's governor, Steve Cowper. They returned to the meeting and over the next 45 minutes Stewart ran through the terms of the restoration agreement for Baily and his two deputies. In addition to the \$500 million fund, \$50 million would be made available to the state for its spill response costs, and the United States would not file any civil suits against Exxon for four years.

Baily raised his concern that the federal government's four-year moratorium on civil suits would deprive the state of a strong partner in its pending litigation against Exxon, but Stewart assured him he would address that issue in the first written draft.

When Stewart had finished his presentation, there were smiles all around. Although the lawyers for the state were still digesting the details, they liked what they had heard. "It all sounded pretty exciting," Baily recalls.

Twenty-one tumultuous days later Stewart's meticulously negotiated plea agreement was in a shambles. Stewart will not confirm newspaper reports that Exxon required the state's participation and neither Exxon nor its lawyers will comment on the plea negotiations. But events suggest that Exxon insisted the state be on board, lest the company have to pay twice for natural resource restoration—once to the U.S. under the plea agreement and again to Alaska as a result of the state's civil suits.

The state's decision to reject the restoration agreement—a decision made on Baily's recommendation—torpedoed the criminal plea agreement. On February 27, minutes after a tension-filled meeting in Washington, D.C., between Stewart and Baily and their respective bosses, Attorney General Richard Thornburgh and Governor Cowper, Exxon was indicted by an Anchorage grand jury on federal criminal charges.

In an unusual epilogue the following day, Stewart and other peeved Justice officials made a number of pessimistic predictions to the press about their criminal case against Exxon and implied that the state had sabotaged its own interest.

In the short run, Baily, a politically savvy ex-U.S. attorney, has forced Justice to indict Exxon, a popular move in Alaska. However, at least for now, he has also closed the door on plea negotiations and with it the possibility of an early settlement and rapid infusion of desperately needed money from Exxon for restoration of the sound.

PHOTOGRAPH BY MARK KELLER

There is some evidence to support the Justice Department's claims that Baily broke his oath of secrecy by taking the state's case to the press. But if blame for the failed plea negotiations is to be apportioned, Justice must shoulder its fair share.

With only six months of on-the-job training, former Harvard Law professor Stewart was ill-equipped to step in as chief negotiator in a highly politicized case involving the nation's worst oil spill. Instead of negotiating a deal that Baily could in turn sell to the state, Stewart issued ultimatums and refused to budge on any of the major terms of the agreement. A more experienced negotiator might have found some way to keep Baily in the circle. Stewart never did.

FACE-OFF ON THE LAST FRONTIER

If Alaska is "The Last Frontier," as its license plates proclaim, then Doug Baily may be one of the last frontiersmen. A talkative 53-year-old with a tendency to flush crimson when agitated, Baily was born and raised in Evanston, Illinois, and first went to Alaska in 1957 for a summer job with the United States Geological Survey. He returned in 1960 to work on an oil exploration team for Pan American Petroleum Corporation and again in 1964, after he graduated from the University of Illinois law school, to get his first taste of public service as an assistant attorney general.

Five years later, at the age of 32, Baily was appointed U.S. attorney for the District of Alaska by President Richard Nixon. In 1971 he joined a small firm in Anchorage, developing over the next 15 years a thriving personal injury and commercial litigation practice. After a two-and-a-half-year adventure sailing a 38-foot boat from Portland, Maine, to San Diego, he did a brief stint as the state director of fisheries. Then, in February 1989, Baily, a lifelong Republican, was appointed by Democratic Governor Cowper to serve out the remaining 21 months of the previous attorney general's term. An avid hunter and bird-watcher, Baily lives in a cabin in the woods with his two black Labrador retrievers.

In the calm of his Juneau office, the April sun streaming through tall windows that frame distant snow-covered mountains, Baily wears a conservative charcoal gray suit. But his style—from the raised voice and dramatic gestures of an experienced personal injury lawyer to the ankle-high zip-up black boots he wears to work—stands in sharp contrast to the Ivy League finish of his counterpart at Justice, Richard Stewart.

Stewart, a tall, trim 50-year-old, played football at Yale before attending Oxford on a Rhodes scholarship and graduating from Harvard Law School in 1966. After clerking at the U.S. Supreme Court for Justice Potter Stewart, he worked at D.C.'s Covington & Burling for four years, then joined the Harvard Law School faculty in 1971. He received tenure in 1975.

The co-author of casebooks on administrative and environmental law, Stewart is a leading proponent of using market-based incentives to foster environmental protection, a view shared by the Environmental Defense Fund, on whose board he served as chairman. With the support of outgo-



Assistant attorney general Richard Stewart: New to Justice after 17 years as a "university bureaucrat"

"Anybody [who] suggests that [the Exxon plea agreement] was a sweetheart deal because we were babes in the woods couldn't be further from the truth," says Stewart.

ing solicitor general and fellow Harvard faculty member Charles Fried, as well as White House counsel C. Boyden Gray, whom Stewart says he has known from his early years in Washington. Stewart was appointed to Justice's top environmental post last August.

Some eight months after his appointment, Stewart seems exactly like what he is—a Harvard law professor in a corner office at Justice. His tone is classic classroom condescension, peppered with "you see," "so for instance," and "obviously" that serve to emphasize his academic roots. "He's haughty," says Baily, and that adjective seems apt. But Stewart could hardly be expected to shed in six months the skin it took him 17 years to grow, and after Baily's at times rambling, hyperbolic discourse on the failed negotiations, Stewart seems refreshingly precise.

Stewart candidly admits that he hasn't practiced much law for the past 17 years. "I was sort of a university bureaucrat," he says with a small laugh. Nonetheless, he took it upon himself personally to negotiate a plea with Exxon. "I thought that this was a major case and that if an agreement could be reached on terms satisfactory to the government, then it could save a long period of litigation and provide the funds necessary to clean up the environment today," he says.

Sitting across the table for Exxon was some of the highest paid legal talent in Washington. Chief among them was white-collar crime specialist Charles "Chuck" Ruff of Covington & Burling, a former Watergate prosecutor and U.S. attorney for the District of Columbia.

Next to Ruff was a familiar face to Stewart—Covington partner E. Edward Bruce. Bruce and Stewart clerked together and joined Covington the same year. As for any implication of undue coziness between the opposing lawyers, "it was a professional relationship," Stewart says.

Stewart rejects the suggestion that Justice was put at a disadvantage by his inexperience. "We had a group of six or seven people, including some of the very top people in environmental crimes and enforcement, working on it," he says. "Anybody [who] suggests that this was a sweetheart deal because we were babes in the woods couldn't be further from the truth."

According to Justice Department spokesman David Runkel, a criminal plea agreement was nearly concluded as early as last October. Shortly afterward Exxon approached Justice with a restoration plan, says Stewart.

Stewart now asserts that he brought the state into the negotiations because the state and federal government are trustees for Alaska's natural resources. (The trustees of Alaska include the United States Departments of Interior and Agriculture and a unit of Commerce, as well as the Alaska Department of Fish and Game.) "If we're going to have a plan for spending on [the sound] and deciding what to do, it ought to be done on a joint basis," he says.

Stewart declines to say whether Exxon made the state's participation in the restoration agreement a prerequisite to signing the criminal plea. He is willing to speak to this reporter on the record about this matter only as all law professors do—in hypotheticals: "Any litigant facing multiple claims

from multiple parties for the same event . . . (would) want everything in one proceeding."

It appears that in either case, whether real or hypothetical, Stewart had no choice but to cut the state into the deal on February 6. He faxed Baily a draft of the agreement six days later.

SNOOKERED IN

The upbeat mood of the February 6 meeting dissipated, says Baily, as he and his staff reviewed the proposed agreement on February 12. He claims the terms in the hard copy were far less attractive than those Stewart had described. "[Stewart] held that out to us to get us to step into the web and get our nose under the tent," Baily says. "They snookered us in."

Although the state of Alaska and the Justice Department still refuse to release drafts of the restoration agreement to the public, *The American Lawyer* has obtained a copy dated February 15, 1990, the second of three drafts circulated by Justice. According to Baily, the key provisions of that draft do not vary significantly from the final draft the state received, dated February 21, 1990. Among those provisions:

Baily argued—and continues to argue—that the \$550 million figure touted by Justice was significantly diluted by the way the deal was structured.

• Within 30 days of entering a plea in federal court—the terms of which have never been made public and to which only Justice and Exxon were privy—Exxon would pay \$150 million into a fund to be used for assessment and restoration projects approved by the trustees of Alaska and an administrator appointed by the White House. After the first \$150 million was depleted, another \$400 million would be deposited in installments within three to seven years as additional projects were approved.

• Exxon would credit the amount it paid into the fund against its civil liability to the U.S. and Alaska for natural resources damages arising from the spill. The maximum amount of the credit would be \$550 million plus any interest earned on the fund during the course of the agreement.

• Payments from the first \$150 million would not be subject to "objection, challenge, or judicial review." Beyond the first \$150 million Exxon could appeal to a federal district court. The company would have to prove that the fund's administrator had abused his discretion or acted in an "arbitrary and capricious" manner in order to overturn his decision.

• Exxon would receive credits against the \$550 million for payments it made to the state and federal government for certain nonrestoration costs, including \$50 million for re-

sponse costs—such as mobilizing government personnel to respond to the spill. Exxon could also receive a credit of up to \$25 million for amounts expended on "bioremediation," the spraying of fouled beaches with a fertilizer that stimulates the action of oil-eating bacteria.

• The United States would agree, for a period of four years from the date of the agreement, to refrain from filing any civil action against Exxon to recover "restoration costs, damages, or for other relief relating to the injured natural resources," unless Exxon sued the U.S. during that time period.

• The parties to the agreement were Exxon Corporation and its shipping subsidiary, Exxon Shipping Company, and the United States. However, in the February 15 version, paragraphs 24 and 44 indicated that the state would be bound by the agreement. Paragraph 24, titled "Relationship with Alaska," read only, "to be inserted." Paragraph 44, the last paragraph of the agreement, stated, "[Paragraph to be inserted to specify to which provisions Alaska is bound]." Baily confirms that the final February 21 draft in effect added the words "Alaska and" to references to

Justice and Exxon was significantly diluted by the way the deal was structured.

First, says Baily, the \$50 million Stewart had verbally promised to the state up front had been transformed in the written draft to a \$50 million credit to Exxon for response costs the company had already agreed to pay to the state. In other words, it was worth nothing. According to Baily, Exxon had agreed shortly after the spill to reimburse Alaska for its response costs, as it was required to do under state law. To create a credit for that amount under another agreement "was smoke and mirrors," Baily says.

Moreover, the draft did not require Exxon to pay response costs under the agreement; the credit applied only if the company chose to make the payments. "Exxon had no obligation to make one penny of that payment," Baily says bitterly.

Stewart concedes he may have left Baily with a false impression about the \$50 million at the February 6 meeting. "I don't think we had nailed it down at the time," he says. "Exxon hadn't signed off."

He also admits that although he knew the state had a legitimate claim to response costs, he had not focused on it. When he realized the strength of the state's claim shortly after the first written draft was faxed to Juneau, he says, he tried to make the provision more appealing to the state by broadening the definition of response costs to cover categories not covered under state law.

Baily responds that by not requiring Exxon to pay those costs and by permitting the credit to apply to both the state and the federal government, the provision, even as broadened, was worthless to Alaska—and a far cry from the no-strings payment he says Stewart dangled in front of him at the February 6 meeting.

Baily objected to the \$25 million bioremediation credit to Exxon on similar grounds. Baily says that while some federal agencies consider bioremediation to be part of restoration, the state always considered it "cleanup"—and again, Exxon was already required by state statutes to complete the cleanup.

Stewart inserted language to the effect that bioremediation would count toward the credit only if it "provides significant restoration benefits"—a move that did not address the state's concerns.

Baily's third objection was to Exxon's oversight of expenditures from the fund. Baily concedes that the \$150 million in "early money" was a substantial benefit and that it was possible Exxon would pay out the rest of the \$550 million. But he says he had to consider the worst possible case: that Exxon would "obstruct, obstruct, obstruct," and that at the end of the seven years the administrators had approved less than \$550 million worth of projects, Exxon would keep the difference.

Stewart counters that such a scenario would have been very difficult because Exxon had to prove "arbitrary and capricious" behavior on the part of the fund's administrator. "It is a very deferential standard that doesn't give rise to much litigation," says Stewart, the former Byrne Professor of Administrative Law at Harvard. "It's difficult for the challenger

"United States" in the agreement, except with respect to the moratorium and certain discovery provisions.

Baily and Stewart agree that while the mechanics of binding the state had not been worked out, the intent, as clarified in the first week of negotiations, was for Alaska to be a party to the agreement.

Exxon would also be bound by its secret criminal plea. Justice officials told a reporter for *The New York Times* on February 27 that the plea included "about \$200 million" in criminal fines. Stewart will not confirm that figure, but does confirm statements attributed to him by the Associated Press that Justice would require "a guilty plea to serious charges" and seek "very substantial . . . unprecedented" criminal fines for this type of environmental crime. (The largest fine to date is a 1976 judgment of \$13 million against the company then known as Allied Chemical Company for polluting the James River in Virginia.)

THE DOLLARS DISPUTE: "SMOKE AND MIRRORS"?

Despite Baily's later complaints that he was shut out of the criminal plea talks, he was primarily concerned at the time, he says, with the terms of the restoration agreement. Baily argued—and continues to argue—that the \$550 million figure touted by Jus-

to persuade the court, at least if the agency has done a halfway reasonable job." He estimates that the longest Exxon could effectively block disbursement, "assuming the administrative record was in order," was 60 days.

Stewart views the possibility of less than \$550 million of projects being approved as farfetched: "Federal agencies are not usually shy about spending money."

The credits, installment payments, and Exxon oversight certainly diluted the value of the deal from the state's perspective, and Stewart's adjustments on the days following February 12 appear to have been negligible. Even he recognizes that he never "fully addressed" Baily's objections to the credits, particularly for response costs.

But \$150 million with a good chance at another \$400 million was not an insubstantial deal, and Baily accepted those bitter pills for the time being. It was during discussions on the dilution of the \$550 million by \$75 million in what Baily considered false credits, however, that he first alerted Stewart to one of his overriding concerns—the response of the state's voters to a deal with Exxon. "I said,

Baily likes accepting the moratorium to losing a battle: "It's as if you're entering into armed hostilities with a serious opponent. Three armies—the state, the federal government, and the civil plaintiffs—each occupy a different part of the line. You've been planning (the attack) for five months. Then, the night before, one of those armies says, 'We're not disbanding, but we're just not going to fire a shot for four years.'"

"I think Stewart called [the moratorium] 'nominal forbearance of little practical consequence,'" Baily continues. "I call it total capitulation."

Stewart says he is still baffled by Baily's objections. "I thought it was a nonissue," he says. "I just don't understand the substance."

According to Stewart, the six-year statute of limitations gave Justice two years after the moratorium expired to file as many civil suits as it desired. "The whole logic behind the agreement... was that Exxon would commit up to five hundred fifty million dollars, and if more were necessary we would bring our civil suits," says an exasperated Stewart. "We were going to go ahead with [discovery]... and restoration plans... and then be prepared if necessary to

ments he mentions, only one—his "fiddling with the definition of response costs"—made it into the second draft, which the state received on February 15. The third and final draft included a provision allowing the U.S. to file a civil complaint if a court deemed its participation indispensable to the state's case and federal interests were threatened. Baily discounts the change as insignificant. In any event, by the time that draft arrived, negotiations between the two men had effectively shut down.

The turning point came on Wednesday, February 14, when the veil of secrecy surrounding the plea negotiations was ripped away by an article on the plea that appeared in *The Wall Street Journal*. For Baily, the press coverage heightened his need to deliver something of obvious value to the governor and the voters.

Unfortunately, the publicity had a different effect on Stewart. Rather than searching harder for the carrots Baily needed to bring the state in, Stewart slipped a one-week deadline on the state. From Baily's perspective Stewart was shoving a "done deal" down the state's throat. The result was predictable.

"RULE OF SILENCE"

The February 14 story in the *Journal* quoted civil plaintiff Rick Steiner, a Cordova, Alaska, fisherman and environmentalist, as saying that Exxon Shipping president Frank Iruosi had told him a plea was in the works. The article also revealed that "separately, the state and federal government are negotiating a memo agreement that would provide for a \$500 million environmental restoration fund bankrolled by Exxon."

The report raised a furor in the press and among the hundreds of lawyers representing civil plaintiffs and environmental groups in some 150 suits filed against Exxon last year. They were concerned that a secret plea arrangement, particularly one involving a civil restoration fund, might preempt or diminish their recoveries. Says Kenneth Adams, a partner at D.C.'s 165-lawyer Dickstein, Shapiro & Morin and a member of the seven-lawyer executive committee coordinating the private plaintiff actions: "It's clear Exxon was hoping to use... the restoration fund... to offset damages they're going to be required to pay to fishermen, the state, as well as the federal government."

Stewart dismisses the concerns of the contingent-fee lawyers as self-interested. Baily, however, says he sympathized with the worries of his former colleagues in the plaintiffs bar over the effect of the plea on the civil litigation.

On Thursday, February 15, Stewart issued his deadline to Baily. Stewart said the state had until the following Thursday night to sign on to the agreement, because the Anchorage grand jury would be coming in the following Monday, February 26.

Baily was furious. He says he did not understand why the grand jury date was driving the schedule. As a former U.S. attorney, he knew grand juries could be called off or postponed. Why not postpone the grand jury meeting until the negotiations were either concluded or exhausted?

"[The grand jury] is called in on a regular schedule and there has to be a very good reason to call them off,"

Stewart says he is baffled by Baily's objections to the U.S. agreement not to sue Exxon for four years: "I thought it was a nonissue."

"Dick, I can't represent [the deal] as something it isn't because we're in a public forum here," says Baily. "If it's only four hundred seventy-five million dollars, fine, but let's say that."

A seasoned negotiator might have realized the significance of Baily's comment, that any deal would have to be acceptable in Alaska. Indeed, Baily says Stewart seemed to agree with him at the time. But later events indicate that Stewart either underestimated the impact of politics on the state's officials or simply did not know how to accommodate their political concerns.

"THREE ARMIES"

The most important and controversial term to which Baily objected was the four-year moratorium on suits brought by the federal government against Exxon. As a former litigator, Baily says he was concerned with the practical effect of losing a "major, well-financed, widely staffed law firm, particularly when it has 83 branches around the country." Baily concedes that the state and federal government never agreed to file a joint case—Alaska filed suit against Exxon in August 1989—but says he anticipated that the courts would insist, as they have in the private Exxon actions, on consolidating state and federal discovery, which would result in tremendous savings for the state.

file civil actions for additional recoveries if they were needed. And everybody knew that."

Stewart now says that the state's "concrete" concerns were addressed by paragraph 34 of the agreement, which provides that "nothing in this agreement shall limit... the right of the parties to take discovery... in accordance with rule 27 of the Federal Rules of Civil Procedure."

The intent behind that paragraph, says Stewart, was to preserve full discovery rights for the federal government, "as if there were an action." However, according to Professor Geoffrey Hazard of Yale Law School, rule 27 allows depositions to be taken by parties contemplating litigation only in unusual cases, typically when witnesses are sick or dying, and then only by court order. Such major litigation tools as interrogatories and document production do not fall within what Hazard calls "a very narrow and ancient rule."

Even if the rule did preserve substantial discovery rights, Stewart admits that he never offered it as a mitigating factor for Baily to consider—and with good reason. "We have discovery rights," says Baily. "We don't need the feds' discovery rights. We need them in there as litigants."

Stewart insists he made substantial concessions to Baily over the week of February 12, but of the three adjust-

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Plaintiffs lawyer Kenneth Adams of Washington, D.C.'s Dickstein, Shapiro: Stonewalled at Justice

Stewart asserts. "Part of the problem with this grand jury is that some of them have to start three days in advance to get there. So it was already set in motion."

The real reason Stewart imposed the strict deadline appears to be that his boss told him to. According to reports published the week the plea unraveled, Thornburgh had issued his own ultimatum to Stewart: to settle or indict when the grand jury came in. Baily confirms that Stewart said he was delivering the deadline at Thornburgh's behest.

That scenario is consistent with Thornburgh's well-known mania for avoiding or plugging leaks. The *Journal* story appeared on February 11; the deadline was delivered the next day. Stewart refuses to comment on internal communications at Justice, but concedes that after three months of negotiations with Exxon, "the department [felt] there was just no reason to postpone the matter further."

For the state, the one-week deadline was unacceptable. Baily started looking for allies to help the state obtain an extension or stop the plea from going through.

On Saturday morning, February 17, Baily returned a call from plaintiffs lawyer Adams. After reading of the plea negotiations that Wednesday, Adams and other plaintiffs lawyers made informal inquiries at Justice and the White House only to meet "a

Says Adams: "It's clear Exxon was hoping to use . . . the restoration fund . . . to offset damages they're going to be required to pay."

stone wall," he says. He called Baily.

Baily, still bound by his oath of secrecy to Stewart, says he declined to comment on the plea agreement. "Then I asked him if he would stand still if he were in my shoes," recalls Adams. "He said . . . he wouldn't. I got the sense from him that I didn't have a lot of time."

The agreement explicitly provides that its terms would have no effect on private plaintiffs' actions. Adams, however, had no way of knowing that.

On Monday, February 19, President's Day, Adams fired off a letter to Stewart seeking assurances that the plea agreement was limited to settlement of Exxon's criminal liability and would not affect private plaintiffs'

pending damages claims. He received no answer.

In a second letter to Stewart the next morning Adams cited a federal regulation that requires Justice to provide 30 days' notice and a public comment period prior to settling civil cases "of this sort." He followed up with a phone call.

Stewart returned Adams's call that afternoon. "He said the matter was being treated entirely as a criminal matter, and there would be no release of civil claims," says Adams. Stewart declined to give Adams any assurances that the plea would be held in open court, saying only that Justice would "follow normal procedures," and that "nothing would happen today

or tomorrow." But Adams says he was still concerned that the settlement might "overlap with the private portion" of the civil litigation.

That same day Baily opened his assault on the pact, repeating to Stewart the objections he had raised the week before. Their conversations became heated. Stewart was caught off guard by the vigor of Baily's attack and frustrated with Baily's posture. "He never had specific suggestions," Stewart now says of Baily. "He just raised concerns and concerns and concerns and concerns." Baily, in turn, resented the time pressure of the deadline and what he perceived as Stewart's inflexibility.

With time running out—"We were getting antsy," Baily remarks—Baily went to the press later that day, expressing his discomfort with the compressed time frame and obliquely condemning the four-year moratorium by decrying the agreement's "major adverse implications" for the pending civil litigation.

Stewart, in his typically understated manner, says he was "very unhappy" when he read Baily's comment in the next day's *Wall Street Journal*. "We'd been working for months together and it seemed to me if there were problems then . . . the best way to handle them was to talk about them, not give it to the press," he complains.

Baily defends his action, claiming that his February 20 comments did not constitute a breach of his oath of secrecy. "I didn't discuss the negotiations or terms publicly until I was satisfied *The Wall Street Journal* had [the restoration agreement]," he says.

The *Journal* received a copy of the agreement by fax. But that copy arrived under peculiar circumstances. Baily says that on February 21 a state legislator told him that the *Journal* had received the agreement. Baily called the *Journal* reporters in Los Angeles, Washington, and New York who had been covering the plea to see if they had the text. None did.

The next day he received a call from reporter Allanna Sullivan, who was covering the story for the *Journal* in New York. When she arrived at work that morning, she found a fax of the agreement on her desk.

Baily denies having sent the agreement himself and says he doubts it came from any state official. Justice's Runkel is not convinced. "A draft of it was handed out by Alaskan officials," he says flatly. "It didn't come from Exxon or Justice."

Justice, bound by Thornburgh's "rule of silence," as Stewart calls it, did not respond to Baily's and the other state officials' attacks in the press over the next few days. "We're in a very difficult position," explains Stewart. "The negotiations are not admissible as evidence in court, and just as a matter of sound practice, we're not going to talk about the substance of the discussions because people are going to be reluctant to come talk to us."

"Of course, it's very frustrating," he admits with a wry grin. "But those are just the rules we happen to be playing with."

In addition to the press and Baily, the civil plaintiffs and federal legislators began pressuring Stewart to extend the deadline or give them certain assurances. On February 21 the civil plaintiffs, still concerned, as Adams wrote to Stewart, with "the apparent

haste of the Justice Department to conclude what looks for all the world like a sweetheart deal," decided to file an order to show cause in Anchorage district court seeking assurance that any plea agreement would be entered in public and that the civil plaintiffs would have the opportunity to comment before the judge made a decision on the plea.

The court proceeding on February 22 was anticlimactic. Anchorage federal district judge H. Russel Holland refused to grant the order but made it clear he expected any plea agreement to be entered in open court in the usual manner.

Meanwhile, on February 20, Representative George Miller, the California Democrat who chairs the House Interior Committee's subcommittee on water, power, and offshore energy resources, which was then holding hearings on the spill, demanded a briefing from Thornburgh.

Miller, says one of his aides, was told only that "nothing was finalized yet." The department's rule of silence misfired. On February 22 Miller issued a press release that blasted Justice for bargaining away the public's interest "in the back rooms of the Justice Department and in the corporate suites of Exxon."

Ironically, both Adams and Miller were responding to exaggerated and somewhat vague descriptions in the press of the agreement's potential effect on civil litigation.

"PIG IN A POKE"

By the night of Wednesday, February 21, Stewart and Bailly say they realized they were beyond the point of no return. Bailly was complaining to every newspaper reporter who would listen about the Justice Department's treatment of the state. "We are being asked to accept a pig in a poke under unreasonably short time constraints," Bailly told *The New York Times*, "and that pig smells awfully bad."

Stewart was giving Bailly plenty of ammunition. As late as Wednesday night, 24 hours before the final deadline, the two paragraphs spelling out the state's responsibilities were still blank. According to Bailly, he had none home by the time the last draft, including the missing paragraphs, arrived by fax at 7 p.m. Alaska time. The provisions were not momentous—they stated that virtually all of the terms of the agreement applied to the state, something Bailly says he already knew.

When Bailly called the next day, Stewart repeated that "the deadline is absolutely tonight." But during the conversation, Bailly recalls, he was given a note from a state legislator who had just spoken with Alaska's Senator Ted Stevens. The message, says Bailly, was that "Stevens had just spoken with [Thornburgh], who had assured him no time constraints existed." According to Bailly, when he mentioned Thornburgh's response, Stewart replied, "Oh, the attorney general thinks these calls from senators are such an inconvenience."

"I said something to the effect that the attorney general was just putting Stevens off," admits Stewart. "It's difficult when you're trying to run a railroad and senators are asking questions."

For Bailly, this conversation was the last straw. The news from Senator Stevens seemed to confirm his suspi-

cions that Stewart was setting an arbitrary deadline.

As it turned out, the note from the legislator was garbled. In an interview with *The American Lawyer*, Senator Stevens explains that Thornburgh told him that "the grand jury was going forward. I told the state legislator there wasn't a time problem because even after the indictment, the plea bargain could continue."

Bailly recommended that Governor Cowper reject the agreement. The governor agreed. Bailly then drafted and sent what he refers to as his "no letter" to Stewart, stating that "we reject the ultimatum that we must accept (the plea agreement) in its present form by this date." The state's decision to reject the agreement, according to the two-and-a-half-page single-spaced letter, was based both on "the manner in which it has been presented and on its unacceptable content."

Bailly continues to insist that he would have been "willing to put inside" Stewart's "repulsive" manner of negotiating if the substance of the restoration agreement had been acceptable.

The text of the letter, however, suggests that Bailly's rejection was prompted as much by Alaskan politics

"The frustration here was enormous because there was so much misinformation," says Justice's Runkel. "When you plead guilty to something, that's a successful criminal prosecution. When you have so many reporters making the same mistake, I assume you have somebody out there misleading them."

On February 23, the day after the state formally rejected the restoration agreement, the Justice Department finally attempted to defend itself publicly and clear up at least one major misconception—that the agreement might have a detrimental effect on the civil cases filed by the private plaintiffs. Runkel issued a confusing half-page press release that included a jab at "comments which have been reported by persons who appear to have little grasp of what is actually involved in this case."

Says Stewart: "Maybe this is a self-inflicted wound, this rule of silence. Justice couldn't win; the department got into even hotter water when they broke the rule of silence six days later."

Concerned that Stewart might fulfill a threat he made to cut the state out of funds Exxon paid for scientific assessment studies if the plea went through, Bailly flew to D.C. to join the

good deal less pleased when he read the papers two days later. On March 1 *The New York Times* quoted Justice "officials" claiming that "the government faces a risky criminal trial based on untested legal principles." The *Times* then quoted Stewart by name as saying, "It is going to be a hard-fought case presenting some novel issues." The article pinned the failure of the negotiations on the state, since "the company had insisted that Alaska officials agree to the final settlement."

The department quickly retracted Stewart's statements two days later, telling the *Journal* "this is not our opinion" and asserting that Stewart's remarks were meant to be "informational."

Says Bailly: "If I'd done that as a U.S. attorney, I'd expect to be seriously reprimanded by the Department of Justice."

"I think there was a slight misrepresentation," Stewart responds. "I think we have a strong case. The uncertainty lies in the level of sanctions... in the use of the Alternative Fines Act." The maximum fines that could be imposed if Exxon were convicted on all ten counts of the indictment is \$3.2 million. Invoking the Alternative Fines Act allows the government to seek two times the estimated \$350 million spent so far by the federal and state governments on cleanup costs and by Exxon on private claims.

According to Stewart, the act has been used successfully only once in an environmental case, in 1989, when Ashland Oil Company was fined \$2.25 million. "We're seeking very much more than that in this case and... what counts as relevant pecuniary loss... is up to the discretion of the judge," he says.

Perhaps more relevant from the state's perspective is that the state might not get a penny of the penalties imposed, says Stewart. Was Bailly aware of that possibility? "I think he must be aware of it," says Stewart. "He's a former U.S. attorney."

Bailly concedes that the state might not benefit from the federal government's criminal prosecution of Exxon. However, he says Justice never informed him that the criminal case was weak.

Moreover, he says he was certainly not aware that the criminal plea agreement would fail if the state did not sign on to the restoration provisions. "We did not get into the negotiations to sabotage the plea agreement," he asserts. "We made our decision based on the information we had."

Bailly says he remains convinced that he did the right thing and is "just happy I wasn't in the impact zone," a reference to the way Stewart was bombarded by the press and other litigants.

Meanwhile, Exxon has refused to make further payments for assessment studies of Prince William Sound, and state and federal funds for the purpose have not yet materialized. Exxon's criminal trial has been postponed indefinitely because of the novel legal issues involved.

Some Alaskans think it's time to head back to the bargaining table. "I think a comprehensive settlement would be in the best interests of all concerned," says Senator Stevens. "This is a classic case for plea bargaining."

After the indictment Justice officials told the press that "the government faces a risky criminal trial based on untested legal principles."

and Stewart's imperious manner at by Bailly's displeasure with the terms. Much of the language is political bombast, a transparent attempt to please disgruntled Alaskan constituents, who by and large still think "Exxon is a dirty word," according to one Anchorage lawyer.

One sample: "The abandonment by the United States of its obligations is of particular concern to the state of Alaska which... must of necessity step in to prosecute claims... the United States will be unable to pursue in a timely manner. While we do not seek to assume that sole responsibility, neither will we shrink from it."

"SO MUCH MISINFORMATION"

After Bailly rejected the restoration agreement on February 22 he and the governor's spokesman, David Ramsey, began granting interviews to explain the state's decision and blast the Justice Department. At times they inaccurately characterized the terms and effect of the agreement. In an article in *The Washington Post* on February 23, for example, Ramsey was quoted as saying that Exxon would pay only "\$100 million with the rest over the next seven to ten years."

To make matters worse, several reporters incorrectly reported that Exxon would "avoid criminal prosecution" under the plea agreement.

governor for a hastily called meeting with Justice officials, including Thornburgh and Stewart. The February 27 gathering was tense. Bailly and Cowper did most of the talking, explaining their objections to the agreement and their dissatisfaction with Stewart's negotiating posture.

"It was a very stressful time for both of us," says Bailly. "I pled my case to [Stewart's] boss very aggressively. We'd attacked his handiwork and the press had done even more—that's the making of hard feelings."

The Justice officials were politely noncommittal, says Bailly. The reason became apparent a half hour later when Thornburgh and Stewart announced at a press conference that Exxon had been indicted on ten criminal counts. These included two felony counts: failure to ensure that the "wheelhouse is constantly manned by competent persons," and engaging a crew member known to be incapable of performing his duties; and three misdemeanors: unlawful discharge of oil into navigable waters, the unlawful discharge of refuse from a ship, and killing migratory birds without a permit. Stewart said that Justice decided to seek the indictment after Exxon rejected the plea agreement for reasons that he declined to discuss.

Bailly says he was surprised but pleased. He was more surprised and a

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A4 WEDNESDAY, APRIL 10, 1991

THE WASHINGTON POST

Oil Officials Ignored Cleanup Deficiencies, Hill Probe Finds

By John Lancaster
Washington Post Staff Writer

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

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

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

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

An Aleyeska spokeswoman acknowledged yesterday that the consortium had not been adequately prepared to cope with the Exxon Valdez spill but said Alaska officials

were well aware of the deficiencies and denied any attempt to deceive the public. "The industry and the state did not plan for [a spill of that] magnitude," said the spokeswoman, Marnie Isaacs.

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

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

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

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

A Justice Department spokeswoman said yesterday that government attorneys were "studying"

Miller's findings but declined further comment.

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

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

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

But in April 1983, according to documents obtained by the Interior subcommittee staff, Theo L. Polasek, Aleyeska's vice president of op-

erations, offered this warning to consortium operators: "Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement."

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

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

Isaacs, the Aleyeska spokeswoman, said the spill contingency plan acknowledged the shortcomings in Aleyeska's cleanup capabilities and that the Alaska Department of Environmental Conservation had approved it anyway. Moreover, she denied Miller's suggestion that the consortium "secretly" reneged on commitments, asserting that statements attributed to consortium officials were nothing more than proposals to modify the contingency plan when it came up for renewal in

1990. "It's absolutely incorrect to characterize these discussions as modifying the [existing] plan," she said.

Larger Environmental Toll Revealed in U.S. Report

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

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

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

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

—Michael Weiskopf

BUSINESS

April 10, 1990
Los Angeles Times

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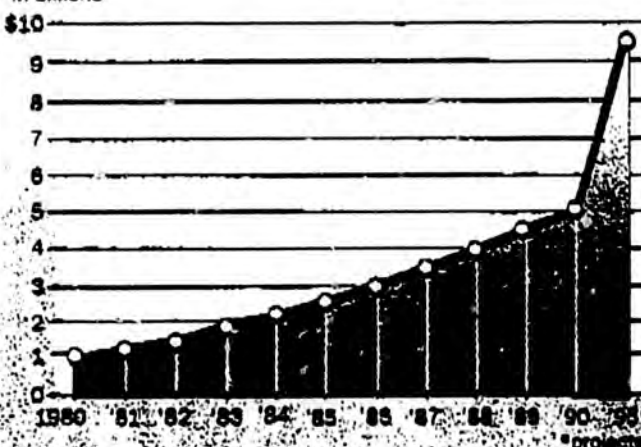
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TV SYNDICATION MARKET SOARS

The TV program syndication market, one of the fastest-growing and most lucrative areas of the television business, is projected to reach \$7.5 billion in 1995—roughly the size of the combined advertising revenues of ABC, CBS and NBC. The syndication market includes everything from the sale of reruns of old network shows (the most profitable segment) and the sale of so-called first-run shows such as "Wheel of Fortune" and "Oprah Winfrey" to local TV stations. In addition, the market now encompasses the sale of programs to cable TV networks and overseas broadcasters.

In billions



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

Los Angeles Times

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

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

Alaska Oil Co-op Accused of Plan to Ignore Spills

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

By PATRICK LEE
TIMES STAFF WRITER

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

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

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

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

Please see SPILL, D3

Greenspan Yields in Spat With Fed

SPILL: Exxon Settlement Being Reviewed

Continued from D1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Boeing Parts Center

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

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

COMPUTER

Continued from D4

it as just another confusing to a crowded alphabet soup.

"A lot of people would like a lifesaver tossed from the ship," said Spencer Layton, vice president for business development at software development land International. "This either foam or lead, and it landed yet."

Microsoft's new operating system, OS/2 3.0, is its answer to a gradual encroachment of Unix on the PC turf dominated by software's far less powerful DOS operating system. The new would be able to run all software written for DOS or the Windows enhancement and feature much better networking capabilities and the ability to perform several tasks at once.

By developing a version of Mips chip, which is based on a speedy new design concept as reduced instruction set computing (RISC), Microsoft is enjoining exclusive allegiance to Intel and giving a potentially long-term boost to the Mips Sun, IBM and Hewlett-Packard have powerful RISC-based systems that run versions of Unix are considered by Microsoft Compaq to be long-term competitive threats.

The new ACE-compatible hardware and software is supposed to be ready for shipment to system developers by the end of the year with commercial products coming sometime next year. Other analysts, however, are skeptical that the Microsoft operating system would be ready soon.

Ronde

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Congressman Urges Revision Of Exxon Pact

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

By ALLANNA SULLIVAN

Staff Reporter of THE WALL STREET JOURNAL

Allegations that oil companies had agreed before the 1969 Valdez spill not to attempt a complete cleanup of spills in Prince William Sound could force revisions in—or even scuttle—Exxon Corp.'s proposed settlement of damages stemming from the giant Alaskan oil spill.

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

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

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

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

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

Business and Finance
DAG is expected to announce it is buying part of the business. Valdez settlement is being opposed. Exxon's proposed settlement is being opposed. A federal report indicates that the spill may be more extensive than first believed. (Source: Reuters) — not bar TV return business. — best significant result.

What's News—

World-Wide

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

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

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

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WEDNESDAY, APRIL 10, 1991

EASTMAN BENTON

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

NYT 1-A

By KEITH SCHNEIDER

4/10/91

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

The Government said that populations of sea otters, harbor seals, bald eagles, murres, sea ducks, clams and crabs plummeted after the Exxon Valdez ran aground and spilled nearly 11

million gallons of oil into the Sound. And it said it did not expect the animal populations to recover for years.

The enormous toll was detailed in the Sound, catalogued in an 18-page summary of 38 scientific studies, also includes losses of killer whales, extensive reproductive defects in salmon and herring fry, and widespread and lingering damage to sea grasses and other plants in tidal zones along 1,300 miles of the western boundary of the Sound and down the coast in the Gulf of Alaska, which were coated by oil for months.

Better Left Alone

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

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

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

Continued on Page A1A, Column 4

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

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

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

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

Shoreline Was Hard Hit

The Government's study said that 300,000 to 500,000 sea birds died after the spill, and that colonies of one of the most abundant species, the common and thick-billed murres, lost 90 to 95 percent of breeding birds. Because the murres colonies live on islands where hydrocarbons and chemicals lingering from the spill are still killing them, and because murres instinctively return to their same breeding areas, scientists fear these colonies could be entirely wiped out.

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

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

Mammals found in oiled areas were smaller than mammals in unaffected bays, a study said. Scientists also found clams and other shellfish absorbed hydrocarbons from the oil and pose a continuing source of poison to sea otters and other species that forage in the tidal zones. A study also found that pollock, caught 800 miles from Bligh Reef, had elevated levels of hydrocarbons in their bile, evidence that the sea and food supply was affected at great distances from the spill.

Perhaps the most surprising finding was made by the National Oceanic and

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

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

The damage to Prince William Sound will last many years.

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

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

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

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

May Stir New Concerns

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

Mr. Miller today questioned the terms of the settlement, appearing in a letter to Federal District Court judges in Washington and Alaska that the Justice Department had acted improperly in exempting the Alyeska Pipeline Service Company from prosecution and Federal or state damage claims. The protection for Alyeska, which is owned by Exxon and seven other oil companies, was part of the criminal plea agreement that the Justice Department reached with Exxon March 12.

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

But, Mr. Miller told the judges, Alyeska had told the State of Alaska in 1988 that it had a spill contingency plan that it was ready to respond to any spill with state-of-the-art equipment and techniques. The Coast Guard and other agencies have previously criticized Alyeska's performance.