

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1947 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL. . 1991-92 164

ACE 447608

Valdez skipper faces Coast Guard hearing

— LONG BEACH —

Joseph Hazelwood, who was acquitted four months ago of most criminal charges in the nation's worst oil spill, faces a Coast Guard hearing that could strip him of his ill-fated ship's master.

In a hearing scheduled to start today, an administrative law judge will decide whether the former Exxon Valdez skipper was guilty of negligence and should forfeit his license.



ZELWOOD: Wants job back.

Exxon captain acquitted of major charges

The Associated Press

ANCHORAGE, Alaska — A jury on Thursday acquitted Exxon Valdez skipper Joseph Hazelwood of being drunk and reckless in connection with the nation's worst oil spill but convicted him of a minor charge of negligent discharge of oil.

After deliberating for just 10½ hours, the jurors absolved Hazelwood of one felony and two misdemeanors stemming from the disaster, in which his tanker ran

aground and spilled nearly 11 million gallons of oil into Prince William Sound on March 24, 1989.

The misdemeanor charge on which he was convicted carries a maximum sentence of 90 days in jail and a \$1,000 fine, far less than the 7½ years and \$61,000 fine he could have faced if found guilty on all four charges.

Superior Court Judge Karl Johnstone set sentencing for today at 2:30 p.m. PST.

There were bursts of applause

in the courtroom as the judge read the first three verdicts of "not guilty."

Hazelwood's New York lawyer, Michael Chalos, a former classmate of Hazelwood's at the Maritime Academy at Fort Schuyler, N.Y., clapped the skipper on the shoulder and hit the counsel table with his hand at the first "not guilty" verdict.

The normally taciturn defendant smiled broadly for the first time in the 2-month-long trial

and commented briefly to reporters, saying, "I'm just relieved. I was nervous."

"I'm going to try to get along with my life. ... I'd like to go back to sea," Hazelwood told reporters at a news conference later. "That's what I do."

His lawyer said he would begin negotiations with Exxon to get back the former skipper's job and would fight expected efforts by the Coast Guard to revoke Hazelwood's captain's license.

Valdez gets new name, transfer

The Associated Press

SAN DIEGO — The tanker involved in the nation's worst oil spill will have its name changed from Exxon Valdez to Exxon Mediterranean and be transferred to foreign service in August, the vessel's owners said Friday.

The ship has become a symbol of environmental disaster since it fouled Alaska's Prince William Sound with 11 million gallons of crude oil 16 months ago, but the change in name and duty was presented as a business decision.

"Due to declining Alaskan crude oil, the vessel will enter foreign service, most likely loading crude in the Mediterranean or the Middle East," said Gus Elmer, president of Exxon Shipping Co.

"It is consistent with our policy that the vessels be named according to their location," he said.

Elmer declined to say that the oil spill was a major factor.

"It is strictly an economics decision," he said.

The 987-foot Exxon Valdez ran onto a reef on March 24, 1989, gouging huge holes in its hull. Oil poured out and fouled hundreds of miles of shoreline. Scores of wildlife were killed.

The 30,000-ton ship has been undergoing repairs since last August at the National Steel and Shipbuilding Co. yard where it was built in 1986.

Three thousand tons of new, inch-thick steel were used to replace mangled sections of its hull.

The \$30 million repair in drydock is almost complete and sea trials are expected to begin July 20. A Coast Guard inspector will be aboard to determine if the ship can be certified as seaworthy.

Exxon Shipping Co.'s former president, Frank Iarossi, said last summer the tanker might be renamed and put to work elsewhere in the world but the company kept the final decision secret until Friday.

Elmer said the Exxon Valdez is one of the largest ships in the

company's fleet and was being underutilized because it could only enter two West Coast ports: Los Angeles and San Francisco.

"Its cargo capacity can be more fully utilized in foreign service," he said.

It will remain registered in the United States and carry a U.S. crew.

The Exxon Valdez was built with a single hull and the company said in March that it would not be retrofitted with a double hull.

Environmentalists advocate double hulls to guard against big spills.

In January, Exxon Shipping Co. paid a \$1,000 fine to settle a pollution claim by the Coast Guard concerning a pair of slicks and spillage of about 356 gallons of oil as the ship awaited clearance to enter San Diego Bay.

The company denied any wrongdoing and Exxon said that the discharges from the ship were actually organic materials that washed free from cargo holds.

Board spreads blame for Valdez spill

The Associated Press

WASHINGTON — Federal investigators spread blame for the Exxon Valdez oil spill Tuesday, citing the captain, his third mate

The Stockton Record

Sunday, February 10, 1991 A-9

Judge limits claims from Exxon oil spill

United States Merchant Marine

Certificate of Service

This is to certify that

VERN HERBERT ARMSTRONG

is a

U.S. Merchant Marine Veteran
having served aboard oceangoing merchant ships in service to the
United States during World War II.

Captain Warren G. Leback
MARITIME ADMINISTRATOR

ACE 447610

Honorable Discharge



from the Armed Forces of the United States of America

This is to certify that

VERN HERBERT ARMSTRONG

was Honorably Discharged from the

United States Coast Guard

on the 02 *day of* AUGUST 1945 *This certificate is awarded*

as a testimonial of Honest and Faithful Service

Frederic J. Grady

Frederic J. Grady

Issued pursuant to P.L. 95-202 for
service in the 'American Merchant
Marine in Oceangoing Service during
the Period of Armed Conflict,
December 7, 1941, to August 15, 1945.'

Captain, U.S. Coast Guard

ACE 447612

FROM:

VERN H AKISTRONG
893 E HAMMER LN APT 155
STOCKTON CA 95210

MARITIME &
ADMIRALTY
LAWYER

and associates
ATTORNEYS

LONDON

ENGLAND

U.S. LINES CO. N.Y.C.
1950th 1970 No. 41

("TO BE OPENED BY ADDRESSEE ONLY")

PERSONAL AND CONFIDENTIAL

TO:

"HONORABLE - U.S. DISTRICT CO.

"H. RUSSEL HOLLAND"
U.S. COURT HOUSE

AUDITED DELIVERY

222 - W. 4TH. AVE.
99513 - ANCHORAGE, AL.

17 ELLS
CUT
TO OPEN
LIFT
UP
WITH CARE

Mid-East **SPICE SACK**



ACE 447613

Ahead of TIME Consultants
637 "P" Street
Sacramento, CA 95814
(916)446-7875

215
24

April 3, 1991

Judge Russel Holland
U. S. District Court
222 W. 7th Ave. Box #4
Anchorage, AK 99513

RECEIVED

APR 9 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

RE: Public Notice and Call For Comments
U.S. vs. Exxon Corp. & Exxon Shipping Co.

Honorable Judge Holland:

This letter is my personal protest against the proposed settlement in the U.S. vs. Exxon case before your bench - before the Nation.

While the disaster initially shocked the country, it has been swept under the carpet, in a sense, by the world crisis situation in the Gulf. Comparisons between the crude spilled as a result of the War conflagration and the Valdez debauchery seemed a tragedy. Being served up to the public as minor in comparison to the War, the Valdez incident became ripe for settlement it appeared.

The most unsettling aspect of the entire scenario seems to be the denial of the facts and figures regarding the devastation delivered Nature. I feel the American public should be allowed the chance to hear the entire story. Cloaking the ever present threat to the environment in this quick and what seems easily resolved monetary settlement for Exxon, is a travesty.

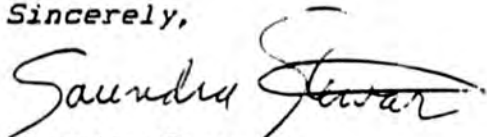
ACE 447614

(25)

Judge Russel Holland
April 3, 1991
Page Two

"What you don't know can't hurt you", is the strong and dangerous message given here. I strongly urge consideration be given in bringing the case to public view; releasing the real figures regarding the damage caused; and, enlightening the public as to the ever present danger which obviously has not even begun to be dealt with by Exxon.

Sincerely,


Sandra Stewart

April 7, 1991

25

Honorable H. Russel Holland
United States District Court Judge

c/o Clerk of Court
Room 2611
United States District Court
222 West Seventh Avenue
Anchorage, AK 99513

Re: Exxon Spill Testimony
No. A90-015 Criminal

Dear Sir:

I hereby submit my comments regarding the proposed settlement of the lawsuit involving the Exxon Corporation and the State of Alaska.

As a citizen of Alaska, I have always been extremely frustrated with the manner in which our State Government has handled the Exxon Spill and all subsequent actions. I feel that the current settlement proposed by Governor Walter J. Hickel is the first positive step anyone in Alaskan State Government has taken to resolve this matter and allow the citizens of this State to move forward.

From the very first day the spill occurred, the State has bungled their responsibilities. Recall that the State approved the Oil Spill Contingency Plan that Alyeska was operating under. The State failed miserably to enforce the Plan. Second, recall that the State had "pre-approved" the use of dispersants and open burning of oil as measures to be taken in the event of a major spill problem. When the time came to expeditiously "approve" the use of these techniques during the first few, critical hours of the spill, the State failed miserably again by procrastinating.

From that point on, the State assumed a completely adversarial approach to their working relationship with Exxon. Under the "leadership" of Governor Cowper and Department of Environmental Conservation Commissioner Dennis Kelso, the spill cleanup plodded along with Exxon receiving constant criticism on the front pages of our local, liberal, outside-owned newspaper, with no positive recommendations to Exxon from our State "leaders" regarding spill cleanup activities.

There has been a great deal of anguish and distress expressed by the coastal communities affected by the spill. I believe part of this can be substantiated, but I believe more often than not, much of this "noise" is politically motivated grand-standing.

But there is another group of Alaskans who have suffered in the wake of this spill, and that is the employees and contractors who work in the Alaskan oil industry. We have been subjected to continual media harassment, our children have been "stoned" at schools, and the State has seen fit to raise oil taxes as a punitive measure to "punish" the industry for this unfortunate accident.

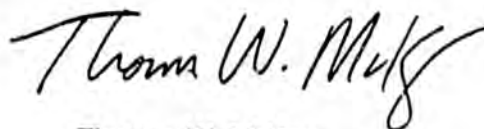
These tax increases (Economic Limit Factor, May 1989) have forced cancellation of numerous industry projects which countless families in this state rely on for jobs and necessary income. Much of the spill legislation which was passed because of the spill is causing many companies to shut down their operations in Alaska and leave the state.

A prime example of this is Chevron's recent announcement to close their Nikiski Refinery because of stringent spill legislation. This type of fallout only hurts our local economy and causes job loss and "brain-drain" from our state since our young people are unable to seek career opportunities in Alaska.

I firmly believe that the State should accept the settlement and resolve this issue promptly. It is entirely possible that the State could end up paying fines itself if the matter were taken to court. A courtroom trial could easily end up revealing gross incompetence in State Government, causing Exxon's fines, etc... to be further reduced, if not completely forgiven. Personally, I would like the State to take the matter to court, but I don't think the outcome would serve the citizens as well as the proposed settlement.

There are other reasons the State should accept this settlement. First, as time passes, the damage caused by the spill will only fade on the beaches of Prince William Sound as well as in the minds of Alaskans and Americans also. Now is the time that the State can gain the most from this situation. Also, the recent intentional spill in the Persian Gulf is estimated to be ten (10) times larger than the Exxon Valdez spill. As more information is revealed by the news media regarding this unfortunate situation, the damage caused by the Valdez accident will pale in comparison to the monstrous environmental crimes committed by one, Saddam Hussein.

In closing, I believe our current Governor, Walter Hickel, deserves special thanks for his assertiveness and initiative in attempting to settle this matter and allow the Alaskans like myself who are interested in moving forward to build our futures in this great state, the chance to do so. I greatly appreciate the opportunity to prepare and submit this testimony to your office.



Thomas W. McKay
3170 Marathon Circle
Anchorage, AK 99515
(907) 265-6890 (W)
(907) 349-9380 (H)

cc: Governor Walter J. Hickel
P.O. Box A
Juneau, AK 99811

Attorney General Charles Cole
P.O. Box K
Juneau, AK 99811

Honorable Ted Stevens
United States Senate
522 Hart Building
Washington, D.C. 20510

Honorable Frank Murkowski
United States Senate
709 Hart Building
Washington, D.C. 20510

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APR 9 1991

CHAMBERLAIN U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

Honorable Donald Young
House of Representatives
2331 Rayburn Building
Washington, D.C. 20515

Anchorage Times
P.O. Box 40
Anchorage, AK 99510-0040

Anchorage Daily News
P.O. Box 14-9001
Anchorage, AK 99514-9001

Ronald G. Clarke
P.O. Box 22372
Juneau, AK 99802
(907) 463-5377
(907) 465-4992 (work)

April 3, 1991

Judge H. Russel Holland
United States District Court
222 West Seventh Avenue
Anchorage, AK 99513

Dear Judge Holland:

Thank you for sending me a copy of the proposed plea agreement between the United States of America and Exxon Corporation and Exxon Shipping Company in criminal case No. A90-015. After reviewing this document thoroughly, I have come to believe that you should reject this proposal.

As a biologist (M.S., Zoology, UAF 1984), I feel that sufficient grounds to reject the proposal exist simply because data from investigations into the effects of the oil spill will remain secret under the terms of this agreement. Considering the tremendous damage wrought upon coastal communities, especially those dependent upon subsistence hunting, fishing and gathering, it is unconscionable to me to agree to any settlement without provisions for complete release of biological and socioeconomic data. After wreaking such massive devastation, Exxon could at least allow Alaskans access to information that could lead more quickly to their economic, cultural and psychological recovery.

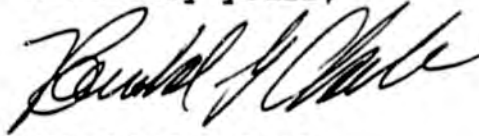
I am puzzled by the fact that the United States chose to prosecute Exxon and Exxon Shipping under the terms of the Migratory Bird Treaty Act, but not the Marine Mammal Protection Act. Surely, the oil killed many protected and/or endangered marine mammals -- those responsible for the spill should not escape punishment for their actions in that regard.

U.S. Attorney General Thornburgh touted the proposed settlement as a major penalty to Exxon, but an Anchorage writer put it into perspective. Exxon cleared \$117 billion in profits last year. Fining them \$100 million is like charging a \$40,000 a year employee \$34.19. Big deal. Considering what they spent on advertising to polish up a soiled public image, money seems to be no object. I'd prefer to see Lawrence Rawl and his boardroom colleagues behind bars. Jail time might constitute a real deterrent to other potential polluters.

Clearly, Exxon and Exxon Shipping want to avoid further public discussion of their actions. As I see it, that's all the more reason to reject the proposal and hold a trial. Don't let them buy their way out of responsibility for their deeds.

Thank you for considering my thoughts. I realize you face a mountainous task in evaluating information concerning such a pivotal event in Alaskan history, and appreciate your careful deliberation. Please send the participants back to the drawing board.

Sincerely yours,



Ronald G. Clarke

RECEIVED

APR 9 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

Alaska State Legislature

House of Representatives



Official Business

118
27
P.O. Box V
State Capitol, Rm. 215
Juneau, Alaska 99811
(907) 485-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

April 10, 1991

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

Dear Judge Holland:

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

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

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

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

— L — V

APR 10 1991

U.S. DISTRICT COURT

Sincerely,

Max F. Gruenberg, Jr.
Rep. Max F. Gruenberg, Jr.
Chairman

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

ACE 447621

29

28

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

Dear Member of The Alaska Legislature:

On March 13, 1991, I met with Governor Walter Hickel and Special Assistant James Rockwell to discuss public concerns regarding the EXXON Valdez Oil Spill.

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

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

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

ACE 416910

RECEIVED

APR 11 1991 (31)

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

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

The EXXON Valdez left the shipping lanes to allegedly possibly avoid impact with ice bergs. The tanker headed west 200° at 12 knots with speed increasing to 15 knots. The course was changed to 180° and the tanker was placed on auto pilot. Afterwards the Captain left the bridge. At 11:57 p.m. March 23, 1989 Constat calls from New Jersey EXXON Valdez began and continued for 33 minutes. Captain Hazelwood did not report the new heading to the Coast Guard radio operator. After the collision, the vessel's main engine was shut down at approximately 1:45 a.m., according to engine log.

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

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

What is the truth?

Sincerely,

Robert Gigler

Robert Gigler
Greenpeace Action International

(WATER 174' DEEP AT POINT
OF 1ST IMPACT ANCHORAGE DAILY)
NEWS ILLUSTRATION MAR. 29-1989

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APR 11 1991

ACE 416911

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

State of Alaska)
) ss:
Third Judicial District)

The foregoing was acknowledged before me this 10th day of April, 1991, by Robert Gigler.



Marshall K. Coryell
Notary Public in and for Alaska
My commission expires: 12/18/92

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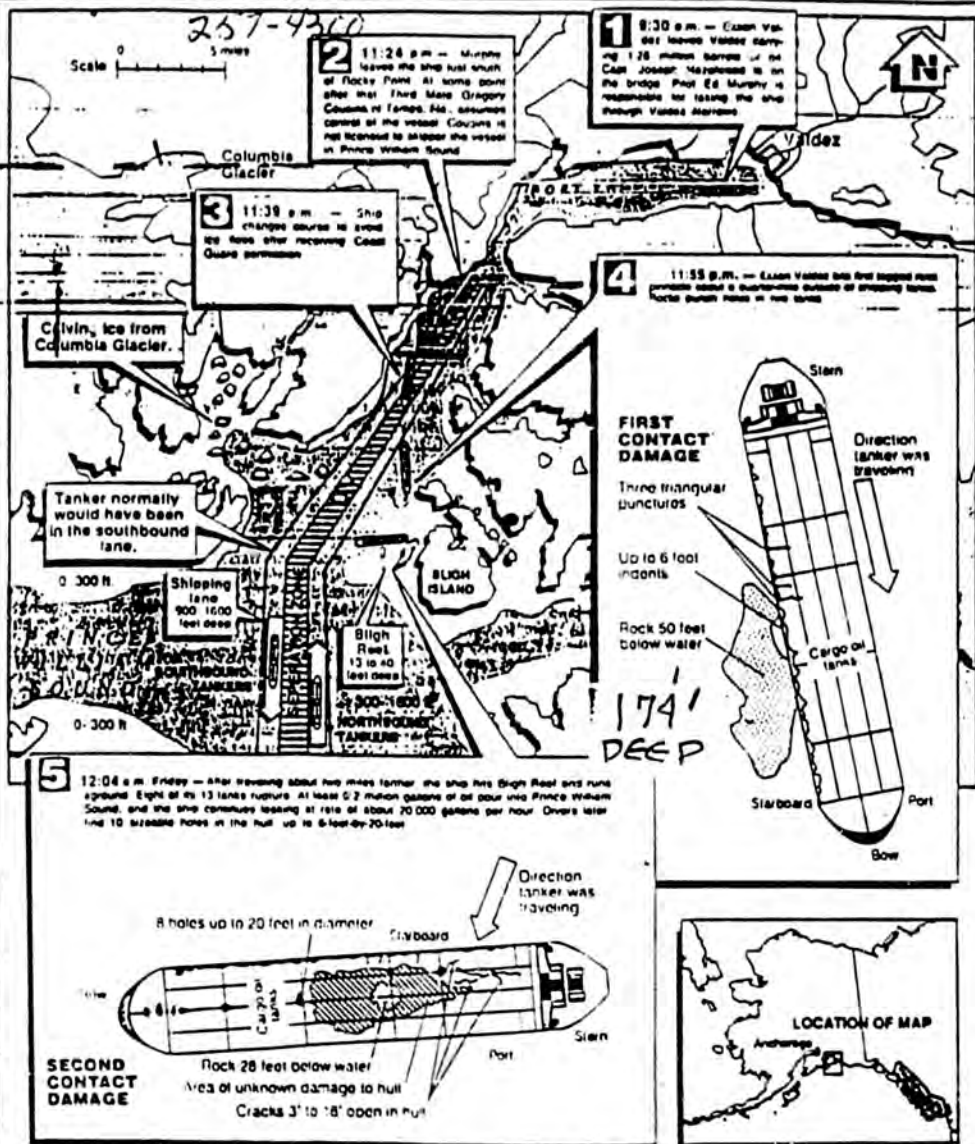
APR 11 1991

ACE 416912

LEKK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

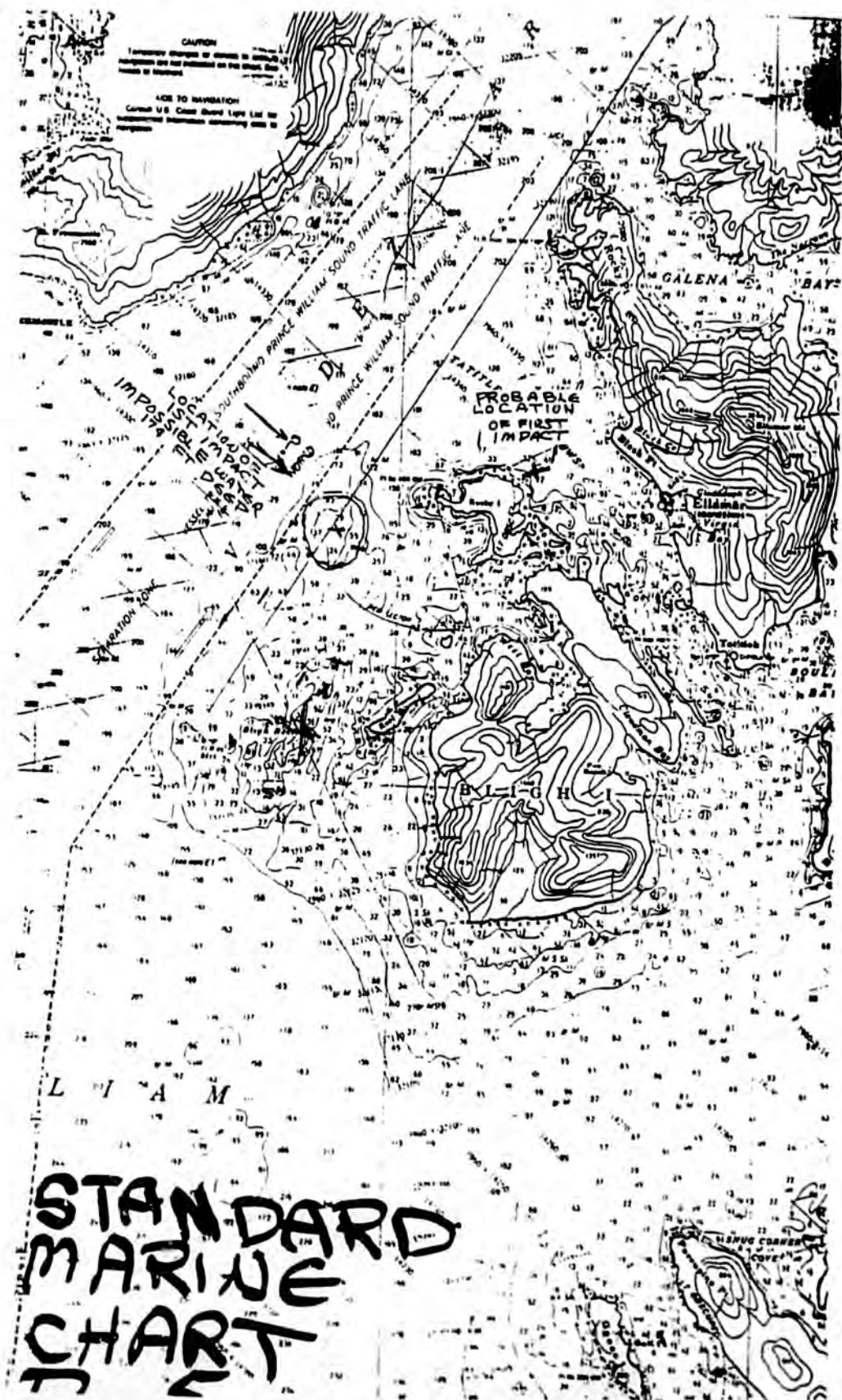
TIMELINE OF EVENTS SURROUNDING TANKER AND OIL SPILL

NO. 3



LATER — OTHER KEY EVENTS

- 12:28 a.m. — Ship notifies the Coast Guard it has run onto the reef.
- 4:30 a.m. — Coast Guard sends State Trooper to look for Exxon Valdez because of suspicions the captain had been drinking.
- 7:00 a.m. — First ship on board to assist from Coast Guard arrives in the investigation.
- 8:00 a.m. — Coast Guard sends Capt. Hensley, Third Mate Cousins and the helicopter Robert Ragan to look for bodies or drug use. Other reports place the time of the tests at 11 a.m. Coast Guard closes Port Valdez to tanker traffic.
- Friday afternoon — First oil containment booms are deployed, at least 12 hours after the spill was reported.
- Friday evening — State environmental officials estimate 285,000 barrels spilled, about 11.5 million gallons. Spill covers about 30 square miles. Efforts begin to pump oil off the vessel and onto the tanker Exxon Starbuck.
- Saturday morning — Exxon announces 175,000 barrels spilled, later raising that to about 240,000 barrels. At noon, officials estimate that the spill is 240,000 barrels, about 11 million gallons.
- Saturday afternoon — Exxon Shipping President Frank Brown says the accident investigation is focused on the actions of Hensley, Cousins and Ragan and rules out mechanical or crew error.
- Saturday evening — Weather remains calm, but currents spread the slick into an expanding loop heading northward.
- Sunday — Gov. Steve Cooper declares Prince William Sound a disaster area, freeing state resources for cleanup and doing the way for a federal disaster declaration. He says it "may well be the greatest disaster to hit Alaska since the Great Fire earthquake 25 years ago."
- Sunday afternoon — The slick now covers about 100 square miles in the shape of a crescent. Only about 175,000 gallons have been skimmed off the water. State, federal and company officials start to use dispersants, the first anywhere in a full-scale oil spill.
- Monday morning — High winds fill the Sound. Aerial oil skimmers are grounded, small boats cannot operate. The spill, now stretched into a longline from nearly 50 miles long, is spreading rapidly. It is thought the slick will reach the coast of British Columbia in 4 to 5 days.



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RE: Exxon Valdez Oil Spill Civil Settlement

PO Box 705
Kasilof, AK 99610
April 10, 1991

Clerk of the Court
Room 261, U.S. District Court
227 W. Seventh Ave.
Anchorage, AK 99513

Dear Sir:

I don't have enough information to decide "yes" or "no" on the proposed Exxon Valdez oil spill settlement, but I do have positive comments on one aspect of settlement and retribution — the most important as far as I see it. So much of the damage done to environment in 1989 could have been prevented had the oil companies come forth within the first six to twelve hours with equipment to contain the spill and thence start immediately removing the heavy oil from the water. We watched with heavy hearts the first 24 hours after the spill, the weather in the area was quite calm, and no major effort at all was achieved in containing the spill. Once the oil spread and broke up, all efforts were like the proverbial chasing feathers when the pillow seam tears. With the technology available today and the clean-up effort in FWS (too late) to learn from, the oil industry first and foremost should install equipment in Alaska which can be moved rapidly to any spill area and all plans should be ready to implement IMMEDIATELY when a spill occurs. The large boat brought from the Soviet Union had much promise, I have heard, but it was brought in after the spill had spread.

It deeply grieves me that Exxon did indeed spend much money in clean-up which did absolutely NOTHING to improve the environment, but only made one company (VECO) hit the POP FIVE money-making concerns in AK, caused never-to-be-settled conflicts in Alaskan communities among those who were given clean-up jobs and those who were not, changed forever the fishing fleet in some areas (due to ability of the cleaning clean-up money to upgrade), and once more allowed many non-resident Alaskans to make a quick trip north and go home with pockets loaded. Now I am pleading with the Court — PLEASE force the oil industry to put in place equipment and plans to avoid a repeat of all the mistakes made in FWS because as surely as we know the spring eventually will come again, we know there will be oil spills in the future. Don't just let the State bureaucrats receive a big bundle so they can play "Favorites"; instead insist on equipment and plans to handle the next spill. To help with the planning, I call your attention to the outstanding creative thought and projects of individuals who on their own tried to clean up the oil spill. Maybe community planning groups could contribute to the final plan.

Thanks for reading my comments.

Sincerely,

Henry J. McCray

P.S. Attached is ... letter to ...

ACE 416915

32

RC 2 Box 705

Kasilof, AK 99610

April 5, 1991

House or Senate Special Committee on Exxon Valdez
Litigation Settlement

P.O. Box V

Juneau, AK 99811-3100

Greetings:

Thanks for the opportunity to comment on Exxon Valdez oil spill civil settlement and the criminal plea agreement; however, please give the public more facts and as much info as possible so we can make reasonable comments. Below are some of my questions, the answers to which would enable me to comment.

- 1) Is the State settlement pressing only civil charges or also criminal charges? 2) Will the settlement forever deny the State the right to press criminal charges against Exxon? 3) Does the settlement provide for future claims not known at this time -- decimation of fish runs in certain areas, permanent habitat destruction, etc. 4) How and where will the State spend the settlement money? 5) What % of original claim is the State accepting in settlement? 6) Are individual fishermen and village claims (through TAPS) affected by the State settlement and in what way? For instance, since State action will set precedent, will each individual claim only be settled for same or less % of original claim as State accepts?

Thanks for supplying further information through the media. We need to know the terms of settlement.

Yours truly,

Mary Joe McElroy

ACE 416916

30

Alaska oil spill settlement.

Your Honor,

10 April, 1991.

I am a private / Alaskan citizen. I had a claim against Exxon that was denied and I presently have a claim against the Trans Alaska Pipeline Fund pending.

I believe the agreement should be approved and settled at the earliest possible date.

I have no knowledge of the Law but I think other parties are culpable in the grounding and subsequent litigation. If others are culpable, as it seems to me, the entire guilt shouldn't rest on Exxon as it does now.

First is the claim Captain Hazelwood, an Exxon employee, was "drunk" in Valdez and then went to his ship in this condition and caused the grounding. I have never heard the question asked why there was no screening or testing before he was allowed on the ship. The lack of testing on Exxon's part shows gross negligence in the control of it's employees.

My contention is that the Alaska Civil Liberties Union, with the vocal backing of our press, was the reason for no testing on "Constitutional" grounds.

Immediately after the grounding Exxon and the other Companies, working on the spill, initiated testing programs that are still in place today. There has been total silence from the press on the issue of testing ever since.

the adversary policy versus negotiations.

Governor, a lawyer, set the adversary stage by publicly stating he would shut down the settlement to the Lower 48 and hired lawyers, on a no bid contract, to prepare Alaska's

Shortly after the Spill Exxon put paid notices in the paper that they were sorry for the accident, they apologized and said they would be financially responsible. Later they opened claim offices to grant relief for legitimate claims (without lawyers if desired). My personal claim was denied but the newspaper ads and the claims offices show Exxon was working in the field of negotiations versus the Governor's litigation.

In the last few months Alaskans have negotiated this settlement and if it is approved it will benefit Alaskans with no lawyer fees deducted.

The papers said the Lower 48 lawyers had benefited by 11 million dollars so far in the adversary role. When, and if, the State of Alaska settles going this route all the claimants will see at least one third of their settlement going to other lawyers. So this boils down to a lawyer - lawyer case some distant time in the future as opposed to the present Governor's settlement now.

I have to put all my cards on the table.

The present Governor says he is going to develop Prince William Sound with part of the settlement money. I have submitted a boating safety program for Prince William Sound that will stand a fighting chance if there is a settlement. If there is no settlement I'll be back to square one.

The open door for the "drunken" Captain and pouring millions of dollars into the Lower 48 show me that Exxon isn't standing alone in the dock.

Coast Guard regulations spell out the duties of a Lookout but we never heard a word about the lookout's actions, or lack of them.

The Governor mandated a Show Trial for the Captain. The Prosecutor's office had to come up with a "Chinese Wall" strategy that was hilarious. It may have been succeeded by the "expert" who was trying for a new record in extrapolation.

Even if the settlement isn't adequate at least it will stop the lawyer hemorrhage and put some money back in the State of Alaska (possibly Prince William Sound).

Carl F. Ford
P.O. Box 103130,
Anchorage, Alaska
99510

Sincerely,



APR 11 1991

U.S. DISTRICT COURT

ACE 416918

ENC
31

7216 Lake Otis Pkwy
Anchorage, AK 99507

Judge Russell Holland
222 W. 7th Ave, room 261
Anchorage, AK 99501

Dear Judge Holland:

Attached is my letter to Governor Hickel, sent earlier today, expressing my non-acceptance of the Alyeska oil spill agreement, as it has been presented by the media.

We believe there was too much secrecy in arriving at the agreement, not enough information divulged to the public, and the public input period is far too short. We believe the amount of money Alyeska is being assessed for clean-up and fines is far too low, and the 10-year payment period is far too generous.

We hope your decision will be to reject the present agreement, to require that the public be informed of what went on in the negotiating process, and that the input period be lengthened considerably. We hope that all of the facts of the settlement will be forthcoming.

Thank you for your consideration of our input.

Sincerely yours

Glenn F. Thompson

Glenn F. Thompson

Gladys W. Thompson

Gladys W. Thompson

ACE 416919

APR 11 1991

RECEIVED

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TELEPHONE (907) 344-2015

7216 LAKE OTIS PARKWAY • ANCHORAGE, ALASKA 99507

April 10, 1991

Walter J. Hickel
Governor of Alaska
601 C Street, Suite 758
Anchorage, AK 99503

Dear Governor Hickel:

Please do not accept the Alaska oil spill settlement for Alaskans in its present form as it has been described to us through the media.

We need **ALL** the facts revealed to us before we can make a decision.

Many of us have reason to suspect that the reason for so much secrecy in the negotiations can be that too many of the negotiators on the State of Alaska side are more pro-oil than pro-Alaska, and are therefore afraid to reveal all of the details to impartial examination by all interested Alaskans.

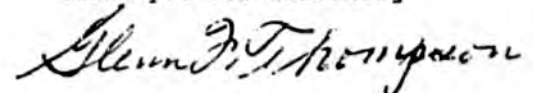
I thought that shutting out the public from decisions about crucial negotiations of vital interest to everybody, by discussing and concluding them behind closed doors was a thing of the past.

True, we are being given the opportunity to give input now, but only after the negotiations have been completed, as a take-it-or-leave-it proposition. On that basis I would reject it, and I hope that most other Alaskans will do likewise.

One billion dollars is not much compared to the enormity of the damage. I am sure that Alyeska would be most happy to get off that easily for its carelessness. In fact, with the proposed 10-year payment period, it could very well **make** money on the deal.

I vote **NO** on acceptance of the secrecy and the probable over-generosity of the State's negotiators.

Thank you for listening



Glenn F. Thompson

32

April 11, 1991

Judge Russell Holland
Federal Court
222 W. 7th St.(Box 4)
Anchorage, Ak 99501

c/o Clerk's Office Rm. 261

Dear Judge Holland:

In view of oil spill information made public only three or four days ago, and hopefully with more to come, I ask that you extend the period for public response for at least another 30-60 days. (Also give more publicity to the correct name and address where the response should be sent.)

We need to read and digest this very important material before responding, as all facts should be known before making an intelligent decision.

Meanwhile, as expected Exxon and its cohorts, continue lying all the way to the banks. Their profits are at all time highs, particularly after gouging the public by raising the costs for gas to cover their own during the "War".

How can a just settlement be made until all facts are in and digested by the people?

If and when settlement is made, let us and everyone else get the repayments (fines, etc.) up front, not in the future. What would happen to the repayments if EXXON merges, is bought out, goes bankrupt, gets a Ch. 7,11,13, etc. BEFORE we were paid (during a waiting period)? How much interest, even at 2% could an entity make on \$660,000,000. million during an 11 year period? Why shouldn't that money be given to the victims, rather than left with the aggressive, unconscionable predators?

Our democracy is "hanging out there" and needs strengthening for it to endure in spite of the grievous assaults by greedy, money-hungry corporations or individuals.

Let's give the people an extended chance to speak!

Thank you for listening and doing your best!

Sincerely,

Gladys W. Thompson
Gladys W. Thompson

APR 11 1991

FBI U.S.D. DIST. COURT

ACE 416921

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CORRECTION

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

32

April 11, 1991

Judge Russell Holland
Federal Court
222 W. 7th St. (Box 4)
Anchorage, Ak 99501

c/o Clerk's Office Rm. 261

Dear Judge Holland:

In view of oil spill information made public only three or four days ago, and hopefully with more to come, I ask that you extend the period for public response for at least another 30-60 days. (Also give more publicity to the correct name and address where the response should be sent.)

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Our democracy is "hanging out there" and needs strengthening for it to endure in spite of the grievous assaults by greedy, money-hungry corporations or individuals.

Let's give the people an extended chance to speak!

Thank you for listening and doing your best!

Sincerely,

Gladys W. Thompson
Gladys W. Thompson

APR 11 1991

FBI U. S. DIST. COURT

ACE 416921

35

Judge H. James Holland

April 10, 1991

U.S. District Court

Re: Plea bargain by
the Ekron Corp.,
concerning Ekron Valley
oil spill.

Dear Judge Holland:

It appalls me to have to address you about this case. That the State of Alaska and the federal government are so willing to settle this suit, with so little pain to the Ekron Corporation, is disgusting. I thank you for at least allowing the public to address this issue.

In 1977, I purchased a three acre spot of land on Peterson Bay (directly across Kachemak Bay from the Homer Spit). Since it is boat access, a number of my friends raised their eye brows, but I said, "Look, it's beautiful there, peaceful, and I know that if I ever fall on hard times, one thing is certain - that a man would have to be a fool to starve to death by the sea". At that, they laughed and one said, "Yeah, that's right. That's right."

Oil did not wash up on my beach, or most of Kachemak Bay. I cannot say that my previous claim to survivability was disrupted. But I know that that of hundreds, if not thousands was. Their ability to live from the sea is no longer a laughing matter.

However, even though I was not directly "oiled", that does not mean that I was not directly affected. The immediate destruction of the spill was sad enough (via TV, of course). But what little time I have been able to spend on Kachemak Bay the last two summers after the spill, has at times been

horrific, particularly as my wife passes by the thousands of sea birds that nest on "Shull Rock", knowing that they represent a fraction of the birds killed by the Exxon Valdez oil spill, and that these creatures could be totally eliminated by a spill of far less magnitude ~~than~~ than that of the Exxon Valdez.

Please, Judge Holland, do not allow the Exxon Corporation - run by rich men - to be held, essentially, unaccountable. I believe there are shareholders in the Exxon Corp. who are deeply concerned about company practices. I also believe they are pitifully few. The Money God is too strong; Witness Chairman Rumsfeld says the public will pay anyway. At least make him lick the devil's afterburners.

Please do not allow the State of Alaska - presently, run by rich men more governed by development than by concern - to prevail. They are an elected minority so deeply connected to the oil industry that there should be conspiracy charges being considered.

Please do not allow the federal government - run by the biggest oil besotted bunch of the three - to take the final control of this issue. The death of news about the huge spills in the Persian Gulf and the fallout from the Kuwaiti oil-field fires is, non-the-less, enough to make the Exxon Valdez oil spill in Prince William Sound appear a pittance.

indirect
quote: of
course

> "fort of makes you see warm. misis that the Prince William Sound spill was so small." A classic de ja vu whitewash all over again.

Judge Holland, you, sir, will have been exposed to far more information concerning the Exxon Valdez oil spill than most Alaskans.

and, certainly, most other emblems will be.
Please, before you rule, consider what the primary
motivating factor is in the three litigants responses.
If Exxon has the 'yep, it's a good deal.', glint
in their eye, then it's money. If the state says
'yep, Prince William Sound will be a grant theme
Park', then it's money. And if the Federal government
says, 'yep, inward and outward.', then
conservation and preservation and a minimal amount
of reason give way to money.

Please, Judge Holland, if that is the case, then
let us start the process of sentencing them to
eat money. Because if companies of any sort that
are in the position to destroy the environment
and not be held accountable to the extent
that they are criminally liable, then there may
only be money left to eat.

That, or let them eat oil-soaked clams, or
PCB-laden fish or just drink chemically saturated
sea water that could preserve a stinky rich clamster
log. That is what the rest of humanity may
face if we do not take action against those who
do not care.

Sincerely,

Jane Bachman

JAMES BACHMAN

905 MULDOON RD. Sp. 1

ANCHORAGE, ALASKA 995

338-0253

APR 11 1991

U.S. DISTRICT COURT

ACE 416924



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National Audubon Society

NATIONAL CAPITAL OFFICE

801 PENNSYLVANIA AVENUE, S.E.

WASHINGTON, D.C. 20003

(202) 547-9009

April 11, 1991

The Honorable H. Russel Holland
U.S. District Judge
c/o Clerk of the Court
Room 261
United States District Court
222 West Seventh Avenue
Anchorage, Alaska 99513

Re: United States v. EXXON Corporation and EXXON Shipping Company
No. A90-015 Criminal

Dear Judge Holland:

The following comments are submitted on behalf of Prince William Sound Conservation Alliance, Alaska Center for the Environment, Defenders of Wildlife, Greenpeace U.S.A., National Audubon Society, Natural Resources Defense Council, Northern Alaska Environmental Center, Sierra Club, and Trustees for Alaska ("the Conservation Groups") in response to the Court's March 22, 1991 Notice inviting public comment on the plea agreement entered into between the parties to the above-captioned proceeding. The Conservation Groups appreciate the opportunity to submit these comments. We are aware that you have offered the public an unusual opportunity to apprise the Court of its views on a criminal matter. But the events that led to the February 1990 ten-count indictment returned by a federal grand jury against EXXON and EXXON Shipping ("defendants") and the resultant consequences of those events for the environment of Prince William Sound and the surrounding area warrant the fullest possible public review of the settlement of the criminal charges against those defendants.

However, this review is hampered by the parties' failure to disclose information in their possession on the impact of the spill on the environment of Prince William Sound, Gulf of Alaska, Cook Inlet, and other affected areas making it difficult to give the Court an informed opinion on the adequacy of the proposed criminal fines. Consequently, we cannot advise the Court with specificity

The recent release by the United States of a 19-page summary of some of the information underlying the proposed settlement agreement does not cure this defect.

ACE 416925

(36)

on whether the proposed criminal fines will provide restitution for the damage done Prince William Sound and its environs, or are even a "just" punishment for the crimes committed by defendants. This defect taints the entire settlement agreement. We ask the Court to order the release of all relevant information by the parties to the agreement.² Approval by the Court of the criminal plea should await such disclosure, and an opportunity should be given to the public to submit supplemental comments based upon that information.

The Conservation Groups view as central to the settlement of the federal and state governments' claims against defendants the imposition of a substantial criminal sentence. This sentence should reflect the seriousness of the offenses that underlie the federal indictment, provide restitution for damage to the Sound and act to deter future criminal behavior by defendants and other similarly situated businesses. We believe that the proposed agreement will not achieve these goals for the following reasons.

1. The Proposed Criminal Fines Are Insufficient

Based on what is known about the impact of the spill on Prince William Sound and applying basic tenets of criminal sentencing, the Conservation Groups believe the proposed fines are insufficient. We reach this conclusion after examining their correlation to the crimes that have been committed, their projected impact on defendants, and the extent to which they provide restitution for Prince William Sound and the species that depend upon the Sound for their survival.

The proposed criminal fines bear little relationship to the enormity of the crime against the environment committed by the defendants. These crimes are among the most heinous crimes against our environment to date. The crude oil that migrated from the EXXON VALDEZ contaminated 1,200 miles of shoreline, four National Wildlife Refuges, two National Parks, one National Monument, and one National Forest. It also destroyed migratory bird habitat, seal and lion haul-out areas, and six salmon hatcheries. According to a summary of natural resource damages from the spill released

Not included are the results of various economic studies. Without this information, the impact of defendants' conduct cannot be quantified.

² At minimum, the Court should order the United States to disclose the information in its possession, because of its special status as a Trustee of public resources.

on April 9, 1991 by the United States,³ several hundred bald eagles and as many as 500,000 birds of various species and several hundred thousand more chicks perished as a result of the spill. As many as 5,500 sea otters and 200 harbor seals may have died. Serious harm was done to at least 26 archaeological sites, and to the hunting and fishing lifestyles of Native villages. Contaminated clams and invertebrates are a continuing source of pollution to sea mammals, and the long-term impacts of the spill on fish and wildlife have yet to be determined.

The proposed criminal fines are significantly lower than those that might have been assessed had the Court elected to apply the Alternatives Fines Act, 18 U.S.C. Sec. 3571(d). Under that law, which the United States implied it would ask this Court to apply, defendants could have been assessed criminal fines at twice the proven pecuniary loss resulting from their criminal conduct.⁴ While such high amounts might not have actually been assessed by this Court, they do provide some measure of the potential seriousness of the crimes.⁵

2. Innovative Sentencing Measures Would Deter Repetitious Behavior

Corporations, particularly ones as large as defendant EXXON,

³ "Summary of Effects of the EXXON VALDEX Oil Spill on Natural Resources," filed with this Court April 8, 1991.

⁴ This would increase defendants' exposure to criminal fines to \$2 billion (twice the amount of civil damages assessed against defendants in the proposed settlement agreement). Depending on the accuracy of recent reports on the results of the State of Alaska's economic studies, this liability could run as high as \$6 billion.

⁵ A substantial criminal fine in this case, however, may deter others in the oil industry from engaging in similar criminal conduct. As there is ample evidence of widespread noncompliance with environmental laws and regulations by this industry, this Court should weigh the broader deterrent effect of high fines in evaluating the adequacy of the proposed fine. See Inland Oil Spills, Stronger Regulation and Enforcement Needed to Avoid Future Incidents (General Accounting Office, February 1989) (GAO/RCED-89-65).

pose particular challenges with respect to imposing sentences.⁶ Fines, even substantial ones, are rarely sufficient to induce behavioral reform.⁷ This fact is clearly illustrated in the instant case where the management of defendant EXXON has not only consistently refused to acknowledge any culpability or remorse for the havoc it wrought on the environment, but views the \$1.1 billion settlement agreement as a "cost of doing business."⁸ This unrepentant attitude makes it unlikely that defendants will take action to avoid a repetition of the events that caused this catastrophe. Therefore, the Court should consider the imposition of supplemental "innovative" sentencing measures to achieve a deterrence objective.⁹

We ask the Court to consider placing defendants on probation. Probation is particularly appropriate in sentencing a corporation where the goal is not to drive it out of business, but to preserve it as a constructive member of society, and where fines alone may not reform corporate behavior. Creative probation conditions can be tailored to each category of offense and to the characteristics of the offender to achieve the rehabilitation of defendants.

In this case, the Court could include as a condition of probation, or as a free-standing measure, a requirement that defendants' facilities be subjected to a periodic environmental audits by a court-appointed independent auditor. Such an audit could be designed to identify specific improvements in defendants'

⁶ Corporations do not go to jail and can absorb fines, because of their sheer wealth -- in no case more true than here -- and their ability to pass them on to customers. See F. Grad, *Treatise on Env't'l Law* at 2-555.

⁷ See Coffee, *Corporate Crime and Punishment: A Non-Chicago View of the Economics of Criminal Sanctions*, 17 *Am.Crim L. Rev.* 419, note 20 at 468, 475-76 (1980); Bower, "On the Amoral Organization" in *The Corporate Society*, 178, 197 (R. Marris ed. 1974).

⁸ Chairman of the Board of EXXON Corporation Rawls recently compared the total cost of the settlement to the cost of opening two offshore oil and gas wells.

⁹ See United States Sentencing Commission Proposed Amendments to the Sentencing Guidelines for the United States Courts. 54 Fed. Reg. 47056 (November 8, 1990).

equipment and operating practices to prevent a recurrence of the events that led to their conviction, and of other possible environmental problems as well. Environmental audits, like probation, can be viewed as a tool to "rehabilitate," rather than merely to punish environmental violators; analogous to community service requirements imposed on convicted drunk drivers.

3. Exculpation of Alyeska Pipeline Service Company

Conservation Groups object to the release of Alyeska Pipeline Service Company and its owner companies from any culpability under federal law arising from the events that unfolded after the grounding of the *EXXON VALDEZ*. Alyeska's failure to comply with the oil spill contingency plan in effect on March 24, 1989 significantly compounded the environmental damage that eventually occurred. According to material recently submitted to this Court by Rep. George Miller, Vice Chairman of the Committee on Interior and Insular Affairs, U.S. House of Representatives, Alyeska and its owners had knowledge of Alyeska's inability to respond to an oil spill in Prince William Sound, and failed to take remedial action.¹⁰

In light of this information about Alyeska and its owner companies' conduct, it is clearly not in the public interest for the United States to waive its right to pursue criminal as well as civil and administrative penalties against them. Alyeska and its owner companies gained access to environmentally sensitive lands to build the Trans Alaska Pipeline System, and then set out on a course of deceiving the public about their capacity to comply with the undertakings they had made to gain this privilege. If this portion of the agreement is approved, they will not be held accountable for their misconduct. The Court should strike that part of Paragraph IIIA that exculpates Alyeska and its co-owners.

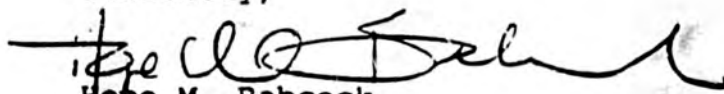
4. Alaska Should Not Be Insulated From Review

The Conservation Groups protest the insulation of Alaska from any administrative or judicial review of its actions under Paragraph IVA. Not only does the public have a right to review those actions and to challenge any that are inconsistent with the agreement, but the United States and this Court should not waive their authority to enforce the provisions of the agreement. Paragraph IVB is unenforceable, and should be struck by the Court.

¹⁰ April 8, 1991 letter from Rep. George Miller to Hon. Russel Holland and Hon. Stanley Sporkin, filed in No. A90-015 CR, A91082 Civil, A91083 Civil, A91081 Civil, 3AN-89-6852 Civil, 91-484 SS Civil.

We appreciate your consideration of these comments and hope that they will be helpful in your evaluation of the plea agreement.

Sincerely,



Hope M. Babcock
General Counsel
National Audubon Society

On behalf of Conservation Groups

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APR 11 1991

FEDERAL U. S. DISTRICT COURT

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April 11, 1991

APR 11 1991

FEDERAL U. S. DISTRICT COURT

Honorable Russell Holland
Federal Court House
Anchorage, Alaska 99501

Dear Sir:

I imagine that you will be receiving and reading through many letters in the next few days. I watch the news and read the paper regularly, yet Wednesday was the first time that I heard you were requesting statements from the public in regards to the Exxon Valdez disaster. This happening one day before your deadline.

I do not envy your position, for there will always be those that will not be satisfied. But sir, you are not here to satisfy. You are here to do the right thing, which is uphold the laws of our land and dispense justice.

In some ways our jobs are alike. I am a youth counselor for the State of Alaska. I can write release papers at any time for my counselees, or hold them until their institutional order expires. To them, their freedom is many times more important than the 11,000,000 gallons of oil that washed ashore in Alaska. My job is to find out as much information as possible, to develop a treatment plan, to work with my resident until he either proves his ability to act responsibly and obey our laws, or until his institutional order expires at which time I am forced to release him. How can I make the right decision if I do not have the facts in front of me? How can I release a resident if he is merely surface conforming in front of me, yet behind my back he is bragging to his fellow juveniles about how he is "getting over" on the system? I take as much time as is needed before I make my decisions. I observe the behavior of my resident very closely to find out just what is his real behavior.

The public does not know enough of the facts leading up to or after the spill to make correct decisions. We can only go by what we see or hear in the news, which is opinionated one way or another. As we approach the deadline, more information is surfacing and none of it appears to be good.

Why are we in such a haste to settle this? This will affect the people of Alaska for at least 10 to 20 years into the future. Everyone has made promises, from the oil companies to state and federal governments. Yet what promises have been kept? Only under pressure has anything been done. What does this behavior show me?

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Honorable Russell Holland
April 11, 1991
Page Two

It has been shown that Exxon will not be losing much in the settlement; they will even be able to deduct some of their expenses through their taxes! If I was found guilty of a criminal act, would I be afforded the same luxury? Where is the justice? Would the average citizen have the same opportunity to plea bargain to such a degree? What message is going to be sent around the world?

In my opinion, big business and the government are in bed together. They both have much to lose so they are making their deals behind closed doors. Already the general public couldn't care less about politics because of the feeling that they as voters have little or no control. Here again is another classic case of the public saying one thing and the government doing another. Government is supposed to be protecting the public, yet the politicians are busy protecting themselves. If I had the facts to make the correct decision, I would know who I could trust during election time, and cast my vote accordingly. If the politicians knew the public was more active in their districts, and monitoring their behavior, then perhaps they would be less willing to make deals with big business - deals that their constituents often pay the price for.

I am against this settlement! I want to know who knew what and what part they played, so I can hold them accountable, as I would be held accountable for my actions and behavior. No more deals, no more plea bargains. Please send a message of truth, responsibility, and above all JUSTICE FOR ALL throughout our land. This is the only way we can prevent disasters such as the Exxon disaster from happening again.

Please do not rush into your decision just so our "honorable" Governor Hickel can begin "his" gas pipeline and the oil companies can begin drilling in even more environmentally sensitive areas. Their behaviors are proven - their track records speak for themselves. They need to earn the public's trust before they are ever allowed to work in our back yard again.

I'll be here twenty years from now - it's very likely that they will not.

Most sincerely,


J.R. Malesic

JM:kf

ACE 416932

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APR 11 1991

FED. U. S. DIST. COURT

Tom Lakosh

Box 100648

Anchorage Ak 9951

Honorable H. Russel Holland

Having only recently been informed of your request for comments on the settlement of Criminal Charges against Exxon I am submitting an abbreviated response to your request.

If I were to offer money to a DA to avoid criminal prosecution I would be charged with bribery, why isn't Exxon?

If I were to take water fowl illegally I would be fined heavily for each bird I so took, why isn't Exxon?

If I were to take marine mammal illegally I would be fined heavily and probably thrown in jail for years. Take in this case refers to simple harass of those animals.

If I were to illegally dispose of hazardous waste heavy fines and jail time would be probable.

If I were to kill or harass Bald Eagles, much less 200 of them, I would have permanent room and board.

ACE 416933

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If I were to engage in the above action in a deliberate manner, fraudulent, malicious

my intentions I would be criminally liable
for fraud and civilly liable for
punitive damages probably treble dama

If I bombed a Church I would
be criminally liable for wanton destruct
and violation of the civil liberties of the
persons seeking to freely express their
religion.

Your honor the sound is my church
the wanton destruction of my church is
the only reason I have cried in 22 years

Sincerely
Tom LaRosh

37 ~~108~~

P.

TRADITIONAL DENA'INA TRIBE

Council Of Elders

Box 143

Sterling, Alaska 99672

To: The Honorable H. Russel Holland
United States District Judge

From: Mary Ann Mills, Council Member
Traditional Dena'ina Tribe
Kenai Peninsula

Subject: Exxon Valdez Oil Spill

Date: April 11, 1991

The Traditional Dena'ina Tribe is requesting you to rule against the State of Alaska from making a settlement with Exxon on the Exxon Valdez oil spill. We request all withheld information pertinent to the damage caused by the Exxon Valdez oil spill be made public and submitted to the Traditional Dena'ina Tribe, Council of Elders. This is the only way the Traditional Dena'ina Tribe, Council of Elders can assess the effects (damage) the oil spill has and will continue to have upon our people, land, and resources. We will submit our claim after perusal of such documents, and we may request monetary value compensation.

We ask you to peruse the Overview presented to you at the Northern Justice Conference (1990), as it is the bases of federal and state (entities) in the dealing with the Indigenous People.

We request no third party interference from Native Corporations, as in accordance to the CERCLA & SERA Amendments to the Clean Waters Act; which prohibits corporate interference, but mandates tribal involvement and tribal consent.

Thank you for your assistance in these matters of law.

*Mary Ann Mills
Council of Elders
Traditional Dena'ina Tribe*

38

CHICKALOON VILLAGE
CHICKALOON VILLAGE FISH AND GAME
CONSERVATION COUNCIL
HCO4 BOX 9880
PALMER, AK 99645
(907) 745-0505

April 11, 1991

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

Hon. Judge Holland,

This letter is to put Chickaloon Village, a federally recognized Tribal Government in South Central Alaska, on record as strongly opposing the proposed oil spill settlement negotiated between the Federal Government, the State of Alaska and the Exxon Corporation.

Information recently released to the public has revealed what many of the Alaska Native Villages have feared --that the documented effects of the spill are far worse than previously revealed, and the long-term effects on subsistence (and therefore Native culture, way of life, and economics), the environment (our sacred Mother Earth) and the health of the people of Alaska (Native and non-Native) are not yet known;

The lack of involvement in the negotiations for this proposed settlement by Traditional Alaskan Tribal Governments, both those effected directly due to their location on Prince William Sound, and those inland who, like Chickaloon, also depend for our survival on fish, game and fowl which will suffer long-term effects from the oil spill (please refer, for example, to the latest study released regarding the huge mortality rate of pink salmon adults and roe).

When both the state and the federal governments are persecuting and imprisoning Alaska Natives for subsistence fishing and hunting, in other words the taking of fish and animals to feed our families according to our traditional way of life, it outrages us that Exxon, the killer of countless fish, birds and mammals, is let off with nothing more than a slap (one Anchorage reporter stated that the fine proposed for Exxon was the equivalent of fining person who makes \$40,000.00 a year \$ 34.19). Recent revelations regarding the irresponsibility of the Alyeska Pipeline Corporation must also be addressed before all criminal charges are dropped in exchange for what amounts to chump change for these corporate giants.

While no amount of money, or jail time for corporate

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executives, can make up for the suffering of our fish and animal relations, who are still dying horrible deaths as a result of Exxon's negligence, or the loss of our subsistence way of life which has sustained us since time immemorial, it concerns us deeply that they (and we) have been determined to be worth such a paltry price.

Federal law mandates that Native Peoples give their consent before their resources and lands can be appropriated (25 USCA 177). Not only did this never occur in Alaska, but the Native Peoples directly effected by the spill were not allowed to be included in the negotiations. (The CERCLA and SERA amendments to the Clean Water Act specifically prohibits the so-called Alaska Native Corporations created by ANCSA from participation in any such negotiations on behalf of Alaska Native Peoples, although they do provide that the Traditional Tribal Governments in Alaska shall be participatory in all such proceedings, negotiations and settlements.)

Our sacred lands, waters and way of life have been seriously threatened and damaged by the Exxon Valdez oil spill. The suffering continues and the long term effects are only now coming to light. Why the need to act so quickly to "bury the hatchet" at the expense of truth, justice and human rights? Who will really benefit by such a quick and easy resolution to this matter? Chickaloon Village does not believe its best interests (nor those of the other traditional Native Villages) have been reflected in this proposed settlement, and we know that a great many Native Peoples throughout Alaska feel the same. When, if ever, will our voices be heard, here in our homeland?

Sincerely,



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

ACE 416937

---END---

39 ~~40~~

TO: Honorable H. Russel Holland
United States District Judge
U.S. District Court
222 W. Seventh Avenue, No. 4
Anchorage, Alaska 99513

April 10, 1991

RE: A 90 - 015 CR

FR: Theodora P. Thoma
#2 Marine Way
Juneau, Alaska 99801

APR 11 1991

FED. U. S. DISTRICT COURT

RE: CRIMINAL PLEA BARGAIN PROCEEDINGS
concerning EXXON CORPORATION, EXXON SHIPPING, ALYESKA SERVICES

For the record, I am a self-employed environmental lobbyist and have been closely involved in Alaska resource issues for over 20 years. As such I was a chief proponent for the re-design of the Alyeska pipeline, for an all land route through Canada, and for full environmental safeguards to protect state and national/international waters connected with the eventual marine terminal and tanker route emanating from Valdez. As you are aware, the pipeline and marine route escaped full NEPA "court review as a result of Congressional action instigated by the Alaska delegation in 1973. I still believe that NEPA review would have addressed the basic environmental safety and compliance responsibilities that were the root cause of the EXXON VALDEZ disaster, and subsequent inadequate response. My direct comments follow:

1) I oppose the agreement to drop the FELONY criminal charges against Exxon Corporation and Exxon Shipping Company (A90-015). I strongly believe that the pursuit of these grand jury charges and probable convictions are the only way to reform the inadequate staffing and competency levels aboard U.S. tankers that service Valdez and the West Coast to Panama. From the week-long live broadcast of the National Transportation Safety Board (NTSB) hearings in the summer of 1989, it was obvious that:

- A) Mr. Frank Iarossi, former chairman of Exxon Shipping, knowingly cut back the number of crew members aboard the EXXON VALDEZ, compromising safety, stretching the physical ability of crew to competently man this carrier of dangerous, toxic material;
- B) That Mr. Iarossi, Exxon Shipping, and Mr. Hazelwood, the ship's master, allowed Mr. KAGAN, a known incompetent, to serve aboard the EXXON VALDEZ, against the wishes and counsel of competent crew members who knew of his mental and physical problems, and caused KAGAN to steer the vessel through dangerous, ice-choked waters, resulting in the crash of the EXXON VALDEZ and resultant spillage of 11 million gallons of oil;
- C) That Mr. Iarossi, Exxon Shipping, and Exxon Corporation knowingly allowed Mr. Hazelwood to operate the EXXON VALDEZ without monitoring his acute alcoholism, and in fact fabricated the small amounts of paperwork in Exxon files relative to Hazelwood's condition. These two reports were without dates or signatures, yet purported to show that monitoring of Hazelwood did occur;

Consequently, I believe that counts IV & V (A90-015) should be reinstated and litigated, and actively pursued by the federal government, as these circumstances were the BASIS of state testimony before the NTSB. The agreement to bring these charges for litigation by the federal government was done in lieu of applicable state laws covering crew safety and competence.

PAGE 1 of 2

ACE 416938

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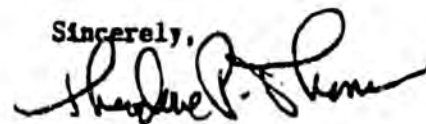
Page 2 of 2

2) Additionally, I strongly believe that the MISDEMEANOR criminal charges against Exxon Corporation and Exxon Shipping Company are being settled far too cheaply for the great, extensive damages to wildlife over a 700 mile region. It is my understanding that the ALLIED CHEMICAL case was the largest, previous U.S. settlement for environmental damages, at \$13 million. However, this was also 10% of Allied's earnings for that year. EXXON's yearly SALES are over \$100 BILLION; their reported net, yearly earnings are \$5 BILLION; and their NYSE traded stock has gone up 13 points in the last two years, at a estimated value of \$1 BILLION per point. This huge corporation is in effect being given a pittance fine by the plea-bargain, and it in no way should be viewed as a properly negotiated fine for either the extent of damages or the worth of the corporation. Also, as you may be aware, Mr. Lawrence Rawl of Exxon has repeatedly stated to the press that the fines and settlement will in no way impair or harm his company, and that all costs will be immediately passed on the consumer in pump prices. Finally, the overall terms of the settlement, payments over ten years, are an affront to Alaskans and the nation as a whole; once Mr. Rawl 'passes on the costs', consumers will in effect be paying over and over for Exxon's corporate liabilities, while the corporation makes token payments for it's environmental assault on the nation's common resources.

3) Finally, I strongly believe that civil and criminal charges, both felony and misdemeanor, against Exxon, Exxon Shipping and ALYESKA should be reinstituted and pursued by the federal and state governments, based on the complicity, culpability and liability of Exxon and the owner companies of Alyeska to secretly plan non-compliance with terms of agreements struck with the federal and state governments to immediately respond and clean up ANY spill in Prince William Sound. The documents obtained and verified by U.S. Congressman George Miller amply demonstrate that collusion on the part of Exxon and Alyeska to ignore the existing contingency plan was commonplace, and an active topic of discussion among the owner companies in 1987-88, even to the point of written, internal memos that materials, personell and marine transport were not on-hand to address but the most minor spills in Port Valdez and Valdez Arm. The June, 1988 owners meeting of Alyeska in Phoenix, Arizona, as referenced by Stanley Factor, Vice-President of Arco Marine, Inc., states clearly the Alyeska HAD NO INTENTION of responding to a spill in Prince William Sound, except with dispersents that were not on hand, with no properly fitted aircraft to utilize them. On March 24, 1989, in the early am hours, one of the first calls made by Mr. Tarossi, upon hearing of the spill in Houston, was to Southern Air Transport of Miami, for a C-5 aircraft, specially fitted for disepesent application, to be airborne, fly to New Mexico to pick up the dispersent ("ADDS PACK") and proceed to Anchorage. As the record shows, dispersent was not on-hand in Alaska, the plane was in Miami. The Valdez personell were not trained or available, the barge was empty, and whatever small booms and skimmers on-hand were buried in snow. I term these circumstances as criminal acts on the part of Alyeska and owner companies who were far more interested in tanker turn-around times and under manning than taking any responsibility for the consequences.

In summary, I trust you take these points into consideration, and I do appreciate the opportunity to comment. The Alaaka Legislature is holding daily hearings on these vitally important issues, and I hope you are able to see the wisdom in recommending rejection of these present settlement terms, as a judicial officer responsible for determining the fairness of the settlement for immediate and long-term damage to national resources.

Sincerely,



Theodore P. Thoma

ACE 416939

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APR 11 1991

FEDERAL U. S. DISTRICT COURT

April 11, 1991

HAND DELIVERED

The Honorable Judge Russel Holland
U.S. District Court House
222 West 7th Avenue
Anchorage, Alaska 99501

RE: EXXON SETTLEMENT AGREEMENT

Dear Judge Holland:

I respectfully urge you not to approve the Exxon Settlement Agreement. The recently released studies clearly indicate environmental and economic damage far in excess of what was originally calculated. There are estimates of Three to Eight Billion Dollars in provable damages. A settlement figure of 900 Million Dollars (approximately 500 Million in real terms) obviously is not in the public interest.

As to the 100 Million Dollars in settlement of criminal charges, I would suggest to you that this is also a grossly inadequate figure. Your Honor, I know you are aware that in order to be an effective deterrent penalties for crimes must be adequate. Do you honestly believe that 100 Million Dollars constitutes a significant punishment and deterrent for a corporation like Exxon? I would strongly suggest to you that it does not.

I have little faith in the wisdom and fortitude of the Alaska Legislature; therefore my hope lies with you. Your Honor, I urge you again, please, in the best interest of everyone, disapprove this agreement.

Respectfully Submitted,

Laura M. Schaffer

LAURA M. SCHAFER

P.O. Box 877569

Wasilla, Alaska 99687

Telephone: (907)373-3195 Home
(907)376-2414 Work

ACE 416940

43

41

YALE H. METZGER
1102 C Street
Anchorage, Alaska 99501
(907)277-7245

April 10, 1991

United States District Court
Federal Building U.S. Courthouse
222 W. 7th Avenue
Anchorage, Alaska 99501

Re: Public comments regarding proposed settlements in
M/V EXXON VALDEZ criminal prosecution.

Dear Judge:

I am a frequent user of Prince William Sound as the sailor of a pleasure boat. Accordingly, I have followed the press reports of the settlement discussions between Exxon and the government carefully. I have no financial interest in the outcome of your decision regarding the proposed settlement of the criminal charges against Exxon. However, I believe that financial interests are not the only interests which should influence your decision in this matter. Perhaps those with no financial stake in the outcome of this case have the clearest view of the monumental implications of the proposed settlement.

The acceptance of the proposed settlement would remove the defendants' conduct from public scrutiny. Although Exxon's conduct may come under scrutiny in the litigation of civil suits, these could easily be settled out of court; forever closing the doors on the public's view of the defendants' conduct leading to this disaster. As a practical matter, the exposure of the defendants' conduct to the public's scrutiny in a criminal trial would seem to substantially reduce the amount of discovery necessary in the multitude of civil law suits resulting from the spill.

Ideologically, informed public opinion is the best basis for public policy. The criminal trial of the defendants seems to provide the only assurance that the public will be provided both sides of the story on which to base its opinion. Presently, public opinion is based in part on the allegations of the parties as reported in the press, and in part on information leaked from the closed-door negotiations leading to the proposed settlement. I believe that the impact of closing the doors on the information which would be exposed at a criminal trial is obvious and an important factor weighing in favor of not accepting the proposed settlement.

My second concern regarding the proposed settlement is the impression that it will leave on industry interests if approved. I am concerned that the ratification of the settlement would reinforce the belief that industry can solve its problems by spending money. Early in the effort to respond to the spill, Exxon officials vowed to leave Prince William Sound the way they found it. Anyone who ever walked the beaches of Prince William Sound knew that this promise was impossible to fulfill. Despite being impossible to fulfill, this is an understandable corporate reaction to the public's pressure at the time. Exxon's naivete about the environment in which they did business probably lead to their frivolous vow. Perhaps if the spill occurred on Wall Street or in the hallways of an office building in Houston, Exxon officials would have been better prepared to respond to public pressure. Allowing the defendants to, in effect, buy their way out of the present case, reinforces the same flawed reasoning that lead to such statements and (1) discounting the possibility that a catastrophic spill would occur; (2) failure to adequately prepare for a catastrophic spill; (3) failure to recognize and understand the uniqueness and delicacy of the environment in which they did business; (4) failure to realize, or acknowledge, the social, economic and aesthetic impact of their corporate decisions; (5) failure to recognize the ramifications of leaving irresponsible people in positions of great importance; and (6) failure to fulfill the promises made back when Exxon undertook to make Prince William Sound its place of business.

The other side to the above argument is that it would be expensive to try the defendants and that the government may end up recovering less than the amount agreed upon in the proposed settlement. However, I believe that the cost to the public to try this case, combined with the risk of recovering less than specified in the proposed settlement, is outweighed by the benefit of placing the defendants in the limelight of a fair criminal trial.

The roughly one billion dollars which the defendants would pay pursuant to the proposed settlement comes with no enforceable assurances that it will be used to offset the damage caused by the defendants' conduct. In fact, some of the State of Alaska's proposed uses of the settlement funds are quite controversial and may result in further damage to Prince William Sound. I refer to the plans proposed by the present state administration to improve access to the area.

I believe that the influence on public policy from the exposure of the defendant's conduct leading to the spill is the only outcome which can be reasonably calculated to deter board room policies based on oversights or unacceptable risks. The premiss for public opinion should be facts. I do not believe that the public presently has enough facts on which to base an informed opinion. Our lawmakers cannot even seem to obtain the necessary information with which to draft laws and regulations. More recently, a release of information by NOAA suggests that

information currently compiled about the results of the spill is incomplete. The proposed settlement appears to be premature in light of our inability to adequately measure the damage caused by Exxon. The proposed settlement may obviate much of the need for future study of the effects of the spill.

The recovery of the dollar value of damages caused to Prince William Sound is only one of many public benefits which could be realized by the trial of the defendants in this case. There is no guarantee that any fines contemplated by the proposed settlement will support the objectives of our criminal justice system. This leaves the proposed settlement even less significant in view of the broad goals of our criminal justice system.

In short, I am concerned that the economic impact from the proposed settlement is not enough of a deterrent to prevent future flawed policy making like that which lead to the spill and not enough information is presently available with which to measure an appropriate punishment in the form of a fine should Exxon be convicted of a crime.

The above comments are respectfully submitted for your consideration.

Sincerely,


Yale H. Metzger

C:\WP51\EXXON.LTR

ACE 416943

EX-114
APR 11 1991
FED. U. S. DISTRICT COURT

42

1040 Bench Ct.
Anchorage, AK 99504
April 10, 1991

Judge Russel Holland
Federal Court
222 West 7th
Anchorage, AK

Re: Exxon Valdez Oil Spill

Dear Judge Holland:

I understand from a newspaper article that you have made a call for public comment on the plea bargain proposed for the Exxon Corporation and its shipping subsidiary in the case of the Exxon Valdez oil spill. The following are my comments.

I understand from news media stories that a settlement of one billion dollars is proposed and that this figure was arrived at as a "reasonable" figure by Governor Hickel without the benefit of any analysis about what the actual costs are. A wide range of studies have been initiated the "Trustees" in 1989 and 1990 for the purpose of determining what the environmental costs of this oil spill are. The Trustees include representatives of the State of Alaska and the Federal government. I understand that Governor Hickel did not take these studies into consideration in determining the one billion dollar settlement amount. While those studies have not been completed, indications are that the costs would be well in excess of one billion dollars. If those costs are not paid by Exxon, it is the public that will bear the burden. The value of lost wildlife and other effects on the environment are difficult to determine. But it is only fair that those costs are determined as scientifically as possible through the studies that have been initiated and that Exxon pay the full amount. I think it is unfair and unjust that the case be settled without the benefit of the studies. Governor Hickel wants to settle the suit as quickly as possible and not go into protracted legal proceedings. If the issue were mere technicalities, quick settlement would be a good idea. But technicalities are not at issue. Quantifying the dollar value of damage to the environment is at issue. This proposed settlement has strong potential for making it easy for industry to violate the environment grossly and not pay for it. People should be good stewards of the land and water. Industry, the State of Alaska, and the Federal government should all be good stewards. I think they would be bad stewards if settlement is based on only a vague notion of what the costs are rather than the best scientific information available. This one billion dollar settlement could set a poor legal precedent that would set back the cause of protecting the environment considerably.

Thank you for the opportunity to comment and for your consideration.

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Sincerely,



Tim Holder

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APR 11 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

ACE 416945



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U.S. DISTRICT COURT
222 WEST 7TH AVE RM 261
ANCHORAGE AK 99513

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APR 11 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

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DLR

THE EXXON FLEA AGREEMENT IS PART OF A PACKAGE THAT INCLUDES CONSENT DECREE, MEMORANDUM OF AGREEMENT. THAT PACKAGE IS NOT IN THE PUBLIC INTEREST, BECAUSE NEGOTIATORS INTENTIONALLY STRUCTURED SETTLEMENT TO EXCLUDE LEGISLATIVE BRANCH, BOTH CONGRESS AND ALASKA LEGISLATURE, FROM ANY INFLUENCE OR CONTROL OVER SPENDING. DESPITE CONSTITUTIONAL PROVISIONS REQUIRING ALL MONEY BILLS TO ORIGINATE FROM CONGRESS, LEGISLATURE. STATE ATTORNEY GENERAL TESTIFIED TO LEGISLATIVE COMMITTEES AS TO THAT EXCLUSIONARY INTENT BY SETTLEMENT NEGOTIATORS. JUST SAY NO.

JOE SONNEMAN TEL.463-2624
324 WILLOUGHBY
JUNEAU AK 99801

ACE 416946

46



Alaska Conservation Foundation

430 West 7th Avenue, Suite 215 • Anchorage, AK 99501 • (907) 276-1917 • Fax 274-4145

44
April 9, 1991

Honorable H. Russell Holland
U.S. District Court
District of Alaska
222 W 7th Avenue, #4
Anchorage, AK99513

Re: Exxon Settlement

Your Honor:

For eleven years, Alaska Conservation Foundation, a 501(c)(3) tax exempt, public foundation has been supporting Alaska's environmental community. It has made more than \$2,500,000 in grants for a wide range of activities. It would be fair to say that its emphasis has been support of local citizen activities for a clean and better environment.

Alaska Conservation Foundation helps citizens who are working to improve human habitat and the natural environment without relying on government assistance, not because they are opposed to such assistance, but because the responsible government agency has either refused to help or has had to be prodded to help, often after protracted litigation. This is not the way things should be, but it is the way they are.

Alaska Conservation Foundation's strength is its trust in ordinary people to better their lives. Surely, it would make a great deal of sense to apportion some of the Exxon settlement to the foundation's grantmaking in support of citizen oversight of the actual restoration and rehabilitation of Prince William Sound. With the blessing of former Governor Cowper, Alaska Conservation Foundation received contributions from individuals across the country to assist citizen cleanup and oversight after the Exxon Valdez spill. The Foundation has already granted more than \$250,000 to citizen based efforts to cleanup the sound and to insure better oil spill contingency planning and preparedness. Although we should really be able to count on our representative form of government to protect the public interest, the spill proved that without continuing citizen oversight the public interest inevitably suffers.

For this reason and in addition to an "independent" board of trustees to administer the settlement fund, citizen oversight of fund implementation should be required as a condition of any settlement. Alaska Conservation Foundation is an appropriate and

ACE 416947

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responsible public interest institution to insure effective citizen oversight, and is qualified to receive funds for that purpose.

Sincerely,

Jan Konigsberg

Mr. Jan Konigsberg
Executive Director

JK:sd

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APR 11 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

ACE 416948

APR 11 1991

FEDERAL U. S. DISTRICT COURT

4546
3730 Wesleyan Dr.
Anchorage, Alaska
99508
April 01, 1991

Judge Russ Holland
U.S. District Court
222 West 7th Street#4
Anchorage, Alaska

Your Honor Regarding the State of Alaska/Exxon agreement:

I do not support the agreement for the following reasons:

1. Possible SERIOUS CONFLICT OF INTEREST.

The Governor has appointed Mr. Heinze, an ex-Arco official. Mr. Heinze is acting as prime mover, consultant, and decision maker for the State of Alaska, whereas in 1988 he was active with the opposing party or parties.

Cole, our State Attorney, has possible undisclosed interests in oil leases; or may be disposed to accommodate the opposing party through previous partnerships, employment, or alignment. The public does not have information if there is a conflict or not.

Release of Aleyska from charges is not understandable since it delivered the damaging oil and is part of the consortium, including Exxon.

2. There should be no unilateral settlement between the State and Exxon.

There should be the combined interest with the State and its harmed residents and the damages should reflect all of Alaska. In this agreement Exxon and the State will settle and as I understand it, the State will join with Exxon to fight suits filed by residents of Alaska, against the State and Exxon. The State should present a position of "all for one, and one for All" to the people of Alaska. The State is in a better position to obtain damages for its people, in conjunction with the agreement of the residents not to sue the State.

3. The State of Alaska is not bargaining from a position of Strength, or using the States ability to gain just rewards.

The State claims it cannot afford a long expensive Court case--it needs a quick end to the suit.

The negotiations have been secret in that known damages have not been made public. The State representative claim the State needs money now.

The State has the means to sustain itself while pursuing just settlements by re-imposing State Income Taxes(deductible on Federal Income taxes), by restructuring or imposing other severance taxes on timber, minerals and fish. The State is obligated not to make Education and Social Services decline in order to accommodate one industry.

4. The Settlement, if made, should be in a "lump" sum with the Total amount up front. The present terms do not take into account of inflation over the pay-out years, nor lost interest.

ACE 416949

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4. cont;

The lump sum could invest the principle and spend only the interest to clean up the environment and insure implementation of Safety and Security. This endowment would be protected from political manipulation.

The State has reportedly spent \$900,000.00. The public does not know how much we actually have paid through the system. Rather than one billion, it appears that three billion would be a reasonable claim. Also, the additional end expenses would reflect 100 % of actual cost.

5. Punitive damages should be awarded for criminal neglect and destruction. The residents of Alaska and its flora and fauna are innocent victims of long lasting harm.

I have always advocated we can have both oil and gas development and a safe environment. Alaskans need a fair settlement in order to go forward and to develop future plans with caution and confidence. We need a just decision, from the Court.

Your Honor, I have been a resident for about 32 years. I own joint property in the Seldovia Bay. The City of Seldovia was begging for oil containment booms to protect our Bay, there were none for Seldovia. The City asked for money to buy floater logs, across the Bay in Homer, there was nothing at that time and time was short. I immediately sent the City of Seldovia one of my first entire Social Security checks, \$300.00. I was proud of the workers in Seldovia. I never want to see this death and destruction again or suffer the tears of anguish.

Sincerely,


T.P. Burrell

46

3942 Turnagain Blvd.
Anchorage, Alaska 99517

H. Russell Holland
C/o Clerk of the Court
Room 261
U.S. District Court
222 West 7th Avenue
Anchorage, Alaska 99513

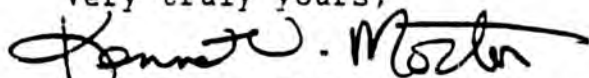
April 11, 1991

Dear Sir;

I am writing to express my opposition to the proposed settlement of criminal charges against Exxon regarding the Exxon Valdez oil spill. As a professional land use planner in private practice and as a former worker in the commercial fishing industry, I have known the Sound before and after the spill. In light of the long record of neglect on the part of Exxon, and the magnitude of the damage, I cannot believe that the proposed penalty is adequate. The penalty should send a clear message to the industry that their neglect will cost them. The proposed penalty does not do this. The proposed penalty is nothing more than a slap on the wrist and will do little or nothing to encourage greater care on the part of the industry. The penalty must be sufficiently large to hit them where it hurts, in their profits.

Thank you.

Very truly yours,


Kenneth V. Morton

APR 11 1991

ACE 447648

3531 Perenosa Bay Drive
Anchorage, Alaska 99515
April 10, 1991

Honorable H. R. Holland
United States District Court Judge
United States District Court
c/o Clerk of Court, Room 261
222 West 7th Avenue
Anchorage, Alaska 99513

Subject: Exxon Spill Testimony
No. A90-015 Criminal

Dear Judge Holland:

I would like to make the court aware of my feelings as a citizen of Alaska concerning the proposed settlement of the lawsuit involving the Exxon and the State of Alaska.

To be very specific, I am in favor of the proposed settlement. I think it is the most positive outcome from the entire catastrophe.

Money can never buy back the condition of Prince William Sound. Only nature through its own processes can restore the Sound. And since we cannot stop natural forces, the sound will be restored one day no matter what we do.

Today we think that what we did immediately in response to the spill may have been the wrong thing to do. There is no reason to think today's best logic may also change with time. As long as this argument goes on as to what was the right thing to do, the stronger Exxon's case is that they did what they were supposed to do at the time. Since natural restoration is lessening the effect of the spill, as time that passes, the more public sentiment and pressure will lessen toward Exxon.

What if the size of the settlement had been double the present amount? Public perception of Exxon is that they could afford any amount. I don't think that is true. But even if the settlement amount were double, I believe the same detractors to the agreement would be saying the same things that they are saying today. Where will it end?

It needs to end here and now. The State of Alaska should take this opportunity to put this whole thing behind us. Let's get on with our future and quit crying about what might have been!



Mark L. Prestridge

ACE 447649

APR 11 1991

FED. U. S. DIST. COURT

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April 10, 1991

3210 Wyoming Drive
Anchorage, AK 99517
(907) 277-5840
(907) 263-4806 (W)

Judge H. Russel Holland
c/o Clerk of the Court
222 W. 7th Ave Room 261
Anchorage, AK. 99513

APR 11 1991

U. S. DISTRICT COURT

Dear Judge Holland:

I noticed in the Daily News this morning that you are accepting testimony on the EXXON settlement. Naturally, the California News makes the 14 letters you received to date seem like a million, with overwhelming negative response. No surprise there, as they have come out in editorials condemning the settlement and sensational journalism is their trademark. But I am glad they made mention of the letters so I could relay my thoughts to you on the settlement [before the deadline].

As a 27 yr. resident of Alaska, a certified Alaskan fanatic, and an avid outdoor enthusiast I consider myself a slight victim of the spill. I spend most of my vacations here (once every 4-5 yrs have to visit the relatives for a week). I'm just as PO'd out about the spill as anybody, maybe more so than most. It holds some of my favorite places in the State. It was a terrible, unfortunate accident, but that's all, just an accident. Its not like the spill in the Persian Gulf, ten times larger, intentionally created by a madman. At least I think there was a spill in the Gulf, didn't the press report something about one once back in January? Anyway, getting back to the PWS spill, I guess its safe to assume the State and the oil industry were fairly unprepared to tackle such a large one. I feel confident they are now. And the Sound is recovering very nicely from what I can tell.

Basically it sounds like just a few points are a question in peoples minds as to whether this is a good deal and whether we should accept it. The first being whether the State and Federal Governments could get more money by taking EXXON to court for 5-10 years. I'm not a gambler and I'm more tune to a bird in the hand is worth two in the bush. More than likely the lawyers will end up getting rich. The jury didn't hang Hazelwood like people expected and I doubt that they will find EXXON guilty of any "gross negligence". A hundred million plea bargain sounds pretty good. A billion total dollars (or 750 million real or whatever dollars) spaced out over 10 years so the money isn't wasted foolishly also sounds pretty good. Is the damage worth more? Is the new Star Trek better than the old one? Depends on who you ask.

Another point is who gets to spend the settlement. Anybody but the State of Alaska Legislature would be okay with me. I'd rather they didn't have

anything to do with it . . . period. My understanding is there would be a committee of 3 State and 3 Federal representatives that would decide. I guess I wouldn't mind having a few more folks representing the State but I can accept the committee as is. I hope the Legislature doesn't have anything to do with picking out the State representatives. Certainly the residents of Alaska should be allowed to provide input to the committee on how to use the money. Citizens of the USA could comment on the 100 million criminal fine if it's used toward restoration.

That's pretty much all I wanted to say. I support the settlement as is and hope it is accepted. It's about time we put the PWS spill behind us and move forward. Quite honestly, while its EXXON oil that spilled, I place most of the blame for the environmental damage on the Alaska State Government, and in particular Steve Cowper, Dennis Kelso and the bumbling idiots at the DEC. By not allowing EXXON to use cleanup techniques from the pre-approved spill response plan immediately, they could (and should) be blamed for much of the damage. This semi cover-up will be coming out in court and I have a feeling a lot of jury's will come to that conclusion too. In light of this, damages by taking EXXON to court could very well be less than those of the settlement.

In summary I say accept the settlement and take the money. But before I close, I'd just like to say that I for one appreciate the time and effort Attorney General Cole and Gov. Hickel put into this deal. Thanks for your time.

Sincerely,



Michael E. Beck

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APR 11 1991

FBI - ANCHORAGE

April 10, 1991

Judge Fussel Holland
U.S. District Court
Anchorage, Alaska

Your Honor,

I am writing in response to your call for public opinion on the out of court settlement with Exxon Corp. over the Exxon Valdez disaster.

I, as an active registered Alaskan voter, urge you not to consider an out of court settlement. I feel the comedy of errors and gross negligence that led to the disaster must be prosecuted.

Unfortunately, I do not represent any big money concerns in the state. But, as a student at UAA, an avid outdoor adventurer, a cold water SCUBA diver and sport fisherman, I feel I do represent a large cross section of the state. All this prompts me to write this letter.

I have been researching a paper on the out of court settlement with Exxon. That research has led me to the studies of probable cause of the oil spill conducted by the US Coast Guard and the State of Alaska and the Alaska State Oil Spill Coordinator. I have also looked at the original Alyeska Oil Spill Contingency Plan for 1989. These are all published reports and available to the public at the Alaska Resource Library in the Federal Building. The gross personal and corporate negligence on record is overwhelming.

I have reviewed the verdict and sentencing in the Joseph Hazelwood trial. Although Hazelwood is popularly viewed as a scapegoat, I believe a captain is ultimately responsible for what happens on his ship. There are so many departures from standard

ACE 447650

(51)

and required procedure that they cannot be overlooked. Those in the Exxon Shipping Company are as much to blame for keeping him in his position as he is for failing in it. Justice was not served in that case.

Alyeska's part in compounding the initial errors certainly cannot be overlooked. Alyeska did not live up to its contract with Exxon or its understanding with the State of Alaska. Although Exxon Shipping Company assumed control of clean-up efforts it was not its jurisdiction to do so. The real heroes in the early response are the Cordova Fishermen.

It is evident that Alaska State government and the oil industry are necessary, yet strange, bedfellows. We have energy that the entire country requires and we are handsomely compensated for it. But the kind of negligence that led to the grounding of the Exxon Valdez cannot be tolerated, on a personal, state, or national level. We should not let ourselves be bought off by the money lavishly thrown at the ineffectual "clean-up" or the 200 million dollar offer.

The terms that allow them to take 10 years to pay the settlement and the tax deductibility of it are absurd. Ultimately we, the little people, wind up paying the settlement and the taxes on Exxon's profit with this plan. Exxon is a company that reported in excess of 10 billion dollars profit the year preceding the oil spill.

A more equitable arrangement than money would be to make Exxon restore the Sound to the way it was. This is not possible therefore, the chain of command responsible for the neglectful way in which the Exxon Shipping Company and Alyeska were run

should be held up to public consternation through a public trial, hopefully with adequate prosecution by the state this time.

I know that the bottom line in corporate responsibility is money. I have been told by several North Slope workers that the 2 billion dollars Exxon already paid for "clean-up" efforts has put the fear of God into the entire industry. The oil industry will avoid environmental damage because it is not cost effective. Perhaps that is the best we can expect.

And yet, I, like Judge Johnstone, would have liked to hear an apology, an acknowledgment of Exxon's role in creating the conditions that allowed this to happen. Although Exxon acknowledges its responsibility after the fact, something Captain Hazelwood never did in court, they also proved that no amount of money will clean up the sound. The industry does not have the technology to do so, and is in fact, not required to develop it.

I have to wonder what NOAA general counsel Tom Campbell meant when he said in Wednesday's Daily News that, "The federal government thinks it is getting enough money from Exxon to restore the waterway." I have not read any reports that credit anything but time with restoration of habitat after an oil spill. We are dealing with effects that can last up to 20 years. How can we settle in just two years? The herring harvest, the first commercial enterprise to be affected by the spill, will not return for two more years. It is unconscionable to make a final settlement when the overall results are not close to being known.

I know we cannot compare apples and hubcaps, like wildlife habitat vs money. I know that many people would find it naive to try, but someone must stand up for that which cannot defend

ACE 447652

itself. That is one principle that law is based on, isn't it? We must balance the rights of indigenous species with the encroachment on their shrinking habitat.

In as much as time is the only cure for the wounded sound and money is all Exxon can offer, PLEASE. DO NOT SETTLE OUT OF COURT! Hold Exxon and Alyeska morally and legally responsible. We should demand ten times what they offer. If a tap on the pocketbook is all industry can feel, then make it feel it in a big way. We have a chance to send the message out that negligent polluting of our environment will not be tolerated. Industry must act responsibly as well as cost effectively. And where prevention is the best cure, response and restoration should also be required.

I have thought about this issue a lot and feel very strongly about it. I thank you for your time and consideration.

Sincerely,

Catherine L. Williams

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JUDGE H. RUSSEL HOLLAND
c/o Clerk of Court
Room 261
222 W. 7th Ave.
Anchorage, Ak
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APR 11 1991
FED. U. S. DISTRICT COURT

Judge H. Russel Holland,

In response to your request for public comment on Exxon's plea bargain, I am putting forth my comment. I agree with the attached article. The charges against Exxon are absurd and make no sense what so ever. If anyone believes that Exxon intentionally grounded a multi-million dollar vessel to intentionally lose a multi-million dollar cargo, they should have their head examined. I believe that the real criminals in this incident are the idiots that were running the state at the time - Kelso & Cowper. If they had been doing their jobs, they wouldn't have hobbled Exxon. So my comment, for the record, is in favor of the plea bargain.

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Scott Sindelar

ACE 447656

Some say Exxon never said to its personnel department, run down to the bars along the waterfront and find a few derelicts to man this huge ship. Furthermore, we should not forget in the heated hysteria that no official proof at this writing exists that either the captain or the crew were not competent.

Accidents do happen. Perfectly qualified and credentialed people make mistakes. Competent drivers get killed by the thousands because competence doesn't mean you can't have lapses of attention or make errors in judgment. So the criminal charges are political baloney, an attempt to shake down Exxon and win a cheer from the environmental mob.

When are the rest of us going to accept our share of the responsibility for the Valdez oil spill? After all, Alaskans love to sell the oil. We love to burn it. If you want oil, you must move it on the high seas. Capt. Eddie Rickenbacker was fond of saying that as long as you have movement, you are going to have crashes.

Let's dampen down the utopian helper dust. There are no systems, plans or schemes that will prevent future oil spills. Given the volume of oil being moved, the uncertainty of nature, the fallibility of all humans,

The U.S. Justice Department has turned the guns on Exxon

Americans have been taught to be fearful of the U.S. budget deficit, which allegedly is "mortgaging our future." We have been pummeled with charges of "imperial overreach" — a claim that our military strength is sapping the life from our economy. And we have been terrorized by hysterical claims that our food and environment are unsafe.

All the while, the United States has enjoyed one of the smallest deficits in the world when measured in proportion to income and wealth. Our military rival, the Soviet Union, crippled by socialism and an inefficient economy, is cracking up before our eyes. Americans remain the healthiest people with the safest food and least polluted environment in the world.

The unfounded hysterias that tyrannize us are calculated to serve special interests, whether those of government wanting more taxes, pacifists wanting less military or environmental groups wanting more power.

Moreover, the scare stories blind us to the real threats to our future. The most serious of these

By Paul Craig Roberts

Paul Craig Roberts, an economist at the Center for Strategic and International Studies, is a columnist for The Washington Times.

threats is the hostile attitude toward business that is being taught in our universities and law schools. Today the U.S. government is full of brainwashed young lawyers who believe that doing good in the world and destroying U.S. businesses are one and the same thing.

For example, exultant from its destruction of our nation's most innovative financial firm, Drexel Burnham, the U.S. Justice Department has now turned its guns on Exxon, our largest oil company.

It is absolutely certain that Exxon did not run its Valdez oil supertanker aground off the coast of Alaska on purpose in

order to pollute the water and kill migratory birds. Yet, the Justice Department's criminal indictment assumes that it did.

The trumped-up indictment relies on two laws designed to punish polluters, the Clean Water Act and the Refuse Act. These acts make it illegal to discharge hazardous substances and refuse without a permit. They are designed to stop unwanted pollutants and garbage from being dumped in waterways.

It is absurd for the Justice Department to claim that the accidental spill of \$150 million of valuable oil in Prince William Sound was "refuse matter" thrown, discharged and deposited by Exxon without a permit.

It is equally absurd to charge Exxon with violating the Migratory Bird Treaty Act, which prohibits the killing of migratory birds without a permit. The Justice Department's lawyers need psychiatric care if they really believe that Exxon wasted \$150 million worth of oil plus \$2 billion in cleanup costs and \$120 million in damage claims paid to fishermen in order to go bird hunting with-

out a license.

The other two indictments are drawn from the Ports and Waterways Act and the Dangerous Cargo Act, which require tankers to be manned by competent personnel. The government is charging that Exxon "willfully and knowingly" employed people incapable of performing the duties assigned to them.

That's about the stupidest charge imaginable. How could the attorney general possibly believe that one of the world's largest companies purposely hired incompetent people to squander its profits and jeopardize its existence?

It seems clear that the captain of the Valdez supertanker didn't do his job. But he always had in the past. It is not as if he had a record of running oil tankers onto reefs while remaining in Exxon's employ. That would imply negligence on the part of the company.

In its front page story, The New York Times, no friend of oil companies, acknowledges that "the government faces a risky criminal trial based on untested legal principles." Actually, Josef

Stalin tested these principles in the 1930s when he invented make-believe crimes in order to destroy people.

It is unsettling to watch the Justice Department practicing law the way Stalin did. Attorney General Dick Thornburgh declared that "by pursuing criminal charges in this case, the federal government is sending a strong signal that environmental crimes will not be tolerated." If the government has its way with Exxon, in the future anyone involved in a car accident that results in gasoline spilling into a stream or waterway will be subject to prosecution for an "environmental crime."

What we are witnessing is the extortion of an oil company by the Justice Department. (1) Exxon will admit to "serious charges" and pony up \$550 million more for a fund to please favored environmental interest groups, the government will let the oil company off with a plea bargain. If nothing else, this shows that it is environmental groups and not large corporations that pull the strings of justice.

Criminal prosecution of Exxon must puzzle America's economic allies

The criminal prosecution of the Exxon Corp. for last year's Alaskan oil spill must come as a puzzlement to America's economic allies around the world who look to this nation for leadership.

By Jerry Heaster

Jerry Heaster is a columnist for the Kansas City Star in Kansas City, Mo.

tional light.

A criminal charge should be based on criminal intent. Given this, is it rational to assume that Exxon executives would have knowingly done anything that would have caused such an accident to happen?

Hardly. The accident was horrible, not only in

and no doubt will spend much more.

Despite the spill's obvious accidental nature and Exxon's good faith cleanup efforts, the attorney general says the criminal prosecution signals that "environmental crimes will not be tolerated."

Not so. What it really reveals

should be concerned because prosecuting Exxon makes it that much easier for government to

deprive you of the law's protection when it suits a powerful person's political purpose.

The conventional wisdom of the United States is that if the United

McLukich

Each life encounter
spills will eventually
mile

Judge Holland:

When I heard of the proposed settlement between Exxon Corporation, the Federal Government, and the State of Alaska concerning the Exxon Valdez incident, I was incensed. After the incredible magnitude of environmental harm this company, or rather consortium of companies, inflicted on our state, I find a "billion dollar" settlement, spread out in convenient installments over many years, akin to slapping John Hinkley's hand for trying to shoot President Reagan, or saying "Shame on you!" to Saddam Hussein.

Exxon's apparent abrasiveness and indifference during the early hours of the spill, coupled with Alyeska's lack of *promised* spill response capabilities were ingredients in a sick recipe for disaster. The damage caused by this spill to wildlife and associated ecosystems will be evident far into the future. Punishment for the results of Exxon's poor judgement and apparent lack of ecological morals should carry similar long-term affects for their organization.

The settlement is far too little for a corporation of Exxon's resources, and the installment plan makes it far too easy for Exxon to escape from this incident with a minimum of wear and tear. It is my opinion that Exxon Corporation should pay 5% of their gross annual income, before expenses, for the next 30 years at the very least. This would provide a corporate punch that will be felt for the lifetimes of the people involved in the events which lead to the spill. The effects of the spill will be felt for the next millennium. It is only fair that Exxon feel some pain as well.

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Now for a little perspective on the person who has just vented his spleen. Until December 1990 I worked for Chevron U.S.A., and I parted company on friendly terms. I have no deep animosity towards "Big Oil" or large corporations per se. I worked for ten years at Chevron's Anchorage Terminal, and spent the last 3-1/2 years at Chevron's Point Arguello Facility near Santa Barbara, California. I recently relocated to Anchorage to pursue a career in the computer industry in the state I have come to love very deeply.

While working as a Programmer/Analyst for Chevron in California, I watched as they and their project partners waded through adverse public opinion and incredible bureaucratic muck trying to get their oil processing facility up and running. To this day, after expending nearly 2.5 billion dollars on the project, not a drop of oil has moved through the plant, and not a penny of positive cash flow has entered the pockets of the members of the project consortium.

So, I have witnessed one end of the spectrum; "Big Oil" trying to get their raw materials but dealing with people who want the benefits of petroleum technology, but don't want the material obtained from their "back yard." The frustration of trying to get the oil safely and cleanly while being pre-judged by the public is incredible.

On the other hand, I can see the need for some kind of regulation, some method of checking-up on companies which are performing environmentally sensitive work, to ensure that they are capable of handling emergencies of magnitudes commensurate with their projects. When I heard of the Exxon Valdez spill, I was sickened that such a thing had happened, especially to an area as beautiful and bountiful as Prince William Sound. As the drama unfolded I was amazed at the poor initial response to the spill and wondered why the companies had not complied with their promises.

Here was the other end of the spectrum; "Big Oil", gambling that they could slide by and not attend to their responsibilities as expected by the general public. Indeed, Exxon and Alyeska gambled, and we all lost. It is time for those who played the game, and blithely danced around their promises, to pay until it hurts. They should not get off lightly and, in my opinion, the current settlement is *far too light!*

Thank you for the opportunity to comment on this issue.

Garry J. Wallan

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WALTER J. HICKEL, GOVERNO

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

APR 11 1991

April 11, 1991

U.S. DISTRICT COURT

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

Dear Judge Holland:

On behalf of the State of Alaska, I am submitting the following brief comments on the Plea Agreement between the United States and Exxon Corporation and Exxon Shipping Company currently pending imposition of sentence. These items are those of most concern to the State.

The State of Alaska has a paramount and continuing interest in seeing that parties found criminally responsible under federal law for the discharge of crude oil in the Alaska environment are deterred from future conduct which could lead to similar catastrophes. It is also important that others in the oil and marine transportation industries are similarly deterred. The proposed disposition, when viewed in light of all of the events surrounding the Exxon Valdez oil spill, is of sufficient magnitude to call to the attention of Exxon and the industry at large the need to assure that all necessary precautions must be taken to guarantee the safe transportation of crude oil over the land and waters of our state.

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The Honorable Russell Holland
Judge of the United States District Court
April 11, 1991
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The Plea Agreement provides for a \$100 million fine, remitted to \$50 million dollars based upon Exxon's efforts to clean up the spill and to pay for some of the damages caused by the spill. The Agreement further provides for the immediate payment of \$50 million in restitution to the State of Alaska to be used for restoration purposes. In addition to these payments, the Agreement recites that Exxon has expended in excess of \$2 billion in response and cleanup costs and paid more than \$300 million in damages to private parties to date. Simultaneously with filing of the plea agreement, Exxon entered into a civil settlement agreement with the United States and the State of Alaska which, if approved, calls for as much as \$1 billion dollars to be paid over the next ten to fifteen years. These payments, in conjunction with the guilty pleas to be entered by Exxon and the public censure which accompanied the spill, are sufficient to establish an adequate level of deterrence.

The remittance provision is beneficial to this State as it should serve as an incentive to those who might in the future be responsible for the discharge of oil to take responsibility for its clean up and to take affirmative voluntary steps to compensate victims of oil spills.

The \$50.0 million restitution payment to the State of Alaska required by Part IV of the Agreement for restoration of natural resources is an especially appropriate condition of the sentence. It provides the Alaska State Legislature immediate

The Honorable Russell Holland
Judge of the United States District Court
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access to significant funds to commence the restoration of Prince William Sound. These restoration activities will ultimately benefit all of the user groups who appear as plaintiffs in the myriad civil actions, including Alaska natives, commercial fishermen, recreationists, property owners and businesses.

In sum, the proposed sentence outlined in the Plea Agreement adequately addresses the State's concerns about long term industry-wide deterrence. In addition, although the \$50.0 million restitution payment is not in itself adequate compensation for all of the State of Alaska's damages, it is a significant down payment on those damages to be recovered under the civil settlement or in subsequent civil litigation. Most importantly, the amounts are available immediately and are dedicated to restoration of the environment which in turn will redound to the benefit of all Alaskans who live, work and recreate in Prince William Sound and other areas affected by the oil spill.

Thank you for the opportunity to comment on the pending Plea Agreement and sentencing proceeding.

Sincerely,

Craig J. Tillery
for CHARLES E. COLE
ATTORNEY GENERAL

CEC:bkn

Chris Chavasse
P.O. Box 15003
Fritz Creek, Ak
99603

April 9th, 1991

The Honorable Judge Holland:

In the light of the recent disclosure of the summary of the federal assesment I believe that not only do we as the residents of the State of Alaska, but also the residents of the Nation, have the inherent right to examine this document prior to accepting a politically motivated out of court settlement with Exxon Corp. Therefore, I must request that the Judicial System extend the comment period on the proposed settlement and also provide copies of the released summary of damage to all communities in the State of Alaska and the Nation at large.

Having personally participated in the clean-up effort after the spill, and having seen and appraised the damage to the communities and natural resources of the State I do not consider that the current settlement amount is appropriate, nor the terms thereof.

In the light of the accumulated damage, planet wide, caused by Industry, this is not the time to be releasing the perpetrators in a political settlement. Exxon and Aleyeska, both, should be held accountable for their negligence and criminal disregard for the Life and Liberty afforded the State and its peoples.

Sincerely,



Chris Chavasse

ACE 447664

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U.S.D. - T.C.

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April 11, 1991

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

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

Dear Judge Holland:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Alyeska Should Not be Excused From Criminal Liability.

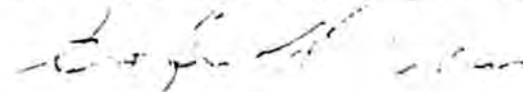
Congressman Miller has described Alyeska's broken promises regarding its ability to prevent or respond to a spill of this magnitude. The merits of any criminal case or civil penalties against Alyeska cannot be determined without court proceedings, but to foreclose that possibility erodes confidence that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

CONCLUSION

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

Respectfully submitted,

ADLER, JAMESON & CLARAVAL



Geoffrey Y. Parker

to 32%, K_2O = 8 to 9%, and CO_2 = 27 to 32% (3-5, 15). Analyses of fresh samples, which were sealed before complete cooling, indicate that the 1988 lavas were almost water-free. The volatile contents of F (2.5 to 4.5%), Cl (3.5 to 5%), and SO_2 (4 to 5.5%) are higher than reported previously for the 1960 lavas (15). Such high volatile concentrations no doubt contributed to the lower solidus temperature of the lava of Oldoino Lengai compared with that of the synthetic system studied by Cooper *et al.* (12).

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

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

REFERENCES AND NOTES

1. H. Rock and G. Schulte, *Zeitschr. Vulkanol.* 6, 47 (1921).
2. J. B. Dawson, in *Cammerer, O. F. Turtle and J. Girton, Eds. (Interscience, New York, 1966), pp. 155-168.*
3. ———, *Nature* 195, 1075 (1962).
4. C. G. Du Bois *et al.*, *ibid.* 197, 445 (1963).
5. J. Girton and D. McKie, *Lunar* 13, 213 (1980); J. D. Twyman and J. Girton, in *Alkaline Igneous Rocks*, J. G. Fitton and B. G. T. Upton, Eds. (Spec. Publ. 30, The Geological Society, London, 1987), pp. 85-94.
6. M. E. Wallace and D. H. Green, *Nature* 335, 345 (1988).
7. J. Keller, in *Carbonates—Genesis and Evolution*, K. Bell, Ed. (Unwin Hyman, London, 1989), pp. 70-88.
8. T. Deans and B. Roberts, *J. Geol. Soc. London* 141, 563 (1984); M. J. Le Sas, in *Alkaline Igneous Rocks*, J. G. Fitton and B. G. T. Upton, Eds. (Spec. Publ. 30, The Geological Society, London, 1987), pp. 53-83.
9. J. B. Dawson, P. Bowden, G. C. Clark, *Geol. Rundsch.* 57, 365 (1968).
10. C. Niyamweru, *J. Afr. Earth Sci.* 7, 603 (1988).
11. I. J. Richard, *J. East Afr. Geosci. Nat. Hist. Soc.* 16, 89 (1942).
12. N. J. Guert, *Geol. Surv. Tanganyika Rep.* 4, 56 (1956).
13. A. F. Cooper *et al.*, *Am. J. Sci.* 275, 534 (1975).
14. All temperatures were taken with Omicron temp thermocouples chromel-alumel NiCr-NiAl; range = 25° to +990°C. Consistency was checked with two instruments.

15. J. Keller and M. Kraft, *TERRA* 1, 226 (1989).
16. During November 1988, B. Dawson and co-workers (B. Dawson, personal communication) carried out additional temperature measurement and obtained higher temperatures from 573° to 593°C. These data show that hotter magma is available at depth.
17. The DTA and DTG analyses were carried out at the

Natural Resources Institute, University of Oregon. V. Keszler is thanked for his help with the members of the expedition, K. Kraft, C. Niyamweru, C. Hue-Fiedl, and A. Demann for assistance. We also thank the Peterson from Arusha, and our local porters for their help in field.

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Magnification of Secondary Production by Kelp Detritus in Coastal Marine Ecosystems

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

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

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

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

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

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

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

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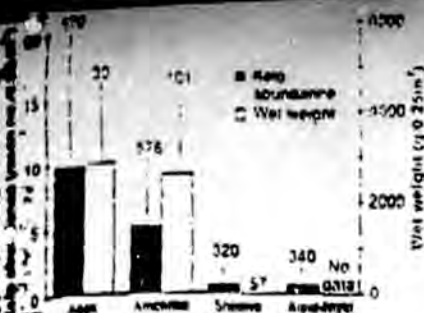


Fig. 1. Kelp abundance and wet weight (means and 1 SD of quadrat counts and sample weights) for four islands with sea otters (Adak and Amchitka) and without otters (Shemya and Alad-Nizki). Wet weight at Shemya = 0. Sample size is given above each error bar.

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

production. Systematic benthic surveys verified differences in kelp abundance and biomass between islands. At each island, transects were established at 16 to 30 randomly selected sites along the 0-m contour. All sites were on the Bering Sea side of each island and were judged subjectively to be of similar exposure. Along each transect, 20 randomly selected 0.25-m² quadrats were censused by divers for kelp abundance. The resulting data (Fig. 1) show orders of magnitude differences in subtidal kelp abundance and biomass between islands with and without sea otters. Although abundance and biomass are not synonymous with production, research on similar kelp assemblages suggests that benthic production should be very different among these islands (2, 10). Kelp-derived organic carbon is available to nearshore suspension feeders, detritivores, and (indirectly) their predators, and if phytoplankton alone is a limiting resource, then secondary production should be significantly different between island types. We used two analyses to determine

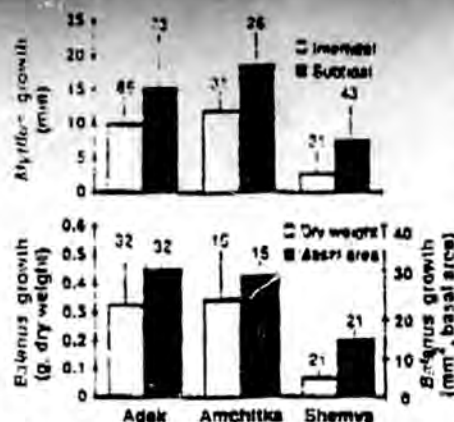


Fig. 2. Results of translocation experiments: means and 1 SD of growth in length (mussels, *Mytilus*) or dry weight and basal area (barnacles, *Balanus*). Sample size is given above each error bar.

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

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

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

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

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

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

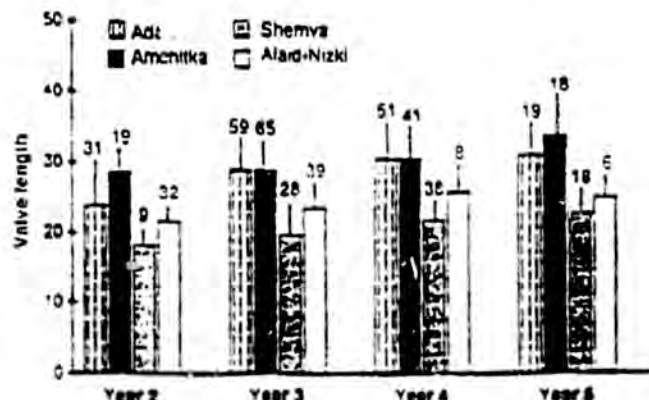


Fig. 3. Age-size relations for *Mytilus edulis* at four Aleutian Islands: means and 1 SD of valve length. Sample size is given above each error bar.

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

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

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

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

rived organic carbon is not restricted to benthic organisms.

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

Our data support quantitatively the suggestions of Mann (2, 3) and others that kelps contribute significantly to coastal secondary production, perhaps ultimately establishing limits to the abundances of food-limited populations. Factors affecting kelp occurrence and production such as the recolonization or extinction of sea otters, sea urchin disease, catastrophic storms, nutrient depletion during El Niño events, or oil spills and other pollution are thus likely to have wide-ranging and often long-lasting influences on the productivity of coastal ecosystems.

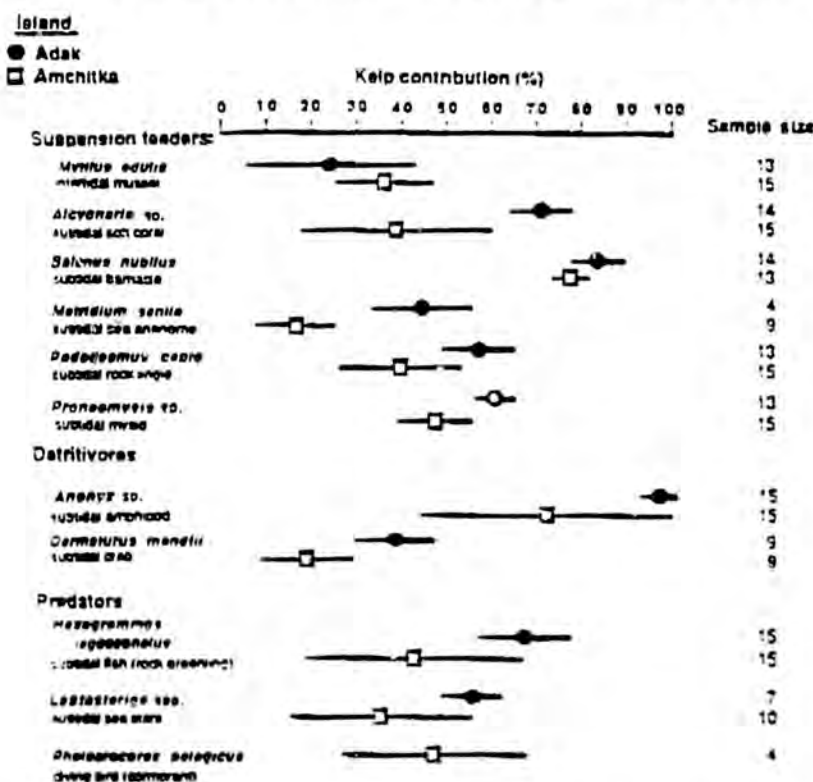


Fig. 4. Percentage of carbon photosynthesized by kelps found in tissues of consumers at islands with extensive subtidal kelp beds. Values are means and ± 1 SD. Three to five samples were collected and analyzed from each of three sites at each island.

REFERENCES AND NOTES

1. R. C. Newell, in *Flow of Energy and Matter in Marine Ecosystems*, M. J. R. Fasham, Ed. (Plenum, New York, 1984), pp. 317-343; C. A. Stumm and R. C. Wiseman, *Mar. Ecol. Prog. Ser.* 22, 141 (1985); R. Carpenter, *Ecol. Monogr.* 56, 769 (1986).
2. K. H. Mann, *Mar. Biol.* 14, 199 (1972).
3. ———, *Science* 182, 975 (1973).
4. D. O. Duggins, *Ecology* 61, 447 (1980).
5. J. A. Estes and I. F. Palmisano, *Science* 185, 1051 (1974); J. A. Estes et al., *Ecology* 59, 822 (1978).
6. K. H. Mann, *Ecology of Coastal Waters: A Synthesis* (Univ. of California Press, Berkeley, CA, 1982).
7. C. Harrold and I. S. Pearse, in *Estuarine Studies*, R. Longworth and I. M. Lawrence, Eds. (Balch, Rotterdam, 1977), pp. 137-233; V. A. Garritt, *Univ. of California, Santa Cruz* (1978).
8. F. Favonni, *Quart. Publ. Inst. Mar. Sci. Univ. Alaska* (1974), pp. 3-37; W. B. McAlister and F. Favonni, in *The Environment of Amchitka Island, Alaska*, M. J. Merritt and R. G. Fuller, Eds. (Energy Research and Development Administration, Oak Ridge, TN, 1977), pp. 331-352.
9. S. Minoda and T. Minoda, *Ocean. Publ. Inst. Mar. Sci. Univ. Alaska* 2 (1974), pp. 207-241; J. A. Labedz and I. F. Palmisano, in *The Environment of*

Alaska. Eds. M. L. Munn and R. G. Bailey. Univ. Alaska Press, Fairbanks, Alaska, 1977. pp. 165-182. N. J. Wadsworth, *Frontiers in Arctic Science* (1984), pp. 172-190.

D. O. Ducey, *Phytol.* University of Washington, Seattle (1980).

Phytomass production in the Aleutians is comparatively low (38 to 243 g of carbon per square meter per day) concentrated during a relatively short growing season and primarily restricted to bays (higher than the exposed coast) with vertical water mobility (9).

Algae were initially of equal size and were assigned to cages randomly. We could not replicate the "no rain" treatment of this experiment because we were unable to visit Adak-Nizki Island until the summer of 1987.

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

Kruskal-Wallis ANOVA on mean growth of individuals at a site (cage) were: mass intertidal, $\chi^2(2) = 19.3$, $P < 0.0001$; mass subtidal, $\chi^2(2) = 17.2$, $P < 0.0002$; barnacle dry weight, $\chi^2(2) = 6.4$, $P < 0.05$; barnacle basal plate area, $\chi^2(2) = 6.2$, $P < 0.05$.

Masses were collected from equivalent tidal heights at sites of equivalent wave exposure. Specially moistened masses were chosen to reduce the potential confounding consequences of a diapycnic complex.

E. A. Lutz, *J. Mar. Biol. Assoc. U.K.* 56, 723 (1976).

Complete random block ANOVA for age-size analysis with age (2 to 6 years) as the blocking factor, $F(1,11) = 203$, $P < 0.001$. Such a random block analysis allows us to examine island effects (kelp-dominated compared to urban-dominated) for all four age classes simultaneously.

S. B. Fry and E. B. Sherr, *Canad. Mar. Sci.* 27, 25 (1984) for comprehensive discussion and critique of the application of $\delta^{14}\text{C}$ techniques to ecological studies. The ratio of ^{13}C to ^{12}C is fixed at the time (and according to the pathway) of photosynthesis. With minor modification ($+0.5$ to 1.5 per mil per trophic level), this ratio is maintained through consumer trophic levels. Thus consumer signatures reflect those of key primary producers.

Territorial input of organic matter to nearshore coastal waters was presumed to be insignificant primarily because short terrestrial vegetation is mainly runs of grasses and lichens, which degrade in situ; there is no woody vegetation that would produce large amounts of exportable detrital matter. J. McConnaughey and C. P. McRoy, *Mar. Biol.* 53, 257 (1979); M. R. Fortin and J.-C. Dublet, *Canad. J. Fish. Aquat. Sci.* 38 (1981); G. H. Rau et al., *Deep Sea Res.* 29, 1035 (1982).

Five whole (above holdfast) kelp specimens per island were collected at each of three randomly selected sites at each island and subsampled systematically by taking a number of plugs uniformly along the length of the blade. Three to five specimens of each transect were collected at the same sites at the three sites and were used whole (intact, unprocessed) or subsampled (muscle tissue or other).

The entire exception to the pattern of greater consumer enrichment at islands with kelp was *Mytilus* shells, which was the only consumer we collected from the intertidal zone, where kelp is abundant at all four islands. *Mytilus* $\delta^{13}\text{C}$ values showed no pattern between kelp and no kelp islands.

Differences between kelp and no kelp islands were significant in a random-block ANOVA (with success in kelp), thus allowing analysis of all species simultaneously, considering all subtidal consumers pooled ($F(1,27) = 7.96$, $P < 0.0001$) or only invertebrate consumers ($F(1,14) = 11.64$, $P < 0.005$).

A simple mixing model based upon that of T.

McConnaughey and C. P. McRoy, *Mar. Biol.* 53, 263 (1979) was possible because of the two-source source model. Percentage contribution from each is calculated as $(\delta^{13}\text{C}_{\text{sample}} - \delta^{13}\text{C}_{\text{phytoplankton}}) / (\delta^{13}\text{C}_{\text{kelp}} - \delta^{13}\text{C}_{\text{phytoplankton}}) \times 100$, where $\delta^{13}\text{C}$ represents a non-photonuclear isotope fractionation and was empirically derived for each species by calculating the difference in $\delta^{13}\text{C}$ between the most deplete sample (14) and species ("pure" phytoplankton diet) and the mean phytoplankton value (-24.0). In cases where the most $\delta^{13}\text{C}$ deplete value for a species was less than the phytoplankton value, the mean of our measured enrichment values (2.3 per mil per trophic level) was used. This method makes our model conservative in favor of phytoplankton (reducing the percentage of carbon from kelp) in that our calculations indicate that even the most taxonomically deplete consumers incorporate

some non-derived carbon.

25. D. O. Ducey, in *The Community Ecology of Sea Otters*, G. A. VanBlaricom and J. A. Estes, Eds., Springer-Verlag, Berlin, 1983, pp. 192-201.

26. Supported by NSF grant DPT-8421362. We sincerely appreciate the discussions and comments of our colleagues M. Dethier, S. Fry, T. Michaels, and G. VanBlaricom, and the assistance provided by a small army of divers plus the U.S. Coast Guard (17th District), the U.S. Navy (Adak Naval Station), the U.S. Air Force (Shemya Air Force Base), and the U.S. Fish and Wildlife Service (Alaska Marine Refuge), during our surveys, collections, and experiments in the Aleutians. We thank P. Hansen, L. Johnson, A. Sewell, and J. Wadsworth who were particularly helpful in the field or laboratory.

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A 48-Million-Year-Old Aphid-Host Plant Association and Complex Life Cycle: Biogeographic Evidence

NANCY A. MORAN

Biogeographical and paleobotanical evidence suggests that the aphid subtribe Melaphidina has been associated with its sumac host plant since the early Eocene when these plants were continuously distributed across the Bering land bridge. Transfer experiments indicate that the American species, *Melaphis rhois*, shows an unusual complex life cycle, similar to that known in Chinese melaphidines, with some generations feeding on mosses as alternate host plants. As with the association with sumac, this complex life cycle may have been established in the melaphidine lineage before the southward retreat of sumac from Alaska 48 million years ago. This example suggests that the interactions and life histories shown by modern populations may be determined, in large part, by evolutionary commitments made in the distant past.

DESPITE THE LARGE AMOUNT OF attention paid to possible coevolutionary interactions between herbivorous insects and their host plants, the ages of interactions between specific insect and plant lineages have been estimated in only a few cases (1, 2). These ages are difficult to obtain from fossils of damaged plant tissues since the damage must be distinctive enough to be definitely associated with a modern insect group. The ages of life cycle phenomena observed in modern animal species are even more difficult to establish, because these are rarely documented by any fossil evidence. I have used biogeographic evidence to establish the antiquity of an association between an aphid and a plant lineage and of a peculiar complex life cycle.

The aphid subtribe Melaphidina (Homoptera: Aphididae: Pemphiginae: Fordini) consists of four Asian genera and a monospecific American genus (3, 4). All known species form galls on sumac species (Anacardiaceae, *Rhus* L., subgenus *Rhus* (3, 4)). These galls are induced by aphid feeding and are inhabited by three generations of parthenogenetic females. Galls are closed, sac-like structures with a structure and composition very different from leaves from

which they are derived (5). Ecdysis of the final winged emigrant generation is synchronized with opening of gall exit slits. Although this level of intricacy suggests that a sumac-Melaphidina association is ancient, more definite evidence concerning the age of the interaction is provided by biogeographic considerations.

The current distribution of the Melaphidina implies that use of sumac was established before the geographic separation of the ancestors of modern hosts in Asia and America. The occurrence of the subgenus *Rhus* in both the Old and New Worlds is attributed to dispersal across the Bering land bridge during or before the early Eocene, an explanation strongly supported by fossil evidence (6) (Fig. 1). The vicariance between Asian and American plant lineages resulted when climatic changes pushed plant distributions southward during the Tertiary (7). For sumac, this occurred about 48 million years ago, as judged by the distribution of leaf fossils in Alaskan Tertiary flora (6, 8). The sumac-Melaphidina association must be

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**Resource Damage Assessment
of the T/V *Puerto Rican*
Oil Spill Incident**

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Attachment B

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commercial fishery of the area depends. Thus, not only would many of the larvae have been valuable in themselves if they had lived to become adults, but the entire commercial fishery would have been more productive. Unfortunately, current ecological theory will not support an estimate of the total injury done to the commercial fishery as a result of the destruction of a part of the food chain upon which it depends.

Replacement Costs

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A replacement cost approach can avoid many of the problems involved in attempting to estimate the use value of biological resources. Under the replacement cost approach the resource is valued at what it would cost to replace it. If the resource is replaced, the problems of identifying all its uses, the monetary value of these uses, and the users affected by the resource loss are eliminated, except for the period between the initial loss and the replacement.

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Twenty-three institutions were asked to estimate the cost of obtaining specimens of the birds killed in the Puerto Rican oil spill, or the price at which they would be willing to sell members of each species (Sterling Hobe Corporation 1985; and California Department of Fish and Game 1985). Nine institutions responded and their estimates are shown in Figure 23.

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One problem with most of these estimates is that they are not true replacements costs, but rather the cost of collecting already existing specimens from the wild and redistributing them to the Gulf of the Farallones area. This does not represent true replacement, since true replacement requires a complete recovery of the species population. This can be most clearly assured by using only captive breeding programs for replacement.